INEQUALITY IN SCHOOL FINANCING: THE ROLE OF THE LAW

U.S. Commission on Civil Rights
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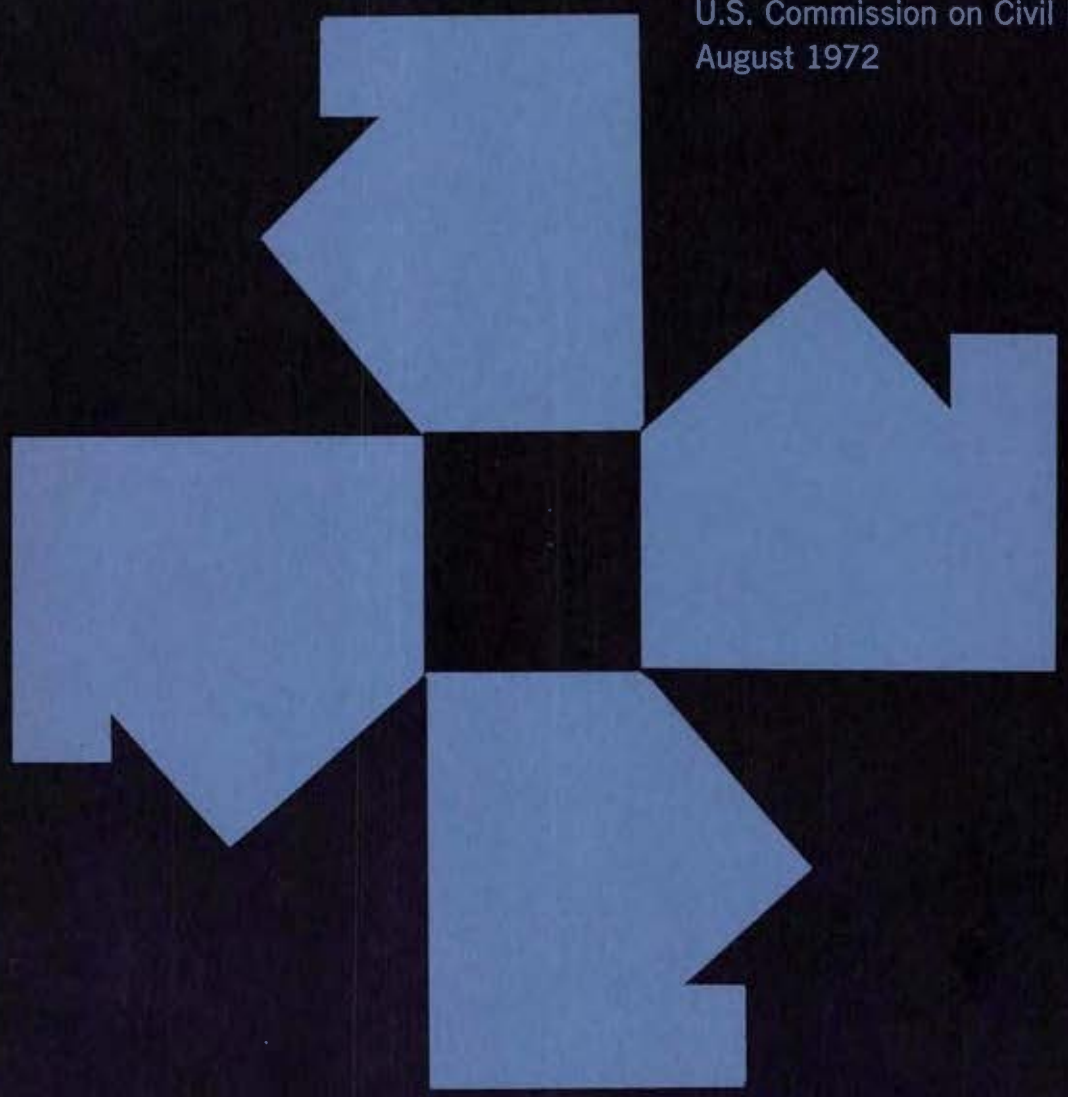

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U.S. COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan Agency established by Congress in 1957 and directed to:

Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, or national origin;

Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of their race, color, religion, or national origin;

Appraise Federal laws and policies with respect to equal protection of the laws because of race, color, religion, or national origin;

Serve as a national clearinghouse for information with respect to denial of equal protection of the laws because of race, color, religion, or national origin; and

Submit reports, findings, and recommendations to the President and the Congress.

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TABLE OF CONTENTS

INTRODUCTION

The U.S. Commission on Civil Rights is undertaking a comprehensive assessment of the nature and extent of educational opportunities available to Mexican Americans in the public schools of the Southwest.

The fourth of a series of reports on Mexican American education, *Mexican American Education in Texas: A Function of Wealth* was released on the same day as this survey of the law. Report IV focuses on the impact which the financing of education in Texas has on the Mexican American community. This survey was originally prepared as a legal appendix to Report IV. Because the subject matter has implications far beyond the education of Mexican American children in Texas, the Commission determined to publish it separately as part of its clearinghouse function.

This survey was prepared by Howard A. Glickstein and William L. Want.* It gives a brief history of the movement toward equality of educational opportunity in the United States; it reviews recent court decisions mandating equality in educational expenditures; and it raises some of the critical questions thus far unanswered by either the courts or the legislatures regarding ramifications of these decisions.

Moreover, it suggests that the recent court decisions striking down State systems of school finance because of intrastate inequality may not be the panacea for minority group schoolchildren that had originally been envisioned. Because children of minority groups are increasingly concentrated in urban areas, the decisions will tend to benefit minority group children to the extent they benefit the cities in which they live. The outcome depends on whether cities as a whole will benefit from the decisions.

The proportion of minority group persons living in the major cities has grown rapidly in recent years. Except for the very poor who cannot afford to leave, large numbers of white persons have fled to the suburbs leaving the central cities primarily inhabited by the minority and low-income groups. The cities, therefore, find their tax bases diminishing at a time when demands are increasing on them, not only for education, but for health, welfare, and protective services. If an equal opportunity to succeed in life is to be provided all children, a means of financing education must be developed which takes into consideration the additional burdens urban school districts must bear as well as the particular educational needs of the children they must educate.

This is the challenge with which the courts and legislators must struggle if the hope of equality of education is to be realized in this country. This is the challenge this survey attempts to define.

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CHAPTER I

INEQUITY IN SYSTEMS OF SCHOOL FINANCE THROUGHOUT THE COUNTRY

Discrimination against minority students in the Nation's public schools is rapidly giving cause for real alarm among all those concerned with equal opportunity and with the entire future of this country. Inequality in school financing is increasingly recognized as a major factor in perpetuating this educational and social dilemma.

Systems found to be using inequitable methods of financing their educational programs have been struck down by courts in California, Texas, Minnesota, Arizona, and New Jersey. Appeals from some of these cases are now progressing to the Supreme Court of the United States.[1] On March 6, 1972, the President's Commission on School Finance issued its final report calling for numerous reforms. A number of State legislatures are in process of making substantial changes in their systems of school finance.[2] In the wake of all these developments, the Administration is showing growing interest in providing large-scale Federal aid to assist in reorganizing school finance systems. The U.S. Commissioner of Education, Sidney P. Marland, recently has said that he believed the Federal Government should pay 25 to 30 percent of the cost of public education rather than the 8 percent it now pays.[3]

The focus of the Commission report is on inequities in the Texas system of school finance. This report unravels three separate, cumulative methods in which the Texas system functions to provide grossly inequitable funding for predominantly Chicano (Mexican American) school districts.

The first source of inequity was found to lie in the minimum foundation formula, nominally an equalizing device of State aid which operates in such a way that it provides less money for predominantly Chicano school districts. The second source of inequity was revealed in the formula by which the local district fund assignment is computed. Although presumably representing a fair measure of the share that districts are financially able to contribute to the minimum foundation plan, Commission findings showed the local fund assignment formula to be replete with discriminatory features. The third source of inequity was seen in the use of local property taxes to supplement the minimum foundation plan. The cumulative effect of these inequities is that, despite the minimum equalizing effect of State aid and the higher tax rates prevalent among predominantly Chicano school districts, per pupil expenditures from State and local revenue sources are below those in predominantly Anglo districts. They range from a high of about $675 in districts 20 to 30 percent Mexican American to $340 in districts 80 percent or more Mexican American.

Texas may be an exception in that its system of finance clearly operates to the financial detriment of minority group children: in this case—Chicano.[4] The

[1] On Apr. 25, 1972, the Supreme Court noted probable jurisdiction in *Rodriguez* v. *San Antonio Independent School District*, 337 F. Supp. 280 (W.D. Tex. 1971) *prob. juris. noted*, 40 U.S. L.W. 3513 (1972).

[2] See, e.g., Washington Post, Mar. 15, 1972, Sec. B at 1, cols. 6–7 which report that the Ways and Means Committee of the Maryland House of Delegates has approved a bill "radically redistricting State aid to public schools in Maryland * * *." The Committee agreed to withdraw its proposal after it was assured by the Governor that he will introduce his own bill next year. Washington Post, Mar. 22, 1972, Sec. C at 1, col. 8.

[3] N.Y. Times, Jan. 10, 1972, Sec. E at 25, col. 1.

[4] This report points out that, in contrast to Texas, in the other Southwestern States—California, Arizona, New Mexico, and Colorado—the majority of Chicano pupils are found in predominantly Anglo districts. This made it difficult to separate the effect of the State finance systems on Mexican Americans, as distinguished from Anglos, who attend school in the same district. In California, it appears that a majority of minority group pupils reside in districts that are not financially disadvantaged. See Coons, Clune, and Sugarman, *Private Wealth and Public Education* 356–57, n. 47 (1970) (hereinafter referred to as Coons, Clune, and Sugarman, *Private Wealth*). Coons, Clune, and Sugarman, discount the relationship between race and financial inequities: "There is an understandable tendency to treat the school finance issue as an outrider of the racial problems of public education * * * the fact is otherwise. There is no reason to suppose that the system of district-based school finance embodies a racial basis. *The districts which contain the great masses of black children ordinarily also contain great masses of white children.* There well may be very significant racial/dollar discrimination within districts, but that is another problem: to lump it with interdistrict discrimination is totally misleading." (emphasis added.) *Id.* at 355–57. *Cf.* Levin, et al., *Paying for Public Schools: Issues of School Finance in California* (Urban Institute, 1972) at 26–27 in which the authors find that districts with more than 50 percent minority students have by far the highest non-Fed-

inequalities in school finance between rich and poor school districts found in Texas, however, are the rule throughout the country.[5]

A view of inequality on the national level begins with a look at the disparities among the States where average per-pupil expenditures currently range from a high of approximately $1,400 in Alaska to a low of less than $500 in Alabama.[6] Nor do State expenditures necessarily reflect the relative importance a State places on education. For example, Mississippi and Alabama, which rank 49th and 50th in terms of per-pupil expenditures devote 39.7 percent and 40.2 percent respectively of their public expenditures to education. Alaska and New York, on the other hand, which rank first and second in terms of per-pupil expenditures, devote only 32.1 percent and 33.9 percent respectively of their public expenditures to education.[7]

State averages, by definition, mask the wide range of disparities within the States.[8] In Wyoming, expenditures range from a low of $618 per pupil to a high of $14,554; in Kansas, from $454 to $1,831; in Vermont, from $357 to $1,517; in Washington, from $434 to $3,406; in Oklahoma, from $342 to $2,566; in Colorado, from $444 to $2,801; and in Pennsylvania, from $484 to $1,401.[9]

In California per-pupil expenditures for Emery Unified and Newark Unified School Districts, both in Alameda County, were $2,223 and $616 respectively.[10] In New Jersey 14 districts with a total of 13,391 pupils spent less than $700 per pupil while 16 districts with 29,653 pupils spent more than $1,500 per pupil.[11] In New York, two Long Island school districts within 10 miles of each other—Great Neck and Levittown—spent $2,078 and $1,189 respectively per pupil.[12]

Not only does the current system of school finance produce spectacular divergencies in expenditures for students in different school districts, but it also results in inequalities in terms of the taxes paid to finance education. Local funds, derived almost exclusively from the real property tax, provide better than one-half the revenue for elementary and secondary education in the Nation as a whole.[13] The amount that can be obtained through a property tax is a function of the tax rate employed and the value of the property taxed. Use of the property tax, therefore, subjects educational financing to the massive disparities in tax base that characterize American local governments.[14] Consequently, the richer a district, the less severely it need tax itself to raise funds. In other words, a man in a poor district must pay higher local rates for the same or lower per-pupil expenditures.[15]

In Alameda County, California, Emery Unified School District manages to spend $2,223 per pupil with a $2.57 tax rate while Newark Unified must tax at a rate of $5.65 to spend $616 per pupil.[16] In Essex County, New Jersey, Millburn, with a $1.43 school tax rate compared to $3.69 in Newark, has more teachers per pupil than Newark, spends more for teachers' salaries per pupil ($685 to $454), and employs more professional staff per pupil.[17]

In Arizona, Morenci Elementary School District produced $249.64 per pupil in local revenue with a tax rate of $0.67. Roosevelt Elementary School, however, had to use a tax rate of $4.65 to produce a mere $99.04

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eral expenditure levels. "When blacks and Spanish surnamed students are viewed separately, however, different expenditure patterns for these two largest minorities emerge. In general, the districts with the highest proportion of black students are spending more per pupil than districts with the highest proportion of Spanish surnamed students. The reverse is true, however, in the middle ranges—the districts with from 10 to 20 percent minority enrollment. There the districts with concentrations of Spanish surnamed students spend more per student than those with concentrations of blacks."

[5] See Coons. Clune, and Sugarman, "Educational Opportunity: A Workable Constitutional Test for State Financial Structure", 57 Cal. L. Rev. 305. 317 (1969) (hereinafter referred to as Coons, Clune, and Sugarman, "Educational Opportunity"): "(1) Poorer districts in general tend to make a greater tax effort for education than do wealthier districts, (2) poorer districts in general have significantly lower educational offerings than do wealthier districts."

[6] See App. A.

[7] See N.Y. Times, Jan. 10, 1972, Sec. E at 2 (table).

[8] See App. B.

[9] *Ibid.*

[10] *Serrano* v. *Priest*, 5 Cal. 3d 584, 600 n. 15, 487 P. 2d 1241, 96 Cal. Rptr. 601 (1971).

[11] *Robinson* v. *Cahill*, 118 N.J. Super. 223 242 287 A. 2d 187, 197 (1972).

[12] Report of the New York State Commission on The Quality, Cost and Financing of Elementary and Secondary Education, 2.7 (1972) (hereinafter referred to as the "Fleischmann Commission Report.")

[13] In 1970–71 local district revenues provided 52 percent of the funds for public education; States provided 44.1 percent and the Federal Government provided 6.9 percent. See N.Y. Times, Jan. 10, 1972, Sec. E at 2 (table).

[14] See Berke and Callahan, "Inequities in School Finance" 61 (1971) a paper presented at the 1971 Annual Convention of the American Academy for the Advancement of Science and reprinted by the Select Committee on Equal Educational Opportunity, U.S. Senate, 92d Cong. 2d Sess. (Comm. Print 1972).

[15] An expert witness in the *Rodriguez* case, stated that "One of the cruel ironies in the current approach to supporting schools in Texas is that the communities which have the least money for their schools are the very districts which tax themselves most heavily to raise school revenues." (See affidavit of Joel Berke (p. 13) in *Rodriguez* v. *San Antonio, op. cit. supra* note 1.)

[16] These and other discrepancies in California are illustrated by the chart in App. C.

[17] *Robinson* v. *Cahill, op. cit. supra* note 11 at 240.

per student in local revenue.[18] In Texas, the 10 districts with above $100,000 market value of taxable property per pupil would have to tax at $0.64 to obtain the highest yield; the four districts below $10,000 would have to tax at $12.83.[19]

A further glaring inequity in current systems of school finance is found in variations of expenditures which tend to be inversely related to educational needs. City students, with greater than average educational needs, consistently had less money spent on their education and had higher pupil/teacher ratios to contend with than did their high-income counterparts in the favored schools of suburbia.[20] In 1967, Los Angeles, for example, spent $601 per pupil, while its suburb Beverly Hills spent $1,192. Detroit spent $530; its suburb Grosse Pointe, $713.[21] Dr. James B. Conant deplored inequities of this nature:

> The contrast in the money spent per pupil in wealthy suburban schools and in slum schools of the large cities challenges the concept of equality of opportunity in American public education.[22]

The current pattern of resource allocation has been brought about by the State in two ways. First, the local districts with unequal taxable resources have been created by the States. As the court noted in *Serrano* v. *Priest:* "Governmental action drew the school district boundary lines, thus determining how much local wealth each district would contain." [23]

Secondly, although the States have made some efforts to equalize the differences through financial aid to local school districts, large disparities still remain. The States contribute approximately 44 percent of revenues for elementary and secondary education through flat grants or equalizing grants or combinations of the two. The flat grant consists of an absolute number of dollars distributed to each school district on a per pupil or other per unit standard. Plans employing equalizing grants (or foundation plans) are more complicated and have a number of variants. In its simplest form, a foundation plan consists of a State guarantee to a district of a minimum level of available dollars per student, if the district taxes itself at a specified rate. The State aid makes up the difference between the guaranteed amount and local collections at the specified rate.[24]

After its original proposal in 1923 [25], the equalizing approach became the model of numerous State adaptations. Compromises with the strict application of the equalization objectives were made in most States to accommodate: (a) The longstanding tradition of flat grants; (b) the reluctance of State officials to increase State taxes so they would fully finance equalization plans; and (c) the desire of some localities to finance truly superior schools.[26] In most States the foundation plan ended by providing the poorest districts with basic education programs at a level well below that of the wealthier districts that were left with ample local tax leeway to exceed the minimum foundation plan level without unduly straining local resources.[27]

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[18] *Hollins* v. *Shofstall*, No. C-253652 at 3 (Ariz. Super. Ct., Maricopa Cty. 1972) (memorandum and order granting summary judgment).

[19] The complete table from which this information was taken, included in the affidavit submitted by Dr. Joel Berke in *Rodriguez* v. *San Antonio op cit. supra* note 1 is attached as App. D. Highest yield is the revenue that would be obtained by using the tax rate of the district with the highest tax rate in the sample. The table shows that the resulting burden increases at a much greater rate for poorer districts than for richer if they both seek to realize the highest return in the sample.

[20] See Berke and Kelly, "The Financial Aspects of Equality of Educational Opportunity" 10 (1971), reprinted by the Select Committee on Equal Educational Opportunity, U.S. Senate, 92d Cong., 2d Sess. (Comm. Print 1972). See also, U.S. Commission on Civil Rights *Racial Isolation in the Public Schools* (1967) which discusses the problems cities face in financing their schools. "Under the system of financing, the adequacy of educational services is heavily dependent on the adequacy of each community's tax base. With the increasing loss of their more affluent white population, central cities also have suffered a pronounced erosion of their fiscal capacity. At the same time, the need for city services has increased, particularly in the older and larger cities. The combination of rising costs and a declining tax base has weakened the cities' capacity to support education at levels comparable to those in the suburbs." *Id.* at 25.

[21] The phenomenon of divergent expenditures in the same metropolitan area is further illustrated by the chart in app. E.

[22] Conant, "Slums and Suburbs," 145–46 (1961).

[23] 5 Cal. 3d 584, 603 (1971). See also Schoettle, "The Equal Protection Clause in Public Education", 71 Col. L. Rev. 1355, 1410 (1971): "Allocation of tax base is no less a state act than would be the distribution of dollars by the state itself in unequal and arbitrary amounts to residents of different units of local government."

[24] For a full discussion of State equalization plans see Coons, Clune, and Sugarman, *Private Wealth, op. cit. supra* note 4 at ch. 2. See also statement of Charles S. Benson, Hearings Before the Select Committee on Equal Educational Opportunity of the U.S. Senate, 92d Cong. First Sess., pt. 16 A, at 6709, 6712–6715 (hereinafter referred to as "Equal Educational Opportunity Hearings".)

[25] See Benson, *op. cit. supra* note 24 at 6712.

[26] See Advisory Committee on Intergovernmental Relations, "State Aid to Local Government" 40 (1969).

[27] *Ibid.* See Statement of National Committee for Support of the Public Schools, "Equal Educational Opportunity Hearings" pt. 16 D-3 at 8287, 8288 which summarized the major inadequacies of State equalization programs: *"State systems of education finance distribute state funds through foundation programs which fail to correct the wealth disparities among local dis-*

Federal educational aid programs, which make up only about 7 percent of all revenues for public education, have had some impact on equalizing resources. Title I of the Elementary and Secondary Education Act, enacted in 1965, accounts for almost 40 percent of Federal funds expended on elementary and secondary education.[28] It is designed to meet the educational needs of children from low-income families; [29] because it is responsive to educational needs of the poor it has had an equalizing effect.[30] Other Federal programs, however, often serve to reinforce disparities. Funds under the National Defense Education Act, for example, sometimes have gone disproportionately to suburban schools.[31] Aid to federally impacted areas never was intended to have an equalizing effect.[32] It is merely designed to compensate for the presence of large-scale tax-exempt Federal activities; need is not a criterion. Nevertheless, "[i]t is the small but important share of educational financing that has been contributed by the Federal Government that has been the most effective fiscal contribution to equal educational opportunity in American school finance." [33]

tricts." While these programs vary widely in specifics from State-to-State they frequently suffer from three major flaws and a host of minor ones:

"Foundation amounts—the maximum amount the State assures each district—are inadequate. For instance, California's maximum amount is $355 per elementary pupil; Maryland's is $370.

"Flat or minimum grants which award money on the basis of number of pupils to all districts, wealthy or poor. When they are awarded as part of the maximum foundation amount, as in California, or are substituted for districts not qualifying for minimum amounts under an equalization program, as in Maryland, they subsidize the wealthy and attenuate the disparities.

"Districts must raise money locally to support education programs superior to those provided for in the foundation amount. This gives rise to disparities in tax effort and in expenditures. Even though poorer districts make the same or greater tax effort on behalf of their schools, they are able to purchase much less education than the rich."

It also is noteworthy that the basis of measurement used to determine a district's allocation tends to discriminate against cities. Funds are distributed on the basis of pupil weighted average daily attendance (WADA). The WADA formula has an adverse impact on cities because of their truancy problems. See Fleischmann Commission Report at 2.15, 2.38. See also Kirp, "The Poor, the Schools and Equal Protection", *Equal Educational Opportunity* 139, 168 (1969); 1 U.S. Commission on Civil Rights, *Racial Isolation in the Public Schools* 28 (1967): "State aid programs designed decades ago to assist the then poor suburban districts often support the now wealthier suburbs at levels comparable to or higher than the cities."

[28] See Berke and Kelly, *op. cit. supra* note 20 at 27; 1 U.S. Commission on Civil Rights, *Racial Isolation in the Public Schools* 28–29 (1967); Advisory Committee on Intergovernmental Relations, State Aid to Local Government 37–39 (1969).

[29] See Glickstein, "Federal Educational Programs and Minority Groups", 38 J. of Negro Ed. 303 (1969) for a discussion of Title I and other Federal aid programs that assist minority group children; see also *American Indian Civil Rights Handbook* 54 (U.S. Commission on Civil Rights, Clearinghouse Publication No. 33, 1972) for a discussion of Federal educational aid to Indians; "Title I of ESEA, Is It Helping Poor Children?" (Report by the Washington Research Project and the NAACP Legal Defense and Education Fund, Inc., 1970).

[30] See Berke and Kelly, *op. cit. supra* note 20 at 27, 30; Berke and Callahan, *op. cit. supra* note 14 at 73–75 U.S. Commission on Civil Rights, *Racial Isolation in the Public Schools* 29 (1967).

[31] 1 U.S. Commission on Civil Rights, *Racial Isolation in the Public Schools* 28 (1967).

[32] *Ibid.*

[33] Berke and Callahan, *op. cit. supra* note 14 at 73.

CHAPTER II

THE PURSUIT OF "EQUAL EDUCATIONAL OPPORTUNITY"

A. The Development of Public Education in the United States

The fundamental relationship between education and democracy has always been a premise of our form of government. George Washington stressed this in his farewell address:

> Promote then as an object of primary importance, Institutions for the general diffusion of knowledge. In proportion as the structure of a government gives force to public opinion, it is essential that public opinion should be enlightened.[34]

Thomas Jefferson echoed this conviction:

> I think by far the most important bill in our whole code (of Virginia) is that for the diffusion of knowledge among the people. No other sure foundation can be devised for the preservation of freedom, and happiness.[35]

Our Founding Fathers, moreover, regarded the provision of education as a public function. "It is not too much to say," wrote John Adams, "that schools for the education of all should be placed at convenient distances and maintained at the public expense." [36]

The first system of public education in the United States was created by the Massachusetts School Law of 1647; within a generation most of the other New England colonies had followed the example of Massachusetts.[37] Development of public schools in the middle and southern colonies was much slower; education outside of New England was still primarily a private matter at the close of the 18th century.[38] Public interest in public education increased during the first half of the 19th century and by 1850 "the battle for free state schools" was won in the northern States.[39] Progress was slower in the South but by 1918 education in every State of the Union was not only free but compulsory.[40]

Today, the duty of government to provide education is generally conceded. It has been specifically provided for in the constitutions of 50 States of the Union [41] and has been given eloquent recognition in numerous judicial opinions such as that of the Supreme Court of Michigan which said:

> We supposed it had always been understood in this state that education, not merely in the rudiments, but in an enlarged sense, was regarded as an important practical advantage to be supplied at their option to rich and poor alike, and not as something pertaining merely to culture and accomplishment to be brought as such within the reach of those whose accumulated wealth enabled them to pay for it.[42]

Education was widely regarded as a means of fostering social cohesion. Samuel Lewis, first superintendent of common schools in Ohio, wrote in 1836:

> Take fifty lads in a neighborhood, including rich and poor—send them in childhood to the same school—let them join in

[34] Farewell address, 35 *The Writings of George Washington* (Bicentennial Edition) 230. See also *Id.* at vol. 28, p. 27.

[35] Letter to George Wythe, 10 *The Papers of Thomas Jefferson* 244 (Princeton University Press 1954). See also Id. at vol. 9, p. 151; 6 *The Works of John Adams* 168 (1851); 1 U.S. Commission on Civil Rights, *Racial Isolation in the Public Schools* 1–2 (1967). Early legislation reflected the importance attached to education. For example, the Northwest Ordinance of 1787 provided: "Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." 1 *Documents of American History* 131 (Commager ed. 1958).

[36] *The Works of John Adams, op. cit. supra* note 35.

[37] Cubberley, *Public Education in the United States* 17–19 (1919); 1 *Documents in American History* 29 (Commager ed. 1958).

[38] Cubberley, *op. cit. supra* note 37 at 77.

[39] Id. at 101–115; 118–152.

[40] Id. at 246–254; Morison and Commager, II *The Growth of the American Republic* 306–307 (1950).

[41] See, e.g., Constitution of Florida, Art. 12, sec. 1; Constitution of Idaho, Art. 9, sec. 1; Constitution of Michigan, Art VIII, sec. 1; Constitution of North Carolina, Art. I, sec. 27; Art. IX, secs. 1 and 2; following *Brown* v. *Board of Education*, 347 U.S. 483 (1954), South Carolina repealed its constitutional provision for the establishment of public schools and Mississippi amended its constitution to make provision of educational services within the legislature's discretion; Constitution of Rhode Island, Art. 12, sec. 1. See also Article 26.1 of the United Nations Universal Declaration of Human Rights which provides: "Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit."

[42] *Stuart* v. *School District No. 1 of Kalamazoo*, 30 Mich. 69, 75 (1874). See also *Brown* v. *Board of Education*, 347 U.S. 483, 493 (1954); *City of Louisville* v. *Commonwealth*, 134 Ky. 488, 492–93, 121 S.W. 411 (1909); *Malone* v. *Hayden*, 329 Pa. 213, 223–24, 197 Atl. 344, 352 (1938); *Bissell* v. *Davison*, 65 Conn. 183, 190–91, 32 Atl. 348, 349 (1894); *Herold v. Parish Board of School Directors*, 136 La. 1034, 68 So. 116, 119 (1915); 1 U.S. Commission on Civil Rights, *Racial Isolation in the Public Schools* 260 (1967).

the same sports, read and spell in the same classes, until their different circumstances fix their business for life: some go to the field, some to the mechanic's shop, some to merchandise: one becomes eminent at the bar, another in the pulpit: some become wealthy; the majority live on with a mere competency—a few are reduced to beggary! But let the most eloquent orator, that ever mounted a western stump, attempt to prejudice the minds of one part against the other—and so far from succeeding, the poorest of the whole would consider himself insulted.[43]

But certain structural characteristics of our system of public education worked against the goal of social cohesion. For one thing, our schools were segregated by race and, in many places, by ethnic background. It was in the area of race that the first battles to achieve equal educational opportunity were fought.

B. Efforts to Eliminate School Segregation

The attack began by efforts to insure that "separate" facilities were, in fact, "equal", as required by the Supreme Court's decision in *Plessy* v. *Ferguson.*[44] Courts found violations of the equal protection clause of the 14th amendment [45] where it was shown that there were inequalities between black and white schools in buildings and other physical facilities, course offerings, length of school terms, transportation facilities, extracurricular activities, cafeteria facilities, and geographical conveniences.[46]

In *Missouri ex rel. Gains* v. *Canada* [47] and in *Sipuel* v. *Board of Regents,*[48] the Supreme Court—considering alleged tangible inequalities—invalidated school segregation where it was shown that the quality of facilities provided for blacks was unequal to the quality of the facilities afforded whites. Next, the Court considered whether intangible factors—more difficult to measure than bricks and mortar—could be considered in determining whether there had been a denial of equal educational opportunities. The Court answered affirmatively in *Sweat* v. *Painter* [49], where it held that more than physical facilities needed to be considered in judging whether Texas was providing equal educational opportunity in separate facilities to black law students. "What is more important," the Court stressed, "is the fact that the University of Texas Law School possesses to a far greater degree those qualities which are incapable of objective measurement but which make for greatness in a law school." [50] Similarly, in *McLaurin* v. *Oklahoma State Regents for Higher Education* [51] the Court required that a black student admitted to a white graduate school be treated like all other students and not segregated within the school. Again, the Court relied upon "intangible considerations", including "his ability * * * to engage in discussion and exchange views with other students * * *." [52]

The fatal blow to the separate but equal doctrine was struck in 1954 with the Court's decision in *Brown* v. *Board of Education.*[53] Here the Court held that it was unnecessary in each case to demonstrate the harm caused by segregation. Rather, a universal rule was appropriate: [54]

> (I)n the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated * * * are * * * deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment.

Of especial importance to the Court in assuring equal treatment was the significance it placed on the role of public education. The Court said: [55]

> Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our

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[43] Quoted in Gardner, *Excellence* 117 (1961). See also Wilson, "Social Class and Equal Educational Opportunity", in *Equal Educational Opportunity* 81–82 (1969).

[44] 163 U.S. 537 (1896).

[45] The 14th amendment to the Constitution provides, in pertinent part: "* * * nor shall any State * * * deny to any person within its jurisdiction the equal protection of the laws."

[46] See, e.g., *Sipuel* v. *Board of Regents,* 332 U.S. 631 (1948); *Missouri ex rel. Gaines* v. *Canada,* 305 U.S. 337 (1938); *Gong Lum* v. *Rice,* 275 U.S. 78 (1927); *Carter* v. *School Board,* 182 F. 2d 531 (4th Cir. 1950); *Davis* v. *County School Board,* 103 F. Supp. 337 (E.D. Va. 1952), *rev'd sub nom. Brown* v. *Board of Education of Topeka,* 347 U.S. 483 (1954); *Butler* v. *Wilemon,* 86 F. Supp. 397 (N.D. Tex. 1949); *Pitts* v. *Board of Trustees,* 84 F. Supp. 975 (E.D. Ark. 1949); *Freeman* v. *County School Board,* 82 F. Supp. 167 (E.D. Va. 1948), *aff'd.* 171 F. 2d 702 (4th Cir. 1948). See also Leflar and Davis, "Segregation in the Public Schools—1953", 67 Harv. L. Rev. 377, 430–35 (1954); Horowitz, "Unseparate but Unequal—The Emerging Fourteenth Amendment Issue in Public School Education", 13 U.C.L.A. L. Rev. 1147, 1149 (1966). Mary E. Mebane [Liza], a teacher at South Carolina State College, recently described what it was like to go to a separate but unequal school: "It's when you're in the second grade and your eye reads the name 'Bragtown High School' and you also see in the front of the book 'discard' and even though you're only 7 years old you know, as you turn the pages that have tears patched with a thick yellowing tape, that you're using a book that a white girl used last year and tore up, and your mother is paying book rent just like her mother paid book rent. You get the secondhand book. And it gives you a thing about secondhand books that does not go away until you are teaching yourself and are able to buy all the new ones you want." N.Y. Times, Mar. 15, 1972, at 43, cols. 1–3.

[47] 305 U.S. 337 (1938).

[48] 332 U.S. 631 (1948).

[49] 339 U.S. 629 (1950).

[50] *Id.* at 634.

[51] 339 U.S. 637 (1950).

[52] *Id.* at 641. See also 1 U.S. Commission on Civil Rights, *Racial Isolation in the Public Schools* 246–247 (1967); U.S. Commission on Civil Rights, *Freedom to the Free* 144–147 (1963).

[53] 347 U.S. 483 (1954).

[54] *Id.* at 495.

[55] *Id.* at 493.

recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

The *Brown* decision also has been applied to segregated schooling involving Mexican American and other minority group children.[56]

C. The Question of Financial Equality

Since the *Brown* decision, there has been an unremitting struggle—through the courts, the legislatures, and executive action—to eliminate racial discrimination from the operation of our public schools.[57] The increasing sensitivity created by *Brown* to inequalities among schools broadened the search for equality to factors other than race.[58]

Interdistrict financial disparities, while a problem of lower visibility, have increasingly attracted the attention of scholars, lawyers, and the courts. Equal educational opportunity not only involves the elimination of invidious racial and ethnic discriminations but also requires that public money expended on education be distributed in a nondiscriminatory manner. What formula is appropriate for determining whether or not education funds are being dispersed in a way that will guarantee equal educational opportunities?

The answer to this question does not necessarily depend on a simple quantitative weighing of resources; at times, the attainment of equality demands unequal efforts and expenditures. An adequate definition of "equal educational opportunity" requires the consideration of varied factors. Many formulations have been advanced.[59]

The definitions generally can be categorized as those which place restraints on the State and those which impose upon the State some type of affirmative obligation. In the first category are formulations which ordain that a State's educational financing system may not discriminate against the poor [60] on the basis of the wealth of the residents of a school district [61], on the basis of geography [62], or against taxpayers by imposing unequal burdens for a common State purpose.[63] Definitions of this sort are particularly suitable for the courts which usually are reluctant to inject themselves into such subjective and substantive questions as the appropriate product of an educational system. These definitions permit the State to design its educational system in a variety of ways so long as it does not violate some relatively clear formulation of equal protection.[64]

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[56] See e.g., *Romero* v. *Weakley*, 226 F. 2d 399 (9th Cir. 1955); *Hernandez* v. *Driscoll*, Civ. No. 1384 (S.D. Tex. 1957), 2 Race Rel. Rep. 329 (1957); *Cisneros* v. *Corpus Christi Independent School District*, 324 F. Supp. 599, 604–606 (S.D. Tex. 1970). *Cf.*, *Mendez* v. *Westminster School District of Orange County*, 64 F. Supp. 544 (S.D. Cal. 1946), *aff'd.* 161 F. 2d 774 (9th Cir. 1948); *Delgado* v. *Bastrop Independent School District*, Civ. No. 388 (W.D. Tex. 1948); *Gonzales* v. *Sheely*, 96 F. Supp. 1004 (D. Ariz. 1951). See also U.S. Commission on Civil Rights, *Ethnic Isolation of Mexican Americans in the Southwest* 11–13 (1971).

[57] For an account of this struggle, see the following reports of the U.S. Commission on Civil Rights: *1959 Report; 1961 Report, Volume 2; Civil Rights, 1963; Freedom to the Free* (1963); *Survey of School Desegregation in Southern and Border States, 1965–66* (1966); *Southern School Desegregation 1966–67* (1967); *Federal Enforcement of School Desegregation* (1969).

