

Courts Split on School Finance Issue

by Jody George

In two landmark legal efforts in the early 1970s, parents challenged the funding of school systems near Pasadena, California, and San Antonio, Texas. In *Serrano v. Priest*, the California Supreme Court ruled that the reliance on local property taxes to fund California school systems violated the federal constitution. The Texas action, brought in federal district court, reached the U.S. Supreme Court on appeal before *Serrano*, also appealed to the nation's highest court.

In 1972, The U.S. Supreme Court ruled against the Mexican-American parents from Texas in *San Antonio Independent School District v. Rodriguez*.¹ In reaching its decision, the Court relied upon two important legal principles.

First, the Court said that the U.S. Constitution does not guarantee the right to an education, as it does to rights such as free speech and privacy. Second, the Court said that the Texas school finance system did not violate the equal protection clause of the 14th Amendment. It conceded that the system was imperfect. But it refused to become involved because "direct control over decisions concerning the education of one's children is a need that is strongly felt in our society."²

The Supreme Court's decision in *Rodriguez* foreclosed the use of the *federal* courts for school finance challenges, such as the *Serrano* appeal. After 1972, state courts became the arena for addressing the extent of constitutional guarantees of equal funding in education. State courts have found that funding disparities in school finance systems violated state constitutions. Most successful suits have had two factors in their favor.

First, they have been brought on the basis of state equal protection clauses or state education clauses, which 49 states have. The applicable provision in the North Carolina Constitution reads: "The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools . . ." (Art. IX, Sect. 2). It is comparable with the education provisions in other state constitutions, some of which require "thorough," "efficient," "suitable," or "adequate" systems of free public

schools. The New Jersey Constitution, for example, says: "The legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years" (Art. 8, Sect. 4).

In *Horton v. Meskill*, the Connecticut Supreme Court found that the state's school finance system violated the state constitution's *equal protection clause*.³ The Court said that state constitutional equal protection provisions, while substantially equivalent to the federal equal protection clause, possess an independent vitality. It thus found unconstitutional the Connecticut school finance system, which depends primarily on the local tax base without regard to the ability of towns to finance an educational program.

Second, in successful suits, the factual records generally have been more extensive. As D. C. Long says in "Rodriguez: The State Courts Respond" (*Phi Delta Kappan*, March 1983, pp. 481-484): "Plaintiffs meticulously documented how state school finance systems discriminated against school children as a result of the fiscal capacity of the school district—a factor that has nothing to do with education. They also documented the ways in which inequalities in financing resulted in unequal educational facilities, staff, course offerings, equipment, and instructional materials."

These courts were concerned that taxpayers in property-poor districts paid higher tax *rates* for education than taxpayers in property-rich districts. Because the higher tax rates generated revenues in comparatively small amounts, property-poor towns could not afford to spend for the education of their pupils, on a per-pupil basis, the same amounts that the rich towns could. Furthermore, the courts often found that the state foundation programs did not adequately *equalize* the amounts available to individual districts. (continued)

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Table 1. Courts That Found Disparities in School Finance Unconstitutional

Language of the Court	Applicable Language in the State Constitution
<p>1. California: <i>Serrano v. Priest</i>, 5 Cal. 3d 584, 487 P2d 1241 (1971) (Serrano I); subsequent opinion, 18 Cal. 3d 728, 557 P2d 929 (1976) (Serrano II): Discrimination in educational opportunity on basis of district wealth involves a suspect classification and education is a fundamental interest. School financing system violated equal protection guarantees of state constitution by conditioning availability of school revenues upon district wealth, with resultant disparities in school revenue, and by making quality of education dependent upon level of district expenditure.</p>	<p>Art 1, §7: "A person may not be deprived of life, liberty or property without due process of law or denied equal protection of the laws." Art. 9, §5: "The legislature shall provide for a system of common schools."</p>
<p>2. Connecticut: <i>Horton v. Meskill</i>, 172 Conn. 615, 376 A2d 359 (1977), affirming 31 Conn. Supp. 377, 322 A2d 813 (Hartford County Superior Court, 1974): Education is a fundamental right, and pupils in the public schools are entitled to equal enjoyment of that right. Thus, a system which depends primarily on local tax base without regard to disparity in the financial ability of towns to finance an educational program and with no significant equalizing state support cannot pass test of strict judicial scrutiny and cannot meet state constitutional requirement of equal educational opportunity.</p>	<p>Art. VIII, §1: "There shall always be free public elementary and secondary schools in the state." Art. I, §20 "No person shall be denied the equal protection of the law nor be subjected to segregation or discrimination in the exercise or enjoyment of his civil or political rights because of religion, race, color, ancestry or national origin."</p>
<p>3. New Jersey: <i>Robinson v. Cahill</i>, 62 NJ 473, 303 A2d 273 (1973): The equal protection clause dictates statewide uniformity in the rudimentary scheme of local government. If the state chooses to enlist local government to meet the state's obligation to support a thorough and efficient system of free public schools, it must do so in terms which will fulfill that obligation. The New Jersey system which relies heavily on property taxes to furnish approximately 67% of public school costs, and which leads to great disparity in dollar input per pupil, is violative of the state education clause.</p>	<p>Art. 8, §4 ¶1: "The legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years." Art. 1 ¶1: "All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness." Art. 8 §1 ¶1: "Property shall be assessed for taxation under general laws and by uniform rules."</p>
<p>4. Washington: <i>Seattle School District No. 1 of King County, Washington v. State of Washington</i>, 90 Wash. 2d 476, 585 P2d 71 (1978): The ultimate obligation to the constitutional mandate that the state make ample provision for the basic education of all resident children through a general and uniform system of schools rests upon the legislature. The legislature meets this obligation only if sufficient funds, derived through dependable and regular tax sources are provided; not by authorizing school districts to submit special excess levy requests. Evidence concerning school district's salary scale, staffing, ratios, nonsalaried costs and state funding was insufficient to provide for basic education within the district under any suggested definition of basic education.</p>	<p>Art. 9 §1: "It is the paramount duty of the state to make ample provision for the education of all children residing within its borders." Art. 9, §2: "The legislature shall provide for a general and uniform system of public schools."</p>
<p>5. Wyoming: <i>Washakie County School District No. 1 v. Herschler</i>, 606 P2d 310, (1980), reh'g den. 606 P2d 340 (1980), cert. den. 499 U.S. 824 (1980): State's system of school financing, based principally on local property taxes, whereby property-richer school districts uniformly had more revenue per student than property-poorer ones, was unconstitutional in that it failed to afford equal protection in violation of state constitution.</p>	<p>Art. 1, §34: "All laws of a general nature shall have a uniform operation." Art. 7, §1: "The legislature shall provide for the establishment and maintenance of a complete and uniform system of public education, embracing free elementary schools of every needed kind and grade, . . ."</p>

