TABLE OF CONTENTS

TABLE OF CITATIONS

CASES:

BRIEF OF COMMONWEALTH OF PENNSYLVANIA AS AMICUS CURIAE

I. INTEREST OF AMICUS CURIAE

The Commonwealth of Pennsylvania maintains one of the largest public school systems in the nation and is responsible for the education of over 2.3 million children. As in other states, Pennsylvania has experienced severe problems in school financing. Certain local school boards have been forced to stretch education dollars by firing teachers, eliminating summer school, curtailing athletic programs and other outside activities, and by extending school holidays. The Commonwealth is committed to solving these problems, and the direction of the reforms is inextricably bound to the issues presented in the instant appeal.

The Attorneys General of approximately 30 states have joined in a brief in support of the jurisdictional statement filed by appellants. That brief states that ". . . [i]n consequence of time limitations *amici* have not been able to secure the joinder in this brief of all forty-nine of the American states with systems of school finance inconsistent with the supposed constitional principle" (Brief of Amici Curiae in Support of Jurisdictional Statement, at 1-2, footnote omitted).

Pennsylvania feels compelled to file its own brief because its views are not represented by the brief

filed in support of appellants. Amicus believes that to continue to maintain a viable public school system and to make public education available to everyone without discrimination, a system must be devised which provides:

> quality education for every child regardless of his place of residence;
>
> a rational method of school finance to assure the necessary resources;
>
> equity of tax burden on citizens of the state; and
>
> local control over educational matters where appropriate.

Although a local school district in Pennsylvania derives almost half of its revenues from the state, three-fourths of the local tax burden consists of real estate taxes. See *Statistical Report of the Secretary of Education for the School Year Ending June 30, 1969* (1970); *Our Schools Today* (Pa. Dept. of Education, No. 10, 1971); *A Measurement of Local Effort* (1972).

Because of this heavy reliance on real estate taxes, inequities exist in the educational resources available to public school students due to variations in the local property tax bases upon which local school districts must rely to support their schools.

A Department of Education survey indicates significant discrepancies exist between the wealthiest and poorest school districts, with extremes of property tax bases of from $454,055 of property available per student in one district to $4,926 available in an-

other and per pupil expenditures ranging from $1,406.27 to $661.47.

Amicus is in the process of examining the school finance problems in the Commonwealth and a special commission is being appointed to completely review the situation. We are confident that the financial problems and inequities resulting from the present local property tax system can be obviated without great social or administrative difficulty. However, Pennsylvania's reforms, designed to resolve these financial problems, are being obstructed by the uncertainty of the recent cases applying the equal protection clause to school financing.

These reforms could take many directions. Methods of tax equalization could be refined to take greater account of such problems as sparcity or density of population, poverty, and differences in instructional expense. The Pennsylvania legislature has recently dealt with similar school financing and tax equalization dilemmas. See, e.g., Act of August 18, 1971, P. L. , No. 88, 24 P.S. §25-2501, et seq. As another alternative, Governor Milton J. Shapp has proposed an innovative program for the establishment of a National Education Trust Fund by the federal government to subsidize local and state educational expenditures.

However, due to the ever increasing uncertainties and confusion prevalent in the lower federal and state courts on the issue of the application of the equal protection clause to school financing, it has become imperative for this Court to hear and resolve the issues.

Equal educational opportunity is not a reality today. The Commonwealth of Pennsylvania, possesses

a vital interest in working toward this goal. It believes the principle of "fiscal neutrality," as defined by the three-judge court below is a salutory one, and one which does not involve the judiciary in the intricacies of affirmatively requiring that expenditures be made in a certain manner or amount. Rather, the states are left free to ". . . adopt the financial scheme desired so long as variations in wealth among the governmentality chosen units do not affect spending for education of any child." *Rodriguez v. San Antonio Independent School District,* 387 F. Supp. 280, 284 (1971).

II. ARGUMENT

THE QUESTION PRESENTED IN THIS APPEAL CONCERNS CRITICAL AND COMPLEX ISSUES WHICH DEMAND TO BE RESOLVED BY THIS COURT

Serious and urgent issues are involved in the instant appeal which should be heard. This Court is no stranger to these issues, see *McInnis v. Shapiro,* 293 F. Supp. 327 (N.D. Ill. 1968), aff'd. mem. sub nom., *McInnis v. Ogelvie,* 394 U.S. 322 (1969); *Buruss v. Wilkerson,* 310 F. Supp. 572 (W.D. Va. 1969), aff'd. mem. 397 U.S. 44 (1970), and considerable confusion exists about the significance of this Court's memorandum affirmances in those cases. Compare *Rodriguez v. San Antonio Independent School District,* supra, 337 F. Supp. at 283, and *Van Dusartz v. Hatfield,* 334 F. Supp. 870, 875 (D. Minn. 1971), with *Spano v. Board of Education of Lake and Central School District,* 328 N.Y.S. 2d 229, 231 (Sup. Ct., West. Co., 1972).*