[58] But see David K. Cohen, "The Economics of Inequality", Sat. Rev. 64, 79 (Apr. 19, 1969) who argues that much of the interest in intrastate fiscal disparities arises precisely from despair over the evident failure of efforts to resolve the two central problems of public education of our times—its organization along racial lines and its apparent inability to reduce racial and class disparities in school outcomes. See also Peter Milius in the Washington Post, Nov. 28, 1971, Sec. A at 4, col. 3–4: "Northern liberals who used to stand forcefully for school desegregation are suddenly finding it impolitic, and are looking for alternatives, ways to stay 'liberal' without being in favor of busing * * *. The answer that many are tending toward is equalization for desegregation, moving dollars around instead of children. They note that, after all, the object of desegregation all along was only equal educational opportunity. If equalization sometimes sounds a little like 'separate but equal' that has not so far bothered these Northerners."

[59] See, e.g., Coons, Clune, and Sugarman, "Educational Opportunity", *op. cit. supra* note 5 at 338–40; Wise, *Rich Schools, Poor Schools—The Promise of Equal Educational Opportunity* at 143–159; Kirp, "The Poor, the Schools and Equal Protection" in *Equal Educational Opportunity* 139, 140, 156 (1969); Coleman, "The Concept of Equality of Educational Opportunity" in *Equal Educational Opportunity* 9 (1969); Silard and White, "Intrastate Inequalities in Public Education: The Case for Judicial Relief Under the Equal Protection Clause", 1970 Wis. L. Rev. 7, 25–28 (1970).

[60] See *Amici Curiae* Brief of Center for Educational Policy Research, Center for Law and Education at 2, *Serrano* v. *Priest*.

[61] See Coons, Clune, and Sugarman, "Educational Opportunity", *op. cit. supra* note 5 at 311: "The quality of public education may not be a function of wealth other than the wealth of the state as a whole."

[62] See Wise, *op. cit. supra* note 59 at 146: "Equality of educational opportunity exists when a child's educational opportunity does not depend upon either his parents' economic circumstances or his location within the State."

[63] See *Hollins* v. *Shofstall*, *op. cit. supra* note 18 (1972).

[64] Wise, *op. cit. supra* note 59 at 158–59.

Definitions in this category have the virtue of "modesty, clarity, flexibility, and relative simplicity." [65]

The definitions of "equal educational opportunity" which impose an affirmative obligation on a State [66] run from the simple—"one scholar, one dollar" [67]—to the amorphous—"[*A*] school district is constitutionally required to provide the best possible equality of opportunity * * *." [68]—to the utopian—"equal educational achievement for every child" [69]—to definitions which stress the distribution of funds on the basis of need and then seek to formulate some standards for defining "needs". [70] Some of these formulas have been advanced in school finance litigation, and we shall now turn our attention to a consideration of the cases.

[65] See Coons, Clune, and Sugarman, "Educational Opportunity", *op. cit. supra* note 5 at 340.

[66] See Coleman, *op. cit. supra* note 59. Coleman describes the evolving role of government and educational institutions in assuring equal educational opportunities. Initially the roles of the community and educational institutions were relatively passive; all that was expected was the provision of a set of free public resources. It was then up to the family and child to decide how to use these resources. Today, the responsibility to create achievement lies with the educational institution, not the child.

[67] See *Spano* v. *Board of Education of Lakeland Central School District, No. 1*, 328 N.Y.S. 2d 229, 235 (Sup. Ct. Westchester County, 1972).

[68] Comment, "Equality of Educational Opportunity: Are Compensatory Programs Constitutionally Required?" 42 S. Cal. L. Rev. 146, 150 (1969).

[69] Silard and White, *op. cit. supra* note 59 at 25–26.

[70] See *Id.* at 26–28; Kirp, op. cit. supra note 59; *Cf.* Cohen, *op. cit. supra* note 58 at 78: " . . . schoolmen and researchers haven't much evidence about the educational techniques that might satisfy a need criterion, or how much they might cost. Such news is bound to dampen judicial or legislative enthusiasm for a criterion of resource allocation." See generally, Comment, "The Evolution of Equal Protection: Education, Municipal Services, and Wealth", 7 Harv. Civ. Lib.—Civ. Rights L. Rev. 103, 172–184 (1972).

CHAPTER III

THE SEARCH FOR JUDICIAL REMEDIES

A. The Appropriate Constitutional Standard

As we have seen, the equal protection clause of the 14th amendment has been the battering ram in the pursuit of racial and ethnic equality in public education. It is this same amendment that has been chosen as the weapon of those seeking equality in educational financing. The meaning and sweep of the equal protection clause has been a frequent issue before the Supreme Court and standards have been developed for applying that clause in various situations. These standards provide the backdrop against which the recent school finance cases have been brought. We will review those standards before turning to the recent cases.

The basis of an equal protection attack on governmental action is that two groups similarly situated have been treated differently, *e.g.*, minority children and majority children, similarly seeking a public education, are required to go to separate schools.

The Court initially developed standards for judging equal protection violations in cases involving economic regulation. In *Gulf, Colorado and Santa Fé Ry.* v. *Ellis*, the Court said that legislative classifications

> must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis.[71]

The Court also has emphasized that the burden of attacking a legislative act lies wholly "on him who denies its constitutionality".[72] In *Lindsley* v. *Natural Carbonic Gas Co.*[73], summarizing the rules by which equal protection arguments must be tested, the Court noted that the person attacking the statutory classification "must carry the burden of showing that it is arbitrary" and that "if any state of facts reasonably can be conceived that would sustain it,* * * the existence of that state of facts at the time the law was enacted must be assumed." [74]

But the Court has not been as solicitous of legislative enactments that were alleged to abridge rights of free speech and association, protected by the first amendment. In *Schneider* v. *State* [75], for example, the Court observed that when a State abridges

> * * * fundamental personal rights and liberties * * * the courts should be astute to examine the effect of the challenged legislation. Mere legislative preferences or beliefs respecting matters of public convenience may well support regulations directed at other personal activities, but be insufficient to justify such as diminishes rights so vital to the maintenance of democratic institutions.

And in *Shelton* v. *Tucker* [76], the Court used these words:

> [E]ven though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative

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[71] *Gulf, Colorado and Santa Fé Ry.* v. *Ellis*, 165 U.S. 150, 155 (1897). See also *Southern Ry.* v. *Greene*, 216 U.S. 400, 417 (1910); *Atchison, Santa Fé Ry.* v. *Vosburg*, 238 U.S. 56, 59 (1915); *Royster Guano Co.* v. *Virginia*, 253 U.S. 412, 415 (1920); *Truax* v. *Corrigan*, 257 U.S. 312, 337 (1921); *Air-way Corp.* v. *Day*, 266 U.S. 71, 85 (1924); *Power Mfg. Co.* v. *Saunders*, 274 U.S. 490, 493 (1927); *Louisville Gas Co.* v. *Coleman*, 277 U.S. 32, 37 (1928); *Ohio Oil Co.* v. *Conway*, 281 U.S. 146, 160 (1930); *Metropolitan Co.* v. *Brownell*, 294 U.S. 580, 583 (1935); *Hartford Co.* v. *Harrison*, 301 U.S. 459, 462 (1937); *Asbury Hosp.* v. *Cass County*, 326 U.S. 207, 214 (1945); *Morey* v. *Doud*, 354 U.S. 457, 465 (1957); *Baxstrom* v. *Herold*, 383 U.S. 107, 111 (1966); *Rinaldi* v. *Yeager*, 384 U.S. 305, 309 (1966).

[72] *Brown* v. *Maryland*, 25 U.S. (12 Wheat) 419, 436 (1827).

[73] 220 U.S. 61, 79–80 (1911).

[74] The latter of these two rules, which has been stated on innumerable occasions since, see, e.g., *Rast* v. *Van Deman and Lewis Co.*, 240 U.S. 342, 357 (1916); *Crescent Cotton Co.* v. *Mississippi*, 257 U.S. 129, 137 (1921); *Heisler* v. *Thomas Colliery Co.*, 260 U.S. 245, 255 (1922); *State Board of Tax Comm.* v. *Jackson*, 283 U.S. 527, 537 (1931); *Metropolitan Co.* v. *Brownell*, 294 U.S. 580, 584 (1935); *Carmichael* v. *Southern Coal and Coke Co.*, 301 U.S. 495, 509 (1937); *United States* v. *Carolene Products Co.*, 304 U.S. 144, 154 (1938); *Asbury Hosp.*, v. *Cass County, op. cit. supra* note 71 at 215; *Morey* v. *Doud, op. cit. supra* note 71 at 464; *Allied Stores of Ohio* v. *Bowers*, 358 U.S. 522, 528 (1959); *McGowan* v. *Maryland*, 366 U.S. 420, 426 (1961), appears to have been first stated in *Munn* v. *Illinois*, 94 U.S. 113, 132 (1876). In *Munn*, an Illinois statute seeking to regulate public warehouses and the storage and inspection of grain was challenged on equal protection grounds. In the cases just cited which repeat the *Munn* language, all involve the matter of taxation or economic regulation.

[75] 308 U.S. 147, 161 (1939).

[76] 364 U.S. 479, 488 (1960).

abridgement must be viewed in the light of less drastic means for achieving the same basic purpose.

In *Board of Education* v. *Barnette* [77], involving the constitutionality of the public school flag salute requirement, the Court said:

> The right of a State to regulate, for example, a public utility may well include, so far as the due process test is concerned, power to impose all of the restrictions which a legislature may have a "rational basis" for adopting. But freedoms of speech and of press, of assembly and of worship may not be infringed on such slender grounds.

Nor is it only in the area of the first amendment that the Court gives especially close scrutiny to legislative action. Thus, in *United States* v. *Carolene Prods. Co.* [78], the Court noted that:

> [t]here may be a narrower scope for operation of the presumption of constitutionality when legislation appears on its face to be within a specific prohibition of the Constitution such as those of the first ten amendments, which are deemed equally specific when held to be embraced within the Fourteenth.

In time, the Court recognized that legislative classifications attacked under the 14th amendment, beyond those encroaching on rights protected by the first 10 amendments, could not be treated uniformly and subjected to a "rational basis" test. Different tests were required depending upon the nature of the classifying factor and the interest affected. Thus, the Court has concluded that legislative classifications involving "suspect" [79] criteria or affecting "fundamental rights" will be held to deny equal protection unless justified by a "compelling State interest".[80] In *Shapiro* v. *Thompson* [81] the Court articulated this standard:

> Since the classification here touches on the fundamental right of interstate movement, its constitutionality must be judged by the stricter standard of whether it promotes a *compelling* state interest. Under this standard, the * * * [requirement that new residents to an area wait a one-year period before being eligible for welfare assistance] violates the Equal Protection Clause.

Among the criteria the court has regarded as suspect are race, *Bolling* v. *Sharpe* ("Classifications based solely upon race must be scrutinized with particular care, since they are contrary to our traditions and hence constitutionally suspect")[82]; lineage, *Hirabayashi* v. *United States* ("Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality")[83]; wealth, *Harper* v. *Virginia Board of Elections* ("[l]ines drawn on the basis of wealth or property, like those of race . . . are traditionally disfavored")[84]; and, possibly, illegitimacy.[85] Compare *Levy* v. *Louisiana* [86] and *Weber* v. *Aetna Casualty and Surety Company* [87] with *Labine* v. *Vincent*.[88] In sum, the Court has regarded as "suspect" classifications those which discriminate against an individual on the basis of factors over which he has no control.[89]

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[77] 319 U.S. 624, 639 (1943). See also *Kovacs* v. *Cooper*, 336 U.S. 77, 95 (1949); *Bates* v. *Little Rock*, 361 U.S. 516, 525 (1960); *NAACP* v. *Alabama*, 357 U.S. 449 (1958); McKay, "The Preference for Freedom", 34 N.Y.U.L. Rev. 1182 (1959); Comment, "An Informer's Tale: Its Use in Judicial and Administrative Proceedings", 63 Yale L.J. 206, 228 (1953).

[78] 304 U.S. 144, 152 n. 4 (1938).

[79] For a summary of the different ways in which the "suspect" classification standard has been described, see Comment, "Equal Protection in the Urban Environment: The Right to Equal Municipal Services", 46 Tul. L. Rev. 496, 508 n. 70 (1972).

[80] The "rational basis" and "compelling state interest" tests have been variously described as the "old" or "standard" test and the "new" or "strict" test. For a further discussion of these tests see Comment, "Equal Protection in the Urban Environment: The Right to Equal Municipal Services", 46 Tul. L. Rev. 496, 497–99 (1972); Comment, "*James* v. *Valtierra:* Housing Discrimination by Referendum?", 39 Univ. Chic. L. Rev. 115, 119–20 (1971).

[81] 394 U.S. 618, 638 (1969).

[82] 347 U.S. 497, 499 (1954). See also *Korematsu* v. *United States*, 323 U.S. 214, 216 (1944); *Loving* v. *Virginia*, 388 U.S. 1, 11 (1967); *McLaughlin* v. *Florida*, 379 U.S. 184 (1964). *Cf. Sherbert* v. *Verner*, 374 U.S. 398 (1963) where, in a due process context, the Court applied the compelling interest test to a classification related to religion.

[83] 320 U.S. 81, 100 (1943). See also *Yick Wo* v. *Hopkins*, 118 U.S. 356 (1886); *Yu Cong Eng* v. *Trinidad*, 271 U.S. 500 (1926); *Hill* v. *Texas*, 316 U.S. 400 (1942); *Hernandez* v. *Texas*, 347 U.S. 475 (1954).

[84] 383 U.S. 663, 668 (1966). *Harper* has been called "the turning of America's conscience from the narrow problem of Negro rights to a wider recognition of the disadvantaged position of the poor of all races." Note, "The Supreme Court, 1965 Term", 80 Harv. L. Rev. 123, 180 (1966). *Cf.* Mr. Justice Jackson concurring in *Edwards* v. *California*, 314 U.S. 160, 181 (1941). In *McDonald* v. *Board of Election Comm.*, 394 U.S. 802 (1969) the Court declined to use the compelling interest test and noted that the classification at issue was not based on race or wealth, "two factors which would *independently* render a classification highly suspect. . . ." *Id.* at 807 (emphasis added). See also *Griffin* v. *Illinois*, 351 U.S. 12 (1956); *Burns* v. *Ohio*, 360 U.S. 252 (1959); *Smith* v. *Bennett*, 365 U.S. 708 (1961); *Douglas* v. *California*, 372 U.S. 353 (1963); *Anders* v. *California*, 386 U.S. 738 (1967); *Roberts* v. *La Vallee*, 389 U.S. 40 (1967); *Williams* v. *Illinois*, 399 U.S. 235 (1970); *Southern Alameda Spanish Speaking Organization* v. *Union City*, 424 F. 2d 291 (9th Cir. 1970). *Cf.* Mr. Justice White, concurring in *Griswold* v. *Connecticut*, 381 U.S. 479, 503 (1965).

[85] Indicating the heightened levels of consciousness of recent years is the suggestion that sex classifications also be regarded as suspect. See Comment, "Are Sex-Based Classifications Constitutionally Suspect?" 66 N.W. L. Rev. 481 (1971).

[86] 391 U.S. 68 (1968).

[87] 40 U.S. L.W. 4460 (1972).

[88] 401 U.S. 532 (1971).

[89] *Id.* at 551, note 19. In more general terms, the Court has suggested that legislation which falls more harshly upon a class that exercises little control over the political process should receive "strict scrutiny". See, *e.g., United States* v. *Carolene Products Co.*, 304 U.S. 144, 153 n. 4 (1938) where the Court noted that: "[P]rejudice against discrete and insular minori-

Included in the category of interest that the Court has regarded as fundamental are voting [90], procreation [91], interstate travel [92], marriage [93], political association [94], and the opportunity to earn a living.[95] Some lower courts have classified education as a fundamental interest.[96]

When a challenged classification involves a "fundamental interest", just as in the case of a "suspect" classification, the State's basis for the classification must be more than "rational" [97]; the State has the burden of showing that it was without alternatives and had a "compelling" need to classify it as it did.[98] Summarizing this test, one commentator has stated:

> Application of the new equal protection doctrine involves close "judicial scrutiny" imposing upon the state a heavy burden of justification. Concomitantly, the Court has sometimes considered whether there are alternatives available to the state by which it can achieve its legitimate objective, without substantial infringement upon fundamental rights * * * the state may not employ a method which, though rationally related to that objective, more substantially infringes upon protected rights (footnotes omitted).[99]

In the school finance cases the courts have considered the "suspect" classification, "fundamental interests" categorizations and have employed the "rational basis", "compelling state interest" tests. These cases are now considered in detail.

B. The Initial Cases

Attacks on State school financing schemes proved unsuccessful in *McInnis* v. *Shapiro* [100] and *Burruss* v. *Wilkerson*.[101]

McInnis was a suit brought by students attending school in districts within Cook County, Illinois. They attacked various State statutes dealing with school financing on 14th amendment grounds. They argued that the statutes permitted "wide variations in the expenditures per student from district to district, thereby providing some students with a good education and depriving others, who have equal or greater educational needs." [102]

At the time of the case, per-pupil expenditures in Illinois varied between $480 and $1,000. The State guaranteed a foundation level of $400. The State contribution was made up of a flat grant for each pupil and an equalization grant awarded to each district which levied a minimum property tax. Where the local tax revenue per pupil generated by the minimum rate, plus the flat grant, was less than $400, the State provided the difference as an equalization grant. Districts taxing above the minimum rate were not penalized by having the additional revenue considered before determination of the equalization rate. Thus, all districts, regardless of their wealth, received a flat grant. The equalization formula helped bring poorer districts up to the $400 minimum level but did not close the gap between rich and poor districts that resulted from enabling the same tax rate to produce vastly greater income in the rich districts. In fact, the court found that districts with lower property valuations usually levy higher tax rates.

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ties may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry" (citations omitted). See also, *Hobson* v. *Hansen*, 269 F. Supp. 401, 507, 508 (D.D.C. 1967), *aff'd. sub nom. Smuck* v. *Hobson*, 408 F. 2d 175 (D.C. Cir. 1969).

[90] See *Reynolds* v. *Sims*, 377 U.S. 533 (1964); *Carrington* v. *Rash*, 380 U.S. 89 (1965).

[91] See *Skinner* v. *Oklahoma*, 316 U.S. 535 (1942).

[92] See *Shapiro* v. *Thompson*, 394 U.S. 618 (1969).

[93] See *Griswold* v. *Connecticut*, 381 U.S. 479 (1965); *Loving* v. *Virginia*, 388 U.S. 1, 12 (1967); *cf. Eisenstadt* v. *Baird*, 40 U.S. L.W. 4303 (1972).

[94] See *Williams* v. *Rhodes*, 393 U.S. 23 (1968).

[95] See *Truax* v. *Raich*, 239 U.S. 33, 41 (1915). See also *Sail'er Inn Inc.* v. *Kirby*, 5 Cal. 3d 1, 485 P. 2d 529, 95 Cal. Rptr. 329 (1971).

[96] See *Ordway* v. *Hargraves*, 323 F. Supp. 1155 (D. Mass. 1971); *Hosier* v. *Evans*, 314 F. Supp. 316 (D. Virg. Is. 1970). *Cf. Hobson* v. *Hansen*, 269 F. Supp. 401, 508 (D. D. C. 1967). *Contra, Johnson* v. *New York State Education Department*, 449 F. 2d 871 (2d Cir. 1971), *cert.* granted, 405 U.S. 916 (1972). It also has been suggested that in certain circumstances particular types of municipal services might be regarded as fundamental rights. See Comment, "Equal Protection in the Urban Environment: The Right to Equal Municipal Services", 46 Tul. L. Rev. 496, 516, 525 (1972).

[97] Many of the cases involve both a "suspect" classification and a "fundamental interest" which interact with each other. The Court's analysis in such cases has been described as involving a "sliding scale". "Under the 'sliding scale' approach, various classifications and interests are visualized as being on a gradient, with the standard of review becoming more demanding as the nature of the classifications or the value of the interests approaches the 'suspect' or 'fundamental' levels. The suspect and fundamental qualities of the classification created and the interests regulated by a specific state action are evaluated and weighed together in determining the standard of judicial review to be applied." Note, "The Equal Protection Clause and Exclusionary Zoning After *Valtierra* and *Dandridge*", 81 Yale L. J. 61, 71–72 (1971). See also "Developments in the Law: Equal Protection", 82 Harv. L. Rev. 1065, 1020–21 (1969); Comment, "Equal Protection in the Urban Environment: The Right to Equal Municipal Services", 46 Tul. L. Rev. 496, 525 (1972).

[98] See Mr. Justice Harlan's criticism of the "compelling interest" doctrine in *Shapiro* v. *Thompson*, 394 U.S. 618, 658–63 (1969).

[99] See Comment, "*James* v. *Valtierra*: Housing Discrimination by Referendum?", 39 Univ. of Chic. L. Rev. 115, 120 (1971).

[100] 293 F. Supp. 327 (N.D. Ill. 1968), *aff'd. mem. sub. nom. McInnis* v. *Ogilvie*, 394 U.S. 322 (1969).

[101] 310 F. Supp. 572 (W.D. Va. 1969), *aff'd. mem.* 397 U.S. 44 (1970).

[102] *McInnis* v. *Shapiro*, *op cit. supra* note 100 at 329.

A three-judge Federal court found that the Illinois school financing scheme was designed "to allow individual localities to determine their own tax burdens according to the importance which they place on public schools." [103] The court, relying on those Supreme Court cases which shield State legislative enactments from invalidation unless they are "wholly irrelevant to the achievements of the State's objective", upheld the Illinois system.[104]

The State's objective, however, is not furthered by the method of financing schools in Illinois because the tax burdens of individual localities do not directly reflect interest in education. As the court notes, "(t)hough districts with lower tax property valuations usually levy higher taxes, there is a limit to the amount of money which they can raise, especially since they are limited by maximum indebtedness and tax rates." [105] Thus, tax burdens are controlled by property valuations and State-imposed limitations on tax rates. A rich district can tax at a low rate and raise adequate funds to finance its schools. A poor district must impose a burdensome tax rate to obtain sufficient funds and, even then, it is limited by restraints imposed on its tax rate and indebtedness. Accordingly, the court might just as well have concluded that the manner in which school funds are distributed in Illinois is "wholly irrelevant to the achievement of the State's objective" of allowing "individual localities to determine their own tax burden according to the importance which they place upon public schools."

But the court's opinion does not dwell extensively on the mechanics of the Illinois financing scheme. More attention is paid to the remedy sought by the plaintiffs. The court notes that the plaintiff's original complaint sought an order requiring the "defendants to submit * * * a plan to raise and apportion all monies * * * in such a manner that such funds available to the school districts wherein the class of plaintiffs attend school will * * * assure that plaintiff children receive the same educational opportunity as the children in any other district * * *." [106] Similarly, the court observed:

> tection in the following respects: "a. * * * classifications upon which students will receive the benefits of a certain level of per pupil educational expenditures are not related to the educational needs of these students and are therefore arbitrary, capricious and unreasonable; b. * * * the method of financing public education fails to consider * * * (ii) the added costs necessary to educate those children from culturally and economically deprived areas (iii) the variety of educational needs of the several public school districts of the State of Illinois. * * * c. * * * the method of financing public education fails to provide to each child an equal opportunity for an education." * * *
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> While the complaining students repeatedly emphasize the importance of pupils' "educational needs," they do not offer a definition of this nebulous concept. Presumably, "educational need" is a conclusory term, reflecting the interaction of several factors such as the quality of teachers, the students' potential, prior education, environmental and parental upbringing, and the school's physical plant. Evaluation of these variables necessarily requires detailed research and study, with concomitant decentralization so each school and pupil may be individually evaluated. * * * [107]

Obviously, the court regarded the nature of the relief requested as an insurmountable obstacle. This is reflected in its reasons for dismissing the case:

> (1) the Fourteenth Amendment does not require that public school expenditures be made only on the basis of pupils' educational needs, and (2) the lack of judicially manageable standards makes the controversy nonjusticable.[108]

The district court's decision was appealed directly to the Supreme Court [109] and its judgment was affirmed on March 24, 1969.[110]

The *Burruss* case attacked Virginia's scheme for the distribution of funds for public education. The plaintiffs, resident parents and schoolchildren of Bath County, claimed that their rights to equal protection were violated by the system of finance. They further alleged that they were denied "educational opportunities substantially equal to those enjoyed by children attending public schools in many other districts of the State" [111], that the State law failed to take into account "the variety of educational needs" [112] of the different

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[103] *Id.* at 333.

[104] *Id.* at 332, quoting from *McGowan* v. *Maryland*, 366 U.S. 420, 425–26 (1961). The plaintiffs had urged that the importance of education required that the court scrutinize more closely the State regulatory scheme than is normally done when State statutes in other areas are attacked. *McInnis* v. *Shapiro, supra* at 331.

[105] *Id.* at 331.

[106] *Id.* at 335 n. 34. See Coons, Clune, and Sugarman, "Educational Opportunity", *op. cit. supra* note 5 at 339–40 which notes that in *McInnis* v. *Ogilvie*, before the Supreme Court, it was argued that the Illinois financing scheme denied equal protection in the following respects: "a. * * * classifications upon which students will receive the benefits of a certain level of per pupil educational expenditures are not related to the educational needs of these students and are therefore arbitrary, capricious and unreasonable; b. * * * the method of financing public education fails to consider * * * (ii) the added costs necessary to educate those children from culturally and economically deprived areas (iii) the variety of educational needs of the several public school districts of the State of Illinois. * * * c. * * * the method of financing public education fails to provide to each child an equal opportunity for an education." * * *

[107] *McInnis* v. *Shapiro, op. cit. supra* note 100 at 329 n. 4.

[108] *Id.* at 329.

[109] Since the *McInnis* case attacked the constitutionality of State legislation, it was heard by a three-judge Federal court. 28 U.S.C. 2281, 2284 (1964). Cases heard by three-judge courts proceed directly to the Supreme Court; jurisdiction in such cases is not discretionary. 28 U.S.C. 1253 (1964). Generally, in cases coming from Federal Courts of Appeal and State Courts, the Supreme Court has discretion as to whether or not to review the cases. 28 U.S.C. 1254, 1257 (1964).

[110] 394 U.S. 322 (1969). For a discussion of the significance of the Supreme Court affirmance, see Coons, Clune, and Sugarman, "Educational Opportunity", *op. cit. supra* note 5 at 308–309, 344.

[111] *Burruss* v. *Wilkerson*, 310 F. Supp. 572, 573 (W.D. Va. 1969).

[112] *Ibid.*

counties and cities, and that the law failed to make provision for variations in expenses for public education from district to district.[113]

The court rejected the plaintiffs' argument. It found that the differences existing among districts were not caused by the State, and that cities and counties were receiving funds under a "uniform and consistent plan".[114] What was involved, the court suggested, was a local problem. "Truth is," said the court, "the inequalities suffered by the schoolchildren of Bath are due to the inability of the county to obtain locally the moneys needed to be added to the State contribution to raise the educational provision to the level of that of some of the other counties or cities." [115] This, the court concluded, did not involve discrimination by the State. The court also rested its conclusion on the indefiniteness of the relief sought by the plaintiffs and rejected the suggestion that a court could fashion a remedy based on educational needs. The court said:

> Actually, the plaintiffs seek to obtain allocations of State funds among the cities and counties so that pupils in each of them will enjoy the same educational opportunities. This is certainly a worthy aim, commendable beyond measure. However, the courts have neither the knowledge, nor the means, nor the power to tailor the public moneys to fit the varying needs of these students throughout the State.[116]

The court relied on the *McInnis* case which it found "scarcely distinguishable" from the case before it.[117] This decision also was affirmed by the Supreme Court.[118]

The courts were more receptive to an attack on a school finance system in *Hargrave* v. *McKinney*.[119] This case involved Florida's school financing methods. At issue was a Florida statute which provided that any county that imposes upon itself more than a 10 mill *ad valorem* property tax for educational purposes would not be eligible to receive State funds for the support of its public educational system. The statute was attacked as violating the equal protection clause

> * * * because the State limitation is fixed by reference to a standard which relates solely to the amount of property in the county, not to the educational needs of the county. Counties with high property values in relation to their school population are authorized by the state to tax themselves far more in relation to their educational needs than counties with low property values in relation to their school population.[120]

The U.S. Court of Appeals for the Fifth Circuit ruled that the district court had improperly dismissed the case and that the constitutional questions raised were sufficiently substantial to warrant the convening of a three-judge district court. The court noted the "novelty of the constitutional argument" [121] advanced by the plaintiff but concluded that it merited further consideration by a three-judge court. The court said:

> The equal protection argument advanced by plaintiffs is the crux of the case. Noting that lines drawn on wealth are suspect [citing *McDonald* v. *Board of Election*, 394 U.S. 802 (1969); *Harper* v. *Virginia Board of Elections*, 383 U.S. 663 (1966); *Douglas* v. *California*, 372 U.S. 353 (1963); *Griffin* v. *Illinois*, 351 U.S. 12 (1956)] and that we are here dealing with interests which may well be deemed fundamental, [citing *Brown* v. *Board of Education*, 347 U.S. 483 (1954); *Hobson* v. *Hansen*, 269 F. Supp. 401 (D.D.C. 1967)] we cannot say that there is no reasonably arguable theory of equal protection which would support a decision in favor of the plaintiffs.[122]

On remand, the three-judge Federal Court concluded that there was no rational basis for the Florida statute.[123] It noted that the statute has resulted in a reduction of more than $50 million in local taxes for educational purposes in 24 counties that had reduced their millage to the 10 mill limit in the 1968–69 school year. The effect of the Florida statute was to tell a county that it could not raise its taxes to improve education even if that was what the voters wanted. The State contended, however, that "the difference in dollars available does not necessarily produce a difference in the quality of education." The court labeled this contention "unreal" and noted the disparity created when Charlotte County, using the 10 mill limit may raise $725 per pupil while Bradford County, using the same limit, only could raise $52. The court said:

> What apparently is arcane to the defendants is lucid to us—that the Act prevents the poor counties from providing *from their own taxes* the same support for public education which the wealthy counties are able to provide. (emphasis in original.)[124]

The court concluded that this distinction did not have a rational basis and could not withstand attack under the 14th amendment. "We have searched in vain," said

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[113] *Ibid.*

[114] *Id.* at 574.

[115] *Ibid.*

[116] *Ibid.*

[117] *Ibid. Cf. Shepheard* v. *Goodwin*, 280 F. Supp. 869 (E.D. Va. 1968) where a three-judge court held that a Virginia statute violated the equal protection clause. The law provided that children of members of the Armed Forces, or other employees of the United States, living in an impacted area or on or off Federal property, would not be counted for the purpose of distributing State educational aid to school districts.

[118] 397 U.S. 44 (1970).

[119] 413 F. 2d 320 (5th Cir. 1969), on remand, *Hargrave* v. *Kirk*, 313 F. Supp. 944 (M.D. Fla. 1970), *vacated sub nom. Askew* v. *Hargrave*, 401 U.S. 476 (1971).

[120] *Hargrave* v. *McKinney*, *op. cit. supra* note 119 at 323. The complaint cited as an example the fact that the statute under attack permitted Charlotte County to raise by its own taxes $725 per student while Bradford County is permitted to raise only $52 per student.

[121] *Id.* at 324.

[122] *Ibid.*

[123] *Hargrave* v. *Kirk*, 313 F. Supp. 944, 948 (M.D. Fla. 1970).

[124] *Id.* at 947.

the court, "for some legitimate state end for the discriminatory treatment imposed by the act." [125] Since the court struck down the Florida statute for failing to be based on rational distinctions, it concluded that it did not have to consider whether education was "a basic fundamental right" which could be impinged upon—even for rational reasons—only if there were some "compelling State interest".[126]

The court recognized the relevance of the *McInnis* and *Burruss* cases but distinguished them because here the local boards were restricted in determining the extent of their tax burden for education while in the aforementioned cases this power was delegated to school districts. The court also noted that the relief requested in *McInnis* required an affirmative calculation of needs while

> In contrast, in the instant case, the plaintiffs' argument simply stated is that the Equal Protection Clause *forbids* a State from allocating authority to tax by reference to a formula based on wealth. Unlike the broad relief sought in *McInnis*, the remedy here is simple—an injunction against State officials * * *.[127]

C. *Serrano* v. *Priest*

On August 30, 1971, the Supreme Court of California decided *Serrano* v. *Priest* [128], a decision that is certain to become a landmark school finance case. The California court characterized its decision as furthering "the cherished ideas of American education that in a democratic society free public schools shall make available to all children equally the abundant gifts of learning." [129] The court summarized its holding in these words:

> We are called upon to determine whether the California public school financing system, with its substantial dependence on local property taxes and resultant wide disparities in school revenue, violates the equal protection clause of the Fourteenth Amendment. We have determined that this funding scheme invidiously discriminates against the poor because it makes the quality of a child's education a function of the wealth of his parents and neighbors. Recognizing as we must that the right to an education in our public schools is a fundamental interest which cannot be conditioned on wealth, we can discern no compelling State purpose necessitating the present method of financing. We have concluded, therefore, that such a system cannot withstand constitutional challenge and must fall before the equal protection clause.[130]

1. The California School Financing Scheme

The *Serrano* suit was brought by Los Angeles County public school children and their parents. The children claimed that the State financing scheme created substantial disparities in the quality and extent of educational opportunities offered throughout the State. The parents claimed that as a result of the financing method they were required to pay a higher rate than taxpayers in other districts in order to obtain the same or lesser educational opportunities for their children. It was contended that this discrimination violated the equal protection clause on several grounds.[131]

In California, over 90 percent of school funds come from two sources: local district taxes on real property (55.7 percent) and the State School Fund (35.5 percent). The amount of local taxes a district can raise depends upon its tax base—*i.e.*, the assessed valuation of real property within its borders—and the rate of taxation within the district. In 1969–70, for example, the assessed valuation per pupil ranged from a low of $103 to a high of $952,156. Districts have great leeway in setting tax rates.

State aid is distributed under a foundation program similar to the one in Illinois, described in the *McInnis* case.[132] The California program assures that each district will receive annually, from State or local funds, $355 for each elementary school pupil and $488 for each high school pupil. Every district receives "basic State aid" of $125 per pupil, regardless of the relative wealth of the district. "Equalization aid" is provided to a district if its local tax levy—computed at a hypothetical tax rate [133]—plus its basic grant is less than the foundation minimum. Equalization aid guarantees to poorer districts a basic minimum revenue, while wealthier districts are ineligible for such assistance.

Despite State aid, wide differentials remain among districts. For example, in the 1968–69 school year, the Baldwin Park Unified School District, with assessed valuation per child of $3,706, spent $577.49 per pupil;

[125] *Id.* at 948.
[126] *Ibid.*
[127] *Id.* at 949.
[128] 96 Cal. Rptr. 601, 487 p. 2d 1241 (1971).
[129] *Id.* at 626, 487 p. 2d at 1266.
[130] *Id.* at 604, 487 p. 2d at 1244.

[131] Among the equal protection violations claimed were the following: (a) quality of education is a function of wealth of parents and neighbors as measured by tax bases; (b) quality of education is a function of geography; (c) failure to take into account varied educational needs; (d) children in some circumstances not provided with equal educational resources; (e) use of "school district" as a unit of differential allocation of funds is not reasonably related to legislative purpose to provide equal educational opportunities; (f) "A disproportionate number of schoolchildren who are black children, children with Spanish surnames, children belonging to other minority groups reside in school districts in which a relatively inferior educational opportunity is provided." *Id.* at 604 n. 1, 487, p. 2d at 1244.

[132] See text accompanying note 100 *supra.*

[133] To make this computation, it is assumed that each district taxes at a rate of $1 on each $100 of assessed valuation in elementary school districts and $.80 per $100 in high school districts. This is simply a "computational" tax rate used to measure the relative wealth of the district for equalization purposes. 5 Cal. 3d at 593.

the Pasadena Unified School District—assessed valuation per child of $13,706—spent $840.19 and the Beverly Hills Unified School District—assessed valuation $50,885—spent $1,231.72 per child.

Basic State aid, which is distributed on a uniform per pupil basis to all schools irrespective of wealth, widens the gap between rich and poor districts.[134] Beverly Hills, as well as Baldwin Park, receives $125 from the State for each of its students.