Not all state courts have found that disparities in school finance violate state constitutions. Some have been unwilling to become involved in school finance issues. Georgia and New York are examples. The Georgia Supreme Court concluded that the state school finance system provided unequal educational opportunities to children in low-wealth districts; nevertheless it said that the Georgia Constitution afforded no relief.⁴ The New York Court of Appeals, though it denied the plaintiffs' claim, conceded that the New York school finance scheme produces "great and disabling and handicapping disparities in educational opportunities across our state."⁵

The major reason for sustaining inequitable financing schemes has been the preservation of local control. For example, the Ohio Supreme Court

found local control to be a rational basis for upholding Ohio's system of financing elementary and secondary education. The Ohio court said that "by local control, we mean not only the freedom to devote more money to the education of one's children but also control over participation in the decision-making process as to how these local tax dollars are to be spent."⁶ The Oregon Supreme Court said that "assuming there are alternative systems of financing education which would eliminate some of the inequalities in the present system and retain and enhance local control, the present system of financing is not invalid."⁷

In cases where state supreme courts have struck down school finance systems, most have ordered the state legislature to find a solution, subject to

Table 2. Courts That Found Disparities in School Finances Did Not Violate State Constitutions

Language of the Court:	Applicable Language in the State Constitution:
<p>1. Arizona: <i>Shofstall v. Hollins</i>, 110 Ariz. 88, 515 P2d 590 (1973): The state constitution establishes education as a fundamental right of pupils between ages of six and 21 years and assures every child a basic education. The mere fact that state's school financing system reflects disparity of wealth among school districts does not deny equal protection to students and taxpayers in poorer districts. As long as the financing system meets the educational mandates of the constitution, it need otherwise be only rational, reasonable, and neither discriminatory nor capricious to meet the equal protection requirements of the state and federal constitutions.</p>	<p>Art. XI, §1: "The legislature shall enact such laws as shall provide for the establishment and maintenance of a general and uniform public school system."</p> <p>Art. II, § 13: "No law shall be enacted granting to any citizen, class of citizens, or corporations, municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations."</p>
<p>2. Colorado: <i>Lujan v. Colorado State Board of Education</i>, 649 P2d 1005 (1982): Local control is the objective of state's school finance system. Notwithstanding the fact that disparities in school finance system could lead to low-wealth districts having less fiscal control than wealthier districts, such result did not warrant striking down the entire system as in violation of the state equal protection clause. The education clause in the state constitution requires thorough and uniform educational opportunities but does not prevent a local school district from providing additional educational opportunities beyond such standard. Although representative form of government and democratic society may benefit to a greater degree from a public school system in which each school district spends exact dollar amount per student with eye toward financing identical education for all, such are considerations and goals which properly lie within legislative domain.</p>	<p>Art. 2, §25: "No person shall be deprived of life, liberty, or property, without due process of law." Art. 9, §2: "The general assembly shall provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state."</p>
<p>3. Georgia: <i>McDaniel v. Thomas</i>, 248 Ga. 632, 285 SE2d 156 (1981): The adequate education provisions of the state constitution do not restrict local school districts from doing what they can to improve educational opportunity, nor do they require the state to equalize educational opportunity between districts. As long as low wealth districts provide each child with an opportunity to acquire the minimum basic skills necessary for the enjoyment of rights of speech and of full participation in the political process, they do not fail to provide an adequate education. Because the school finance system bears some rational relationship to the legitimate state purpose of providing basic educational funding to children, it does not violate the state equal protection clause.</p>	<p>Art. 8, §1: "The provision of an adequate education for the citizens shall be a primary obligation of the State of Georgia, the expense of which shall be provided for by taxation."</p>