2. The 14th Amendment Violation

In testing the California school finance structure against the equal protection clause, the California court said it would follow the two-level test used by the Supreme Court. Economic regulations have been presumed constitutional; all that is required is that the distinctions drawn by a challenged statute bear some rational relationship to a conceivable legitimate State purpose. But in cases involving "suspect classifications" or touching on "fundamental interests", legislative classifications are subject to a strict scrutiny. In this area, the State has the burden to show that it has a compelling interest which justifies the law and that the distinctions drawn by the law are necessary to further its purpose.

a. *Wealth as a Suspect Classification*

Applying this test, the California court first considered whether it was appropriate to regard wealth as a "suspect classification". It answered affirmatively[135], relying principally on the Supreme Court decisions in *Harper* v. *Virginia Board of Election*[136] and *McDonald* v. *Board of Election*.[137] The California court found it "irrefutable" that the State financing system classifies on the basis of wealth. The court conceded that the amount of money raised locally is also a function of the tax rate and, consequently, poor districts could attempt to equalize disparities in tax basis by taxing at higher rates. Practically, however, poor districts never could levy at a rate sufficient to compete with more affluent districts. For example, Baldwin Park citizens, who paid a school tax of $5.48 per $100 of assessed valuation in 1968–69, were able to spend less than half as much on education as Beverly Hills residents, who were taxed only $2.38 per $100. "Thus," the California court said, "affluent districts can have their cake and eat it too: they can provide a high quality education for their children while paying lower taxes. Poor districts, by contrast, have no cake at all." [138]

The court rejected the defendants' argument that classification by wealth is constitutional so long as the wealth is that of the district, not the individual. The court said:

> We think that discrimination on the basis of district wealth is equally invalid. The commercial and industrial property which augments a district's tax base is distributed unevenly throughout the State. To allot more educational dollars to the children of one district than to those of another merely because of the fortuitous presence of such property is to make the quality of a child's education dependent upon the location of private, commercial, and industrial establishments. [Footnote omitted.] Surely, this is to rely on the most irrelevant of factors as the basis for educational financing.[139]

The defendants also argued that different levels of educational expenditure do not affect the quality of education. The plaintiffs' complaint, however, alleged that expenditures *did* affect the quality of education. Because of the procedural posture of the case[140], the California Supreme Court accepted the plaintiffs' allegation as true.[141]

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[134] As the California Supreme Court noted: "* * * basic aid, which constitutes about half of the State educational funds * * * actually widens the gap between rich and poor districts. (See Cal. Senate Fact Finding Committee on Revenue and Taxation, State and Local Fiscal Relationships in Public Education in California (1965) p. 19.)" *Id.* at 608, 489 p. 2d at 1248. For example, if the basic aid program were eliminated, Baldwin Park still would receive the same total amount of State assistance through the equalization program alone. Beverly Hills, however, would lose all of its basic aid grant and would not make it up through another State assistance program. Basic aid therefore, is significant only to the wealthier districts. *Id.* *Fleischmann Commission Report, op. cit. supra* note 12 at 2.8.

[135] *Serrano* v. *Priest, op. cit. supra* note 128 at 597.

[136] 383 U.S. 663, 668 (1966).

[137] 394 U.S. 802, 807 (1969).

[138] *Serrano* v. *Priest, op. cit. supra* note 128 at 600.

[139] *Id.* at 601.

[140] The defendants had filed general demurrers to the plaintiffs' complaint asserting that none of the claims stated facts sufficient to constitute a cause of action. *Id.* at 605, 487 P. 2d at 1245. In these circumstances, the issue in the case is not the merits of what the plaintiffs contend but whether the situation described in the complaint, if true, would result in a legal remedy. A party demurring to a complaint—or moving to dismiss the complaint—in effect accepts everything stated in the complaint as true but contends, nevertheless, that there is no violation of the law.

[141] *Id.* at 591, 601 n. 16. The court noted that there is considerable controversy among educators over the relative impact of educational spending and environmental influences on school achievement. For an excellent summary of the studies on this question, see *Schoettle, op. cit. supra* note 23 at 1378–1388. The court also noted that other courts had considered contentions similar to the defendants and had rejected them. *Serrano* v. *Priest, op. cit. supra* note 128 at 601 n. 16. In addition to the cases and authorities cited by the court, see *Van Dusartz* v. *Hatfield*, 334 F. Supp. 870, 874 (D. Minn. 1971); *Robinson* v. *Cahill, op. cit. supra* note 11 at 252–57; Coleman, "A Brief Summary of the Coleman Report", *Equal Educational Opportunity* 253, 259 (1969); Coons, Clune, and Sugarman, *Private Wealth* 425–33; Bowles, "Towards Equality of Educational Opportu-

Finally, the defendants argued that whatever discrimination might exist in California was *de facto* discrimination, i.e., it resulted from factors over which the State had no control or responsibility. The court, summarily rejecting this contention, noted that "* * * we find the case unusual in the extent to which governmental action *is* the cause of the wealth classifications." [142] The court cited with approval this description of State involvement in school financing inequalities:

> [The States] have determined that there will be public education, collectively financed out of general taxes; they have determined that the collective financing will not rest mainly on a statewide tax base, but will be largely decentralized to districts; they have composed the district boundaries, thereby determining wealth distribution among districts; in so doing, they have not only sorted education consuming households into groups of widely varying average wealth, but they have sorted non-school—using taxpayers—households and others—quite unequally among districts; and they have made education compulsory.[143]

b. *Education as a Fundamental Interest*

The California court held that not only was the discrimination in this case related to a "suspect classifica-

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nity", *Equal Educational Opportunity* 115 (1969); Testimony of David Selden, *Equal Education Opportunity Hearings* pt. 16B at 6727; Advisory Committee on Intergovernmental Relations, *State Aid to Local Government* 44 (1969). A recent study by a group of researchers at Harvard University headed by Frederick Mosteller and Daniel P. Moynihan reaffirms the central findings of the Office of Education's 1966 report, Equality of Educational Opportunity—known as the *Coleman Report*—that academic achievement depends more on family background than what happens in the classroom. Christopher Jencks, one of the authors of the study, contends that "the least promising approach to raising achievement is to raise expenditures, since the data gives little evidence that any widely used school policy or resource has an appreciable effect on achievement scores." *On Equality of Educational Opportunity*, edited by Mosteller and Moynihan at 42 (1972). The study raises "the question whether a social strategy designed to increase the incomes of lower-class families by raising occupational levels or wage rates, by tax exemptions or income supplementation, might not in the end do more to raise levels of educational achievement than direct spending on schools." *Id.* at 50. Jencks concludes that the most promising alternative for raising achievement "* * * would be to alter the way in which parents deal with their children at home. Unfortunately, it is not obvious how this could be done. Income maintenance, family allowances, etc., seem a logical beginning." *Id.* at 43. In this regard the study names as a recommendation "* * * increased family-income and employment-training programs, together with plans for the evaluation of their longrun effects on education." *Id.* at 56.

Shortly after the President's televised address on Mar. 16, 1972, calling for a moratorium on school busing and compensatory education to help disadvantaged children, HEW issued a publication called *The Effectiveness of Compensatory Education: Summary and Review of the Evidence*, which concluded "that the concentrated compensatory education program proposed by the President is a sound investment for the Nation at this time." *Id.* at 6. With respect to whether or not compensatory education can work the study stated that "the evidence * * * is definitely encouraging." *Id.* at 11. On the question of how closely effective compensatory education is related to increased expenditures, the report noted that "the evidence, and therefore our conclusion, is much less clear." It stated further, "that an effective compensatory education program will indeed require significant additional resources * * *". But the study cautioned that "there is also an upper boundary of marginal costs, beyond which one would probably be wasting money in the application of compensatory resources." *Id.* at 11.

Cf. Bradley v. *The School Board of the City of Richmond, Virginia* 338 F. Supp. 67 (E.D. Vir. 1972), *rev'd. on other grounds.*—F. 2d—(4th Cir. June 5, 1972), in which the court found that schools attended by a disproportionate number of black students are perceived as inferior by the pupils attending them. *Id.* at 81. The court cited evidence that "self-perception is affected by a pupil's notion of how he is being dealt with by the persons in power" (*Id.* at 209) and that "teachers' conceptions of the schools in which they hold classes are affected by the racial and *economic* status of their schools. There is a 'much stronger tendency toward a negative view of school and students in the mostly black and deprived schools than in the mostly white and *advantaged* schools.'" (emphasis added.)

Id. at 210. Perhaps this suggests that students who attend physically inferior schools develop unfavorable self-perceptions and that teachers who teach in such schools have low expectations of their students. See also Berke and Kelly, "The Financial Aspects of Equality of Educational Opportunity", *op. cit. supra* note 20 at 39: "* * * we are firmly convinced that while more money alone will not solve the crisis in educational quality, lessening the resources available to educators is even less effective in improving education. In short, while more money by itself is not the sole answer to improving the quality of education available to all Americans, it seems to be far more effective than whatever factor may be considered second best. For money buys smaller classes, improved teaching devices, experimentation. new schools to achieve integration, counseling services of near-clinical personnel usage, or whatever other techniques, research, development, and practice find to be most promising.

But even aside from the question of educational effectiveness, we have little patience with those who ask us to prove, as a condition precedent to reform, that achieving greater equity in the raising and the distribution of revenues will result in improved performance in the schools. For the end result of throwing roadblocks in the way of change is to support the maintenance of the system of educational finance we have described in this report, a system which regularly provides the most lavish educational services to those who have the highest incomes, live in the wealthiest communities, and are of majority ethnic status. In our eyes, this situation is the very definition of inequality of educational opportunity. For a Nation which has aspirations toward achieving an educated, humane, prosperous, and democratic society, reversing that inequitable pattern of educational resource distribution must be at least as high an educational priority as the development of new and more effective ways to help all children to learn." The Fleischmann Commission likewise concluded that "* * * The amount of money expended does make a meaningful difference in the quality of education." *Fleischmann Commission Report, op. cit. supra* note 12 at 2.2.

[142] *Serrano* v. *Priest, op. cit. supra* note 128 at 603.

[143] *Id.* at 603 n. 19, quoting from Michelman, "The Supreme Court. 1968 Term, Foreword: On Protecting the Poor Through the 14th Amendment", 83 Harv. L. Rev. 7, 50, (1969). For a further discussion of the responsibility of the State toward public education see. 1 U.S. Commission on Civil Rights, *Racial Isolation in the Public Schools* 260–61 (1967); Kirp, *op. cit. supra* note 27 at 164–65; Silard and White, *op. cit. supra* note 59 at 8–9; *Robinson* v. *Cahill, op. cit. supra* note 11 at 274; *Cooper* v. *Aaron*, 358 U.S. 1, 16–17 (1958); *Bradley* v. *The School Board of the City of Richmond, Virginia. op. cit. supra* note 141.

tion", *i.e.*, wealth, but it also encroached upon a "fundamental interest", *i.e.*, education. The court recognized that there was no direct authority supporting the argument that education is a fundamental interest which may not be conditioned on wealth, although there are suggestions to that effect in some court opinions.[144] Education, however, plays an indispensable role in the modern industrial state since

> * * * first, education is a major determinant of an individual's chances for economic and social success in our competitive society; second, education is a unique influence on a child's development as a citizen and his participation in political and community life * * *. Education is the lifeline of both the individual and society.[145]

In many respects, the court found, education may have greater social significance and a more far ranging impact than the rights of defendants in criminal cases and the right to vote—two "fundamental interests" which the Supreme Court already has protected against discrimination based on wealth.[146] "We are convinced," the court concluded, "that the distinctive and priceless function of education in our society warrants, indeed compels, our treating it as a 'fundamental interest'." [147]

c. *The Absence of a Compelling State Interest*

The State argued that despite the discriminations involved in the California school financing system, the structure was necessary to achieve a compelling State interest, *i.e.*, "to strengthen and encourage local responsibility for control of public education".[148] The court disagreed. First, it argued that no matter how public education is financed, it still would be possible to leave decisionmaking over school policy in the hands of local districts.[149] Second, local fiscal control is an illusion when, as in California, the assessed valuation within a district is a major determinant of how much it can spend on schools; in fact, the system deprives less wealthy districts of local fiscal control.[150] Accordingly, the court concluded:

> We find that such financing system as presently constituted is not necessary to the attainment of any compelling state interest. Since it does not withstand the requisite "strict scrutiny," it denies to the plaintiffs and others similarly situated the equal protection of the laws.[151]

Nor did the court agree that its holding was barred by the Supreme Court's summary affirmances in the *McInnis* and *Burruss* cases.[152] The court extensively analyzed those cases and distinguished them largely on the grounds that in *Serrano* the court was being asked to invalidate discrimination on the basis of wealth while in *McInnis* and *Burruss* "plaintiffs repeatedly emphasized 'educational needs' as the proper standard for measuring school financing against the equal protection clause." [153]

D. Other Recent Cases [154]

1. Minnesota's system of financing public education—structurally indistinguishable from the California system—was challenged in *Van Dusartz* v. *Hatfield*.[155] The court, resting squarely on *Serrano*, reached a similar conclusion. Describing the financing system in Minnesota, the court said:

> To sum up the basic structure, the rich districts may and do enjoy lower tax rates and higher spending. A district with $20,000 assessed valuation per pupil and a 40 mill tax rate on local property would be able to spend $941 per pupil; to match that level of spending the district with $5,000 taxable wealth per pupil would have to tax itself at more than three times that rate, or 127.4 mills.[156]

The court recognized that there was difference of opinion among educators over the degree to which money counts but quoted from an affidavit submitted by the plaintiffs that concluded that in Minnesota:

> The districts having the lowest per-pupil expenditure, which are generally the poorest districts in terms of assessed valuation per-pupil unit, offer an education that is inferior to the districts having the highest per-pupil expenditures.[157]

The court's analysis of the constitutional questions presented to it proceeded along lines comparable to that in *Serrano*: is a "fundamental interest" involved? has the State used a "suspect classification"? is there a "compelling State interest"? The court observed:

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[144] *Serrano* v. *Priest*, *op. cit. supra* note 128 at 604 n. 22.
[145] *Id.* at 605.
[146] The court elaborates on this proposition. *Id.* at 607–09.
[147] *Id.* at 608–09. For further discussion of education as a "fundamental interest" see, e.g., Kirp. *op. cit. supra* note 27 at 140: *Hobson* v. *Hansen*, 269 F. Supp. 401, 508 (D.D.C. 1967).
[148] *Serrano* v. *Priest*, *op. cit. supra* note 128 at 610.
[149] *Ibid.*
[150] *Id.* at 611.
[151] *Id.* at 614–15. The court also rejected the State's contention that the Constitution did not require territorial uniformity of State programs and that if wealth could not determine the quality of public education, the same rule must be applied to all tax-supported public services. *Id.* at 611–14.
[152] See discussion of *McInnis* and *Burruss*, *supra* notes 100 and 101.
[153] *Serrano* v. *Priest*, *op. cit. supra* note 128 at 617.
[154] A full list of the cases that have been filed to challenge school financing methods, prepared by the Lawyers' Committee for Civil Rights Under Law, is included as App. F.
[155] 334 F. Supp. 870 (D. Minn. 1971).
[156] *Id.* at 873.
[157] *Id.* at 874.

* * * education * * * is to be sharply distinguished from most other benefits and services provided by government. It is not the "importance" of an asserted interest which alone renders it specially protected * * *. Education has a unique impact on the mind, personality, and future role of the individual child. It is basic to the functioning of a free society and thereby evokes special judicial solicitude.[158]

This "fundamental interest," the court concluded, is invidiously affected by a wealth classification and:

* * * the objection to classification by wealth is in this case aggravated by the fact that the variations in wealth are State created. This is not the simple instance in which a poor man is injured by his lack of funds. Here the poverty is that of a governmental unit that the State itself has defined and commissioned. The heaviest burdens of this system surely fall *de facto* upon those poor families residing in poor districts who cannot escape to private schools, but this effect only magnifies the odiousness of the explicit discrimination by the law itself against all children living in relatively poor districts.[159]

Since this discrimination was not compelled by any State interest of sufficient magnitude, it was invalid under the 14th amendment. This did not mean, said the court, that the only valid system was one involving uniformity of expenditure for each pupil in Minnesota. All that fiscal neutrality requires is that educational benefits are not distributed according to wealth: the State may adopt one of many optional funding systems which do not violate the equal protection clause.[160]

2. In Texas, a three-judge Federal court, in *Rodriguez* v. *San Antonio Independent School District*[161], relied on *Serrano* in finding that Texas' method of financing public elementary and secondary education violated the equal protection clause. Although the complaint in the *Rodriguez* case, in addition to alleging that the Texas school finance system discriminated on the basis of wealth, also alleged that it discriminated against Mexican Americans[162]—and all the plaintiffs in the case were Mexican Americans—the court's decision rests solely on wealth discrimination. In Texas, there happens to be a close correlation between financial discrimination and ethnic and racial discrimination. A study of the Texas finance system submitted in evidence in the *Rodriguez* case concluded that:

Racial discrimination is also readily apparent in Texas educational finance. There is a consistent pattern of higher quality education in districts with higher proportions of whites, and lower quality education in districts with lower proportions of whites. In short, the more Negroes and Mexican Americans in the school population of a district, the lower its revenues for education.[163]

Texas is perhaps unique in this respect.[164] For this reason, the *Rodriguez* court may well have decided to base its decision on wealth discrimination because that was a more universally existing problem, because it could find support in the *Serrano* and *Van Dusartz* decisions, and because some commentators have cautioned against basing the school finance cases on racial and ethnic discrimination.[165]

The court, in *Rodriguez*, notes these financial disparities. A survey of 110 school districts throughout the State showed that while the 10 districts with a market value of taxable property per pupil above $100,000 enjoyed an equalized tax rate per $100 of only $0.31, the poorest four districts, with less than $10,000 in property per pupil, were burdened with a rate of $0.70.[166] The rich low-rate districts, however, raised $585 per pupil while the poor high-rate districts collected only $60 per pupil.[167] The seven San Antonio school districts followed a similar pattern. Market value per student varied from a low of $5,429 in Edgewood to a high of $45,095 in Alamo Heights. Taxes, as a percent of the property's market value, were the highest in Edgewood and the lowest in Alamo Heights. Yet Edgewood produced only $21 per pupil from local taxes while Alamo Heights garnered $307 per pupil.[168]

The court, employing the same constitutional analysis as that followed in *Serrano* and *Van Dusartz*, invalidated the Texas system.[169] Disagreeing with the defendants that the plaintiffs were calling for "socialized education," the court said "Education, like the postal service has been socialized, or publicly financed and operated, almost from its origin. The *type* of socialized education, not the question of its existence, is the only matter currently in dispute." [170] The court also rejected the defendant's argument that Federal assistance had an equalizing effect. Factually, this was not so, but more importantly, "[p]erformance of its constitutional obligations must be judged by the State's own behavior, not by the actions of the Federal Government." [171] The court ordered Texas to develop a new educational

[158] *Id.* at 875.
[159] *Id.* at 875–76.
[160] *Id.* at 876–77.
[161] *Op. cit. supra* note 1.
[162] See App. F.
[163] See affidavit of Joel S. Berke, p. 4.

[164] See discussion acccompanying text at note 4, *supra.*
[165] Coons, Clune, and Sugarman, *Private Wealth, op. cit. supra* note 4 at 356–58, 403–409.
[166] *Rodriguez* v. *San Antonio Independent School District, op. cit. supra* note 1 at 282.
[167] Ibid. At this point, the court noted that "[t]hose districts most rich in property also have the highest median family income and the lowest percentage of minority pupils, while the poor property districts are poor in income and predominantly minority in composition."
[168] *Ibid.*
[169] *Id.* at 282–84.
[170] *Id.* at 284.
[171] *Id.* at 285.

financing system and gave it 2 years in which to do so.[172]

3. New Jersey's school finance system was challenged in *Robinson* v. *Cahill*.[173] In a lengthy opinion, the court analyzed the school finance scheme in effect at the time the complaint was filed as well as the "State School Incentive Equalization Aid Law" (known as the Bateman Act) enacted October 26, 1970, and effective July 1, 1971. The latter law was the product of extensive study and was intended to provide an equitable system of State financing.[174] The court, however, employing the *Serrano* analyses, concluded that:

> The present system of financing public elementary and secondary schools in New Jersey violates the requirements for equality contained in the State and Federal Constitutions. The system discriminates against pupils in districts with low real property wealth, and it discriminates against taxpayers by imposing unequal burdens for a common state purpose.[175]

The New Jersey court's opinion is too intricate for thorough analysis here. Some of its highlights, however, merit further attention.

The court found a consistent pattern of financing throughout the State:

> In most cases, rich districts spend more money per pupil than poor districts; rich districts spend more money on teachers' salaries per pupil; rich districts have more teachers and more professional staff per pupil, and rich districts manage this with tax rates that are lower than poor districts, despite "equalizing" aid.[176]

For example, Newark has a school tax rate of $3.69 as compared with the $1.43 rate in Millburn. Yet Millburn has more teachers per pupil, spends more for teachers' salaries per pupil ($685 to $454) and has more professional staff per pupil.[177]

Valuable commercial and industrial property was unequally distributed throughout the State. One hundred and twelve municipalities containing 11 percent of the State's population had commercial and industrial property almost equal in value to that possessed by a group of municipalities containing 39 percent of the State's population. Both groups raised proportionately similar amounts in taxes, but the first group only needed to use a tax rate under 2 percent while the poorer groups required a tax rate of 6 percent or more.[178] "Yet most of the poorer communities must serve people of greater need because they have large numbers of dependent minorities, that is, blacks and those whose origin is Puerto Rican or Cuban." [179] It is not, however, only the older, large cities that are penalized by the funding system; many poor suburbs and rural districts also suffer.[180]

The court extensively analyzed the relationship between dollar expenditures and quality of education and concluded that "there is a correlation between dollar expenditures and input [such as teachers and facilities] and between input and output [results]." [181]

Although the court praised the improvements the Bateman Act made on the school financing system—such as giving special weight to the number of children in a district receiving aid to dependent children assistance—it noted that such factors as "municipal and county overload" still were not taken into account. Said the court:

> Poor districts have other competing needs for local revenue. The evidence shows that poorer districts spend a smaller proportion of their total revenues for school purposes. The demand for municipal services tends to diminish further the school revenue-raising power of poor districts. Another general disadvantage of poor districts is the fact that property taxes are regressive; they impose burdens in inverse proportion to ability to pay. This is because poor people spend a larger portion of their income for housing.[182]

The court's order permits the continued operation of the school system and existing tax laws and all actions taken under them. To allow time for legislative action, the court's order is not to be effective until January 1, 1974.[183]

The New Jersey opinion illustrates the varied factors that must be taken into account in order to develop an equitable school financing formula and the difficulty of developing such a formula even where a State makes a good faith effort to do so.

4. An Arizona court followed the *Serrano* trend in *Hollins* v. *Shofstall*.[184] The court found the *Serrano* and *Van Dusartz* rulings to be "highly persuasive",[185] but appeared to base its opinion on the discrimination suffered by taxpayers rather than by schoolchildren. The court found that the amount of money expended

[172] *Id.* at 286. On Apr. 25, 1972, the Supreme Court noted probable jurisdiction in this case. 40 U.S. L.W. 3513 (1972).

[173] *Robinson* v. *Cahill*, *op. cit. supra* note 11.

[174] *Id.* at n. 4. Among other things, the formula in the Bateman Act provides greater minimum aid to districts with a high proportion of children receiving assistance under the Aid to Families with Dependent Children (AFDC) program.

[175] *Id.* at 280.

[176] *Id.* at 237–38.

[177] *Id.* at 240.

[178] *Id.* at 242.

[179] *Id.* at 243.

[180] *Id.* at 245.

[181] *Id.* at 248. The court cited testimony of Prof. Henry S. Dyer of the Educational Testing Service of Princeton, N.J., that pupil achievement is positively related to per pupil expenditure for instructional purposes. Id. at 253.

[182] *Id.* at 273.

[183] *Id.* at 280.

[184] No. C–253652 (Super Ct. Maricopa County 1971) (memorandum and order denying motion to dismiss). Summary judgment subsequently was granted. See note 18.

[185] *Id.* at 3 (mem. op.).

per student could be highly misleading [186] and also noted the various devices that were employed to equalize disparities among districts which conceivably could avoid an equal protection violation.[187] What was persuasive to the court was a comparison of "the amounts per pupil in average daily attendance raised by district taxation to pay for costs of operation and maintenance in different districts and the district tax rates necessary to raise such funds." [188] The court noted that in 1970–71 Morenci Elementary School District's taxes produced $249.64 per pupil in average daily attendance at a tax rate of $0.67. Roosevelt Elementary School District taxed at a rate of $7.14 but produced only $99.04 per pupil. Thus, "[a]lthough Morenci's tax rate was only about one-tenth of Roosevelt's, it produced about 2½ times more revenue per ADA child." [189]

The Arizona Superior Court concluded:

> * * * the funds available in any given school district for public education are to a highly significant extent a function of the taxable wealth within the district. Arizona's school financing system imposes grossly disparate tax burdens on taxpayers in its different school districts. Taxpayers in a school district poor in taxable wealth are forced to make a substantially greater tax effort to provide substantially less moneys for the operation and maintenance of their schools in comparison with what is required of *taxpayers* in a district rich in taxable wealth. (emphasis added.) [190]

5. A departure from the *Serrano* trend was made in the decision of the New York State Supreme Court in *Spano* v. *Board of Education of Lakeland Central School District No. 1*.[191] The court there concluded that it was bound by the *McInnis* and *Burruss* decisions [192] and took exception to the reasoning of the California court in *Serrano* in distinguishing those decisions.[193] In addition, the court feared that if it were to allow this case to go to trial [194], it would "render a grievous, if not irreparable disservice to public school education".[195] The court's concern was based on assertions by counsel for the school district that, as a result on the filing of this case, the market for its school bonds, as well as those of other districts, was in turmoil.[196] Accordingly, the court dismissed the case and concluded:

> "One scholar, one dollar"—a suggested variant of the "one man, one vote" doctrine proclaimed in *Baker* v. *Carr*, 369 U.S. 186—may well become the law of the land. I submit, however, that to do so is the prerogative and within the "territorial imperative" of the legislature or, under certain circumstances, of the U.S. Supreme Court.[197]

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[186] The court refers to one of plaintiffs' exhibits (Exhibit C) which shows that Roosevelt Elementary School District spends $606.86 per pupil while the 10 districts in the State which spend the most per pupil spend between $2,370.20 to $1,681.32. The court finds it erroneous to presume that the 10 districts provide superior quality of education "when it is considered that all 10 are rural school districts which the highest average daily attendance being 75, the lowest 2, the median 12, and the average 22, while average daily attendance at Roosevelt for 1970–71 was 9,700 * * *" *Id.* at 4–5.

[187] "* * * the amounts a district receives from State financial assistance, State equalization aid and Federal programs will influence the quality of its educational programs and the amount which must be raised by district taxation." *Id.* at 4. *Cf. Rodriguez* v. *San Antonio Independent School District, op. cit. supra* note 1 and text accompanying note 171 in which the court concludes that the extent of Federal assistance is irrelevant to the State's obligation of equal treatment.

[188] *Hollins* v. *Shofstall, op. cit. supra* note 184 at 5.

[189] *Ibid.*

[190] *Id* at 5–6. *Cf. Robinson* v. *Cahill, op. cit. supra* note 11 where the court also found discrimination against taxpayers.

[191] 328 N.Y.S. 2d 229 (Sup. Ct. Westchester County 1972).

[192] See text accompanying notes 100–118 *supra.*

[193] See text accompanying notes 152–53 *supra.*

[194] As in *Serrano*, the court was considering the adequacy of the complaint and not the merits of the case. See note 140 *supra.*

[195] *Spano* v. *Board of Education of Lakeland Central School District No. 1, op. cit. supra* note 191 at 234.

[196] *Ibid.*

[197] *Id.* at 235.

CHAPTER IV

WHITHER SERRANO?

The Supreme Court has agreed to review the *Rodriguez* case [198] and, consequently, will have another opportunity to consider whether disparities in educational financing violate the equal protection clause of the 14th amendment. The Court might choose to summarily reverse *Rodriguez* and its decisions in *McInnis* and *Burruss* as authority. This could suggest that the Court regards the equal protection contentions in the school finance cases as settled and not warranting full review. On the other hand, it might indicate that despite the nature of the requested relief in the current cases, *i.e.*, a negative declaration against discrimination based on wealth rather than an affirmative order to provide educational resources on the basis of "needs", the Court—as probably was the case in *McInnis* and *Burruss*—continues to regard school finance cases as nonjusticiable because of the unmanageability of the requested relief.

It is difficult to view the equal protection claims in these cases so insubstantial but it is not difficult to imagine that a Court, reluctant to play an "activist" role, would decline to immerse itself in the complexities or controversies surrounding the school finance question. Perhaps the Court would prefer to remain out of the "educational thicket" just as, in the reapportionment area before *Baker* v. *Carr* [199], it preferred to avoid the "political thicket". One reason for the Court's eventual willingness to adjudicate reapportionment cases was the unlikelihood of relief emanating from any other source.[200] Neither State courts nor State legislatures showed any inclination to correct the inequities typical of most legislative and congressional apportionment.

The school finance area presents a somewhat different situation. State courts have been willing to act [201] and have found violations of State constitutions as well as the Federal Constitution.[202] State legislatures [203], as well as State executives [204], also have demonstrated that they are sensitive to the inequitable manner in which educational resources are distributed. The Federal Government, moreover, is involving itself with this question and there have been recent proposals for greater Federal efforts to help reform educational financing.[205] It is possible, therefore, that the Supreme Court might choose to curtail the role of Federal courts in this area.

The interests at stake in the school finance controversy, however, are so basic that it would seem necessary for the Court to define the rights involved and order rapid remedial action—a course it could take without necessarily stipulating in detail just what plan should be adopted.[206] Assuming the Court chooses to regard its affirmances in *McInnis* and *Burruss* in the limited manner suggested by *Serrano*, it could fully consider the merits in the *Rodriguez* case. A decision to affirm

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[198] See note *supra* 1.

[199] 369 U.S. 186 (1962). This decision contains an extensive discussion of the "justifiability" issue.

[200] See Mr. Justice Clark concurring in *Baker* v. *Carr*, *Id.* at 258–59.

[201] See *Serrano* v. *Priest*, *op. cit. supra* note 10; *Hollins* v. *Shofstall*, *op. cit. supra* note 18; *Robinson* v. *Cahill*, *op. cit. supra* note 11.

[202] See *Serrano* v. *Priest*, *op. cit. supra* note 10 and *Robinson* v. *Cahill*, *op. cit. supra* note 11.

[203] In Minnesota, the plaintiffs in *Van Dusartz* v. *Hatfield*, *op. cit. supra* note 155 agreed to dismiss their suit, without prejudice, in December 1971 because they believed that the State's revised school-aid formula, passed by the legislature on Oct. 30, 1971, while not meeting the "strict constitutional standard set forth in the Court's October 12 memorandum * * * it appears that [it] * * * is considerably closer to meeting the constitutional standard of fiscal neutrality than the previous statute." See Lawyers' Committee tabulation, App. F. In California, five major reform proposals are being considered. See Levin, et. al., *op. cit. supra* note 4 at 10–12. More than one-third of the States have some kind of serious self-analysis under way. See Myers, "School Finance: A Return to 'State Preeminence", 6 City 6 (1972).

[204] In New York State, Governor Rockefeller appointed a Commission on the Quality, Cost and Financing of Elementary and Secondary Education to explore this area.

[205] See report of the President's Commission on School Finance, "Schools, People and Money" (1972).

[206] In *Baker* v. *Carr*, *op. cit. supra* note 199 at 226 the court rejected the argument that manageable judicial standards could not be fashioned and said: "Judicial standards under the Equal Protection Clause are well developed and familiar, and it has been open to courts since the enactment of the 14th amendment to determine, if on the particular facts they must, that a discrimination reflects *no* policy, but simply arbitrary and capricious action." (emphasis in original)

the lower court might be narrowly based.[207] The Supreme Court could analyze the Texas school finance system in terms of its impact on Mexican Americans and conclude that there has been a denial of equal protection.[208] Or the Court could directly face, as did the Texas court, the question of whether an educational financing system that distributes its benefits in relation to wealth violates the 14th amendment. A decision on the merits undoubtedly would involve application of the "rational basis" or "compelling State interest" tests.

The development of these tests and how they have been applied in the recent school finance cases have already been discussed. *Serrano* treated the "compelling interest" doctrine as an established member of the Supreme Court household of adjudicatory formulas. If that doctrine retains its vitality, it is probable that most present school finance systems will be found wanting under the equal protection clause. The Court has recognized wealth as a "suspect" classification and the arguments seem compelling to classify education as a "fundamental interest". Once either or both of these categorizations are made, it would seem unlikely for the Court to recognize any "compelling State interest" to continue the present inequities. We now will briefly review recent Supreme Court decisions that relate to these tests and criteria that undoubtedly will figure prominently in the argument of the *Serrano* issue before the Supreme Court.

A. Recent Supreme Court Decisions

Dandridge v. *Williams*[209] suggests that the Court is reluctant to add to the class of "fundamental interests" and adverse to treating all wealth distinctions as "suspect". Here the Court concluded that even in cases involving "the most basic economic needs of impoverished human beings"[210], it will apply the "rational basis" test absent some improper or "suspect" classification. This case involved a challenge to Maryland's administration of the Aid to Families with Dependent Children program. Maryland, through a "maximum grant regulation", imposed a limitation on the size of assistance grant any one family unit could receive. The effect of this regulation was to provide families of six or fewer members[211] with assistance sufficient to meet their determined standard of need fully, but "to deny benefits to additional children born into a family of six, thus making it impossible for families of seven persons or more to receive an amount commensurate with their actual need * * *."[212]

The Court, in a majority opinion by Mr. Justice Stewart, described the issue before it in these words:

> * * * we deal with State regulation in the social and economic field, not affecting freedoms guaranteed by the Bill of Rights, *and claimed to violate the Fourteenth Amendment only because the regulation results in some disparity in grants of welfare payments to the largest AFDC families.* (emphasis added)[213]

Applying the traditional equal protection test, the Court concluded that the regulation was "rationally supportable":

> In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some "reasonable basis," it does not offend the Constitution simply because the classification "is not made with mathematical nicety or because in practice it results in some inequality." *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U.S. 61, 78.[214]

The Court conceded that the cases it relied upon for the traditional equal protection test "in the main involved State regulation of business and industry" and that the "administration of public welfare assistance, by contrast, involves the most basic economic needs of impoverished human beings."[215] This difference, however, did not require the application of a more stringent constitutional standard. The court noted that this case did not involve a contention that the Maryland regulation was infected with a racially discriminatory purpose or effect such as to make it inherently suspect.[216]

Apparently, what most influenced the Court in this case was that the classification involved did not appear too unreasonable. The language of the Court suggests that it was not especially moved by a regulation that resulted "only * * * in some disparity in grants

[207] When passing on constitutional questions, the court generally prefers to limit its decision as narrowly as possible. See, e.g., *Garner* v. *Louisiana*, 368 U.S. 157 (1961); *Sweatt* v. *Painter*, 339 U.S. 629 (1950); *Alabama State Federation of Labor* v. *McAdory*, 325 U.S. 450 (1945); *Village of Euclid* v. *Ambler Realty Co.*, 272 U.S. 365 (1926).

[208] As noted *supra* viewing school finance disparities in terms of racial and ethnic discrimination is infinitely more complex and less generally applicable than a wealth analysis.

[209] 397 U.S. 471 (1970).

[210] *Id.* at 485.

[211] It is not entirely clear how large a family unit must be before it receives less than the subsistence allowance. See *Id.* at 509 n. 2.

[212] *Id.* at 490.

[213] *Id.* at 484. The Court disagreed with the district court that the regulation was invalid for "overreaching" *i.e.*, that it dealt too broadly and indiscriminately with the entire group of AFDC eligibles. The concept of "overreaching", the Court concluded, is applicable when a regulation is challenged as sweeping so broadly as to impinge up activities protected by the first amendment guarantee of free speech. *Ibid.*

[214] *Id.* at 485.

[215] *Ibid.*

[216] *Ibid.* n. 17.

of welfare payments to the largest AFDC families".[217] This distinction between differently situated poor families the Court did not choose to regard as "suspect". Nor did the Court undertake an indepth exploration of the nature of the interests involved by the regulation, except to note that they were important.

The dissenting opinion of Mr. Justice Marshall rests heavily on the unfairness of the classification created by the Maryland regulation. According to Justice Marshall:

> This classification process effected by the maximum grant regulation produces a basic denial of equal treatment. Persons who are concededly similarly situated (dependent children and their families), are not afforded equal, or even approximately equal, treatment under the maximum grant regulation. Subsistence benefits are paid with respect to some needy dependent children; nothing with respect to others. Some needy families receive full subsistence assistance as calculated by the State; the assistance paid to other families is grossly below their similarly calculated need.[218]

Justice Marshall does not find either the "traditional", "rational basis" equal protection test or the "compelling" interest test [219] satisfactory to an analysis of this case. Instead, he concentrates upon "the character of the classification in question, the relative importance to individuals in the class discriminated against of the government benefits they do not receive, and the asserted State interests in support of the classification." [220] As indicated, Justice Marshall regards the classification in this case as improper—"even under the Court's 'reasonableness' test" [221]—since he views the government benefits involved as vital and he attaches little weight to any of the State's justifications for its regulation. He concludes:

> * * * it cannot suffice merely to invoke the spectre of the past and to recite from *Lindsley* v. *Natural Carbonic Gas Co.* and *Williamson* v. *Lee Optical of Oklahoma, Inc.* to decide this case. Appellees are not a gas company or an optical dispenser; they are needy dependent children and families who are discriminated against by the State. The basis of that discrimination—the classification of individuals into large and small families—is too arbitrary and too unconnected to the asserted rationale, the impact on those discriminated against—the denial of even a subsistence existence—too great, and the supposed interests served too contrived and attenuated to meet the requirements of the Constitution. In my view Maryland's maximum grant regulation is invalid under the Equal Protection Clause of the Fourteenth Amendment.[221a]

In March 1971 the Court decided *Boddie* v. *Connecticut* [222] in which indigents challenged the constitutionality of a statute requiring the payment of court fees and costs incident to divorce proceedings. The Court might simply have relied on the *Griffin* v. *Illinois* [223] line of cases and held that equal protection is denied when access to the courts is dependent on wealth. This was the course advocated in the concurring opinions of Justices Douglas and Brennan. The majority opinion of Justice Harlan, however (joined by Chief Justice Burger and Justices White, Marshall, Stewart, and Blackmun), resorted to the "due process of law" standard of the 14th amendment.[224] Recognizing that

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[217] *Id.* at 484. The Court noted at one point that the maximum grant regulation affects "only one-thirteenth of the AFDC families in Maryland * * *." *Id.* at 480, n. 10. At another point, the Court suggested that absent the maximum grant regulation a family headed by an unemployed person would receive more than one supported by an employed breadwinner earning the minimum wage. *Id.* at 486, n. 19. See note, "The Equal Protection Clause and Exclusionary Zoning After *Valtierra* and *Dandridge*", 81 Yale L.J. 61, 80 (1971): "The *Dandridge* court may well have reasoned that rather than disproportionately disadvantaging the poor through governmental action, the Maryland statute merely refused to extend assistance on an equal basis to a sub-class of the poor, viz those with large families." See also Lefcoe, "The Public Housing Referendum Case, Zoning, and the Supreme Court", 59 Cal. L. Rev. 1384, 1424 n. 140 (1971).

[218] *Id.* at 518.

[219] In describing the application of the "compelling" interest test, Justice Marshall seems to limit it to those instances where it is agreed that a "fundamental right" is involved. *Id.* at 520. As we have shown, *supra*, this is just one branch of the "compelling" interest test. The Court also has applied the test when the classification involved a "suspect" categorization.

[220] *Id.* at 520–21. Justice Marshall's formulation does not differ materially from the "compelling" interest approach used by the court in *Serrano* where the nature of the classification and the importance of the interest involved were analyzed before concluding that the State was required to show a "compelling" interest for its classification. Justice Marshall concedes that the Court has essentially applied his analysis in other cases "though the various aspects of the approach appear with a greater or lesser degree of clarity in particular cases." *Id.* at 521, n. 15.

[221] *Id.* at 529.

[221a] *Id.* at 529–30. The *Dandridge* decision has been criticized. See e.g., Dienes, "To Feed the Hungry: Judicial Retrenchment in Welfare Adjudication", 58 Cal. L. Rev. 555 (1970); Graham, "Poverty and Substantive Due Process", 12 Ariz. L. Rev. 1 (1970); Note, "The Supreme Court, 1969 Term", 84 Harv. L. Rev. 1, 60 (1970). Surprisingly, *Dandridge* was not mentioned by the court in *Serrano*. In *Van Dusartz*, the court dismissed *Dandridge* with these words: "One can concede the significance of welfare payments to an indigent and yet accept the result in *Dandridge* v. *Williams*, where the Court did not face a suspect classification." *Van Dusartz* v. *Hatfield*, 334 F. Supp. 870, 875 (D. Minn. 1971).

[222] 401 U.S. 371 (1971).

[223] 351 U.S. 12 (1956). See also cases cited at note 84 *supra*.

[224] The 14th amendment, in addition to proscribing denials of equal protection by the States also provides that no State shall "deprive any person of life, liberty, or property, without due process of law * * *." Justice Douglas, in his concurrence, complains that the due process clause "has proven very elastic" whereas "rather definite guidelines have been developed" for construing the equal protection clause. *Boddie* v. *Connecticut*, *supra* note 222 at 384–85. *Cf. Bolling* v. *Sharpe*, 347 U.S. 497, 499 (1954). ("'The equal protection of the laws' is a more explicit safeguard of prohibited unfairness than 'due process of law', and, therefore, we do not imply that the two are always interchangeable phrases.") Generally, invocation of the due process clause has a greater overall impact. When a State law

479-134 O - 72 - 4

"marriage involves interests of basic importance in our society [225]" and that the State monopolizes the means of dissolving marriages,[226] Justice Harlan concluded that the plaintiffs had been denied "an opportunity to be heard upon their claimed right to a dissolution of their marriages, and, in the absence of sufficient countervailing justification for the State's action," had been denied due process.[227] The opinion, therefore, emphasizes the unfairness of lack of access to the courts when marriage is involved; the emphasis is on marriage—not on indigency. The opinion, moreover, recognizes that some interests, here marriage, are of "basic importance in our society" and that the State requires "sufficient countervailing justification" to impinge on them. Thus, the Court, in applying a "compelling interest" test in the due process context, seems to be developing a dual standard for testing due process claims parallel to that used in the equal protection area.[228]

Later in the same month as the *Boddie* decision, the Court decided *Labine* v. *Vincent* [229] where it concluded that there was "nothing in the vague generalities of the Equal Protection and Due Process Clauses which empowers this court to nullify the deliberate choices of the elected representatives of the people of Louisiana." [230] At issue was a Louisiana statute which accorded different inheritance rights to illegitimate children, although duly acknowledged, than to legitimate children of a father who died without a will. Chief Justice Burger and Justices Stewart and Blackmun joined in an opinion by Mr. Justice Black, concurred in separately by Mr. Justice Harlan, which concluded that there was no constitutional basis for upsetting the disparate treatment accorded the inheritance rights of legitimate and illegitimate children under Louisiana law. In a strongly worded dissent, Mr. Justice Brennan, joined by Justices White, Douglas, and Marshall, argued that there was "no rational basis to justify the distinction Louisi-

is found to violate due process, the State's attempt to regulate a particular subject is completely circumscribed. "Invocation of the equal protection clause on the other hand, does not disable any governmental body from dealing with the subject at hand. It merely means that the prohibition or regulation must have a broader impact." Justice Jackson concurring in *Railway Express* v. *New York*, 336 U.S. 106, 112 (1949). There has been a long dispute regarding the meaning and scope of the due process clause. Such questions as whether the clause incorporates all or some of the prohibitions of the Bill of Rights have concerned the Court for decades. Some members of the Court, in seeking to give substance to the command of "due process of law", have argued that the 14th amendment was intended to make the provisions of the Bill of Rights—which are directed at the Federal Government—also applicable to State action. Other members have favored a selective incorporation approach. See, e.g., *Adamson* v. *California*, 332 U.S. 46 (1947); *Duncan* v. *Louisiana*, 391 U.S. 145 (1968). To those who favor the application of the due process clause on a case by case basis, the test has been one of "fundamental fairness". *Duncan* v. *Louisiana*, *supra* at 186–87. Justice Black, long an opponent of this application of the due process clause, strongly criticized its application in the *Boddie* case. *Boddie* v. *Connecticut*, *supra* at 392–94. Justice Black also did not regard the charging of fees and costs as a denial of equal protection. *Id.* at 389.

[225] *Boddie* v. *Connecticut*, *op. cit. supra* note 222 at 376.

[226] Justice Harlan emphasized that unlike other contractual arrangements which can be rescinded or amended out of court, the marriage contract only can be dissolved in a judicial proceeding. Parties to ordinary commercial contracts have alternative means of conflict resolution; with respect to marriage, the State monopolizes the only means available for resolving disputes. Thus, persons who seek access to courts to dissolve marriages do so no more voluntarily than a defendant who is in court as a result of being sued. Special protections therefore are appropriate. *Id.* at 375–77.

[227] *Id.* at 380–81.

[228] For a perceptive discussion of indigency and court access see Klimpl. "Indigents Access to Civil Court", 4 Colum. Human Rights L. Rev. 267 (1972). Two months after its decision in the *Boddie case*, the Court took action in eight cases which seemed to suggest that *Boddie* was to be given a narrow application. Review was denied in five cases: (1) *In re Garland*, 402 U.S. 966 (1971) which involved the right of a bankrupt to file a petition in bankruptcy without payment of a filing fee, (but see *U.S.* v. *Kras*, 40 U.S. L.W. 3385 (1972) where, on Feb. 21, 1972, the Court agreed to review a similar case); (2) *Meltzer* v. *C. Buck Le Craw & Co.*, 402 U.S. 954 (1971) involved a statute that penalized a tenant double his rent if he went to court to challenge his eviction and lost; (3) *Bourbeau* v. *Lancaster*, 402 U.S. 964 (1971) where an indigent could not afford an appeal docketing fee in a guardianship action; (4) *Beverly* v. *Scotland Urban Enterprises, Inc.*, 402 U.S. 936 (1971) involving an indigent who could not post the penalty bond required to appeal from an adverse judgment in a housing eviction case; and (5) *Kaufman* v. *Carter*, 402 U.S. 964 (1971) where an indigent mother was denied court-appointed counsel to defend herself against a State civil suit to declare her an unfit mother and take away five of her seven children. Two cases were sent back to the lower courts for reconsideration in light of *Boddie:* (1) *Sloatman* v. *Gibbons*, 402 U.S. 939 (1971) where a filing fee was required in divorce cases but an indigent could obtain an extension of time to pay that fee; and (2) *Frederick* v. *Schwartz*, 402 U.S. 937 (1971) involving an indigent who could not afford to appeal a welfare claim from an adverse court decision. In the eighth case, *Lindsey* v. *Normet*, 402 U.S. 941 (1971), involving a situation similar to the *Beverly* case, *supra*, the Court agreed to review the decision below. See text accompanying note 254 *infra* for a discussion of the Court's decision in the *Lindsey* case. Justice Black disagreed with the Court's decision in all but the *Lindsey* case. He argued that if *Boddie* is to be the law, it should not be confined to divorce cases but extended to all civil cases. It would be inconsistent with equal protection to extend special favors to divorce litigants. According to Justice Black, "* * * the decision in *Boddie* v. *Connecticut* can safely rest on only one crucial foundation—that the civil courts of the United States and each of the States belong to the people of this country and that no person can be denied access to those courts, either for trial or an appeal, because he cannot pay a fee, finance a bond, risk a penalty, or afford to hire an attorney * * *. There is simply no fairness or justice in a legal system which pays indigents' cost to get divorces and does not aid them in other civil cases which are frequently of far greater importance to society." *Meltzer* v. *C. Buck Le Craw & Co.*, 402 U.S. 954, 955–56, 960 (1971).

[229] 401 U.S. 532 (1971).

[230] *Id.* at 539–40.

ana creates between an acknowledged illegitimate child and a legitimate one" and that the "discrimination is clearly invidious".[231]

Illegitimate children had received somewhat better treatment in 1968 when Justices Brennan, White, Douglas, and Marshall could recruit as allies Chief Justice Warren and Justice Fortas. In *Levy* v. *Louisiana* [232] and *Glona* v. *American Guarantee and Liability Ins. Co.*[233], these six Justices, in an opinion by Mr. Justice Douglas, found that Louisiana had denied equal protection of the laws in situations involving illegitimate children. In *Levy*, the Court held that Louisiana could not deny illegitimates the right to recover for the wrongful death of their mother; the Court followed standard equal protection analysis and treated this as a case involving "basic civil rights".[234] In *Glona*, the Court concluded that there was no rational basis for a law which denied natural mothers the right to recover for the deaths of their illegitimate children.[235] In both of these cases, Justices Black, Harlan, and Stewart dissented.[236] When these same Justices, accompanied by Chief Justice Burger and Justice Blackmun, constituted the majority in *Labine*, they narrowly restricted the scope of *Levy* and *Glona* noting that "*Levy* did not say and cannot fairly be read to say that a State can never treat an illegitimate child differently from legitimate offspring." [237] Needless to say, the dissenting Justices in *Labine* relied heavily on *Levy* and *Glona*.[238]

A month after *Labine*, the Court again refused to invoke the equal protection clause to invalidate a legislative classification—this time, one alleged to be based on poverty. In *James* v. *Valtierra* [239], the Court upheld a provision of the California constitution requiring that low-rent public housing projects be approved by a majority of the qualified voters in the community affected. It distinguished *Hunter* v. *Erickson* [240], relied on by the lower court, where the Supreme Court invalidated a provision of a city charter which required that any ordinance regulating real estate on the basis of race, color, religion, or national origin could not take effect without approval by a majority of those voting in a city election. That case, said the Court in *Valtierra*, involved a classification based on race while the California law required "approval for *any* low-rent public housing project, not only for projects which will be occupied by a racial minority". (emphasis added) [241] The Court placed great reliance on the place of referendums in California's history and concluded that "[t]his procedure for democratic decisionmaking does not violate the Constitutional command that no State shall deny to any person 'the equal protection of the laws'." [242]

Justice Marshall, dissenting for himself and Justices Brennan and Blackmun, found the special treatment of low-income housing in this case to be invidious discrimination based on poverty, prohibited by the 14th amendment and previous Court decisions.[243] The dissent criticizes the majority for only testing the California law in terms of racial discrimination. "It is far too late in the day," said Justice Marshall, "to contend that the 14th amendment prohibits only racial discrimination; and to me, singling out the poor to bear a burden not placed on any other class of citizens tramples the values that the 14th amendment was designed to protect." [244]

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[231] *Id.* at 558.

[232] 391 U.S. 68 (1968).

[233] 391 U.S. 73 (1968).

[234] *Levy* v. *Louisiana, op. cit. supra* note 232 at 71.

[235] Mr. Justice Douglas wryly commented: "It would, indeed, be far-fetched to assume that women have illegitimate children so that they can be compensated in damages for their death." *Id.* at 75.

[236] 391 U.S. 76 (1968).

[237] *Labine* v. *Vincent*, 401 U.S. 532, 536.

[238] *Id.* at 550–51. Perhaps the Court's change of heart toward illegitimates was based on its view of the importance of the different interests affected by the classifications—in *Levy* and *Glona*, the right to maintain wrongful death actions; in *Labine*, the right to inherit. Or perhaps the difference in the decisions related more to the change in the composition of the Court. Nevertheless, the Court's treatment of illegitimates does not necessarily dictate its attitude toward the poor. Illegitimacy, perhaps, can be eradicated if there are sufficient disincentives. The Bible, however, tells us: "For ye have the poor always with you." *Matthew* 26:11. Justices also have distinguished between illegitimates and the poor. Compare Chief Justice Taney, *Lessee of Brewer* v. *Blougher*, 14 Pet (39 U.S.) 178, 198–99 (1840): "All illegitimate children are the fruits of crime; differing, indeed, greatly in its degree of enormity," with Mr. Justice Byrnes, *Edwards* v. *California*, 314 U.S. 160, 177 (1941): "Poverty and immorality are not synonomous." But see *Weber* v. *Aetna Casualty & Surety Co.*, 40 U.S. L.W. 4460 (1972) discussed *infra* at p. 28 where the Court returned to the *Levy* and *Glona* treatment of illegitimates.

[239] 402 U.S. 137 (1971).

[240] 393 U.S. 385 (1969).

[241] *James* v. *Valtierra op. cit. supra* note 239 at 141.

[242] *Id.* at 143. The fact that this case involved a referendum could not have been the principal element motivating the Court's decision. In other situations, the Court has invalidated actions accomplished by referendum. See, e.g., *Reitman* v. *Mulkey*, 387 U.S. 369 (1967); *Hunter* v. *Erickson*, 393 U.S. 385 (1969); *Lucas* v. *Colorado General Assembly*, 377 U.S. 713 (1964). See also Comment, "*James* v. *Valtierra:* Housing Discrimination By Referendum?", 39 Univ. of Chic. L. Rev. 115, 117–18 (1971). One commentator has suggested that newly enacted referendum requirements for public housing will not be sustained. See Lefcoe, *op. cit. supra* note 217 at 1457. Another commentator has reached a contrary conclusion. See Comment, "*James* v. *Valtierra:* Housing Discrimination By Referendum?", *Id.* at 127 n. 59.

[243] *James* v. *Valtierra, op. cit. supra* note 239 at 144–45. Justice Marshall relied on *Douglas* v. *California*, 372 U.S. 353 (1963); *McDonald* v. *Board of Election*, 394 U.S. 802 (1969); and *Harper* v. *Board of Elections*, 383 U.S. 663 (1966).

[244] *Id.* at 145.

B. The Implications of *Dandridge* and *Valtierra* for Equal Protection

It is possible that the explanation offered for the Court's decision in *Dandridge* also is appropriate to *Valtierra*.[245] The Court may have recognized the classfication at issue as imposing *some* hardships on the poor but it may not have considered the extent of the hardship great enough to warrant closer scrutiny of the State law involved.[246] The California law required a referendum only in the case of low-rent public housing [247]; other housing that would benefit low- and moderate-income families was not subject to a referendum.[248] The Court also may not have believed that access to public housing warranted the same degree of protection as, for example, access to the courts.[249]

In addition to the extent of the harm involved, a second difference between *Dandridge* and *Valtierra* on the one hand, and the cases in which the "compelling State interest" doctrine have been applied on the other, is that both cases involved relatively recent Government programs—public welfare and public housing. The rights of citizens to welfare and housing, unlike the right to vote, to access to the courts, and, perhaps to education, are not deeply imbedded in our laws or traditions. *Valtierra* and *Dandridge* suggest, therefore, that the Court does not believe that the Government has a general obligation to remedy existing economic inequalities or provide an adequate supply of low-income housing. When the Government ventures into these fields, its actions should not be subjected to intensive judicial scrutiny. One commentator has suggested that:

> * * * there are certain limits to the Government's constitutional obligation to further fundamental interests and relieve the plight of racial minorities and the poor, and that when remedial action is undertaken outside the area of constitutional compulsion the stringent judicial scrutiny normally triggered by the presence of fundamental interests and suspect classifications is no longer appropriate.[250]

Valtierra, coming on the heels of *Dandridge*, has created concern that the Court is abandoning its special solicitude for the poor and that the "compelling State interest" doctrine will be allowed to atrophy. One commentator concluded:

> * * * *Valtierra* affirms once again that poverty or wealth classifications are not being assigned that same station as racial categories. * * * *Valtierra* can be seen as marking the end of a doctrinal detour.[251]

Another commentator decried the fact that in *Valtierra* "the Court may have signaled a retreat from its formerly expansive interpretations of the 14th amendment." [252] Recent decisions of the Court, however, suggest that *Valtierra* and *Dandridge* do not necessarily herald a turnaround from the past.

C. The Equal Protection Clause Continues To Be Broadly Applied

On February 23, 1972, the Court reaffirmed its position that the poor are entitled to special considerations when they are seeking access to the courts. The Court, however, refused to hold that the poor's interest in decent shelter is so fundamental as to warrant special Court scrutiny when dealing with State statutes regulating landlord-tenant relations. At issue in *Lindsey* v. *Normet* [253] were three provisions of Oregon's Forcible Entry and Wrongful Detainer Statute which provided

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[245] As noted, the *Serrano* decision of Aug. 30, 1971, did not discuss *Dandridge*. Nor did it discuss *Valtierra*. Both of these decisions were decided before *Serrano*—Apr. 6, 1970 and Apr. 26, 1971, respectively.

[246] See Lefcoe, *op. cit. supra* note 217 at 1416: "* * * the Court's opinion was based on a determination that the article was reasonable even though it affected poor people specially." See also Note, "The Equal Protection Clause and Exclusionary Zoning After *Valtierra* and *Dandridge*", 81 Yale L. J. 61, 80 (1971).

[247] Nor was it clear that the referendum provision doomed public housing in California. Sixty-nine percent of the referendums covering 52 percent of the proposed units had yielded affirmative results. See Lefcoe, *op. cit. supra* note 217 at 1400.

[248] See, e.g., U.S. Housing Act of 1937 sec. 23, as amended, Housing and Urban Development Act of 1965 sec. 103(a), 42 U.S.C. sec. 1421(b) (1970) (leased housing program); 42 U.S.C. sec. 1421(b) (1970) (turnkey I); 42 U.S.C. sec. 1421(b)(a)(3) (1970) (turnkey leasing); 12 U.S.C. sec. 1701(s) (1970) (rent supplement program); National Housing Act secs. 235, 12 U.S.C. sec. 1715(z) (1970), 236, 12 U.S.C. sec. 1713 (1970) (interest subsidy home-ownership and rental programs). See also Sloane, "Toward Open Adequate Housing: The 1968 Housing Act: Best Yet—But Is It Enough?", 1 Civ. Rights Dig., No. 3 (1968).

[249] Public housing accounts for only about 1 percent of the Nation's housing stock and fewer than 10 percent of people classified as in poverty occupy publicly owned units. See Lefcoe, *op. cit. supra* note 217 at 1423–24. See also Lefcoe, *Id.* at 1391: "Denying an indigent person the right to a divorce can be regarded as a greater hardship than the one inflicted by [the California law]."

[250] See Note, "The Equal Protection Clause and Exclusionary Zoning After *Valtierra* and *Dandridge*", 81 Yale L. J. 61, 79 (1971).

[251] See Lefcoe, *op. cit. supra* note 217 at 1457, 1458. See also Schoettle, *op. cit. supra* not 23 at 1405 where the author states that the *Dandridge* and *Valtierra* decisions "cast doubt upon the status of proverty as a criterion meriting particular scrutiny under the equal protection clause."

[252] See Comment, "*James* v. *Valtierra*: Housing Discrimination by Referendum?", 39 Univ. of Chic. L. Rev. 115, 142 (1971). Cf. Note, "The Equal Protection Clause and Exclusionary Zoning After *Valtierra* and *Dandridge*", 81 Yale L. J. 61, 72 (1971): "Despite cries of despair to the contrary, *Dandridge* and *Valtierra* do not signal an end to the relevance of equal protection doctrine in assessing the constitutionality of exclusionary zoning laws."

[253] 405 U.S. 56 (1972).

that: (1) trials in eviction proceedings were to be held no later than 6 days after the complaint was served, unless the tenant provided security for accruing rent; (2) the only issue that could be considered at the trial was the tenant's failure to pay rent; any defenses, such as lack of repairs, could not be raised; (3) if the tenant lost the case and wished to appeal, he was required to post a bond, guaranteed by two sureties, for twice the amount of rent expected to accrue during the appeal, the bond to be forfeited if the lower court decision was affirmed.

The Court held that neither the expedited trial nor limitation of defenses provisions violated the due process or equal protection clauses.[254] The Oregon statute was found to have a "rational basis". Appellants argued, however, that a more stringent standard than mere rationality should be applied:

> * * * the "need for decent shelter" and the "right to retain peaceful possession of one's home" are fundamental interests which are particularly important to the poor and which may be trenched upon only after the State demonstrates some superior interest.[255]

The appellants relied on the "suspect" classification and "fundamental interest" cases.[256] In rejecting this argument, the Court said:

> We do not denigrate the importance of decent, safe, and sanitary housing. But the Constitution does not provide judicial remedies for every social and economic ill. We are unable to perceive in that document any *constitutional guarantee of access to dwellings of a particular quality* or any recognition of the right of a tenant to occupy the real property of his landlord beyond the term of his lease, without the payment of rent or otherwise contrary to the terms of the relevant agreement. Absent constitutional mandate, the assurance of adequate housing and the definition of landlord-tenant relationships are a legislative, not judicial functions. Nor should we forget that the Constitution expressly protects against confiscation of private property or the income therefrom. (emphasis added)[257]

The Court, however, concluded that the double-bond prerequisite for appealing did violate the equal protection clause because it discriminates against tenants appealing from adverse decisions and cannot be related to any valid State objective. The Court relied on those cases which hold that where an appeal is granted to some litigants it cannot be capriciously or arbitrarily denied to others.[258] Here the Court found the State's justification for the double-bond provision to be "arbitrary and irrational" and noted:

> The discrimination against the poor, who could pay their rent pending an appeal but cannot post the bond is particularly obvious. For them, as a practical matter, appeal is foreclosed, no matter how meritorious their case may be. The non-indigent * * * appellant [in this type of action] also is confronted by a substantial barrier to appeal faced by no other civil litigant in Oregon.[259]

In a separate opinion, Justice Douglas agreed that the double-bond provision violated the equal protection clause. He characterized the interest in one's home as a "fundamental interest" [260] and proceeded to apply the "compelling interest" test:

> Modern man's place of retreat for quiet and solace is the home. Whether rented or owned it is his sanctuary. Being uprooted and put into the street is a traumatic experience. Legislatures can of course protect property interest of landlords. But when they weigh the scales as heavily as does Oregon for the landlord and against the fundamental interest of the tenant they must be backed by some "compelling * * * interest".[261]

Justice Douglas, however, disagreed with the majority's view that the expedited trial provision and one-issue-trial requirement of the Oregon statute did not violate the due process clause. The former provision effectively denied tenants access to the courts, particularly slum tenants; "this kind of summary procedure usually will mean in actuality no opportunity to be heard." [262] While normally a State may bifurcate trials by considering one issue in one suit and another issue in another suit, "* * * where the right is so fundamental as the tenant's claim to his home, the requirements of due process should be more embracing." [263]

Concern for the poor was expressed by the Court in *Lindsey* but was not controlling in finding an equal

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[254] Due process requirements were met since the proceeding was sufficiently simple that a short notice requirement was not unreasonable and since other types of actions were available to the tenant to raise whatever defenses he had. Nor was equal protection violated because suits under the statute differed significantly from other litigation where the time between complaint and trial is substantially longer and where a broader range of issues may be considered. The potential application of the statute reaches all tenants—rich and poor, commercial and noncommercial. Treating tenants sued for possession of property differently from tenants sued in other types of actions, moreover, is impermissible only if there is no valid State objective. An analysis of the purposes of the Oregon law convinced the Court that "Oregon was well within its constitutional powers in providing for rapid and peaceful settlement of these disputes." Id. at 73.

[255] *Ibid.*

[256] *Ibid.*, n. 21–23.

[257] *Id.* at 74.

[258] *Id.* at 77.

[259] *Id.* at 79.

[260] *Id.* at 82.

[261] *Ibid.*

[262] *Id.* at 85.

[263] *Id.* at 89. Justice Douglas added: "In the setting of modern urban life, the home, even though it be in the slums, is where man's roots are. To put him into the street when the slum landlord, not the slum tenant, is the real culprit deprives the tenant of a fundamental right without any real opportunity to defend. Then he loses the essence of the controversy, being given only empty promises that somehow, somewhere, someone may allow him to litigate the basic question in the case." *Id.* at 89–90.

protection violation; discrimination related to wealth, however, was directly related to the Court's finding of an equal protection violation in *Bullock* v. *Carter* [264], decided the day after *Lindsey*. *Bullock* involved a Texas law requiring a candidate to pay a filing fee as a condition for being on the ballot in a primary election. Fees ranged as high as $8,900.[265]

At the outset, the Court recognized it had to decide which standard of review was appropriate. The Court said:

> The threshold question to be resolved is whether the filing-fee system should be sustained if it can be shown to have some rational basis [citing *Dandridge* and *McGowan* v. *Maryland*, 366 U.S. 420] or whether it must withstand a more rigid standard of review.[266]

As in *Harper* v. *Virginia Board of Elections* [267], the requirement here had an impact on the franchise since the requirement of high filing fees narrows the field of candidates, thus limiting the choice of voters. And this limitation especially affects the less affluent. As the Court said:

> * * * there is the obvious likelihood that this limitation would fall more heavily on the less affluent segment of the community, whose favorites may be unable to pay the large costs required by the Texas system * * *. [I]t gives the affluent the power to place on the ballot their own names or the names of persons they favor * * *. [W]e would ignore reality were we not to recognize that this system falls with unequal weight on voters, as well as candidates, according to their economic means.[268]

The Court, relying on *Harper*, concluded that because of the influence of an impact on the franchise and an impact which is "related to the resources of the voters supporting a particular candidate", more is required than a showing that the law has some rational basis; it is necessary that the law be "closely scrutinized" and found reasonably necessary to the accomplishment of legitimate State objectives.[269] Applying this test, the Texas law is found wanting. Even under conventional standards of review—the rational basis test—the Court considers the Texas law "extraordinarily ill-fitted" to the goals Texas asserts the law is designed to achieve.[270] The Texas law, the unanimous Court concluded, denies equal protection because:

> * * * Texas has erected a system that utilizes the criterion of ability to pay as a condition to being on the ballot, thus excluding some candidates otherwise qualified and denying an undetermined number of voters the opportunity to vote for candidates of their choice.[271]

The *Bullock* case appears to move well beyond *Harper*. It shows special concern for the interest of the less affluent. While *Harper* said that a person could not be denied the ballot because of his economic circumstances, *Bullock* says that economic circumstances cannot be allowed to limit the impact of a person's vote. The analogy to the racial cases is close. The 15th amendment proscribes voting denials based on race and such cases as *Gomillion* v. *Lightfoot* [272], and *Fortson* v. *Dorsey* [273] suggest that devices that minimize the voting impact of minorities will not be tolerated. At least in the voting area, therefore, the Court appears to be according race and poverty equal consideration.

The Court also is continuing to apply the "compelling State interest" test. In one of Mr. Justice Powell's first decisions—*Weber* v. *Aetna Casualty & Surety Co.*[274]—the Court struck down a statute alleged to discriminate against illegitimates and said:

> Courts are powerless to prevent the social opprobrium suffered by these helpless children but the Equal Protection Clause does enable us to strike down discriminatory laws relating to status of birth where—as in this case—the classification is justified by no legitimate state interest, *compelling or otherwise.* (Emphasis added) [275]

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[264] 405 U.S. 134 (1972).
[265] *Id.* at 138 n. 11.
[266] *Id.* at 142.
[267] 383 U.S. 663 (1966).
[268] *Bullock* v. *Carter, op. cit. supra* note 264 at 144.
[269] *Ibid.*
[270] *Id.* at 146.
[271] *Id.* at 149. *Cf. Swarb* v. *Lennox*, 405 U.S. 191 (1972)—decided the same day as *Bullock*—where the Court upheld a lower court judgment affording special protection to persons earning less than $10,000 a year who sign contracts that contain confession of judgment clauses which permit creditors to obtain automatically a court judgment in the event the debtor fails to meet the terms of the contract. Again, the Court demonstrated that it is appropriate to consider relative wealth when denials of equal protection are alleged.
[272] 364 U.S. 339 (1960). This case involved a gerrymander which removed black voters from the city of Tuskegee. The scheme did not deprive blacks of the right to vote; it altered the impact of that vote.
[273] 379 U.S. 433, 439 (1965). In *Fortson* the Court indicated it would invalidate multimember voting districts if they could be shown to "minimize" or "cancel out" the voting strength of a racial minority. See also *Burns* v. *Richardson*, 384 U.S. 73, 88 (1966). Compare *Connor* v. *Johnson*, 402 U.S. 690 (1971) with *Whitcomb* v. *Chavez*, 403 U.S. 124 (1971).
[274] *Weber* v. *Aetna Casualty & Surety Co.* 40 U.S.L.W. 4460 (1972).
[275] *Id.* at 4463. The *Weber* case returns to the reasoning of *Levy* and *Glona*—see discussion p. 25 *supra*—and narrowly limits *Labine* v. *Vincent supra* at p. 25. Involved in *Weber* was a claim by illegitimate children under Louisiana's Workmen's Compensation law. Louisiana law relegated the right to recover compensation of unacknowledged illegitimate children to a lesser status than that of legitimate and acknowledged illegitimate children. The Court found no basis for distinguishing between unacknowledged illegitimate children and other dependent children. The Court distinguished the *Labine* case as one involving State control over the disposition at death of property within its borders—an area in which "[t]he Court has long afforded broad scope to state discretion . . ." *Id.* at 4461-62.

D. The School Finance Cases in the Supreme Court

What do these recent decisions portend for the school finance cases? Obviously, predicting what the Supreme Court will do is risky business, particularly at a time when membership of the Court is changing. It seems safe, however, to predict that the Court will continue to give special scrutiny to certain types of legislation that affect persons differently because of their wealth. Although the Court has used language indicating that a classification related to wealth is in itself sufficient to warrant close scrutiny [276], the cases suggest that close scrutiny will not be accorded unless the discrimination based on wealth affects some other important interest or right.

Generally, when the interest affected comes witihn the rubric of "political or civil rights", a person's economic circumstances will not be allowed to result in even a minor impairment of his ability to exercise his right. Thus, wealth may not impede the exercise of the ballot nor may it limit a voter's choice of candidates; wealth may not deny access to the courts in criminal cases, nor may it act as a bar in certain civil cases.

On the other hand, when a wealth classification affects an interest that can be labeled "social or economic", the Court's decision as to whether to afford close scrutiny to the alleged discrimination will depend upon its evaluation of the magnitude of the injury.

The failure, for example, to provide large families on welfare with proportionately more funds than smaller families as in *Dandridge* or the creation of barriers to the construction of a certain type of housing within the means of the poor as in *Valtierra,* has not been regarded by the Court as resulting in injuries of sufficient magnitude to warrant close scrutiny.

In this area, however, matters of degree are significant. Although the Court refused to mandate a particular level of subsistence in *Dandridge,* it has declared legislation illegal which barred persons from obtaining subsistence, as in *Truax* v. *Raich* [277] and *Shapiro* v. *Thompson.* [278] Similarly, in *Valtierra,* the Court declined to hold that some types of housing could not be restricted, but where restrictions on housing have been general and widespread, the Court has reached contrary conclusions. [279] Economic and social interests, therefore, do obtain close consideration from the Court when their invasion is especially widespread or aggravated, political or civil rights, however, merit protection even against minor encroachments. [280]

There are strong arguments for treating education as a political or civil right. Many of the reasons for placing education in a special category have been explored in our consideration of the cases which have afforded education special treatment and in our review of the place of education in our society. Significantly, the statements by the Founding Fathers cited earlier emphasized the importance public education plays in in the maintenance of the democratic system rather than the importance it holds for an individual in social and economic areas. As the court said in *Van Dusartz* v. *Hatfield:*

> Education has a unique impact on the mind, personality, and future of the individual child. It is basic to the functioning of a free society and thereby evokes special judicial solicitude. [281]

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[276] See *McDonald* v. *Board of Election Comm.,* 394 U.S. 802, 807 (1969).

[277] 239 U.S. 33 (1915).

[278] 394 U.S. 618 (1969).

[279] See, e.g., *Buchanan* v. *Warley,* 245 U.S. 60 (1917); *Shelley* v. *Kraemer,* 334 U.S. 1 (1948); *Jones* v. *Alfred Mayer Co.,* 392 U.S. 409 (1968); *Reitman* v. *Mulkey,* 387 U.S. 369 (1967).