judicial review. Some have ordered the legislature to define the educational opportunity mandated by the state constitution. In a bold and unusual step, the New Jersey court ordered the legislature to levy a new income tax to support the increased costs of reform.⁸

In a recent decision, a Connecticut court took the process one step further. Seven years after the *Horton v. Meskill* decision (see discussion above), the court ruled that the state's public school finance system remains unconstitutional. This decision demonstrates the willingness of a court to get involved in the *enforcement of remedies* designed to provide equal education opportunities. As John Augenblick, former director of the Education Finance Center of the Education Commission of the States, told *Education Week*, "What makes

the Connecticut decision important is that when the court goes as far as it does and orders some remedy, it obviously means it, and wants to see something happen."⁹ □

FOOTNOTES

¹411 U.S. 1 (1972).

²*Ibid*, page 49.

³See cite to Connecticut case in accompanying Table 1.

⁴See cite to Georgia case in accompanying Table 2.

⁵*Board of Education, Levittown Union Free School District v. Nyquist*, Slip Opinion, p. 21 (N.Y. Court of Appeals, 1982).

⁶*Board of Education of the City School District of Cincinnati v. Walter*, 390 NE 2d 813, at 820.

⁷*Olsen v. State*, 554 P2d 139, at 148.

⁸See cite to *Robinson v. Cahill* under "New Jersey" in the accompanying Table 1.

⁹Foster, Susan, "Funding Equalization Is Ordered Again for Connecticut Schools," *Education Week*, May 9, 1984, p. 1.

4. **New York:** *Board of Education, Levittown Union Free School District v. Nyquist*, 94 Misc. 2d 466, 408 N.Y.S. 2d 606 (Nassau County Supreme Court, 1978); *aff'd.*, 443 N.Y.S. 2d 843 (App. Div. 1981); *rev'd.* No. 317, Op. Slip (N.Y. Court of Appeals, 23 June 1982): Preservation and promotion of local control of education was both legitimate state interest and one to which present financing system was reasonably related. Thus present statutory prescriptions for state aid to local school districts for maintenance and support of public elementary and secondary education — premised on local taxation within individual school districts with supplemental aid allocated in accordance with legislatively approved formulas and plans — do not violate the equal protection clause of the state constitution. Statewide \$360-per-pupil flat grant provided by state aid legislation was immune from attack under equal protection clause since on its face there was no inequality in per-pupil distribution of state aid allocated to all school districts without differentiation. Education article mandate that legislature provide for a system of free common schools was being met in New York, in which average per-pupil expenditure exceeded that in all other states but two. And since decisions as to how public funds will be allocated are matters peculiarly appropriate to legislature, the present school financing system does not violate the education provision in the state constitution.

5. **Ohio:** *Board of Education of the City School District, etc. v. Walter*, 58 Ohio St. 2d 368, 390 NE 2d 813 (1979), *cert. den.*, 444 U.S. 1015 (1980): Although the Ohio system of school financing is built upon the principle of local control, resulting in unequal expenditures between children who live in different school districts, the disparity is not so irrational as to be an unconstitutional violation of the state equal protection and benefit clauses. The system also did not violate the provisions of the state constitution which requires the General Assembly to secure a thorough and efficient system of common schools. It has long been an established principle of law that courts do not interfere in political or legislative matters, except in those instances where legislative enactments violate the basic law.

6. **Oregon:** *Olsen v. State*, 276 Or. 9, 554 P2d 139 (1976): Local control is the state's objective in maintaining the present system of school finance. The fact that some school districts have less local control than others because of the disparity in the value of the property in the district did not lead to the conclusion that the equal rights clause of the state constitution had been violated. Nor did it violate the provision in the state constitution requiring a uniform system of schools. The financing system does not totally deprive the children of the poorest district of an education or of the use of some of the tools and programs believed to enhance education.

Art. 11, §1: "The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated." Art. I, §11: No person shall be denied the equal protection of the laws of this state or any subdivision thereof."

Art. I, §2: "All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary." Art. XI, §2: "The general assembly shall make such provisions, by taxation or otherwise, as, with the income arising from the school target fund, will secure a thorough and efficient system of common schools throughout the state."

Art. VIII, §3: "The Legislative Assembly shall provide by law for the establishment of a uniform, and general system of common schools." Art. I, §20: "No law shall be passed granting to any citizen or class of citizens, privileges or immunities, which, upon the same terms, shall equally belong to all citizens."