[280] The Chairman of the U.S. Commission on Civil Rights, The Reverend Theodore M. Hesburgh, C.S.C., recently commented upon the dichotomy between political and civil rights and economic and social rights. "The rights of individuals in this country have been largely a collection of political and civil liberties which are rooted in a centuries-old tradition * * *. But to secure the dignity of human beings more is required than political and civil rights * * *. [T]oo often we have been dealing with social and economic issues in this country as problems, as the discharge of minimal responsibilities to take care of the needy. When we have been asked to provide economic or social benefits, we have viewed such actions as bestowing a privilege. Our people have political and civil rights; in the economic, social, and cultural areas, we disperse privileges. This is too narrow a view * * *. [T]here is a split in the world between the definitions of rights in the western world and in the socialist world. To socialist governments the great rubric of human rights focuses essentially on economic rights. We, on the other hand, have focused somewhat more on political and civil rights * * *. [T]o make meaningful the civil and political guarantees under the Constitution they must be extended to economic and social rights." See "Beyond Civil Rights", unpublished remarks of The Reverend Theodore M. Hesburgh delivered to the American Jewish Committee, May 13, 1971. See also R. Rankin and M. Smith, "State Bills of Rights: Revitalizing Antiques", 2 Civ. Rights Dig. (No. 4) 47, 48 (1969) in which the authors note that a provision of the original Puerto Rican Constitution which would have guaranteed certain economic rights was withdrawn because of strong objections preventing congressional approval.

[281] 334 F. Supp. 870, 875 (D. Minn. 1971). The court argues that the *Dandridge* opinion supports its special treatment of education. "Even the majority opinion in *Dandridge,*" the court notes, "seems to intimate this by its citation of the decision in *Shelton* v. *Tucker,* 364 U.S. 479, 81 S. Ct. 247, 5 L. Ed. 2d 231 (1960) as the exemplar of the Court's commitment to those areas where 'freedoms guaranteed by the Bill of Rights' may be affected. 397 U.S. at 484, 90 S. Ct. at 1161. In *Shelton,* Mr. Justice Stewart for the majority had declared that 'The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools,' 364 U.S. at 487, 81 S. Ct. at 251.'" *Id.* at 875 n. 10. The court also found support in the *Valtierra* decision saying: "In another respect *Valtierra* actually supports the fundamentality of the interest in education. The Court there emphasized the special importance

The Supreme Court has expressed great solicitude for education, noting that "[t]he American people have always regarded education and acquisition of knowledge as matters of supreme importance which should be diligently promoted * * *."[282] There is a strong possibility, therefore, that the Court will accord the same special treatment to education as is now afforded to political and civil rights.[283]

If the Court chooses to regard education as a social or economic interest, whether or not it will afford close scrutiny to educational finance systems will depend upon its evaluation of the magnitude of the injury inflicted by those systems. Just as in *Lindsey*, where the Court concluded that there is no "Constitutional guarantee of access to dwellings *of a particular quality*" (emphasis added) or as in *Dandridge*, where the Court rejected the contention that a person had a right to a particular level of subsistence, so, too, the Court might conclude that as long as a State provides an educational program, it will not become involved in questions related to the quality or level of that program. The disparities among districts, however, are of enormous magnitude. Even if there is continuing debate over whether additional money will improve educational achievement, there can be no debate that money buys books, laboratory facilities, pleasant surroundings, and pays teachers' salaries.[284] The disparities in the availability of funds to different school districts are so extreme that resulting injury is inevitable and substantial.

The substantiality of the disparities seems to distinguish the school finance cases from such as *Dandridge* and *Valtierra*. In *Dandridge*, the discrimination between large families and small families was relatively modest. In *Valtierra*, sustaining the California law would would not necessarily result in a substantial diminution of housing opportunities for the poor. These cases might be said to involve classifications based on wealth that impose minimal injury. To be sure, the school finance cases do not involve situations where persons are denied the opportunity to attend school; what is involved is a system which dilutes or diminishes that opportunity. We are not dealing with the type of total deprivations that were involved in *Harper* and *Griffin*. School finance is more like *Baker* v. *Carr* where an irrational structure resulted in the diminishing of a right. Accordingly, a strong argument can be made that the school finance cases involve injury of a sufficiently significant magnitude as to warrant different constitutional treatment.[285]

Should the Court conclude that disparate educational financing schemes encroach on political or civil rights or, alternatively, that they do substantial injury to an economic or social interest, the burden would be on the State to present a strong justification for the inequities it created. The Court, however, might choose to employ the "suspect" classification "fundamental interest", "compelling State interest" terminology that has developed over recent years, and there is nothing in the recent cases to suggest that the Court has abandoned this method of analysis. In *Bullock*, the Court recognized classifications based on wealth as "suspect" and required a "compelling State interest" as a justifi-

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of the democratic process exemplified in local plebiscites. That perspective here assists pupil plaintiffs who ask no more than equal capacity for local voters to raise school money in tax referenda, thus making the democratic process all the more effective." *Id.* at 875 n. 9. See Coons, Clune, and Sugarman, "Educational Opportunity", *op. cit. supra* note 5 at 373–89 where the authors review the special status of education. The authors argue that education should be viewed as a "favored interest"—not as a "right"; to treat education as a right is "preposterous" and will create a 'judicial nightmare". Courts would be unable to develop manageable standards. *Id.* at 373–74. In other areas, however, where interests are regarded as "rights", the courts have had to develop standards and distinguish between degrees of impairment. The "right to vote" involves everything from the denial of the ballot, to dilution of one's vote to limiting one's choice of candidates. See also Silard and White, *op. cit. supra* note 59 at 18.

[282] *Myer* v. *Nebraska*, 262 U.S. 390, 400 (1923). See also Mr. Justice Brennan concurring in *Abington School District* v. *Schempp*, 374 U.S. 203, 230 (1963): '* * * Americans regard the public schools as a most vital civic institution for the preservation of a democratic system of government. It is therefore understandable that the constitutional prohibitions encounter their severest test when they are sought to be applied in the school classroom."

[283] An alternative to treating education as a political or civil right would be to categorize it as a "fundamental interest", as did the *Serrano* court. This, however, seems a more porous container than "political or civil right". In *Shapiro* v. *Thompson*, 394 U.S. 618 (1969), welfare payments were treated as a "fundamental interest" since many families depend upon them "to obtain the very means of subsistence—food, shelter, and other necessities of life." Id. at 627. On the other hand, in *Dandridge* v. *Williams*, 397 U.S. 471 (1970), welfare payments were denied the favored "fundamental interest" caption even though they involve "the most basic economic needs of impoverished human beings." *Id.* at 485. See Mr. Justice Harlan's criticism of the concept of "fundamental interests". *Shapiro* v. *Thompson*, *Id.* at 660–62. Interests regarded as "political or civil rights" almost always receive close scrutiny from the Court when an impairment is alleged; other types of interests may be regarded as fundamental under some circumstances and not in other instances. We have preferred to label this second category as "economic and social rights".

[284] See Coons, Clune, and Sugarman, *Private Wealth*, *op. cit. supra* note 4 at 25–33; Berke & Callahan, *op. cit. supra* note 14 at 39.

[285] *Cf. Schoettle*, *op. cit. supra* note 23 at 1400. "One could not expect a Court that regarded State imposition of a flat dollar ceiling per family unit in dispensing AFDC payments as presenting an 'intractable economic, social, and even philosophical' problem insusceptible of judicial resolution to look favorably upon claims of legal entitlement to compensatory education or equality of educational opportunity in some positive sense."

cation; in *Lindsey*, the Court acknowledged that were it faced with a "fundamental interest", the State would be required to demonstrate a "compelling interest" to justify its discrimination.[286] Both of these cases involved an application of the equal protection clause. Accordingly, it seems unlikely that the *Boddie* decision represents a Court determination to abandon the equal protection path in favor of a due process framework.

E. Nature of the Relief

Once the court concluded that systems of educational finance which discriminate on the basis of wealth violate the equal protection clause, it would be necessary to frame an appropriate order to secure relief. As *McInnis* v. *Shapiro* [287] demonstrates, there are doubts as to the ability of courts to devise manageable standards that a State could be required to implement. In *McInnis*, the court was asked to order educational funding that met the "needs" of the pupils in various districts. The more recent school finance cases, however, have urged a negative declaration from the courts.[288] The courts have been requested to tell the States what they cannot do, not what they should do. For example, in *Van Dusartz* v. *Hatfield*, the Court concluded that "a system of public school financing which makes spending per pupil a function of the school district's wealth violates the equal protection guarantee of the 14th Amendment to the Constitution of the United States." [289] The court did not prescribe any particular formula for remedying the constitutional violation; in fact, it deferred action until after the then term current session of the Minnesota legislature.[290]

There is ample precedent for the Supreme Court to conclude that a particular type of discrimination violates the equal protection clause without prescribing a specific formula for remedying the violation.[291] In *Brown* v. *Board of Education* [292] the Supreme Court held that separate but equal public school education denied equal protection of the laws. No specific formula was prescribed for attaining a discrimination-free school system. Rather, the Court deferred ruling on the question of relief. When, a year later, it directed itself to this question, it merely provided some general guidelines to the lower courts and ordered that plans be implemented for carrying out its 1954 declaration "with all deliberate speed".[293] In subsequent years, numerous questions arose as to what specific systems constituted compliance with the Court's order, and these issues were considered and resolved on a case by case basis.[294] Similarly, when the Court first ventured into the area of reapportionment, it did nothing more than declare that legislative apportionment schemes that dilute the votes of citizens in particular areas violate the equal protection clause.[295] It was left to subsequent cases to define more specifically what types of systems complied with the equal protection clause.[296]

The Court could declare that educational financing schemes that discriminate on the basis of wealth violate the 14th amendment. It could be left to future cases to define more concretely what type of systems are in

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[286] See also *Dunn* v. *Blumstein*, 40 U.S.L.W. 4269 (1972) where the Court struck down Tennessee's durational residency requirement for voting and said: "* * * *Shapiro* and the compelling State interest test it articulates control this case." *Id.* at 4272. *Cf. Eisenstadt* v. *Baird*, *op. cit. supra* note 93 at 4306 n. 7 (1972). In *Weber* v. *Aetna Casualty & Surety Co.*, 40 U.S.L.W. 4460 (1972), Mr. Justice Rehnquist expressed his disagreement with the Court's practice of applying a more stringent equal protection test to cases where it concludes that a "fundamental interest" is involved. He labeled this approach "devoid * * * of any historical or textual support in the language of the Equal Protection Clause" and said: "This body of doctrine created by the Court can only be described as a judicial superstructure, awkwardly engrafted upon the Constitution itself." *Id.* at 4464.

[287] 293 F. Supp. 327 (N.D. Ill. 1968), aff'd. mem. sub. nom., *McInnis* v. *Ogilvie*, 394 U.S. 322 (1969).

[288] In *Serrano* v. *Priest*, 5 Cal. 3d 584, 614, 487 P. 2d 1241, 96 Cal. Rptr. 601 (1971) the court concluded that the California educational finance system "classifies its recipients on the basis of their collective affluence and makes the *quality of a child's education* depend upon the resources of his school district and ultimately upon the pocketbook of his parents." (emphasis added) Schoettle, *op. cit. supra* note 23 argues that if the California court's decision is interpreted to mean that school districts must be of equal quality, this would be an inappropriate exercise of judicial power. He contends that "a number of considerations based upon educational research and budgetary theory * * * lend support to the conclusion that the Supreme Court should not hold that the 14th amendment requires that the States afford equality of educational opportunity in some positive sense." *Id.* at 1399.

[289] 334 F. Supp. 870, 877 (D. Minn. 1971).

[290] *Ibid.*

[291] See Schoettle, *op. cit. supra* note 23 which concludes that "* * * the courts should not attempt to guarantee equality of educational attainment. The means through which such a result might be obtained are at present unknown. The courts are an especially inappropriate institution to make such an effort." *Id.* at 1401. Nevertheless, he says: "Our conclusion that a court should not attempt to insure equality of educational result does not dictate that the court should abstain altogether from protecting against inequality. The inability of a court to state with certainty that particular programs will produce equality of educational attainment does not mean that the court cannot remedy instances of injustices and afford protection against too gross an inequality." *Id.* at 1401–02.

[292] 347 U.S. 483 (1954).

[293] *Brown* v. *Board of Education* (II), 349 U.S. 294 (1955).

[294] See note 57 for a collection of sources which discusses the school litigation subsequent to *Brown*.

[295] See *Baker* v. *Carr*, 369 U.S. 186 (1962).

[296] See. e.g., *Gray* v. *Sanders*, 372 U.S. 368 (1963); *Reynolds* v. *Sims*, 377 U.S. 533 (1964); *Wesberry* v. *Sanders*, 376 U.S. 1 (1963).

479-134 O - 72 - 5

accord with the equal protection clause.[297] As we indicate below, some commentators anticipate that a Supreme Court declaration in this area will set off a wave of reform by State legislatures. This might well make future court action unnecessary. In fact, as we have previously shown, there already has been considerable nonjudicial action directed at equalizing State educational finance systems. Dire warnings preceded and accompanied the Supreme Court's involvement in the "political thicket" of legislature reapportionment.[298] Happily, the decision did not involve the Court in unmanageable problems. Rather, compliance has proceeded rather rapidly, and our democracy has been considerably strengthened as a result. The consequences of the Court's involvement in the school finance area might well be the same.

[297] See Silard and White, *op. cit. supra* note 59 at 30–31.

[298] See *Colegrove* v. *Green*, 328 U.S. 549 (1946) and Mr. Justice Frankfurter dissenting in *Baker* v. *Carr*, 369 U.S. 186, 266 (1962).

CHAPTER V

DEVELOPING AN EQUITABLE SYSTEM OF SCHOOL FINANCING

Reforming the methods by which our schools are financed is not dependent upon the Supreme Court's response to the school finance cases. As we have shown, State courts, legislatures, and executives are acting to assure that the level of education a district offers is not dependent on the wealth of that district.[299]

Many formulas are available to the reformers, and the particular formula selected will have varying impact on different segments of the population and sections of the States.

A. Impact on the Cities

There has been much concern for our financially strapped cities where the poor and the minorities are located in large numbers. The expectation has been that a wealth-free system of school financing would benefit the cities and their poor and minorities. The opposite may be true.

Under the present system of school financing, a school district's ability to raise money is dependent upon the value of the property in the district subject to taxation as well as the tax rate. There are obvious limits on the degree to which tax rates can be raised; therefore, the extent to which a district is property rich is the principal determinant of its ability to raise taxes for schools and other purposes. Under a wealth-free system of financing, educational expenditures cannot be a function of district wealth; property rich districts, therefore, lose the advantage associated with their high property values. Cities face a potential loss of education funds under a wealth-free system because, in general, the assessed value of property per pupil in cities is higher than the average in the State.[300]

This phenomenon can be demonstrated by a simple hypothetical case. Assume that a State adopts a strict application of the wealth-free system by providing an equal expenditure of $1,000 for all pupils wherever located—in city, rural, or suburban areas. The tax rate required to raise this amount will depend upon the statewide average assessed value of property per pupil. The appropriate rate will be imposed on every district. In districts where the assessed value of property is below the State average, the amount raised will be less than $1,000 and the State will have to make up the difference. In districts where it is above, the excess taxes that are raised will be turned over to the State.

Suppose that under the present system "Fun City" is able to raise $1,000 per pupil by taxing at a rate of 3 percent; Poverty Hollow, on the other hand, must tax at a 6 percent rate to raise that same amount. Under our hypothetical case, a statewide rate of 4 percent may be required to raise $1,000 per pupil. Such a rate would raise "Fun City's" tax rate by 1 percent. If, in fact, "Fun City" had been taxing at the rate of 3.5 percent in order to spend $1,200 per pupil, under our hypothesized wealth-free system it would find itself taxing at a 4 percent rate and only receiving $1,000 per pupil.

Focusing on two specific cities, we compare urban Albany which has a valuation per student of $57,498 with Carthage, a rural district with a valuation of

[299] See text accompanying notes 201–04 *supra*.

[300] See Berke and Callahan, *op. cit. supra* note 14 at 55. Robert Reischauer, a Brookings Institution property tax expert, has said: "It is an interesting hypothesis that central cities are poor. Relative to the new growth, of course, cities are declining. But in very few cities is absolute wealth declining. It is probably going up slightly in most cities. Cities have real problems, but maybe it's not their fiscal base, but their excessive needs." Quoted in Myers, "Second Thoughts on the *Serrano* Case," 5 City 38, 40 (1971). A study by the Fleischmann Commission in New York reveals that virtually every sizable city in New York State falls above the statewide median in wealth as measured by property value per pupil. *Id.* at 40. The poor areas, in terms of taxable wealth, are in the rural areas. *Fleischmann Commission, op. cit. supra* note 12 at 2.20–2.23.

An analysis of the situation in California distinguishes between slow growth suburbs and fast growth suburbs and concludes that: "Central cities have the highest average per pupil property values for several reasons: their large commercial and industrial base, the small proportion of school aged children compared to the total population, and their high private school enrollment. Slow growth suburbs follow closely behind central cities. Substantially lower per pupil property values are found in rural, smaller city, and fast growing suburban districts. California's rural districts, unlike those in many other States, do not have the lowest property wealth." See Levin, et al., *op. cit. supra* note 4 at 15–16.

$14,109.[301] If both districts taxed at a rate of .02 for educational revenues, Albany would raise $1,149.96 in local taxes per student, whereas Carthage would raise only $282.18. Under a strict application of the wealth-free formula of distribution, both Carthage and Albany would receive equal expenditures per student. Albany would receive less than before, because the average valuation per student in New York is less than Albany's valuation. Carthage, on the other hand, with a lower than average valuation per student would receive more than before. If, for example, the average valuation were $40,000 in New York and educational funds were raised by a uniform State property tax of .02, then a student in Albany would receive only $800 from the property tax revenues. In this example Albany receives less money for the same tax effort.

An analysis of the effect on the central cities of the 37 largest metropolitan areas providing essentially equal expenditures for all children financed from a broad based statewide tax system of proportional rather than progressive rates has shown that nearly twice as many central cities would receive lower expenditures from the States than they now receive under the existing revenue structures. Coincidentally, in three-quarters of the cities in these metropolitan areas, school taxes would rise. For example, in Indianapolis, the tax rate would go from 2.4 to 2.8 while per pupil expenditures would drop from $415 to $377; in Denver, the tax rate would increase from 3.3 to 4.3 as expenditures declined from $667 to $507. If, however, the cities were allowed to keep the additional revenue raised by the higher tax rates, the effect would be significant. In four-fifths of the cases in the largest 37 metropolitan areas, these higher tax rates would have provided the city with more revenue than they will receive under a State distribution system providing for equal expenditures.[302]

Thus, although many cities are losing in assessed value as industry and the wealthy escape to the suburbs, they are still relatively wealthy in terms of assessed value and would be financially prejudiced by a system that provided equal educational expenditures per pupil.[303] The advantages that many cities have over the average district in assessed valuation, however, is overshadowed by special urban problems that have taken many city schools beyond the crisis stage and on to the verge of financial collapse.

1. Additional Educational Costs in the Cities

Larger than average costs strain the budgets of the city schools. Higher teacher salaries, the outstanding budget item [304], are necessitated by a combination of a stable and mature teaching staff at the top of the salary schedule and aggressive teacher union activity. For example, Detroit offered a beginning teacher salary in 1968–69 of $7,500. The average for 35 surrounding suburban districts was $6,922.[305] Big cities also usually pay higher wages to nonprofessional workers.

Urban school districts must pay high prices for land acquisition. Urban land is scarce and therefore expensive; in the outlying areas, less expensive undeveloped land can often be found. In 1967 Detroit paid an average price per acre for school sites in excess of $100,000; surrounding suburban districts only paid approximately $6,000 per acre.[306] In the 25 largest cities average land costs per acre are $658,000; in their contiguous suburbs, $3,500.[307] City school districts also have higher insurance rates, vandalism costs, and maintenance costs for the older school buildings.[308]

2. Special Educational Demands in the Cities

Equal per pupil distribution of educational funds, therefore, would be inequitable because it does not take account of higher urban costs. Nor does it take into account the special problems of educating the large number of disadvantaged minority and low-income children in the cities. One specialist in public education has said of such children: "Their verbal skills may be severely limited; their motivation to do school work

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[301] *Fleischmann Commission, op. cit. supra* note 12 at 2.21–2.22.

[302] See Berke and Callahan, *op. cit. supra* note 14 at 65–71. The authors of this analysis cautioned: "The foregoing tax expenditure analysis should, we believe, be seen as a warning to those who uncritically hailed the new cases and proposals that call for State assumption of educational costs by proportional taxes and a reduction of expenditure disparities." *Id.* at 71.

[303] It should be noted, however, apart from any effect the wealth-free formula has on the absolute amount of funds allotted the cities, the cities have something to gain because use of such a formula would reduce the large differentials in educational expenditures between the cities and nearby suburbs. Competition with wealthy suburban areas for better teachers has been an important source of the cities' high costs for education. See Myers, *op. cit. supra* note 300 at 41.

[304] A typical public school district spends approximately two-thirds of its annual budget on teachers' salaries. See Schoettle, *op. cit. supra* note 23 at 1359. In California, it is 73 percent. See Levin, et al., *op. cit. supra* note 4 at 9.

[305] See Report of the Commissioner's Ad Hoc Group on School Finance, Department of Health, Education, and Welfare, "Equal Educational Opportunity Hearings", pt. 16D–3 at 8372 (1971). See also Berke and Callahan, *op. cit. supra* note 14 at 52.

[306] Report of the Commissioner's Ad Hoc Group on School Finance, *op. cit. supra* note 305 at 8372.

[307] *Ibid.*

[308] See also testimony of Dr. Mark Sheed. "Equal Educational Opportunity Hearings", pt. 16A at 6609–13.

may be inadequate; their attitudes may be in appropriate to the traditional classroom context." [309] That extra needs require additional expenditures was noted by the court in *Robinson* v. *Cahill:* "It is now recognized that children from lower socio-economic level homes require more educational attention if they are to progress normally through school. When the additional compensatory education is provided, it results in *substantially higher costs.*" (emphasis in original.) [310]

In the 37 largest metropolitan areas, central cities average more than 20 percent black population, while outlying areas contain approximately 5 percent.[311] The percentage of black students in the schools is considerably higher than in the general population in the cities because of the higher proportion of white students in nonpublic schools and because of larger proportions of nonwhite families with children in core cities.[312]

Approximately half the black school children in the country are enrolled in the Nation's 100 largest systems [313], located primarily in the cities. In the five Southwestern States of Arizona, California, Colorado, New Mexico, and Texas, 80 percent of the Mexican Americans lived in cities in 1960.[314] Thus, most Mexican American children are probably enrolled in city school systems.

3. Higher Noneducational Costs of the Cities

A strict application of a wealth-free formula providing equal per pupil expenditures also fails to take account of the additional noneducational services that cities must support from their property tax revenues. "Municipal overburden" is the term used to express the cities' greater needs for general public services such as health, public safety, sanitation, public works, transportation, public welfare, public housing, and recreation.[315] Because of municipal overburden, cities devote only approximately 30 percent of their budgets to their schools, as compared to more than 50 percent allocated by the suburbs.[316] While central cities in the largest metropolitan areas average $600 per capita in total local public expenditures for all services, total expenditures outside central city areas in those metropolitan areas average only $419 per person.[317]

The financial disadvantage imposed on the cities by municipal overburden is illustrated by several specific examples. A study of Detroit and its 19 suburbs showed that when all calls on local property taxes are taken into consideration, Detroit has the highest local tax rate; Detroit's tax rate for schools alone, however, is at the bottom of the list. In Baltimore, one-third of the total local budget goes for schools, while Baltimore County can devote 56 percent of its local budget for schools. In Boston, schools get 23 percent of the total budget, while in the neighboring suburb of Lexington, the figure is 81 percent.[318]

4. Adjusting for the Needs of the Cities

The school finance decisions, however, do not require a system of school finance that will be disadvantageous to the cities. What is proscribed is the distribution of educational resources on the basis of district wealth. The States could employ wealth-free formulas that take account of the higher costs in the city, the need for greater funds to educate the disadvantaged, and the problem of municipal overburden. If the State formula distributed education funds on the basis of a set amount per pupil, it could weigh the calculation of the number of pupils to compensate for higher costs and greater needs in the cities. If it were determined, for instance, that cities must pay 25 percent more than the statewide average for educational goods and services, then each child in the city would count as 1.25 in the calculation of the total number of pupils. Educational need could be measured in a variety of ways including the number

[309] J. Kelley, "Judicial Reform of Educational Finance," "Equal Educational Opportunity Hearings" at 7468 (1971).

[310] *Robinson* v. *Cahill, op. cit. supra* note 11 at 263.

[311] Berke and Callahan, *op. cit. supra* note 14 at 51.

[312] *Ibid.*

[313] Washington Post, Nov. 28, 1971, sec. A at 4, col. 6.

[314] See U.S. Department of Commerce, Bureau of the Census, "We the Mexican Americans (Nosotros Los Mexico Americanos)" 6 (1970).

[315] See 1 U.S. Commission on Civil Rights *Racial Isolation in the Public Schools,* 26–27 (1967): ". . . . (C)ities spend a third more per capita for welfare and two times more per capita for public safety than suburbs, while suburbs spend more than half again as much per capita for education. Suburbs spend nearly twice the proportion of their total budget upon education as cities. The greater competition for tax dollars in cities seriously weakens their capacity to support education. Even though school revenues are derived from property tax levies, which in theory are often independent of other principal taxes, city school authorities must take this greater competition into account in their proposals for revenue increases." See also *Fleischmann Commission Report, op. cit. supra* note 12 at 2.67–2.70.

[316] Berke and Callahan, *op. cit. supra* note 14 at 54.

[317] *Id.* at 53.

[318] Myers, *op. cit. supra* note 300 at 40. See Berke and Callahan, *op. cit. supra* note 14 at 54 for a table comparing the 37 largest metropolitan areas with their central cities in regard to education expenditures as a percent of total expenditures for the years 1957 and 1970. The table shows that a consistently higher percentage of the central cities' budgets goes for noneducational expenditures. See also Dimond, "Serrano: A Victory of Sorts for Ethics. Not Necessarily for Education", 2 Yale Rev. of Law and Soc. Action 133, 135 (1971).

of children receiving AFDC, a program of aid for poor dependent children, or the number of children testing below a certain score on a statewide achievement test. Each pupil receiving AFDC or scoring below a certain level could be counted as two in determining the total number of pupils on which aid is calculated.[319]

The cities would receive additional funds under either of the above measures of needs. A study of New York State shows that when AFDC is used to determine need, cities have more than three times the proportion of pupils needing more extensive services, and that when need is determined by test scores, the cities have more than twice as many disadvantaged children as noncity districts.[320]

Taking municipal overburden into account would probably involve a more complex formula. One manner of compensating cities would be to make contiguous areas that use municipal services pay a share of their costs.[321] If the State's new wealth-free system involves a statewide property tax, municipal overburden could be recognized by imposing on the cities a lower than average tax rate for educational revenue.[322]

Two commissions on school finance—the President's Commission on School Finance and the Fleischmann Commission in New York—recently have issued reports recognizing the special financial problems of the cities and recommending that differences in costs and needs be included in any new distribution formulas.[323]

B. Impact on the Suburbs and Rural Areas

Wealthy suburban areas might suffer under a wealth-free formula that provided equal expenditures for all students. Because of the high assessed property values in these areas, substantial revenues can be raised at relatively low tax rates. Under a system in which district wealth is not the determinant of educational expenditures, the suburban areas lose their former advantage. In this respect, a wealth-free school finance formula would affect wealthy suburban areas in the same manner as cities with high assessed property values. As we have shown, such cities would receive fewer educational dollars despite a higher tax rate. Rural areas, on the other hand, have relatively low property values.[324] Consequently, they undoubtedly would receive more educational funds under a wealth-free system of school finance.

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[319] In *Robinson* v. *Cahill*, *op. cit. supra* note 11 at 259, the court discussed a recently enacted New Jersey school finance law, the Bateman Act, which took account of educational needs by assigning AFDC children an additional .75 units in determining the number of children for the school district. Although the court approved of taking needs into account, it found the Bateman Act inadequate in other respects.

See the report of the National Educational Finance Project, "Future Directions for School Financing" (1971) which called for "weighting" to meet educational cost differentials. The following sample weights computed in the detailed research of the Project illustrates the concept of weighting to determine the relative costs of educational programs:

Educational Program:	*Weight assigned*
Basic elementary grades 1–6	1.00
Grades 7–9	1.20
Grades 10–12	1.40
Kindergarten	1.30
Mentally handicapped	1.90
Physically handicapped	3.25
Special learning disorder	2.40
Compensatory education	2.00
Vocational-technical	1.80

Id. at 28. See also *Fleischmann Commission Report*, *op. cit. supra* note 12 at 2.17 which proposed that each student who scores in approximately the lowest quarter on third-grade reading and mathematics achievement tests currently being administered in the state be weighted 1.5 as against a weighting of 1.0 for other children. The Commission concluded that "[t]his mechanism would distribute a share of the State's education budget to schools that are characterized by low rates of student progress and are therefore in greater need." *Ibid.*

[320] Berke and Callahan, *op. cit. supra* note 14 at 59. In the study disadvantaged children included those scoring at least two grade levels behind the State norm.

[321] In *Bradley* v. *The School Board of the City of Richmond*, *op. cit. supra* note 141 the court ordered the consolidation of Richmond and its two contiguous counties and noted the manner in which communities bordering on cities benefit from their services. *Id.* at 179–180.

[322] See Coons, Clune, and Sugarman, *Private Wealth*, *op. cit. supra* note 4 at 232–42, for a more thorough discussion of how a distribution formula can take into account municipal overburden, particularly under the power equalizing model of distribution.

[323] On Mar. 6, 1972, the President's Commission on School Finance issued its final report, a product of 2 years work and 32 volumes of studies. The report discussed the acute problems of school finance faced by the cities. In this regard the Commission made the following recommendations: "* * * that State budgetary and allocation criteria include differentials based on educational need, such as the increased costs of educating the handicapped and disadvantaged, and on variations in educational costs within various parts of the State." Final Report of the President's Commission on School Finance, *Schools, People, & Money* 36 (1972). "The Commission recommends the initiation by the Federal Government of an Urban Education Assistance Program designed to provide emergency financial aid on a matching basis over a period of at least 5 years, to help large central city public and nonpublic schools * * *." *Id.* at 44.

On Jan. 30, 1972, the New York State Commission on the Quality, Cost, and Financing of Elementary and Secondary Education (the Fleischmann Commission) released the first three chapters of its report. As a general principle of support distribution, the Commission set forth the following proposition: equal sums of money should be made available for each student, unless a valid educational reason is found for spending some different amount. Fleischmann Commission Report 2.12. As we have noted, *supra* note 319, the Commission recommended that the distribution formula be weighted to provide additional funds for children having demonstrable learning problems.

[324] Berke and Callahan, *op. cit. supra* note 14 at 61; Berke and Kelly, *op. cit. supra* note 20 at 16.

Reducing educational expenditures where they now are high presents obvious political problems. Districts currently spending substantial sums on education would oppose any formula that reduced their expenditures and at the same time increased their taxes. One way to avoid this problem is to increase substantially overall State spending for education. This was the approach of the Fleischmann Commission in New York which recommended such an increase in overall educational expenditures and a 5 year "phasing in" period in which expenditures in the poorer districts are leveled upward to meet those of the wealthier districts.[325]

C. Impact on Minority Group Children and the Poor

The implication for minority group children of the strict application of a wealth-free formula of distribution among school districts is uncertain. Minority group children live primarily in majority group districts.[326] The fate of either the majority or minority group living within the same district is dependent upon the district's characteristics—whether it is urban, rural, or wealthy. Since, however, most minority group children reside in cities,[327] implementation of a strict wealth-free system would deprive them to the same extent as the cities where they live are deprived.[328] For minority group children residing in rural areas, however, the results would be beneficial.

The implication of a wealth-free system for the poor also is dependent upon the characteristics of the particular districts. The large concentrations of urban poor would receive lesser amounts for education. On the other hand, those living in the rural areas would gain.

D. Alternative Systems of School Financing

We have described the effects on various groups of children of the implementation of a wealth-free system which allots equal expenditures for all children throughout the State. The school finance court decisions, however, do not mandate such a system. They proscribe the use of district wealth as a determinant of educational expenditures. The particular choice of a wealth-free system of school finance is left to the legislatures.

There are numerous possible wealth-free formulas, each of which has various attributes and deficiencies. We will describe five of the basic models. Modifications and various combinations of these models form numerous other models.

1. Reorganization of Existing School Districts

The first alternative is for the State to reorganize existing districts to create new districts with equal tax bases.[329] This alternative has the virtue of preserving the traditional method of school finance minus its source of financial inequalities.[330] There are several difficult problems with this approach, however. For one thing it may require monstrous gerrymandering that would in many instances create geographic entities virtually impossible to administer. For another thing, changes in income distribution would almost certainly require periodic redistricting.[331] Moreover, this model would permit wide variations in educational expenditures per child depending on the rate at which the residents of the school district chose to tax themselves.

2. Statewide Financing and Administration

The second model is the abolition of local school districts and placement of all school administration and financing on a statewide basis. This model runs counter to the American preference and tradition for local decisionmaking and administration in the area of education.[332]

3. Statewide Financing and Local Administration

A third alternative is for the State to raise all the funds and distribute them to the local school districts for administration.[333] Under this model children in dif-

[325] See Fleischmann Commission Report, *op. cit. supra* note 12 at 2.13–2.18.

[326] See note 4 *supra*.

[327] See notes 313–14 *supra*.

[328] See also Kirp and Yudof, "Serrano in the Political Arena", 2 Yale Rev. of Law and Social Action 143, 145–46 (1971).

[329] See, e.g., Final Report, The President's Commission on School Finance, "Schools, People, and Money" 31–32 (1972).

[330] See Schoettle, *op. cit. supra* note 23 at 1411, where the author suggests that in the area of school finance inequality, courts should limit their intrusion to requiring a rational distribution of tax base resources for districts. Such action would also have the effect of removing financial disparities between districts in providing other municipal services.

[331] Final Report, President's Commission on School Finance, *op. cit. supra* note 329 at 31–32.

[332] See Coons, Clune, and Sugarman, *Private Wealth*, *op. cit. supra* note 4 at 14–20 (1970).

[333] See, e.g., Berke and Kelly, *op. cit. supra* note 20 at 33; Comment, "The Evolution of Equal Protection: Education, Municipal Services, and Wealth," *op. cit. supra* note 70 at 193–94.

ferent districts would receive the same amounts of educational expenditures, except for nonwealth based differentials such as needs and costs. The district's chosen tax rate, however, would not be a source of differentials in expenditures. The full State funding approach was recently recommended by the President's Commission on School Finance and the Fleischmann Commission in New York State.[334]

4. Percentage Equalizing

Another approach, called percentage equalizing, compensates for differences in local revenue capacity by matching locally raised funds with State funds in a ratio inversely related to district wealth.[335] This method is similar to the widely used foundation plans that attempt to reduce local financing discrepancies with equalizing State grants. However, it provides local districts with financial incentive and full equalization at any level of spending.

A problem with the percentage equalizing model is that in practice the States that have employed it have imposed restraints that substantially reduce the theoretical equalizing effects.[336] Furthermore, percentage equalizing, like district reorganization, would permit wide variations in educational expenditures for children depending on the tax rate chosen by the district.

5. District Power Equalizing

Finally, there is the system of district power equalizing—a method that allows differential expenditures among school districts while removing the effect of differential tax bases on the expenditures.[337] Under district power equalizing, the State would determine how much each district would be permitted per pupil for each level of tax effort. Districts making the effort but not raising the amount would be supplemented by the State. Districts raising over the set amount would give their excess to the State.

This method is illustrated in the following chart:

Local Tax Rate	*Permissible per pupil expenditures*
10 mills	$500
11 mills	550
12 mills	600
* * *	* * *
29 mills	1,450
30 mills	1,500

The educational expenditures permitted a particular district are a function of the chosen local tax rate, not the district wealth. Consequently, if two districts, whatever their relative wealth, established property taxes at the same rate, they would receive equal per-pupil revenues from the State.[338]

"Power equalizing" theoretically has the virtue of allowing local districts to choose various levels of educational expenditures according to their relative interest in education. It would be very difficult, however, to devise a formula to measure true tax effort.[339] Furthermore, as with models one and four, under "power equalizing", children could receive widely divergent educational resources.

Whatever approaches the various States adopt in devising wealth-free systems of school finance, we can be sure that legislatures throughout the Nation will be grappling with the issue for some time to come. The commentators and lawyers involved in the cases already have begun to prognosticate about the likely legislative

[334] The President's Commission concluded: "The Commission recommends that the state governments assume responsibility for financing substantially all of the non-Federal outlays for public elementary and secondary education, with local supplements permitted up to a level not to exceed 10 percent of the state allocation." Final Report *op. cit. supra* note 329 at 36.

The local supplement feature recommended by the Commission would reserve to the localities some power to determine expenditures on the basis of wealth. This is the very characteristic of the present system of school finance that is proscribed by the *Serrano* line of decisions. Neil McElroy, chairman of the Commission, said that this local payment might fail to meet court requirements. Wash. Post, Mar. 7, 1972, § A. at 1, col. 1. The only way that it could pass muster under *Serrano* would be on the basis that the 10 percent option was so small that the system remains substantially wealth-free.

New York State's Fleischmann Commission called for full State financing of public elementary and secondary education in order to assure that each student is provided equal educational opportunity and that the quality of his education does not depend upon the property values in the area where he happens to live. The 18-member Commission said that its position on centralizing the funding of the schools "is not inconsistent with the Commission's desire to *strengthen* local control over many educational matters * * * (for) it is clearly possible to have centralized financing and decentralized policymaking." See *Fleischmann Commission Report, op. cit. supra* note 12 at 2.4. See also Levin, et al., *op. cit. supra* note 4 at 54.

[335] See, e.g., Comment, "The Evolution of Equal Protection: Education, Municipal Services, and Wealth", *op. cit. supra* note 70 at 187. See Coons, Clune, and Sugarman, "Educational Opportunity", *op. cit. supra* note 5 at 316.

[336] Some of the equalizing restraints imposed are enumerated in Weiss, "Existing Disparities in Public School Finance and Proposals for Reform" (Fed. Reserve Bank of Boston, Research Rep. No. 46, 1970), cited at Comment, "The Evolution of Equal Protection: Education, Municipal Services, and Wealth", *op. cit. supra* note 70 at 187, 188.

[337] See Coons, Clune, and Sugarman, *Private Wealth, op. cit. supra* note 4 at ch. 6.

[338] See Coons, Clune, and Sugarman, "Educational Opportunity", *op. cit. supra* note 5 at 317–19.

[339] Sugarman states: "I would be the first to agree that while it is quite easy to suggest that wealth should be eliminated as a basis for supporting schools, as a practical matter determining what equal effort really is is very complex indeed." Quoted in Myers, *op. cit. supra* note 300 at 41.

responses. One lawyer cautions: "State legislatures don't move often. When they do, unless we are careful, we can be locked into a formula we don't like for over a decade." [340] Others fear "that the direction that change may take in the post-*Serrano* period will be that of providing essentially equal expenditures for all children financed from a broad based statewide tax system of proportional rather than progressive rates." [341]

Still other commentators predict that most legislatures will cooperate with a judicial decree ordering a wealth-free system of finance. "The blessings of *Serrano* are too obvious and the risks too remote." [342] They also suggest the possibility of a favorable Supreme Court decision on school finance touching off "an explosion of creativity in the structure of education." [343]

A less optimistic commentator suggests that rather than act as laboratories of democracy by experimenting with various creative models of school finance, it is "more likely that the State's drive for uniformity will as usual triumph, and all the States with no good reason will jump for the same remedy." [344]

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[340] Sarah Carey of the Lawyers' Committee for Civil Rights under Law quoted in Myers, *op. cit. supra* note 300 at 41.

[341] Berke and Callahan, *op. cit. supra* note 14 at 65–66.

[342] Coons, Clune, and Sugarman, "A First Appraisal of Serrano", 2 Yale Rev. of Law and Social Action, 111, 118 (1971).

[343] Coons, Clune, and Sugarman, "Educational Opportunity," *op. cit. supra* note 5 at 420.

[344] Dimond, *op. cit. supra* note 318 at 137.

CHAPTER VI

SOME POSSIBLE RAMIFICATION OF EDUCATIONAL FINANCE REFORM

A. On Land Use

Adoption of wealth-free systems of school finance is sure to have extensive impact in the area of education. Though less obvious, there may also be widespread impact on other areas of American life. Its adoption would remove an important economic obstacle to location of low- and moderate-income housing in the suburbs. Suburban residents would no longer be able to resist such housing on the grounds that it would bankrupt the municipality because the cost of educating the children who would live in such housing would far exceed the property tax income derived from it.[345] Removal of the "respectable" economic justification hopefully would provide the impetus to open up the suburbs to all economic classes.[346]

The wooing of commercial and industrial enterprise from the cities by suburban communities to gain taxable property is a related land use problem that would be affected by the adoption of a wealth-free system of school finance. Such action currently has the effect of putting jobs out of reach of the urban residents who so desperately need them and dotting esthetically pleasing landscapes with offices and factory buildings.

Educational finance reform also could have the effect of decreasing rural migration to the cities to the extent that rural families feel that inadequate and underfinanced schools in rural areas cheat their children of educational opportunities.

B. On School District Organization

Community control proponents might find support in the adoption of a wealth-free system because poor communities would no longer need to expand the level of educational expenditures by combining with richer areas into a single district. One commentator has said: "[i]f fragmentation no longer means diminution of fiscal capacity, the community control movement has become economically credible. It is now difficult to justify the independence of a middle class suburb while rejecting community demands in the inner city." [347]

The extent to which the school finance cases will impede or stimulate the consolidation of school districts depends upon the financing scheme adopted. A financing scheme which provides aid independent of local tax effort or local tax base might stimulate rich districts, that are administratively inefficient because they are small, to consolidate with other districts. By remaining small, these districts have managed to provide ample funds for education while using a low tax rate. They have resisted any programs that would increase their educational costs such as public housing projects or consolidation with areas with low tax bases. Once a district's tax base is removed as the determinant of its educational expenditure, rich districts might be less opposed to consolidating with other districts if this results in a more efficient educational system.

On the other hand, a wealth-free system of school finance will remove the incentive for poor districts to consolidate with richer ones to obtain a large joint tax base. It has been noted that

> [*Serrano*] closes out the long movement for district consolidation by subsuming its rationale. If tax bases in a decentralized system *must* be effectively equivalent through power equalizing, there is no point in amalgamating districts beyond the point of increasing educational efficiency. Currently district gigantism is receiving low grades in this respect * * *. If fragmentation no longer means diminution of fiscal capacity * * * *prima facie* [*Serrano*] will make metropolitan integration plans more difficult.[348]

But, as we have noted, not all the proposed methods of equalizing school finance operate within the present system of school district; not all seek to equalize aid within the present framework. Some proposals call for reorganizing school districts to equalize their tax bases.

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[345] Suburbs devote more than 50 percent of their budgets to their schools. Berke and Callahan, *op. cit. supra* note 14 at 54.

[346] Introduction, "Who Pays for Tomorrow's Schools: The Emerging Issues of School Finance Equalization", 2 Yale Rev. of Law and Social Action 108 (1971). See also *Fleischmann Commission Report, op. cit. supra* note 12 at 2.71: "* * * the property tax dependence is a barrier to effective social class integration * * *. Full state assumption of educational costs would work to break down these unnecessary and damaging barriers," and App. 2 E, "Impact of Low- and Middle-Income Housing on School District Finance."

[347] Coons, Clune, and Sugarman, "A First Appraisal of Serrano". *op. cit. supra* note 342 at 121 n. 54.

[348] *Id.*

This would provide school districts with equal capacity to raise educational dollars. Some of the recent school finance cases recognize district reorganization or consolidation as a possible and feasible solution to inequities in school financing.

For example, in *Rodriguez* v. *San Antonio Independent School District* [349] as an alternative to ordering that the State restructure its educational finance system to assure that funds are being distributed without regard to a district's wealth, the plaintiffs requested the court to order "the defendant school districts in Bexar County be abolished and that the County School Trustees establish new boundary lines for school districts or districts of approximately equal taxable property per child." [350] Similarly, in *Robinson* v. *Cahill* [351], the plaintiffs requested that the court order the defendants "to change the boundary lines of the districts in a way that will equalize the amount of tax base per student. * * *." [352]

The authority of the courts to order school district consolidation has been an issue in school desegregation cases. Most recently, in *Bradley* v. *The School Board of the City of Richmond, Virginia et al.*[353], a Federal district court ordered Richmond and its two contiguous counties of Henrico and Chesterfield to adopt a metropolitan student assignment plan that would consolidate city and county school systems in order to achieve racial integration in the schools of the three political subdivisions. The court's reasoning in support of its order might well be equally applicable to cases where consolidation is requested to remedy financial disparities. The court regarded consolidation as the only feasible solution and said:

> At present the disparities are so great that the only remedy promising immediate success—not to speak of stable solutions—involves crossing these [county] lines.[354]

Referring to other cases in which school consolidation was required or the creation of separate districts was prohibited in school desegregation cases [355], the court concluded there was ample precedent to support its order and said:

> The equal protection clause has required far greater inroads on local government structure than the relief sought here, which is attainable without deviating from State statutory forms. Compare *Reynolds* v. *Sims*, 377 U.S. 533 (1964); *Gomillion* v. *Lightfoot*, 364 U.S. 339 (1960); *Serrano* v. *Priest*, 40 U.S. L.W. 2128 (Calif. Sup. Ct. Aug. 30, 1971).* * * In any case, if political boundaries amount to insuperable obstacles to desegregation because of structural reasons, such obstacles are self imposed.[356]

School district consolidation also has been an issue in the Detroit school segregation case, *Bradley* v. *Milliken* [357] where the court concluded that *de jure* segregation existed in the Detroit schools. The court emphasized that the obligations imposed by the 14th amendment fall upon the State [358], that Michigan's central educational administrators have extensive powers over the State's educational system, including that of school district reorganization, and that State law provides mechanisms for annexation and consolidation of school districts. Although the court did not order a merger of school districts, it indicated that such a device would be considered in drawing up its final order.[359]

Accordingly, the ordering of school district consolidation or redistricting as a means of equalizing educational expenditures would be within the authority of a court [360], and, without question, within the authority of a State legislature. Were a court to seek to equalize, through consolidation, the ability of school districts to raise funds, it would be important for the court to recognize the demands on a district's tax base other than those for educational purposes. As we have shown, "municipal overburden" places great strains on the revenues raised by cities. In order to insure that districts have equal capacity to raise funds for education, the size of the district's tax base must be adjusted to insure that other unequal demands are taken into account.[361] Thus, a system designed to eliminate fiscal disparities between districts would not necessarily result in uniform tax bases; the tax bases would have to be adjusted to provide adequate funds to meet each district's particular needs.

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[349] *Op. cit. supra* note 1.
[350] See App. F.
[351] *Op. cit. supra* note 11.
[352] See App. F.
[353] 338 F. Supp. 67 (E.D. Vir. 1972) rev'd, — F. 2d — (4th Cir. June 5, 1972).
[354] *Id.* at 100.
[355] *Id.* at 104–11.
[356] *Id.* at 103.
[357] 338 F. Supp. 582 (E. D. Mich.1971).
[358] *Id.* at 593.
[359] *Id.* at 594.
[360] See Schoettle, *op. cit. supra* note 23 at 1411: "The scheme by which tax bases are arbitrarily parceled out among different municipal jurisdictions, while perhaps necessary in an earlier era when records and data were not available, presently has no reasonable justification * * *. In this respect, the present inequalities are analogous to the unequal distributions of voting power that preceded *Baker* v. *Carr*."
[361] See Schoettle, *ibid:* "Though education accounts for the major expenditures of local governments, there is no justification—once the focus has been shifted from education to fiscal disparities—for restricting the requirement of a rational distribution of tax base to school districts. Other mal-distributions are equally significant and equally offensive." See also *Robinson* v. *Cahill*, op. cit. supra note 11 at 273: "Even if districts were better equalized by guaranteed valuations, the guarantees do not take into consideration 'municipal and county overload' * * * Poor districts have other competing needs for local revenue."

CHAPTER VII

THE SCHOOL FINANCE CASES: RELATED PROBLEMS

A. The Property Tax

A frequent misinterpretation of the school finance cases is that they invalidate the use of the local property tax as a source of revenue for educational finance. The focus of the cases, however, is on unequal educational expenditures; property taxes are important to the decisions only as they relate to unequal expenditures.[362] The school finance cases permit continued reliance on the property tax so long as the distribution of revenues collected are free of any wealth criteria.

Nevertheless, the school finance cases may provide an important impetus for property tax reform. These cases highlight the extensive use of property taxes and they make a dramatic and reasoned appeal for the removal of financial inequities in school finance. Further pursuit of dragons of inequity will lead to the lair of the property tax.

Property taxes are the principal local source of revenue for all local government, not merely the schools.[363] Nationwide they produce $33 billion in tax revenues.[364] Ninety-five percent of all education tax revenue comes from the property tax or $17.4 billion, out of a total of $18.4 billion.[365]

As a source of local school support, the property tax has three major deficiencies. It is a poor measure of ability to pay since today wealth is measured in terms exceeding the amount of real estate a person may own.[366] It is regressive since families in the lower income brackets pay a larger percentage in property taxes than do those in higher brackets.[367]

Improper administration of the property tax in most States has resulted in a multiplication of further inequities.[368] Although two-thirds of the States require that property be assessed at its full value, according to 1962 data locally assessed real property averaged less than 30 percent of market value.[369] Even more alarming

[362] In *Serrano* the court upheld the plaintiff parents' cause of action which, in addition to incorporating the children's claim, also alleged that under the current financing scheme they are required to pay a higher rate than taxpayers in many other districts in order to secure for their children the same or lesser educational opportunities. The court upheld this second claim on the basis that it seeks to prevent public officers from acting under an allegedly void law and "if the * * * law is unconstitutional, then county officials may be enjoined from spending their time carrying out its provisions." (citations omitted) *Serrano* v. *Priest*, *op. cit. supra* note 10 at 618. Therefore, the parents injunctive claim against public officials apparently depends on a favorable holding in regard to the children's claim of differential educational expenditures based on wealth. The court did not hold that the system of collection and administration of the property tax is itself invalid.

Further, the court's statement in the second line of its opinion also shows that discriminatory expenditures, not property taxes, were the evil proscribed by the court. "We have determined that this funding scheme invidiously discriminates against the poor because it makes the quality of a child's education a function of the wealth of his parents and neighbors." *Id.* at 589.

It also should be noted that the parents' cause of action, complaining of higher property taxes, if made independent of the children's claim for equal expenditures, would not fall under the fundamental interest doctrine used by the court in reaching its decision.

In *Hollins* v. *Shofstall*, *op. cit. supra* note 184 at 3, 4 the court apparently upholds the taxpayers' claim. Although the court's reasoning and holding is unclear on this issue, it seems to follow *Serrano* in linking taxation with expenditures in a way that does not require the elimination of the property tax.

[363] J. Kelly, *Equal Educational Opportunity Hearings* pt. 16D–1 at 7470.

[364] S. Carey, *Id.*, pt. 16B at 6875.

[365] Final Report, President's Commission on School Finance, *op. cit. supra* note 329 at 27. In New York State, however, in the 1969–70 school year 47.5 percent of all revenue for public elementary and secondary education from non-Federal sources was derived from the local property tax. *Fleischmann Commission Report op. cit. supra* note 12 at 2.26.

[366] "When we were a nation largely of farmers and homeowners, real estate comprised the bulk of the wealth and offered a valid basis for taxation. Wealth could reasonably be measured by holdings of real estate * * *.

"But the growth of manufacturing and other industries, the relative decline in the importance of agriculture, the migrations to cities and to suburbs have created enormous imbalances in this traditional system. Real estate is no longer the fundamental measure of the ability of people to pay for government services or of their need for them." *Id.* at 28. See also Comment, "The Evolution of Equal Protection: Education, Municipal Services, and Wealth", *op. cit. supra* note 70 at 111.

[367] D. Netzer, *Economics of the Property Tax*, at 46 (1966); J. Burkhead, *State and Local Taxes for Public Education* at 28 (1963). See also *Fleischmann Commission Report*, *op. cit. supra* note 12 at 2.36.

[368] D. Netzer, *op. cit. supra* note 367 at 173; Advisory Commission on Intergovernmental Relations, *State Aid to Local Government* 35 (1969).

[369] Statement of J. Kelly, *Equal Educational Opportunity Hearings*, pt. 16D–1 at 7470.

are the huge variations between and within assessment districts.[370] The tendency of many assessors to allow the ratio of assessed values to full market values to decline presents still another problem of property tax administration.[371] This reduces the capacity of the school district to tax local funds. For example, according to one estimate, the assessment ratio in the city of Detroit declined from 90 percent in 1930 to about 50 percent in 1960.[372]

A final problem is the unequal distribution of tax exempt property, such 's Federal Government property and that of church and charitable organizations.[373] These problems of property tax administration recently were summarized:

> Highly unsatisfactory administration of the property tax, including failure to use modern appraisal methods or reassess at frequent intervals, has resulted in gross inequity in relative tax burden. Local governments "need to improve local property tax administration to remove the haphazard way in which the tax applies to properties of equal values." Critics have claimed, for example, that proper assessment of big business could reduce local property taxes on residences and small businesses by 25 percent while still increasing local property tax revenues. All of which is to say that property value as a measure of wealth for r rposes of equalization has all of the problems inherent in the property tax itself.[374]

Property tax reform is sorely needed. The Federal and State governments are showing interest as taxpayers across the country register their disapproval by refusing to support property tax-financed municipal and educational programs.[375] In the meantime, property tax reform is being pressed in the courts.

In *Russman* v. *Luckett*,[376] the Kentucky court of appeals (the State's highest court) held that the land assessment practices were in violation of the State laws and constitution. Plaintiff, taxpayers, parents of schoolchildren, and students sought a declaratory judgment and injunctive relief against tax officials. The court upheld their right to sue on the basis that "a justiciable controversy is presented" and "[t]here are no other adequate remedies which may be invoked by these plaintiffs."[377] The court noted that in the different taxing districts real estate and tangible personal property were assessed at percentages ranging from 30 to 12½ percent of fair market value and that the statewide median real estate assessment ratio was approximately 27 percent. The problem with the system was said by the court to be that it made for disparities in the tax burden upon taxpayers in different counties and taxing districts, and that it produced extreme fund raising difficulties for taxing authorities whose maximum tax rates were limited. More significant to the court was the fact that the current method of assessment was in violation of a provision of the Kentucky constitution and implementing statutes which require assessment at 100 percent of fair cash value. The court rejected as "appalling" the defendant's argument that the constitutional provision was implicitly repealed because of its continued violation by public officials.[378] The court also rejected the defendant's argument that court decisions had nullified the constitutional provision and its implementing statutes by substituting the test of uniformity in place of fair cash value. Finding further that the question of assessment was not a discretionary matter with the commissioner of revenue, the court ordered compliance by the beginning of the following calendar year, approximately 6 months following the decision. Similar suits have been brought successfully in other States.[379]

On June 29, 1971, a three-judge Federal District Court held that assessment practices and laws in Alabama were in violation of the Federal Constitution.[380] Plaintiffs attacked two separate aspects of the assessment process: first, the failure of the State officials to equalize assessment rates violated the Alabama constitution and laws and also the due process and equal protection clause of the 14th amendment of the United States Constitution; and, second, the Alabama statute granting State and local tax officials wide dis-

[370] [T]he 1962 Census of Governments disclosed that in more than two-thirds of the assessment units studied the top quarter of parcels in assessment ratio were assessed on the average at more than twice the ratio for the lowest quarter." J. Kelly, *Equal Educational Opportunity Hearings*, pt. 16D–1, at 7470.

[371] *Ibid.*

[372] *Ibid.* See also *Fleischmann Commission Report, op. cit. supra* note 12 at 2.34–2.36.

[373] S. Carey, *Equal Educational Opportunity Hearings*, pt. 16B, at 6875. Many of the Nation's cities, which are suffering the greatest fiscal decline, have 30–50 percent of their property exempt. *Id.* 6875 n. 1. See also testimony of Ralph Nader, *Equal Educational Opportunities Hearings*, pt. 16B at 6768 where he cites a series of specific examples of powerful corporations extracting local property tax concessions and goes on to state: "The pattern continues across the country. Our files are filled, Mr. Chairman, with examples and documentation of this explicit means of corporate crime; this willful and knowing refusal to pay the most bare minimum property taxes to support local services such as education."

[374] Comment, "The Evolution of Equal Protection: Education, Municipal Services and Wealth", *op. cit. supra* note 70 at 167.

[375] New York Times *op. cit. supra* note at 4, col. 1. See also *Equal Educational Opportunity Hearings*, pt. 16D–2 at 8015.

[376] 391 S. W. 2d 694 (Ky. 1965).

[377] *Id.* at 696.

[378] *Id.* at 697.

[379] S. Carey, *Equal Educational Opportunity Hearings*, pt. 16B at 6876. See also *Village of Ridgefield Park* v. *Bergen County Board of Taxation*, 31 N. J. 420, 157 A. 2d 829 (1960); *Bettigole* v. *Assessors of Springfield*, 343 Mass. 223, 178 N.E. 2d 10 (1961); *McNayr* v. *State*, Fla. 166 So. 2d 142 (1964); *State ex rel. Park Investment Co.* v. *Board of Tax Appeals*, 175 Ohio St. 410, 195 N.E. 2d 908 (1964); *Pierce* v. *Green*, 229 Ia. 22, 294 N. W. 237 (1940).

[380] *Weissinger* v. *Boswell*, 330 F. Supp. 615 (M.D. Ala. 1971).

creation in setting assessment rates was so vague and indefinite that it, too, violated the Federal due process and equal protection guarantees.

The court found that the Alabama constitutional provision requiring that property be assessed at value and that the property of private corporations and individuals be taxed at the same rate has been consistently interpreted by the Supreme Court of Alabama as requiring "uniformity and equality among all taxpayers, 'private corporations, associations and individuals alike', both as to ratio and percentage of taxation and also as to rate of taxation." [381] Nevertheless, the court noted that the median assessment ratio for the State of Alabama was approximately 16.9 percent of fair market value and the median ratios for individual counties ranged from lows of 6.7 and 7 percent to highs of 23.1 and 26.8 percent.[382] Such inequality of treatment was found by the court to violate not only the Alabama constitution but also the due process and equal protection clauses of the 14th amendment to the Federal Constitution. The court noted that "[w]hile distinctions based on geographical areas are not, in and of themselves, violative of the 14th amendment * * *, a State must demonstrate, if it wishes to establish different classes of property based upon different geographic localities * * * that the classification is neither capricious nor arbitrary but rests upon some reasonable consideration of difference or policy." [383] The court was unable to find any legitimate State objective to be served by the vast disparities in the present system.

Plaintiffs' second cause of action attacked the Alabama statute that directed that taxable property within the State be assessed not to exceed 30 percent of its fair market value. The court found the statute to be contrary to the Federal Constitution in that it delegated legislative power to an agency without formulating a definite and intelligible standard. Noting that the type of discriminatory treatment found in the assessment practices were deep-seated and of long standing, the court gave the defendant up to 1 year to comply with the mandate of the opinion.

B. Intradistrict School Disparities

While the recent school finance cases are likely to produce radical changes in the disparities of educational funds available among school districts, it should be emphasized that these cases do not affect inequities that may exist within particular school districts. One notable demonstration of intradistrict disparities was *Hobson* v. *Hansen*[384], a case involving the District of Columbia School System. Judge J. Skelly Wright found that in a variety of ways children from lower income families had less educational resources available to them than children from higher income families. Similarly, a New York City court found that fewer regularly licensed teachers were assigned to the schools in Harlem than to schools in more affluent sections of the city.[385]

Intradistrict disparities also have been identified in Denver. In *Keyes* v. *District Number One, Denver, Colorado* [386]—a case currently pending before the Supreme Court [387]—it was demonstrated that in the schools attended predominately by black and Mexican American students, 23.9 percent of the teachers had had no previous experience in the Denver public schools and 48.16 percent of the faculty held probationary appointments.[388] By contrast, in 20 schools not populated mainly by minority students, only 9.8 percent of the faculty had had no previous experience and only 25.6 percent held probationary appointments.[389]

It generally is believed that intradistrict disparities are a widescale problem.

> There is empirical evidence that school districts allocate substantially fewer dollars to schools in poor and black neighborhoods; indeed, within-district disparities may be as significant as disparities in a given State.[390]

Although cases concerning intradistrict disparities involve difficult and expensive matters of proof [391] there is ample legal precedent to support litigation in this area.[392] Once interdistrict differentials are removed, further pursuit of equality may well focus on intradistrict disparities.

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[381] *Id.* at 620.
[382] *Id.* at 621.
[383] *Id.* at 623 (citations omitted).

[384] 269 F. Supp. 401 (D.C.C. 1967), aff'd. sub. nom. *Smuck* v. *Hobson*, 408 F. 2d 175 (D.C. Cir. 1969), *on motion for further relief, Hobson* v. *Hansen*, 327 F. Supp. 844 (D.D.C. 1971).
[385] In *re Shipwith*, 14 Misc. 2d 325, 180 N. Y. S. 2d 852, 866 (Dom. Rel. Ct. 1958); cf. *Dobbins* v. *Virginia*, 198 Vir. 697, 699, 96 S. E. 2d 154, 156 (1957).
[386] 313 F. Supp. 61 (D. Colo. 1970), rev'd in part, 445 F. 2d 990 (10th Cir. 1970).
[387] Cert. granted, 40 U.S. L.W. 3335 (1972).
[388] *Keyes* v. *District Number One, Denver, Colo., op. cit. supra* note 386 at 79–80.
[389] *Id.*
[390] Kirp and Yudof, *op. cit. supra* note 326 at 146. See also statement of Mark G. Yudof, "Equal Educational Opportunity Hearings," pt. 16B at 6862, 6866; Schoettle *op. cit. supra* note 23 at 1360–62.
[391] See Coons, Clune, and Sugarman, "Educational Opportunity", *op. cit. supra* note 5 at 356 n. 147.
[392] See Schoettle, *op. cit. supra* note 23 at 1412–16. See also Comment, "Equal Protection in the Urban Environment: The Right to Equal Municipal Services", 46 Tul L. Rev. 496 (1972); Horowitz, "Unseparate But Unequal—The Emerging Fourteenth Amendment Issue in School Education," 13 U.C.L.A. L. Rev. 1147 (1966); Abascal, "Municipal Services and Equal Protection: Variations On A Theme by Griffin v. Illinois", 20 Hastings L. Rev. 1367 (1969); Ratner, "Inter-Neighborhood Denials of Equal Protection in the Provision of Municipal Services", 4 Harv. Civ. Rights—Civ. Lib. L. Rev. 1 (1968).

APPENDIX A

CURRENT EXPENDITURE PER PUPIL IN ADA, PUBLIC ELEMENTARY AND SECONDARY SCHOOLS, BY STATE

State	Expenditure per pupil in ADA, 1970–71	Percent of U.S. average	Percent change, 1960–61 to 1970–71
(1)	(2)	(3)	(4)
Alaska	$1,429	170.3	156.1
New York	1,370	163.3	134.2
New Jersey	1,088	129.7	112.5
Vermont	1,088	129.7	210.9
Hawaii	1,050	125.1	214.4
Iowa [1]	1,004	119.7	160.1
Connecticut	997	118.8	117.7
Wisconsin	988	117.8	131.4
Maryland	974	116.1	131.9
Delaware	954	113.7	105.2
Rhode Island	951	113.3	125.9
Pennsylvania	948	113.0	124.1
Illinois	937	111.7	92.0
Oregon	935	111.4	104.6
Wyoming	927	110.5	80.2
Washington	873	104.1	103.0
Minnesota	864	103.0	99.1
Michigan	858	102.3	101.4
Montana	858	102.3	99.1
Arizona	825	98.3	101.7
Louisiana	808	96.3	107.7
Nevada	804	95.8	85.7
Virginia	800	95.4	190.9
California	799	95.2	74.8
Colorado	780	93.0	92.6
Ohio	778	92.7	85.7
Kansas	771	91.9	97.7
Florida	765	91.2	138.3
Maine	763	90.9	150.2
Missouri	761	90.7	116.2
Indiana	741	88.3	98.1
Massachusetts	735	87.6	69.0
New Hampshire	729	86.9	98.1
New Mexico	713	85.0	95.9
North Dakota	689	82.1	83.7
South Dakota	688	82.0	85.9
West Virginia	684	81.5	151.5
Nebraska	683	81.4	96.3
South Carolina	656	78.2	185.2
Texas	646	77.0	95.2
Utah	643	76.6	102.2
North Carolina	642	76.5	166.4
Georgia	634	75.6	148.6
Kentucky	621	74.0	150.4
Oklahoma	605	72.1	89.1
Idaho	595	70.9	98.3

CURRENT EXPENDITURE PER PUPIL IN ADA, PUBLIC ELEMENTARY AND SECONDARY SCHOOLS, BY STATE—Continued

State	Expenditure per pupil in ADA, 1970–71	Percent of U.S. average	Percent change 1960–61 to 1970–71
(1)	(2)	(3)	(4)
Tennessee	590	70.3	152.1
Arkansas	578	68.9	141.3
Mississippi	521	62.1	142.3
Alabama	489	58.3	98.8
United States	839	100.0	113.5

[1] Includes expenditures for area vocational schools and junior colleges.

Source: National Education Association, Research Division, *Estimates of School Statistics, 1961–62.* Research Report 1961–R22. Washington, D.C.: the Association, 1961. p. 29, 31.
National Education Association, Research Division, *Estimates of School Statistics, 1970–71.* Research Report 1970–R15. Washington, D.C.: the Association, 1970. p. 37.

[This table is taken from Berke and Callahan, "Inequities in School Finance" 46 (1971) a paper presented at the 1971 Annual Convention of the American Academy for the Advancement of Science and reprinted by the Select Committee on Equal Educational Opportunity, U.S. Senate, 92d Cong. 2d Sess. (Comm. Print 1972)]

APPENDIX B

INTRASTATE DISPARITIES IN PER PUPIL EXPENDITURES, 1969–70

	High	Low	Index between high/low
Alabama	$581	$344	1,689
Alaska (Revenue/pupils)	1,810	480	3,771
Arizona	2,223	436	5,099
Arkansas	664	343	1,936
California	2,414	569	4,243
Colorado	2,801	444	6,309
Connecticut	1,311	499	2,627
Delaware	1,081	633	1,708
District of Columbia			
Florida	1,036	593	1,747
Georgia	736	365	2,016
Hawaii			
Idaho	1,763	474	3,719
Illinois	2,295	391	5,870
Indiana	965	447	2,159
Iowa	1,167	592	1,971
Kansas	1,831	454	4,033
Kentucky	885	358	2,472
Louisiana	892	499	1,788
Maine	1,555	229	6,790
Maryland	1,037	635	1,633
Massachusetts	1,281	515	2,487
Michigan	1,364	491	2,778
Minnesota	903	370	2,441
Mississippi	825	283	2,915
Missouri	1,699	213	7,977
Montana (Average of groups)	1,716	539	3,184
Nebraska (Average of groups)	1,175	623	1,886
Nevada	1,679	746	2,251
New Hampshire	1,191	311	3,830
New Jersey (1968–69)	1,485	400	3,713
New Mexico	1,183	477	2,480
New York	1,889	669	2,824
North Carolina	733	467	1,370
North Dakota (County averages)	1,623	686	2,336
Ohio	1,685	413	4,041
Oklahoma	2,566	342	7,503
Oregon	1,432	399	3,489
Pennsylvania	1,401	484	2,895
Rhode Island	1,206	531	2,271
South Carolina	610	397	1,537
South Dakota	1,741	350	4,947
Tennessee	700	315	2,432
Texas	5,534	264	20,205
Utah	1,515	533	2,842
Vermont	1,517	357	4,249

INTRASTATE DISPARITIES IN PER PUPIL EXPENDITURES, 1969–70—Continued

	High	Low	Index between high/low
Virginia	1,126	441	2,553
Washington	3,406	434	7,848
West Virginia	722	502	1,438
Wisconsin	1,432	344	4,160
Wyoming	14,554	618	23,553

For New Jersey data are for fiscal year 1969 since fiscal year 1970 data were not yet available;

For Alaska data represent revenue per pupil; for Montana and Nebraska data are high and low of average for districts grouped by size; for North Dakota data are average of expenditures of all districts within a county. Data are not fully comparable between States since they are based entirely on what data the individual State included in its expenditure per pupil analysis.

Source; State reports and verbal contacts with State officials.

Hawaii is the only State that finances education on a statewide basis and consequently does not have the inequities associated with local financing. [This table is taken from Berke and Kelly, "The Financial Aspects of Equality of Educational Opportunity" (1971) reprinted by the Select Committee on Equal Educational Opportunity, U.S. Senate, 92d Cong. 1st Sess. (Comm. Print 1972).]

APPENDIX C

COMPARISON OF SELECTED TAX RATES AND EXPENDITURE LEVELS IN SELECTED COUNTIES 1968–69

County	ADA	Assessed value per ADA	Tax rate	Expenditure per ADA
Alameda:				
Emery Unified	586	$100,187	$2.57	$2,223
Newark Unified	8,638	6,048	5.65	616
Fresno:				
Coalinga Unified	2,640	33,244	2.17	963
Clovis Unified	8,144	6,480	4.28	565
Kern:				
Rio Bravo Elementary	121	136,271	1.05	1,545
Lamont Elementary	1,847	5,971	3.06	533
Los Angeles:				
Beverly Hills Unified	5,542	50,885	2.38	1,232
Baldwin Park Unified	13,108	3,706	5.48	577

Source: *Serrano* v. *Priest*, *op. cit. supra* note 10 at 600.

APPENDIX D

THE RELATIONSHIP OF DISTRICT WEALTH AND HIGHEST TAX EFFORT

TEXAS SCHOOL DISTRICTS CATEGORIZED BY EQUALIZED PROPERTY VALUE AND TAX RATE REQUIRED TO GENERATE HIGHEST YIELD IN ALL DISTRICTS

Categories: Market value of taxable property per pupil	Tax rate needed to equal highest yield (per $100)
Above $100,000 (10 Districts)	$. 64
$100,000 to $50,000 (26 Districts)	1. 49
$50,000 to $30,000 (30 Districts)	2. 53
$30,000 to $10,000 (40 Districts)	4. 88
Below $10,000 (4 Districts)	12. 83

Source: Policy Institute, Syracuse University Research Corporation, Syracuse, New York.

APPENDIX E

COMPARISON OF PUPIL/TEACHER RATIO AND PER PUPIL EXPENDITURES IN SELECTED CENTRAL CITIES AND SUBURBS, 1967[1]

City and suburb	Pupil/teacher ratio	Per pupil expenditures
Los Angeles	27	$601
Beverly Hills	17	1,192
San Francisco	26	693
Palo Alto	21	984
Chicago	28	571
Evanston	18	757
Detroit	31	530
Grosse Pointe	22	713
St. Louis	30	525
University City	22	747
New York City	20	854
Great Neck	16	1,391
Cleveland	28	559
Cleveland Heights	22	703
Philadelphia	27	617
Lower Merion	20	733

[1] Taken from the Urban Education Task Force Report (Wilson C. Riles, chairman), New York, N.Y.: Praeger Publishers, Inc., 1970.

Source: Gerald Kahn and Warren A. Hughes, "Statistics of Local Public School Systems, 1967," National Center for Educational Statistics, U.S. Office of Education.

[This table is taken from Berke and Kelly, *op. cit. supra* note 20 at 10]

Appendix F

LAW SUITS CHALLENGING STATE SCHOOL FINANCE SYSTEMS

The following charts were compiled by R. Stephen Browning, Lawyers' Committee for Civil Rights Under Law; and Myron Lehtman, Task Force on School Finance, U.S. Office of Education, Department of Health, Education, and Welfare. They have been updated through August 1972.

Additional information can be obtained from

THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW
733 15TH STREET, N.W.
WASHINGTON, D.C. 20005

(165)

LAW SUITS CHALLENGING STATE SCHOOL FINANCE SYSTEMS

Case	Plaintiffs	Defendants	Claim	Remedy	Status
ARIZONA Maricopa County Clarance Hollins, et al. v. W. P. Shofstall, et al.	Public school students and their parents who are homeowners and taxpayers in Maricopa County.	The Superintendent of the Arizona Department of Education; the Arizona Board of Education; the Treasurer and Attorney General of Arizona, and the Superintendent of the Maricopa County public schools.	Plaintiff-children allege that under the financing scheme now in effect in Arizona, the amount of revenue available to their school districts is determined substantially by the wealth of local school districts and that poor school districts are therefore unable to offer as much educational opportunities to their students as wealthier districts. Plaintiff-children claim that the Arizona school financing scheme fails to meet the minimum requirements of the equal protection clauses of the United States and Arizona Constitutions.	Plaintiffs ask the court to declare the Arizona financing scheme to be unconstitutional and void; to order the defendants to reallocate school funds in a manner so as not to be unconstitutional; and to allow the legislature a reasonable time to restructure the school financing scheme that will provide equal educational opportunities as required by the State and Federal Constitutions. However, should the legislature fail to act, the plaintiffs ask the court to enter an order regulating, in a constitutional manner, the collection and apportionment of school funds.	Filed on Oct. 12, 1971, in the Arizona Superior Court for Maricopa County, the Arizona school finance system was declared unconstitutional on June 1, 1972, on a motion for summary judgment. Citation: C-253652.
ARKANSAS Marion County Milligan, et al. v. Yarborough, et al.	Taxpaying citizens of Marion County, Ark.	Superintendent of Schools and Board of Directors of Marion County Rural School District No. 1; Governor, Attorney General, members of the Board of Education, and the secretary of the Board of Education of the State of Arkansas; and the Secretary and Regional Director of the Department of Health, Education, and Welfare.	Plaintiffs allege that the method of levying taxes and the rate of taxes among the several school districts in the State of Arkansas cause the wealth of respective districts to determine the quality of education and the quality of physical facilities available to schoolchildren in those respective districts in violation of the Fourteenth Amendment to the Constitution of the United States, and provisions of the Arkansas Constitution. It is further alleged that, within their own district, plaintiffs have been denied equal protection in that their children have been denied substantially equal public educational opportunities due to their geographic location within the district although they, as taxpayers, pay identically the same tax as other residents of the district.	Plaintiffs ask the court to declare the State financing system unconstitutional under the Fourteenth Amendment to the Constitution of the United States and unenforceable insofar as the Arkansas Constitution provides for a system of free education opportunities, that an injunction be granted against the collection of any tax or the issuance of any bond within their district as long as their children are not afforded similar educational opportunities therein, and that the court retain jurisdiction affording the defendants and the State Legislature a reasonable time in which to develop an alternative financial structure.	Filed on Apr. 28, 1972, in the United States District Court, Western District of Arkansas, Harrison Division.
CALIFORNIA Los Angeles Serrano, et al. v. Priest, et al. Another school finance case was	School children and their tax-paying parents from a number of Los Angeles County school districts.	Treasurer, Tax Collector, and Superintendent of Public Schools in the County of Los Angeles; the Treasurer, Con-	Plaintiffs claim that California's system of education finance violates the equal protection clause of State and Federal Constitutions, in that it (a) Makes the quality of education for school age children in California, including Plaintiff-children, a function of the wealth of the children's parents and neighbors, as measured by the tax base of the school district in which said children	Plaintiffs ask the court (a) to declare that they have been denied equal protection of the laws by the California school finance system and that the system is void under the U.S. and California Constitutions; (b) to order the defendants to reallocate the	The case was dismissed by the lower State Court when it sustained defendants demurrer. The Cal-

LAW SUITS CHALLENGING STATE SCHOOL FINANCE SYSTEMS—Continued

Case	Plaintiffs	Defendants	Claim	Remedy	Status
filed in California (Sylva v. Atascadero, San Francisco) but due to its similarity with the Los Angeles suit, the decision was made to drop its prosecution.		troller, and Superintendent of Public Instruction of the State of California.	reside, and (b) Makes the quality of education for school age children in California, including Plaintiff-children, a function of the geographical accident of the school district in which said children reside, and (c) Fails to take account of any of the variety of educational needs of the several school districts (and of the children therein) of the State of California, and (d) Provides students living in some school districts of the State with material advantages over students in other school districts in selecting and pursuing their educational goals, and (e) Fails to provide children of substantially equal age, aptitude, motivation, and ability with substantially equal educational resources, and (f) Perpetuates marked differences in the quality of educational services, equipment and other facilities which exist among the public school districts of the State as a result of the inequitable apportionment of State resources in past years, (g) The use of the "school district" as a unit for the differential allocation of educational funds bears no reasonable relation to the California legislative purpose of providing equal educational opportunity for all school children within the State. (h) The part of the State financing scheme which permits each school district to retain and expend within that district all of the property tax collected within that district bears no reasonable relation to any educational objective or need. (i) A disproportionate number of school children who are black children, children with Spanish surnames, and children belonging to other minority groups reside in school districts in which a relatively inferior educational opportunity is provided. Plaintiff-taxpayers allege that as a result of the education financing scheme, they are required to pay a higher tax rate than taxpayers in many other districts in order to receive for their children the same or lesser educational opportunities.	funds available for financial support of the school system, including funds from property taxes; and (c) to restructure the finance scheme so as to provide equal educational opportunities for all children in the State and, if defendants and the legislature fail to act, that the court regulate collection of property taxes and apportion school funds in satisfaction of the obligations of the state constitution to maintain a system of free public schools and the equal protection clauses of the U.S. and California Constitutions.	fornia intermediate state court of appeals affirmed the dismissal. The California Supreme Court on Aug. 30, 1971, reversed. On Oct. 21, 1971, in a clarification of its earlier opinion, the California Supreme Court returned the case "to the trial court for further proceedings." Citation: 487 P. 2d 1241.
COLORADO Otero County Eelan Allan, et al. v. County of Otero, et al.	Property owners and parents of school children in the East Otero School District.	The County of Otero; the Board of Commissioners for Otero County; the members of the East Otero School District's Board of Education; the Assessor and Treasurer for Otero County; and the Colorado State Tax Commission.	Plaintiffs complain that the method for raising school revenues in Colorado is unfair and discriminatory in operation and effect, and constitutes a violation of the equal protection clause of the United States Constitution. Plaintiffs complain further that the Colorado School Foundation Act fails to provide equalization of the tax burden for education and makes the quality of a child's education vary according to the wealth of his parents and neighbors in the particular community in which he lives.	Plaintiffs ask the court to declare that the local property tax is an unconstitutional infringement of their rights under the equal protection clause of the United States Constitution. Plaintiffs ask the court to enjoin the defendants from assessing, levying, or collecting local property taxes after Jan. 1, 1973.	The complaint was filed in the Otero County District Court for the State of Colorado on Sept. 3, 1971.

CONNECTICUT Jelliffe, et al. v. Berdon, et al.	Public school children and their parents.	Treasurer, Attorney General, Commissioner of Education of the State of Connecticut; Members of the Connecticut State Board of Education; Treasurers, Tax Collectors, and Superintendents of Schools of the Towns of Darien and West Hartford.	Plaintiffs claim that the State of Connecticut's elementary and secondary school financing system violates the equal protection and due process clauses of the Fourteenth Amendment to the United States Consitution by making the educational expenditures per child and the State authorized alternative educational opportunities for each child a function of the wealth of the child's parents, school district, or some entity other than the State of Connecticut as a whole and thus deprives plaintiff children of equal educational opportunity.	Plaintiffs ask that a declaratory judgment be granted holding the elementary and secondary school financing system of the State of Connecticut to be in violation of the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution; that a permanent injunction be issued against the continued operation of the financing system; and that the Legislature be granted reasonable time to restructure the financing system so as to assure that the public expenditure for the education of any child and a child's access to alternative educational opportunities to the extent of such public expenditures, no longer be a function of the wealth of school districts, parents, or any entity other than the State as a whole.	Case filed in the United States District Court for the District of Connecticut on Dec. 30, 1971, and is still pending.
FLORIDA Dade County Classroom Teachers' Association, Inc., et al. v. State Board of Education, et al.	Teacher associations whose membership consists of a large majority of classroom teachers employed in four urban counties.	State Board of Education (consisting of the Governor and his Cabinet), its Commissioner, and the Department of Education.	Plaintiffs allege that the school financing scheme for the State of Florida denies public school pupils and teachers in urban counties educational opportunities afforded pupils in rural areas, deprives them of the equal protection of the laws, and denies them adequate provision for a uniform system of free public school guaranteed by the Federal and State constitutions.	Plaintiffs ask the court to declare that the public school financing laws of the State of Florida are void and unconsitutional as depriving the children of plaintiffs' counties and other urban counties of due process under law, the equal protection of the laws, and an adequate provision for a uniform system of free public schools as guaranteed by the Federal and State constitutions; to enjoin the defendants from enforcing the provisions of such laws; and, upon the Legislature's failure by 1974 to amend existing laws or adopt new laws to provide equal educational opportunity to all children, declare such a program of funding in effect.	Filed in the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida on Dec. 6, 1971, the case was dismissed by the trial court and is currently on appeal to the State Supreme Court.

LAW SUITS CHALLENGING STATE SCHOOL FINANCE SYSTEMS—Continued

Case	Plaintiffs	Defendants	Claim	Remedy	Status
FLORIDA Hargrave et al. v. Kirk et al. (on appeal recaptioned: Askew, et al. v. Hargrave, et al.)	Seventeen students of Florida's public schools and their parents who are also tax paying property owners. (The parents and children reside in sixteen of the State's sixty-seven counties.)	The State Board of Education (consisting of the Governor and his Cabinet), its Commissioner, and the State's comptroller.	The complaint charges that the State's "millage rollback" statute, which imposes a limit on the amount that counties can tax themselves for educational expenditures (a limit which previously was surpassable with local voter approval, and which in fact had been surpassed in numerous counties after gaining local voter approval), violates the equal protection clause of the U.S. Constitution, because the limitation is fixed by reference to a standard relating to the overall wealth of each county and not to its educational needs. Plaintiffs further allege that they cannot raise enough money to meet their educational needs under the statute, because, if they choose to raise locally an amount equal to or less than the statutory limit, they will not have enough funds (even with the State's foundation grant), and, if they try to raise locally the entire amount that they need, they cannot do so because their tax base is too low and the statute disqualifies them from receiving any State financial assistance from the foundation program.	Plaintiffs ask the court (a) to enjoin defendants from using the act of surpassing the statutory local limitation as grounds for withholding foundation grants, and (b) to declare the millage rollback statute null and void.	The case was dismissed by a single judge Federal district court. The Fifth Circuit U.S. Court of Appeals reversed the district court's jurisdictional rulings and remanded with directions to convene a three-judge district court. The three-judge district court on May 8, 1970 declared that the millage rollback statute is unconstitutional as a violation of Equal Protection and enjoined any withholding under the statute. In the spring of 1971, the U.S. Supreme Court vacated the lower court's decision and remanded the case for further proceedings. The case was subsequently dismissed by plaintiffs. Citations: 313 F. Supp. 944, 401 U.S.C. 476.

GEORGIA Battle, et al. v. Cherry, et al.	Black residents and freeholders of an independent school system and parents of children attending an independent school system.	Superintendent of DeKalb County School System and other State and county officials.	Plaintiffs contend that the Georgia Minimum Foundation Program of Education Act of 1964 denies them the equal protection of the laws because, as black residents of an independent school system, they must bear a proportionately higher tax burden than taxpayers within the county school district and because their children receive proportionately less benefits than those in the county school system while paying proportionately more.	Plaintiffs ask the court for a declaration of their rights and an injunction against the continued operation of the challenged provisions of the Georgia Act.	On Feb. 2, 1972, a three-judge Federal court dismissed the complaint holding that res judicata and anti-injunction provisions barred plaintiffs' action. The court stated further that had it reached the merits of the case, plaintiffs' claim of discrimination was without merit (distinguishing Serrano) in that plaintiffs were in a position to benefit from the superior taxable wealth of their school system and that allegations of disparities in fiscal treatment based on race were irrelevant. Citation: 339 F. Supp. 186.
IDAHO Pocatello School District, No. 25, et al. v. Engleking, et al.	School districts, school children, and their taxpaying parents.	Superintendent of Public Instruction, Auditor, Treasurer, and Members of the Board of Educa-	Plaintiffs contend that, as a direct result of the Idaho school financing system, (1) substantial disparities exist among the districts of the State in the dollar amount available per pupil for public education and the educational opportunities afforded therein without any justification in terms of the educational	Plaintiffs ask the court to declare the Idaho school financing scheme unconstitutional under the Fourteenth Amendment of the United States Constitution and under the Idaho Constitution, to order defendants	Filed in late 1971 in the District Court of the Fourth Judicial District of the State of

LAW SUITS CHALLENGING STATE SCHOOL FINANCE SYSTEMS—Continued

Case	Plaintiffs	Defendants	Claim	Remedy	Status
		tion of the State of Idaho; various county assessors, auditors, and treasurers.	needs or demands of the school children in violation of the equal protection clauses of the United States and Idaho Constitutions as well as provisions of the State Constitution providing for the maintenance of a general uniform and thorough system of free public schools within the State, and (2) plaintiff parents are required to pay a higher tax rate than taxpayers in many other school districts while receiving the same or lesser educational opportunities afforded children in other districts.	to reallocate funds in a manner consistent with the holding, and to retain jurisdiction while the State legislature is afforded a reasonable amount of time in which to comply with the court order.	Idaho, in and for the County of Ada, plaintiffs motion for summary judgment is set for argument on Nov. 6, 1972.
ILLINOIS Chicago McInnis, et al. v. Shapiro, et al. (subsequently McInnis, et al. v. Ogilvie, et al.)	High school and elementary school students attending school within four school districts of Cook County, Ill. and a corporate plaintiff, the Concerned Parents and People of the West Side.	Governor of the State, Superintendent of Public Instruction, the Treasurer, and the Auditor of Illinois.	Plaintiffs charge that the State acted unconstitutionally in creating an education finance system which results in plaintiff's school districts receiving per pupil expenditures "far below" those provided other districts. Plaintiffs further allege that as a direct result of the method of financing public education, there exist material disparities in the quality of educational programs, facilities, and services, and in the level of educational attainment achieved, in the different school district.	Plaintiffs ask that various Illinois legislation which provides for and permits the distribution of moneys "not based upon the educational needs of children" and resulting in unequal per pupil expenditures "be declared unconstitutional" and "a permanent injunction be granted."	A three-judge Federal district court dismissed the complaint filed in 1969 for failure to state a cause of action and for nonjudiciability. The U.S. Supreme Court in 1970 summarily affirmed the district court opinion without oral argument. Citations: 293 F. Supp. 327, 394 U.S.C. 322.
ILLINOIS Chicago Gerald L. Sbarboro v. State of Illinois, et al.	A taxpayer and resident of the City of Chicago suing on his own behalf and behalf of all other persons in Illinois similarly situated.	The State of Illinois and the State Superintendent of Public Instruction.	Plaintiffs allege that the Illinois Constitution requires the State to provide an efficient, high quality, and free public education system, and that that provision of the Constitution is being violated because the State is providing less than 50 percent of the total amount of funds necessary for financing public education in the State of Illinois.	Plaintiffs ask the court to declare that the current system of financing education in the State of Illinois is in violation of the State's responsibilities under the Illinois Constitution in that the State has failed to assume the "primary responsibility" for financing public education as required by the Illinois Constitution.	Filed on Oct. 5, 1971, in the Cook County Circuit Court, the case has been consolidated with Blase. Plaintiffs' motion for summary judgment has been denied, and the case is currently being appealed to the State Supreme Court.

ILLINOIS Niles Nicholas V. Blase, et al. v. State of Illinois, et al.	A taxpayer and his daughter, a student in public school district 207 of Main Township in Cook County, Illinois.	The State of Illinois and the Superintendents of Public Instruction for the State of Illinois, Cook County and Public School District No. 207.	All plaintiffs allege that, pursuant to its Constitution, the State of Illinois is obliged to provide a free and efficient system of public education. Plaintiff-taxpayer alleges that he is paying a higher tax rate for the education of children in his school district than are taxpayers in wealthier school districts. Plaintiff-student alleges that the amount spent on her public education is less than that spent for students in other districts of the State with higher assessed valuation, and that she is therefore denied a free and equal educational opportunity as required under the Illinois and United States Constitutions.	Plaintiffs ask the court (a) to declare unconstitutional those sections of the Illinois law which shift to local school districts and local property taxpayers the "primary responsibility" for financing public education throughout the state; (b) to declare that, in Illinois, there is not an efficient public education system of high quality as required by the State constitution; (c) to declare that the State has failed to provide to local school districts a sum of money necessary to meet the minimum standards of education as defined by contemporary standards.	Filed in the Circuit Court for Cook County in September 1971, the Federal constitutional claim was droppod following the filing of the Martwick suit. subsequently, the case was consolidated with the Sbarboro suit. Plaintiffs' motion for summary judgment was denied, and the lower court's opinion is currently being appealed to the Illinois State Supreme Court.
ILLINOIS Martwick, et al. v. Illinois, et al.	Cook County Superintendent of Schools, school children and their taxpaying parents.	The State of Illinois; Superintendent of Public Instruction, Treasurer, and Auditor of Public Accounts of the State of Illinois.	Plaintiffs charge: (a) that the school financing scheme of the State of Illinois denies some children attending public schools within Cook County school districts educational resources and opportunities substantially equal to those enjoyed by children attending public schools in other districts of Cook County and the State of Illinois in violation of the Equal Protection Clauses of the United States and Illinois Constitutions by failing to apportion the Illinois Common School Fund so as to equalize both total educational resources available to students within school districts throughout Cook County and the State of Illinois through equitable distribution of State monies and those differences in educational resources resulting from disparities in the amounts produced by the taxing of property within the school districts; and (b) that the defendants are distributing State provided funds from State revenues amounting to less than 50 percent of the total amount necessary for financing the public elementary and secondary educational system in the State of Illinois contrary to the provisions of the Illinois Constitution which places upon the State the primary responsibility of financing education in the State.	Plaintiffs ask the court (a) to declare unconstitutional the Illinois school finance system as being in violation of the equal protection of the laws of the United States Constitution and the Constitution of the State of Illinois, (b) to enjoin the current operation of the present scheme, (c) to afford the Illinois General Assembly a reasonable time to establish a new statutory scheme, (d) to declare that the State of Illinois and the defendants must provide and distribute not less than 50 percent of the funds needed to provide and maintain public elementary and secondary educational institutions and services in the several school districts within Illinois.	Filed in the Circuit Court of Cook County, Illinois, County Department, Chancery Division, the case was removed to Federal Court in March 1972. Plaintiffs will be requesting a three judge panel and plan to file a motion for summary judgment by September 1972.

LAW SUITS CHALLENGING STATE SCHOOL FINANCE SYSTEMS—Continued

Case	Plaintiffs	Defendants	Claim	Remedy	Status
ILLINOIS Rothchild, et al. v. Bakalis, et al.	A student, his tax-paying parent, and Township High School District No. 113.	Superintendent of Public Instruction of the State of Illinois and the Superintendent of the Educational Service Region, Lake County, Illinois.	Plaintiffs allege that they are denied the equal protection of the laws in violation of both the Fourteenth Amendment of the United States Constitution and the Constitution of the State of Illinois in that the Illinois school finance system invidiously discriminates on the basis of whether a school district has been organized as a unit or co-terminate high school and grade school dual district. Under the challenged system, the State equalization quota apportioned a territory as a unit district is greater than the quota apportioned the same territory if it is organized as a dual district. In a dual district, a total of 1.74 percent of their territory's assessed valuation is deducted in calculating the amount of equalization aid apportioned the territory, whereas, if the ame territory were organized as a unit district, only 1.08 percent of that assessed evaluation would be deducted.	Plaintiffs ask the court to declare the discriminatory provisions of the Illinois School Code unconstitutional and void under the United States andl Ilinois Constitutions, to enjoin the defendants from further application of those provisions, and to apportion the common school fund on an equitable basis.	Filed in November 1971 in the United States District Court for the Northern District of Illinois, Eastern Division, the case is set for trial on Aug. 17, 1972.
ILLINOIS Tax Reform League v. State of Illinois, et al.	Taxpayers organization.	State of Illinois; Superintendent of Public Instruction, Auditor, and Treasurer of the State of Illinois.	Plaintiff alleges that the Illinois system of school finance with its reliance on the property tax as its revenue source is unconstitutional under the Fourteenth Amendment of the United States Constitution because it invidiously discriminates (a) between schoolchildren in the amount of money spent on their education depending on the property values of their neighborhood, (b) against persons on social security whose income therefrom has not increased proportionately with the rise in their property taxes, and (c) against property owners and renters who do not have children in the public schools but who must still pay taxes for public eduction.	Plaintiffs ask the court to declare the Illinois system of financing schools and education from property tax revenues unconstitutional under the Fourteenth Amendment to the United States Constitution and to order that the defendants refrain from operating under such a system.	Filed on Jan. 24, 1972 in the United States District Court for the Northern District of Illinois, Western Division, Freeport, Illinois.
INDIANA, Bartholomew County, Gerald E. Perry, et al. v. Edgar Whitcomb, et al.	School children from public schools in Bartholomew County, Indiana and their property taxpaying parents.	The Governor, Auditor, and Treasurer of the State of Indiana; The Superintendent of Public Instruction for the State of Indiana; the State Board of Tax Commissioners; the Bartholomew Consolidated School Corporation; the Superintendent of Bartholomew Schools; and the Auditor and Treasurer of Bartholomew County.	Plaintiffs allege that the Indiana constitution requires the State to provide a uniform system of common schools and a uniform and equal rate of assessment and taxation. Plaintiffs allege that the current system in effect in Indiana for raising and distributing monies for public education violates the above two requirements of the Indiana Constitution and the equal protection clauses of the Indiana and United States Constitution.	Plaintiffs ask the court (a) to declare that the Indiana statutes for the provision of State aid for public education violates the Indiana and United States Constitutions and (b) to temporarily and permanently enjoin the defendants from collecting property taxes for public education.	Filed in the Superior Court of Marion County, Indiana in November 1971.

INDIANA, Indianapolis Spilly, et al. v. State Board of Tax Commissioners, et al. (recaptioned Jensen, et al. v. State Board of Tax Commissioners, et al.).	Public school children and their parents from three Indiana counties.	The State Board of Tax Commissioners and the Auditor and Treasurer of the State of Indiana.	Plaintiffs claim that the current financing structure, established by the State of Indiana to fund its public schools, makes the quality of education a function of the wealth of children's parents and neighbors; it makes the quality of education a function of the geographical accident of which school district reside in; it fails to take account of educational needs; and it fails to provide children of substantially equal age, aptitude, motivation, and ability with substantially equal educational resources.	Plaintiffs ask the court (a) to declare that the State system for financing education violates both the equal protection clauses of the United States and Indiana Constitution and the Indiana Constitutional provision, which requires the State to provide a general and uniform system of public schools; (b) to restrain the defendants from administering and enforcing the school finance system in such a way so as to violate the Indiana and United States Constitutions (however, should the defendants fail in that task, the plaintiffs ask the court to restrain them from collecting taxes for education); (c) to require the defendants to reallocate public education in a manner so as not to violate the Indiana and United States Constitutions; (d) to allow the defendants and the Indiana legislature a reasonable time to develop a constitutional financing structure; however, should the defendants fail to do so, the court is asked to develop its own constitutional financing structure.	Filed on June 16, 1971, in the Superior Court for Marion County, the case is currently the Circuit Court of Johnson County and is set to go to trial on Aug. 14, 1972.
KANSAS William Hergenreter, et al. v. State of Kansas, et al.	Public school children and their property taxpaying parents from Shawnee and Cherokee Counties, Kansas.	The State of Kansas; the State Board of Education and its Commissioner; the Comptroller of the State Department of Administration for the State of Kansas; and the Treasurer of the State of Kansas.	Plaintiffs allege that the system for financing public schools in the State of Kansas (a) makes the quality of education a function of the wealth of the children's parents and neighbors; (b) makes the quality of education for school children in Kansas the function of a geographic accident of the school district in which they live; (c) fails to take into account the variety of educational needs of the school districts in the State of Kansas; (d) fails to provide children of substantially equal age, aptitude, motivation and ability with substantially equal educational resources; and (e) perpetuates marked differences in the quality of educational services, equipment, and other facilities which exist among the public districts in Kansas. Plaintiffs claim that this financing system violates the equal protection clause of the United States Constitution. The plaintiff-taxpayers allege that they are required to pay a higher tax rate for school purposes than taxpayers in wealthier school districts in order to provide the same or less per pupil expenditures. Plaintiff-taxpayers claim that this inequity violates the equal protection clause of the United States Constitution.	Plaintiffs ask the court to declare that they have been denied equal protection of the laws by the Kansas school financing system and that the system is void under the U.S. Constitution. Plaintiffs ask the court to retain jurisdiction of the action, affording the Kansas legislature a reasonable time to restructure the school finance system so as to assure that the quality of education will no longer be a function of the wealth of school districts.	Case filed in the United States District Court for the District of Kansas in October 1971.

LAW SUITS CHALLENGING STATE SCHOOL FINANCE SYSTEMS—Continued

Case	Plaintiffs	Defendants	Claim	Remedy	Status
KANSAS, Johnson County Michele Caldwell, et al. v. State of Kansas, et al.	The Kansas Federation of Taxpayers, Inc. and public school children and their property taxpaying parents from Johnson County, Kansas.	The State of Kansas; the Attorney General and the Acting Director of Property Evaluation for the State of Kansas; the State Board of Education; the Treasurer and Clerk for Johnson County; the Johnson County School District and its Board of Education.	Plaintiffs allege that under the State's system for financing public schools, 65% of the total Kansas educational revenues were raised from local property tax from school districts which have widely varying amounts of taxable wealth per pupil. Plaintiffs claim that this system violates their rights to equal protection because it makes school expenditures a function of the wealth of school districts in which plaintiffs reside. Plaintiff-taxpayers claim that the State of Kansas is prohibited by the U.S. and Kansas Constitutions from collecting property taxes not based on uniform and equal rates of assessment. As a result of the system for assessing and collecting educational revenue from property tax the plaintiff-taxpayers claim that they are taxed more heavily upon some value property than are persons in other school districts in order to provide the same educational opportunity. Plaintiff-taxpayers further claim that they are suffering injury from the Kansas system for financing schools because it subjects persons who happen to own property to a greater tax than those who do not, without taking into consideration the public services to be financed.	Plaintiffs ask the court to declare that the Kansas system for financing public schools denies them equal protection of the laws under the U.S. and Kansas Constitutions and ask the court to enjoin the operation of the system insofar as its operation makes spending for education a function of wealth and ownership of property.	Filed in early December 1971 in the District Court of Johnson County, Kansas, the case recently had a hearing and is currenty under submission to the judge. A decision is expected shortly.
KANSAS Wiley, et al. v. State of Kansas, et al.	Taxpayers.	State of Kansas; Attorney General, State Board of Education, Director of Property Valuation of the State of Kansas; Treasurer and Clerk of Leavenworth County; Unified School District No. 449 and members of its Board of Education.	Plaintiffs allege that the State school financing system in connection with general obligation bonds issued to construct school facilities violates both the equal protection clause of the Fourteenth Amendment of the United States Constitution and provisions of the Kansas Constitution insofar as it arbitrarily and without any compelling State interest subjects plaintiffs to taxation based on the wealth of the school district in which plaintiffs reside and as a result of the plaintiffs owning property subject to such tax for school construction purposes which taxes them more heavily than other persons upon the same property in order to provide the same education as exists in other districts within the State.	Plaintiffs ask the court to declare that plaintiffs have been denied the equal protection of the laws of the United States and the State of Kansas by the school financing system and to enjoin the operation of the system insofar as the operation thereof makes spending a function of wealth and the ownership of property the basis of funding.	Filed in the United States District Court for the District of Kansas on May 17, 1972.
KENTUCKY Baker, et al. v. Strode, et al.	Schoolchildren and their taxpaying parents.	Members of the Boards of Education of Daviess County and the Independent School District of Owensboro; Superintendents of Public Schools in Daviess County and the Independent School District of Owensboro; Members of the State Board of Education; and the State Superintendent of Public Instruction.	Plaintiffs allege that the State "millage rollback" statute fixing the amount of money which local boards can raise through local property taxes has prevented Kentucky's local school districts from improving their educational standards through local taxation by arbitrarily denying to the various district boards of education the right to assess, collect, and use taxes essential to the maintenance of good public schools and to citizens, taxpayers, and students the educational facilities and quality of instruction which their local officials deemed proper for their children in violation of the Fourteenth Amendment of the United States Constitution and provisions of the Kentucky Constitution.	Plaintiffs ask the court to declare the State's "millage rollback" legislation null, void, and of no effect and to enjoin defendants from enforcing or abiding by such.	Filed in the United States District Court for the Western District of Kentucky on Jan. 26, 1971, a hearing was held before a three-judge court on July 18, 1972 and is currently under submission.

KENTUCKY Nunnelly, et al. v. Miller, et al.	Members of the Board of Education of Louisville, Kentucky.	Members of the Board of Aldermen of Louisville, Kentucky.	Plaintiffs argue that the Kentucky "rollback" legislation, which freezes the basic tax of each school district at the "effective" rate which the district had employed in 1965, is unconstitutional under both the Fourteenth Amendment of the United States Constitution and provisions of the Kentucky Constitution because it operates as special and local legislation and, thus, denies them the equal protection of the laws. Plaintiffs argue further that section 172 of the Kentucky Constitution, which provides that all property not exempted from taxation must be assessed at its fair cash value; because it perpetuates assessments which did not conform with section 172 in 1965.	Plaintiffs ask the court for a declaration of their rights and for a mandatory injunction compelling the defendants to levy taxes in excess of the maximum rate authorized by the challenged legislation.	The Jefferson County Circuit Court, Chancery Branch, Third Division declared the "rollback" legislation unconstitutional and granted the injunction. On June 18, 1971, the Court of Appeals reversed the lower court decision stating that the legislation did not prevent school districts from selecting as high a tax rate as it chose by popular vote and that levy rates between taxing districts need not be uniform. On Nov. 9, 1971, the United States Supreme Court denied certiorari. Citations: 468 S. W. 2d 298, 404 U.S.C. 941.
MAINE Lahaye, et al. v. State of Maine, et al.	Schoolchildren and their taxpaying parents.	State of Maine; Treasurer, Attorney General, Commissioner of Education, and Members of the State Board of Education of the State of Maine; Members of the Board of Directors of various school districts; and	Plaintiffs allege that they are suffering serious inequality and injury in regard to a fundamental interest (the interest in education) by virtue of State created variations in per pupil expenditures caused by variations in school administrative amount wealth and the financing system in violation of the equal protection guarantees of the Fourteenth Amendment and the Constitution of the State of Maine insofar as it renders expenditure for plaintiffs, public education a function of the wealth of the school administrative unit in which plaintiffs reside.	Plaintiffs ask the court to declare that they have been denied the equal protection of the laws of the United States and the State of Maine by the State financing system, to order the defendants to refrain from operating the present system, and to retain jurisdiction while affording defendants and the State legislature a reasonable time in which to take all steps reasonably feasible to restructure the financing scheme.	Filed on Jan. 17, 1972, in the Superior Court, Kennebec, Maine, the case is still pending.

LAW SUITS CHALLENGING STATE SCHOOL FINANCE SYSTEMS—Continued

Case	Plaintiffs	Defendants	Claim	Remedy	Status
		treasurers, tax collectors, and assessors of various municipalities.			
MARYLAND, Baltimore Alvin Parker, et al. v. Marvin Mandel, Governor of Maryland, et al.	Public school children and their property taxpaying parents who reside in the City of Baltimore.	The Governor, Comptroller, and Treasurer of the State of Maryland; the Mayor, Director of Finance, and City Council of the City of Baltimore.	Plaintiffs allege that of the funds generated by the State system for financing public schools in the State of Maryland, approximately 59% are raised by localities. Plaintiffs further allege that a disparity exists in the ability of localities to finance their share of the cost of public education, and as a direct result of this disparity in wealth bases, there is a wide range in the per pupil amount of funds raised locally for education. Moreover, plaintiffs allege that the formula for computing State aid favors wealthy localities over poor localities. Plaintiffs claim that as a direct result of this State system for financing education, (a) the quality of public education is made a function of the wealth of children's parents and neighbors; (b) the quality of education is made a function of the geographical accident of the wealth of the locality in which school children reside; (c) no account is taken of the different educational needs of the various localities and the school children residing therein; (d) children in some localities are provided with material educational advantages over children in other localities which directly affect their educational opportunities; (e) children of substantially equal age, aptitude, intelligence, motivation and ability are denied equal educational resources; (f) a disproportionate number of children of low income and/or black families residing in Baltimore City, are, by virtue of the State system for financing schools, denied equal educational opportunity with other children in the State. Plaintiff-taxpayers claim that the State's system for financing schools requires them to pay a higher tax than similar taxpayers in other localities in order to receive the same or lesser educational opportunities for their children.	Plaintiffs ask the court to declare that the State system for financing schools in Maryland denies them equal protection of the law and therefore is void. Plaintiffs further ask the court to order the defendants to reallocate school monies in such a manner as not to violate the constitution and laws of the United States. Plaintiffs ask the court to retain jurisdiction and to allow the State General Assembly until June 30, 1972 to restructure the State system of financing schools in a constitutional fashion, and that in the event a constitutional restructuring does not occur by that date, that the court enjoin the defendants from enforcing the present system of school finance.	Filed in October 1971 in the United States District Court in the District of Maryland, the district judge recently held, in denying the defendants' motion to dismiss, that the equal protection test to be applied at trial is the rational basis test rather than strict scrutiny.
MASSACHUSETTS Timilty, et al. v. Sargent, et al.	Schoolchild and his taxpaying parent.	Governor, Commissioner of Education, Treasurer, and Auditor of the Commonwealth of Massachusetts.	Plaintiffs claim that the Massachusetts statutory scheme for financing primary and secondary education results in wide disparities in the financial resources available per pupil, the amounts expended per pupil among the various Massachusetts public schools, and the rate of taxation between districts as a direct result of the reliance in the Massachusetts scheme upon local property taxation and that the selection, without regard to variations in equalized valuation per pupil, of local cities and towns as the taxing unit violates the Fourteenth amendment of the United States Constitution.	Plaintiffs ask the court for a declaration that the Massachusetts system providing for the financing of public elementary and secondary school education violates the Fourteenth Amendment of the United States Constitution and is accordingly null, void, and of no effect.	Complaint filed in the United States District Court, District of Massachusetts in January 1972 and is still pending.

MICHIGAN, Detroit The Board of Education of The School District of the City of Detroit, et al. v. The State of Michigan and Allison Green, its Treasurer.	Detroit School Board, students and their parents.	State of Michigan and its Treasurer.	Plaintiffs allege that the finance system fails to allot the school districts in which they reside educational resources and educational opportunities substantially equal to those provided by many other school districts. Plaintiffs allege that the system is deficient in failing to relate to the district variations in educational needs, quality of existing educational facilities, and levels of educational costs and expenses (i.e., for school construction and salaries).	Plaintiffs ask that execution of the "State Aid Act" be enjoined, and that State funds be reapportioned so as to provide substantially equal education opportunities for all children in the State.	Filed in 1968, the case was dismissed for lack of prosecution. The case was refiled in early 1972 and is currently pending.
MICHIGAN, Ingham County William G. Milliken, et al. v. Allison Green, et al.	The Governor and the Attorney General of the State of Michigan.	The Treasurer of the State of Michigan and three school districts having a higher State equalized valuation of taxable property per pupil and higher expenditures per pupil than most other districts in the State of Michigan.	Plaintiffs allege that the Michigan constitution requires the State legislature to maintain and support a system of free public schools, and that the operation of public schools in Michigan are financed in part from taxes on real and personal property, and that the amount of revenue per pupil derived by the school district from property taxes for school purposes is dependent upon the wealth of the school district as measured by the State equalized valuation of taxable property per pupil, and that the effect of this system is to produce substantial disparities among school districts in per pupil expenditures. Plaintiffs claim that these substantial disparities deny equal educational opportunity to the children enrolled in school districts with lower expenditures, and thus it invidiously discriminates against them in contravention of the guarantees of the equal protection clauses of the Michigan and United States Constitutions.	Plaintiffs ask the court to declare that present system of financing public schools in Michigan to be unconstitutional as violative of the equal protection clauses of the Michigan and United States Constitutions.	Filed in the Michigan Circuit Court for the Country of Ingham in October 1971, the Circuit Court on May 8, 1972, filed its Findings of Fact with the State Supreme Court and certified to the State Supreme Court the two questions which one of the plaintiffs, William G. Milliken, acting as Governor had asked the State Supreme Court be certified to it for immediate consideration and

LAW SUITS CHALLENGING STATE SCHOOL FINANCE SYSTEMS—Continued

Case	Plaintiffs	Defendants	Claim	Remedy	Status
					determination. The questions, challenging the validity of Michigan's system of school finance under the equal protection clauses of both the Michigan and United States Constitutions, were argued in June. A decision is expected shortly.
MICHIGAN, Ingham County George Montgomery, II, et al, v. William G. Milliken, et al.	Public school children and their taxpaying parents who live in the Michigan counties of Macomb and Oakland.	The Governor, Attorney General, Treasurer and Comptroller of the State of Michigan; and the Superintendent of Public Instruction of the State of Michigan.	Plaintiffs allege that the State of Michigan's school finance plan is unfair in that it causes substantial financial disparities among school districts in the amount of revenue per pupil available for each district's educational program, that there are wide disparities among the districts in their assessed valuation per puoil, and that the heavy reliance upon local property taxes by local school districts results in substantially inferior educational opportunities for those children living in relatively poorer school districts. Plaintiffs claim that this school financing scheme fails to meet the equal protection requirements of the Michigan and United States Constitution in that it: (a) makes the quality of education a function of the wealth of the children's parents and neighbors; (b) makes the quality of education for school children in Michigan the function of a geographic accident of the school district in which we live; (c) fails to take into account the variety of educational needs of the school districts in the State of Michigan; (d) fails to provide children of substantially equal age, aptitude, and motivation and ability with substantially equal educational resources; and (e) perpetuates marked differences in the quality of educational services, equipment, and other facilities which exist among the public districts in Michigan.	The plaintiffs ask the court (a) to declare the present State aid system for financing education to be unconstitutional because it fails to equalize the yield of property tax levies for school districts; (b) to require the defendants to provide a new school finance plan which would be free of constitutional defects, while preserving the integrity of local school districts and the option of local tax payers to provide quality of education for their children; (c) to prohibit the State comptroller from allocating and the State treasurer from distributing any funds pursuant to the present State Aid Act after July 1972; and, (d) in the event that the State fails to respond constitutionally before July 1, 1972, to have the court restructure the system along constitutional lines.	Filed on Oct. 27, 1971 in the Michigan Circuit Court for the County of Ingham, the Supreme Court of Michigan refused to certify the case at the time it granted certification in Milliken v. Green. It remains pending in the Circuit Court.

MINNESOTA Donald Van Dusartz, et al. v. Rolland F. Hatfield, et al.	Students in the public schools of White Bear Lake School District No. 624, Ramsey County, Minnesota, and their parents and guardians who directly or indirectly support public education in their district through local taxation.	The Auditor and Treasurer for the State of Minnesota; the Commissioner of Taxation for the State of Minnesota; the Commissioner of Education of Minnesota; and the Commissioner of Administration for the State Board of Education: the Minnesota Board of Education; the Independent School District No. 624; and the Treasurer and Auditor of Ramsey County, Minnesota.	Plaintiffs allege that the system for financing public education in Minnesota fails to meet the minimum requirements of the equal protection clause of the United States Constitution in that it: makes the quality of education a function of the wealth of the children's parents and neighbors; makes the quality of education a function of the geographical accident of the per pupil assessed valuation of a school district; fails to take account of the variety of educational needs of school children; provides students living in some school districts with material advantage over students in other school districts; fails to provide children of substantially equal age, aptitude, motivation and ability with substantially equal educational resources; and perpetuates marked differences in the quality of educational services and equipment and other facilities which exist in public school districts in Minnesota as a result of inequitable apportionment of State resources; and requires taxpayers residing in relatively poor school districts to pay higher tax rates on comparable property than taxpayers in wealthier school districts in order to achieve the same or lesser expenditures per pupil.	Plantiffs ask the court to delcare the State financing system void as being repugnant to the equal protection clause of the Fourteenth Amendment of the U.S. Constitution and request the court to retain jurisdiction, affording defendants and the legislature a reasonable time to restructure the financing scheme so as to assure that the quality of public education will be no longer a function of the wealth of school districts; and should the legislature fail to do so, plaintiffs ask the court to restructure the financing system in a constitutional manner.	Filed in U.S. District Court for the District of Minnesota, Third Division, in late September 1971. Defendants subsequently moved to dismiss the complaint, and on Oct. 12, in a decision written by Judge Miles W. Lord, the defendants motion to dismiss was denied. In early December, plaintiffs dismissed their lawsuit, without prejudice, because they believed that the State's revised school aid formula (passed by the legislature on Oct. 30, 1971), while not meeting the "strict constitutional standard set forth in the Court's Oct. 12 memorandum . . . it appears that [it] . . . is considerably closer to meeting the constitutional standard of fiscal neutrality than the previous statute. . . ." Citation: 334 F. Supp. 870.

LAW SUITS CHALLENGING STATE SCHOOL FINANCE SYSTEMS—Continued

Case	Plaintiffs	Defendants	Claim	Remedy	Status
MINNESOTA Minnesota Federation of Teachers, et al. v. Rolland F. Hatfield, et al.	The Minnesota Federation of Teachers and the Minneapolis Federation of Teachers, Local 59; Taxpayers from three different counties and their children who are students in those counties' public schools.	The Auditor and Treasurer of the State of Minnesota; The State Board of Education and its Commissioner; the Auditor and Assessor for Anoka, Carlton, and Hennepin Counties.	Plaintiffs allege that the scheme of taxation for school financing in the State of Minnesota enables some districts to spend substantially more money per pupil while levying substantially lower taxes than other school districts with smaller taxable bases and that plaintiffs, residents of districts with smaller per pupil tax bases, are therefore denied equal protection of the law of Minnesota and the United States.	Plaintiffs ask the court to declare that the Minnesota public school financing scheme violates plaintiffs' rights to (a) equal protection of the law and is therefore repugnant to the Fourteenth Amendment of the United States Constitution; and (b) to a uniform system of public education as established by the Minnesota Constitution.	Case filed in U.S. District Court for the District of Minnesota, Fourth Division, on Sept. 2, 1971. The defendants moved to dismiss, and the court on Oct. 12, 1971, after consolidating this cause with the Van Dusartz's case (as noted above), denied the State's motion to dismiss. Plaintiffs have dismissed their action in light of the Minnesota legislature's action on Oct. 30 which substantially increased the State's share of public education expenses.
MINNESOTA Minnesota Real Estate Taxpayers Association, et al. v. State of Minnesota, et al.	Students from public schools in Traverse County, taxpayers from Traverse and two other Minnesota counties, and the Minnesota Real Estate Taxpayers Association.	The State of Minnesota; the Governor, Treasurer, and Auditor of the State of Minnesota; the Board of Education of Minnesota and its Commissioner; and the State Commissioner of Taxation.	Plaintiffs allege that the equal protection clause of the U.S. Constitution and the fundamental law of the State of Minnesota require the State to provide equal education to aid children and to impose a substantially uniform burden upon all taxpayers; moreover, the State is required by its own Constitution to provide a thorough and efficient public schools. Plaintiffs assert that education is a fundamental interest. And plaintiffs claim that despite the above Constitutional requirements, the State has created a system for financing education which unconstitutionally discriminates against the poor in that (a) it makes the quality of education a function of the wealth of the children's parents and neighbors; (b) it makes the quality of education for school children in Minnesota the function of a geographical accident of the school district in which they live; (c) it fails to take into account the variety of educational needs of the school districts in the State of Minnesota; (d) it fails to provide children of substantially equal age, aptitude, motivation and ability with substantially equal educational resources; (e) it perpetuates marked differences in the quality of services, equipment and other facilities which exist among public districts in Minnesota. Plaintiffs-taxpayers claim they are required to pay a higher tax rate for school purposes than are taxpayers in wealthier school districts in order to provide the same or less expenditures per pupil.	Plaintiffs ask the court to declare that the plaintiffs have been denied their constitutional rights to equal protection and that the system for financing schools in Minnesota is unconstitutional and void. Plaintiffs further request that the defendants be temporarily and permanently enjoined from allocating public monies for the support of public education unless and until that system is restructured in a manner so as not to violate the equal protection clause of the U.S. Constitution and articles 8 and 9 of the Minnesota State Constitution. Plaintiffs also ask the court to retain jurisdiction (upon granting the interim injunctive relief requested), pending action by the Minnesota State Legislature to restructure in a constitutional manner the method for financing schools in the State of Minnesota.	Same as Minnesota Federation of Teachers case, above, except that plaintiffs have not dismissed their action.

MISSOURI Spencer, et al. v. Mallory, et al.	Missouri school-children attending public elementary and secondary schools, their taxpaying parents, persons renting dwellings within school districts and indirectly supporting public education, and teachers.	Commissioner of Education, Auditor, Treasurer, Director of the Department of Revenue, and the Board of Education of the State of Missouri; School District of Kansas City, Missouri and employees thereof.	Plaintiffs allege that the State financing scheme makes the expenditure for every child's public education a function of the taxable wealth per pupil of the school district and thus creates disparities in district wealth, taxing, and expenditure in violation of the equal protection clause to the Constitution of the United States. Plaintiffs further allege that the failure of voters to pass three separate tax levies has resulted in a school budget calling for the elimination of vital programs and services still provided for in other districts in violation of the equal protection clause of the Fourteenth Amendment of the United States Constitution.	Plaintiffs request the court to declare the Missouri financing system void and without force or effect as repugnant to the equal protection clause of the Fourteenth Amendment to the United States Constitution; to afford the legislature a reasonable amount of time in which to restructure the financing scheme so as to assure that the quality of public education measured by spending per pupil no longer will be a function of the wealth of school districts, parents or any entity other than the State as a whole; and to enjoin the defendant school district from eliminating any of its programs as proposed.	Filed in the United States District Court for the Western District of Missouri, Western Division in January 1972, the case was dismissed on January 24, 1972, on the ground that the abstention doctrine applied and that relief should be sought in a State forum.
MISSOURI, Independence Richard M. Trooh, MD. et al. v. William E. Robinson, et al.	Schoolchildren and their property taxpaying parents, all of Independence, Missouri.	The Attorney General and treasurer for the State of Missouri; the State Board of Education and the Board's President, Vice-President and Secretary; the State Director of the Department of Revenue; the Independence School Districts; the Treasurer and the Collector of Revenue for Jackson County, Missouri.	Plaintiffs allege that the State consitution requires the State Office of Education to maintain a free system of public secondary and elementary education and that in maintaining said system the State is required by the U.S. Constitution to discharge its responsibilities on substantially equal basis for all children; and that in spite of these requirements, the defendants have created a system for financing public education which prevents equal education opportunity substantially equal to those enjoyed by children in school districts that are wealthier on a per pupil basis than the Independence Missouri school district. Plaintiffs additionally claim that the State law requiring a minimum of 180 school days in order for local districts to qualify for State aid discriminates against poor school districts.	Plaintiffs ask the court to declare the State system of financing public education to be unconstitutional in that it creates substantial disparities among the school districts as related to the amounts of revenue available for each student. Plaintiffs ask the court to declare that the plaintiffs have been denied equal protection and that the State financing scheme is void. Plaintiffs further ask that the defendants be ordered to reallocate public monies available for education in a manner so as not to violate the equal protection provision of United States Constitution and the fundamental law and Constitution of Missouri. Plaintiffs further ask that the court retain jurisdiction of the action and to request the legislature to take, within a reasonable time, all steps reasonably feasible to make the school financing system comply with the U.S. and Missouri Constitutions. Plaintiffs further ask that the court direct the State Legislature to restructure the State financing scheme so as to provide equal educational opportunity. Plaintiffs lastly ask the court to declare unconstitutional the Missouri statute requiring a specified number of school days to qualify for State aid.	Complaint filed in Missouri Circuit Court for the Sixteenth Judicial Circuit on Nov. 10, 1971.

LAW SUITS CHALLENGING STATE SCHOOL FINANCE SYSTEMS—Continued

Case	Plaintiffs	Defendants	Claim	Remedy	Status
NEW HAMPSHIRE Birch, et al. v State of New Hampshire, et al.	Schoolchildren, their parents, and a professional teacher organization	State of New Hampshire; Attorney General, Treasurer, and Commissioner of Education of the State of New Hampshire; Tax Collector of the Town of Epsom; Treasurer of the Epsom School District; and Superintendent of Schools of Supervisory Union No. 53.	Plaintiffs allege that the State of New Hampshire, by establishing a system of finance for its public schools which makes the expenditure for every child's public education a function of the taxable wealth per pupil of the school district in which he resides, has violated both the equal protection clause of the Fourteenth Amendment of the United States Constitution and the Constitution of the State of New Hampshire.	Plaintiffs ask the court to declare that they have been denied the equal protection of the laws of the United States and New Hampshire by the financing system for public education, to issue a permanent injunction restraining the defendants from operating the present financing system except so long as necessary to effect an orderly transition to a valid system for financing schools, and to afford the State Legislature a reasonable time in which to restructure the financing scheme as required by the equal protection clause of the Fourteenth Amendment to the United States Constitution and the fundamental law and Constitution of New Hampshire.	Filed in the United States District Court for the District of New Hampshire in January 1972, the case was set for trial but has been delayed pending the outcome in Rodriguez.
NEW JERSEY, Jersey City Robinson, et al. v. Cahill, et al. A similar New Jersey complaint was prepared, focusing on the problems of Newark, but apparently no action was taken on it.	The Jersey City Mayor; members of the City Council, the Board of Education and the Board of Estimate; a student of the Jersey City public schools and the student's parent (who is also a resident of Jersey City); ten taxpayers from Jersey City's county and a single taxpayer from another county in New Jersey.	New Jersey's Governor, Treasurer, Attorney General, Commissioner of Education; the New Jersey Senate (and its president); the New Jersey General Assembly (and its speaker).	Plaintiffs charge in a 16-count complaint that the State's system for financing public education is unconstitutional; because it makes the quality of education depend on the wealth of each district and not the State; because it places an unequal tax burden on the property owner who lives in low property value districts; because the public officials in these poorer districts are unable to provide equal educational opportunity; because minimum educational needs are not being met; because the delegation to the districts to run the schools was done without adequate standards; because the schools are not being maintained thoroughly and efficiently as required by the State Constitution; because school district boundaries deprive plaintiffs of the power to spend what they want on education; and because the current system promotes racial discrimination.	Plaintiffs ask the court, among other things, to declare the current educational finance scheme unconstitutional and to order the defendants to restructure the scheme in a manner not violative of the United States and New Jersey Constitutions. Further, they ask the court to order the defendants to change the boundary lines of the districts in a way that will equalize the amount of tax base per student and that will eliminate the complained of discrimination. Finally, the plaintiffs ask the court to declare that the State's real estate tax is unconstitutional to the extent it is used for public school support, and to direct the defendants to enact laws equalizing those taxes on a State-wide basis.	Filed in the Superior Court of Hudson County, New Jersey in early or 1970, a trial was held in late 1971. On Jan. 19, 1972 the court held the New Jersey school finance system denied plaintiffs the equal protection of the laws under both the State and Federal Constitutions and violated the education clause of the State Constitution. An appeal has been taken to the New Jersey State Supreme Court; briefs were submitted this summer and oral arguements are set for the fall. Citation: 287 A. 2d 187.

NEW YORK, Westchester County Andrew Spano, et al. v. Board of Education of Lakeland Central School District No 1.	A property owner and taxpayer, who lives in Westchester County.	The Lakeland School District; the town of Yorktown; the Attorney General, Comptroller, and Commissioner of Taxation and Finance for the State of New York; The State of New York; and the Commissioner of the New York Education Department.	Plaintiff alleges that school districts, such as his, with small tax bases, cannot levy taxes at a rate sufficient to produce the revenue that more affluent school districts reap with minimal tax efforts. Plaintiffs claim that this imbalance violates the constitutional rights of school children to equal protection under the law. Plaintiffs further claim that the State school finance procedure is unconstitutional in that it requires him to pay proproportionately more than his fair share of the burden for supporting education.	Plaintiffs ask the court to declare that the State procedure requiring villages, towns and cities, to raise necessary money for education in their localities violates the equal protection clause of the United States Constitution.	Filed in October 1971, the Supreme Court for the State of New York, County of Westchester found McInnis and Burruss to be controlling while dismissing the precentral value of Serrano and Van Dusartz when it dismissed the case on January 1972. Citation: 328 N.Y.S. 2d 229.
NEW YORK Thompson, et al. v. The State University of New York, et al.	Schoolchildren and their parents.	The University of the State of New York, Commissioner of Education of the State of New York, Comptroller of the State of New York, Commissioners of Taxation and Finance of the State of New York, and the Attorney General of the State of New York.	Plaintiffs allege that the public school financing scheme for the State of New York denies children of the State the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States by continued reliance upon a system which makes expenditures for public school education a function of the local real property wealth of a child's school district, rather than of the wealth of the State as a whole.	Plaintiffs ask the court to declare New York's system for financing public school education unconstitutional under the equal protection clause of the Fourteenth Amendment and to retain jurisdiction pending legislative enactment of an alternative financing system not violative of the Constitution of the United States.	Filed in 1972 in the United States District Court for the Southern District of New York.
OHIO. Franklin County The Ohio Education Association, et al. v. John J. Gilligan, Governor of the State of Ohio, et al.	The Ohio Education Association (a membership organization including 90,000 Ohio teachers) and Public	The Governor, Auditor, and Treasurer of the State of Ohio; the Superintendent of Public Instruction for the State of Ohio; the State	The plaintiffs allege that the Ohio constitution requires that a system of common schools be established for Ohio children and that the equal protection clause of the United States Constitution requires the State to discharge its responsibility on a substantially equal basis for all children in the State. Despite these requirements the State has established a system for financing education which unconstitutionally denies plaintiff school chil-	Plaintiffs ask the court to declare the State system for financing education to be a denial of plaintiffs' constitutional right to equal protection. Plaintiffs ask the court to retain jurisdiction, affording defendants and the legislature of the State of Ohio reasonable time to restructure the	Suit was filed in early December 1971 in the United States District for the Southern District of Ohio, Eastern Division.

LAW SUITS CHALLENGING STATE SCHOOL FINANCE SYSTEMS—Continued

Case	Plaintiffs	Defendants	Claim	Remedy	Status
	Schools students and their taxpaying parents who are residents in the Reynoldsburg School District in Franklin County, Ohio.	Board of Education for the State of Ohio; the Treasurer and Auditor of Franklin County; and the Superintendent of the Reynoldsburg School District for Franklin County.	dren equal educational opportunity in that it (a) makes the education of school age children in Ohio a function of the wealth of their parents and neighbors, (b) makes the education of school age children a function of the geographical accident of the school district in which they reside; (c) provides students living in some school districts a material advantage over students in other school districts; (d) perpetuates marked differences in the extent of educational services, which exist among other public school districts; (e) uses school districts as the unit for allocation of funds despite the fact that they bear no reasonable relationship to the legislative purpose of providing equal educational opportunities.	financing system so as to assure that expenditures for public education will no longer be a function of the wealth of school districts; and should defendants and the legislature fail to restructure the financing system within such a reasonable time, plaintiffs ask the court to regulate the collection of property taxes and apportionment of school funds in satisfaction of the obligations undertaken by the State of Ohio and its constitution in conformity with the equal protection clause of the U.S. Constitution.	
OREGON Olsen, et al. v. State of Oregon, et al.	Schoolchildren, their parents, and School District No. 40, Lane County, Oregon.	State of Oregon; Attorney General, and Superintendent of Public Instruction for the State of Oregon.	Plaintiffs allege that the State has established a financing system for its schools in which the expenditure for every child's education is a function of the taxable wealth per pupil of the school district in which he resides creating widely varying amounts of taxable wealth per pupil of similar age and grade in violation of the equal protection of the laws guaranteed by the Fourteenth Amendment of the Constitution of the United States and the Oregon State Constitution and provisions of the Oregon constitution relating to the establishment of a uniform and general system of common schools within the State.	Plaintiffs ask the court to declare that they have been denied the equal protection of the laws, to order the defendants to refrain from operating the present system of school finance except insofar as absolutely necessary to effect an orderly transition to a valid system for financing schools, and to afford the legislature a reasonable time in which to restructure the financing scheme in compliance with the equal protection guarantees of the Oregon and United States Constitutions.	Filed in early 1972 in the Circuit Court of the State of Oregon for the County of Lane, the State's motion for a continuance pending the outcome in Rodriguez was denied on Aug. 14, 1972. The case has not yet been set for trial.
RHODE ISLAND Doorley, et al. v. Rhode Island, et al.	Mayor of Providence, Rhode Island, schoolchildren, and their taxpaying parents.	State of Rhode Island; Attorney General, Treasurer, Commissioner of the Board of Education, and Members of the Board of Regents of the State of Rhode Island.	Plaintiffs allege that the State financing system violates both the equal protection clause of the Fourteenth Amendment of the United States Constitution and the Constitution of the State of Rhode Island insofar as it renders expenditure for plaintiffs' public education a function of the wealth of the city or town in which each plaintiff resides.	Plaintiffs ask the court to declare that they have been denied the equal protection of the laws of the United States and Rhode Island by the financing system, to order the defendants to refrain from operating the present financing system except insofar as absolutely necessary to effect an orderly transition to a valid system for financing schools, and to afford the defendants and the State legislature reasonable time in which to restrucutre the financing scheme so as to comply with the equal protection clause of the Fourteenth Amendment and the fundamental law and constitution of Rhode Island.	Filed in the United States District Court for the District of Rhode Island on Apr. 6, 1972, the case is still pending.

SOUTH DAKOTA Farmers Educational Cooperative Union of America, et al. v. Kundert, et al.	Schoolchildren, taxpayers, and an organization of South Dakotan farmers and taxpayers.	Auditor, Treasurer, State Superintendent of the Department of Public Instruction, Commissioners of School and Public Lands, and Commissioner of Revenue of the State of South Dakota; county tax assessors, auditors, and treasurers; and school districts.	Plaintiffs contend that they have been denied the equal protection of the laws of the United States and of South Dakota by the financing scheme adopted by the State of South Dakota by denying to plaintiff children cultural and educational opportunities substantially equal to those enjoyed by children attending other public schools in other districts by making the quality of education for school children in South Dakota a function of wealth other than that of the State as a whole in violation of the equal protection clause of the Constitutions of the United States and the State of South Dakota and the right to a general and uniform system of public schools as provided for in the State constitution.	Plaintiffs ask the court to declare that the financing scheme violates the plaintiffs' rights to equal protection of the laws under the constitutions of the United States and South Dakota and that the State has failed to establish a general and uniform system of education throughout the State as required by the State constitution.	Filed in the United States District Court for the District of South Dakota, Southern Division, early 1972.
TEXAS, Austin Janell Guerra, et al. v. Preston H. Smith, Governor of the State of Texas, et al.	Mexican-American children who go to public schools in two Texas school districts, and their parents, who are property taxpayers.	The Governor of Texas; the State Commissioner of Education; and the Texas State Board of Education.	Plaintiffs allege that the Texas and United States Constitutions require the State to maintain a school system on a substantially equal basis for all children in the State. Plaintiffs allege that the State has delegated this responsibility to local school districts and that it has allowed each school district to raise and retain money locally, despite the fact that there are substantial disparities among the school districts with respect to their tax base per pupil. As a direct result of this financing scheme, plaintiffs allege that substantial disparities exist in the amounts of dollars spent per pupil in the various school districts. Plaintiffs claim that the State's financing scheme denies their constitutional right to equal educational opportunity in that it: (a) makes the quality of education a function of the wealth of the children's parents and neighbors, as measured by the tax base of their school district; (b) makes the quality of education a function of the geographical accident of the school district in which plaintiffs reside; (c) fails to take into account the variety of educational needs of the several school districts and of the children therein; (d) provides students living in some school districts material advantages over students in other school districts; (e) fails to provide children of substantially equal age, aptitude, motivation and ability with substantially equal educational resources; (f) perpetuate marked differences in the quality of educational services among the school districts in the State; (g) provides relatively inferior educational opportunity to a disproportionate number of Mexican-American and Negro school children. Plaintiff-taxpayers claim that as a direct result of the State school finance system they are required to pay higher tax rates than taxpayers in other school districts in order to achieve the same or lesser educational opportunities for their children.	Plaintiffs ask the court to declare that they have been denied equal protection of the laws and that the Texas school finance system is void under the United States and Texas Constitutions.	Suit was filed Jan. 28, 1969 in the United States District Court for the Western District of Texas, Austin Division. Defendants moved to dismiss in late 1969, and on July 20, 1971, the court ordered dismissal of the case for failure to state a claim on which relief could be granted. The case is now on appeal before the U.S. Court of Appeals, Fifth Circuit. Briefs have been submitted and oral argument is scheduled for February 1972.

LAW SUITS CHALLENGING STATE SCHOOL FINANCE SYSTEMS—Continued

Case	Plaintiffs	Defendants	Claim	Remedy	Status
TEXAS, Fort Worth, Dallas and Houston. Forth Worth Independent School District et al. v. Dr. J. W. Edgar, Commissioner of Education of the State of Texas et al.	The school districts of Fort Worth, Dallas, and Houston and students and parents from each of these three districts.	The State Board of Education and its Commissioner.	Plaintiffs allege that the operation of the State's foundation plan is illegally and unconstitutionally exacting the amount of the local contribution from plaintiff school districts. The State's minimum foundation statute requires that the local contribution be calculated according to its taxpaying ability, and plaintiffs claim that their contribution has not been calculated in that manner, but rather, in a manner that is not uniform and which discriminates against them and which, therefore, violates both their rights to equal protection and to due process under the United States Constitution and their rights under the fundamental laws and constitution of Texas.	Plaintiffs ask the court to declare the manner by which local taxpaying ability is determined to be unconstitutional and to order the defendants to calculate uniformly local contributions to minimum foundation grants on the basis of each local district's taxpaying ability.	Filed in the United States District Court, Northern District of Texas, Fort Worth Division. Now pending before a three-judge court.
TEXAS, San Antonio Demetrio P. Rodriquez, et al. v. San Antonio Independent School District, et al.	Public school children and their taxpaying parents in the Edgewood Independent School District area which is located within the city limits of San Antonio, Bexar County, Texas. All of the plaintiffs are Americans of Mexican descent.	The Texas State Board of Education and its Commissioner; the Attorney General of the State of Texas; the Bexar County School Trustees; and the eight school districts located in the City of San Antonio, Texas.	Plaintiffs allege that the Texas Constitution requires the State to support a free public school system. Plaintiffs allege that the system established by the State to support free public education denies them equal educational opportunity in that (a) it makes the quality of education received by the plaintiffs a function of the wealth of their parents and neighbors as measured by the property values of the school district in which they reside; (b) it provides students, living in school districts other than Edgewood, with material advantages for education; (c) it provides plaintiffs, who are of substantially equal age, aptitude, motivation and ability with substantially inferior educational resources than children in defendant school districts other than Edgewood; (d) it perpetuates marked differences in the quality of educational services; (e) it discriminates against Mexican-American school children.	Plaintiffs ask the court (a) to declare that the State's system for financing schools has denied them equal protection of the laws of the United States and Texas Constitutions and is therefore void; (b) to preliminarily and permanently enjoin the enforcement of those Texas statutes which establish the State's system for financing schools; (c) to retain jurisdiction of this action, affording defendants and the legislature a reasonable time in which to restructure the school finance system so as to provide substantially equal educational opportunity as required by the equal protection clause of the Fourteenth Amendment to the United States Constitution and Article I, Section 3 of the Texas Constitution; (d) alternatively, to order that the defendant school districts in Bexar County be abolished and that the County School Trustees establish new boundary lines for school district or districts of approximately equal taxable property per child.	Suit was filed in the fall of 1969 in the United States District Court of the Western District of Texas, San Antonio Division. A three-judge court was empanelled and on Oct. 15, 1969, it overruled the defendants' motion to dismiss. Action on the case was delayed in 1969 and 1970; on Dec. 23, 1971, the court declared the Texas system unconstitutional and ordered it corrected by 1973. On June 7, 1972, the Supreme Court noted probable jurisdiction; briefs were submitted this summer and oral arguments will be held in the October 1972 term. Citation: 337 F. Supp. 280.

VIRGINIA, Bath County Burrus, et al. v, Wilkerson, et al.	Students in public schools of Bath County; taxpayers in Bath County.	Public school and finance officials of the State of Virginia; Clerk of the House of Delegates of Virginia.	Plaintiffs claim that they are denied equal protection of the law by State laws creating substantial disparities in quality of, and facilities for, education provided in Bath County as compared to other areas of the State. Students and taxpayers of Bath County, where 46% of the residents earn less than $3,000 a year, request an end to educational discrimination related to their poverty. They allege that the education finance system discriminates against them by preventing them from the raising of local tax revenues adequate to provide minimal educational opportunity even while their tax rates are set at the legal ceiling. In addition, they allege discrimination in that the State's educational aid supplements are related to the locality's education spending from local tax sources, a factor actually increasing total education resource disparities between school districts. Plaintiffs further allege that the system fails to take into account the added costs necessary to provide substantially equal educational opportunities—buildings, equipment, teachers, books, curriculum—in their rural areas. They state that the Virginia legislature has not made positive attempts to deal with expenditure disparities within the State.	Plaintiffs ask the court to declare the State formulae for apportionment of education monies unconstitutional and to retain jurisdiction of the action in order to give the legislature a reasonable time to reapportion funds in such a way as to meet equal protection requirements and to direct reapportioning if the legislature fails to act.	A three-judge Federal court in the Western District of Virginia dismissed the case, citing the McInnis v. Ogilvie decision. The U.S. Supreme Court summarily affirmed the district court opinion. Citation: 310 F. Supp. 572, 397 U.S.C. 44.
WASHINGTON Northshore School District, et al. v. Kinnear, et al.	Schoolchildren, their parents, and school districts.	Director—Department of Revenue, the Department of Revenue, State Superintendent of Public Instruction, Treasurer, and members of the Board of Education of the State of Washington; and the State of Washington.	Plaintiffs allege that as a direct result of the State school financing scheme, which makes the quality of every child's public education a function of the taxable wealth, per pupil, of the school district in which he resides, substantial disparities among the State school districts exist in the dollar amount spent per pupil and therefore in the quality and extent of available educational opportunities as well as in the rate of taxes which must be paid for the same or lesser educational opportunities in violation of the State's duty to provide for the ample provision of education and of the State of Washington's and the United States' constitutional provisions guaranteeing equal educational opportunity.	Plaintiffs ask the court to declare the financing system void as repugnant to the equal protection clause of the Fourteenth Amendment of the United States Constitution and the Constitution of the State of Washington and to direct the defendants to reallocate the funds available for the financial support of the school system consistent with equal protection guarantees or—in the alternative—to retain jurisdiction affording defendants and the legislature a reasonable time to restructure the school finance system consistent with the United States and Washington Constitutions.	Filed in April 1972 in the State Supreme Court which is granted original jurisdiction in the matter because of a State procedural rule allowing for appellate jurisdiction in actions against State officers. Still pending, the Northshore School District has been struck as one of the party plaintiffs.

LAW SUITS CHALLENGING STATE SCHOOL FINANCE SYSTEMS—Continued

Case	Plaintiffs	Defendants	Claim	Remedy	Status
WISCONSIN Bedard, et al. v. Warren, et al.	Schoolchildren and their tax-paying parents.	Attorney General, Treasurer, and Superintendent of Public Instruction of the State of Wisconsin; Superintendent of Schools and President of the Board of Education, Wauwatosa, Wisconsin.	Plaintiffs allege that the Wisconsin system of school finance violates the equal protection clause of the Fourteenth Amendment of the Constitution of the United States by making the expenditure for every child's public education a function of the taxable wealth per pupil of the school district in which he resides and producing widely varying amounts of taxable wealth per pupil.	Plaintiffs ask the court to declare that they have been denied the equal protection of the laws of the United States by the present method of funding public primary and secondary education in Wisconsin, that such system is void under the Fourteenth Amendment, and that the defendants and the legislature must restructure the finance system within a reasonable period of time consistent with the equal protection clause.	Filed in late 1971, in the United States District Court for the Western District of Wisconsin. A motion to stay further proceedings is currently under advisement.
WISCONSIN Net Worth Tax League v. State of Wisconsin, et al.	Taxpayers organization.	State of Wisconsin; Superintendent of Public Schools, Auditor, and Treasurer of the State of Wisconsin.	Plaintiff alleges that the Wisconsin system of school finance with its reliance on the property tax as its revenue source is unconstitutional under the Fourteenth Amendment of the United States Constitution because it invidiously discriminates (a) between schoolchildren in the amount of money spent on their education depending on the property values of their neighborhood, (b) against persons on social security whose income therefrom has not increased proportionately with the rise in their property taxes, and (c) against property owners and renters who do not have children in the public school but who must still pay taxes for public education.	Plaintiffs ask the court to declare the Wisconsin system of financing schools and education from property tax revenues unconstitutional under the Fourteenth Amendment to the United States Constitution and to order that the defendants refrain from operating under such a system.	Filed in the United States District Court for the District of Wisconsin, Eastern Division, Milwaukee, Wisconsin, on Mar. 7, 1972.
WISCONSIN, Milwaukee Justus A. Stovall, et al. v. City of Milwaukee, et al.	Public School children and their taxpaying parents from the City of Milwaukee.	The City of Milwaukee and its Mayor, School Board and Superintendent of Schools; the County of Milwaukee; the State of Wisconsin, and its Governor, Attorney General, and Superintendent of Public Instruction.	Plaintiffs allege that the Wisconsin statute authorizing the financing of public schools for the State of Wisconsin creates a system which relies in large part on local property tax and that the financing scheme causes substantial disparities among individual school districts in the amount of revenue avaialble per pupil for each district's educational programs. Plainti fs claim that this financing system fails to meet the requirements of the equal protection clause of the Fourteenth Amendment in that (a) it makes the quality fo education for school age children a function of the wealth of their parents and other tax payers in their school district; (b) it makes the quality of education a function of the geographic accident of the school district in which children reside; (c) it fails to take account of the variety of educational needs of school districts; (d) it provides students living in some school districts with material advantages over students in other school districts; (e) it fails to provide children of substantially equal age, aptitude, movitation, and ability with equal educational resources; (f) it perpetuates marked differences in the quality of educational services available to school districts; (g) it uses a unit (school districts) for allocation of educational funds which bears no reasonable relationship to the state legislative purposes for providing equal educational opportunity; (h) it creates a system in which numerous minority children reside in school districts which provide relatively inferior educational opportunity; (i) it creates a situation in which plaintiff-taxpayers are required to pay a higher tax rate than taxpayers in other school districts in order to obtain the same or lesser educational opportunity for their children.	Plaintiffs ask the court to declare that the system for financing public schools in Wisconsin is unconstutitional and void under the equal protection clause of the United States Constitution. Plaintiffs ask the court to enjoin the defendants from enforcing the present system for raising and distributing funds for education.	Filed in the Wisconsin Circuit Court for Milwaukee in late November 1971, the case is still pending but may not be heard until after the United States Supreme Court has ruled in Rodriguez.

WISCONSIN, Racine Bellow, et al. v. the State of Wisconsin, et al.	Students in public schools and their parents.	State of Wisconsin, its Treasurer, and the Superintendent of Public Instruction.	Plaintiffs allege that as a result of the delegation of the power to tax to various State subdivisions created without uniformity of tax base, and the manner of appropriation to the various divisions of sums of money in the State school fund, substantial disparities exist in the quality and extent of public education available in the several school districts of the State. They also allege that State aid fails to compensate to any extent for substantial differences in needs of the school districts, for the varying conditions of school facilities, or for the varying costs of those districts, particularly the extreme expense of providing educational opportunities to those children who live in the extremely disadvantaged urban areas.	Plaintiffs ask that the legislature be given reasonable time to reapportion school districts and that the court make appropriate apportionment of State funds if the legislature fails to act.	Filed in 1969 in Wisconsin State Court (Dane County Circuit Court). Prosecution of the suit has been delayed indefinitely due to lack of funds.
WYOMING, Hinkle, et al. v. Sweetwater County Planning Commission for Organization of School Districts, et al.	Citizens and taxpayers of redistricted school district.	State and county committees charged with the function of redistricting school districts.	Plaintiffs contend that as citizens and taxpayers they have suffered injury by having their school district redistricted by the county commission in an effort to equalize State educational opportunities in a manner neither part of any efficient administrative unit nor promulgated with primary consideration to the education, convenience, or welfare of their children.	Plaintiffs ask the court to invalidate the plan adopted for redistricting school districts.	The lower State court remanded the issue to the State committee with instructions to reject the proposed redistricting plan. On appeal, the Supreme Court of the State of Wyoming in an advisory opinion held that the gerrymandering of districts to provide equalized revenue sources was unsatisfactory as a solution to the problem of fiscal disparities between school districts based upon the constitutional arguments of Serrano and directed the State Legislature to restructure the State educational finance system. Citation: 491 P. 2d 1238.

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