* The subject has also been the source of much scholarly debate. See, e.g., *J. Coons, W. Clune, S. Sugarman, Private Wealth and Public Education* (1970); *A. E. Wise, Rich Schools, Poor Schools; The Promise of Equal Educational Opportunity* (1968); Horowitz & Neitring, *Equal Protection Aspects of Inequalities in Public Education and in Public Assistance Programs from Place to Place Within a State,* 15 *U.C.L.A. L. Rev.* 787 (1968); Horowitz, *Unseparate But Un-*

In light of this confusion and the urgent nature of the educational crisis confronting Pennsylvania today, and because state efforts to cope with these problems will be unnecessarily hindered by multiple lawsuits, this Court should hear this appeal.

Delay will only further exacerbate our educational crisis, and the sooner the constitutional dimensions of the problem are resolved, the sooner reforms can begin in this most important area of state and local governmental responsibility. As this court stated in the now familiar passage of the landmark decision in *Brown v. Board of Education,* 347 U.S. 483 (1954):

> 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 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.

---

equal—The Emerging Fourteenth Amendment Issue in Public School Education, 13 *U.C.L.A. L. Rev.* 1147 (1966); Kirp, *The Poor, The Schools and Equal Protection,* 38 *Harv. Educ. Rev.* 635 (1968); Kurland, *Equal Educational Opportunity; The Limits of Constitutional Jurisprudence Undefined,* 35 *U. Chi. L. Rev.* 583 (1968); Schoettle, *The Equal Protection Clause in Public Education,* 71 *Colum. L. Rev.* 1355 (1971); Silard & White, *Intrastate Inequalities in Public Education: The Case for Judicial Relief Under the Equal Protection Clause,* 1970 *Wis. L. Rev.* 7; Note, *Equality of Educational Opportunity: Are "Compensatory Programs" Constitutionally Required,* 42 S. Cal. L. Rev. 146 (1969).

> 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.
>
> Id. at 493. (Emphasis added.)

The importance of the issue cannot be gainsaid. Yet, in their brief amici for appellants raise questions in shotgun fashion concerning federal jurisdiction and the applicability of the doctrine of abstention, in an attempt to persuade this Court to decide this appeal by summary reversal. It is earnestly submitted that such a cursory disposal of so vital a matter, affecting the school systems of forty-nine states, would merely perpetuate the already burgeoning confusion noted above, and also would be contrary to well established principles of abstention and federal jurisdiction.

(a) This appeal is not an appropriate case to exercise the doctrine of federal court abstention.

Amici for appellants criticize the Texas three-judge court for not considering the applicability of the abstention doctrine, as recently articulated by this Court in *Askew v. Hargrove,* 401 U.S. 476 (1971).

A close examination of *Askew* demonstrates that the instant case differs in many significant respects. In *Askew,* this Court invoked abstention because it

was informed by counsel during oral argument that a state court proceeding had been filed attacking Florida's school financing system *solely* on the basis of state law and the Florida constitution. In these circumstances, the Court quite properly chose to refrain from acting because of the pendency of primarily state law claims under the Florida constitution, which claims, if sustained, would obviate the necessity of determining the Fourteenth Amendment question.

No such "state law" suit is pending in Texas in the instant case. Abstention is not necessary in every case where a federal court is faced with a question of local law. See, *Reetz v. Bozanich,* 397 U.S. 82 (1970). This Court has often stressed that abstention was applicable ". . . only in narrowly limited 'special circumstances'." *Zwickler v. Koota,* 389 U.S. 241, 248 (1967) (citing *Proper v. Clark,* 337 U.S. 472, 492 (1949)). The abstention doctrine is a judicially created rule which involves duplication of effort, expense, and an attendant delay, see *England v. Louisiana State Board,* 375 U.S. 411 (1964), and should be applied only where ". . . the issue of state law is uncertain." *Harman v. Forssenius,* 380 U.S. 528, 534 (1965). The classic case in that tradition is where ". . . the nub of the whole controversy may be the state constitution. . . ." *Reetz v. Bozanich,* supra, 397 U.S. at 87 (1970).

Whatever else may be said about the present litigation, the nub of the issue is not the constitution of the state of Texas, or a "unique resource," of that state. Id. at 87. Rather, vitally important questions are involved concerning the scope of the Fourteenth

Amendment, the validity and "suspect" nature of wealth-based classifications, and the "fundamental" quality of education in forty-nine states of this Republic.

(b) Adequate federal jurisdiction exists to hear and decide the controversy presented by this appeal.

The three-judge court below, convened pursuant to 28 U.S.C. §2281, determined it possessed jurisdiction to hear this suit pursuant to 28 U.S.C. §§1331 and 1343. The court's ruling in this issue was clearly correct, and is contested only by amici for appellants.

Plaintiffs below, in this complaint, raised a substantial federal question arising under the Constitution; specifically, whether the school financing system of the State of Texas violates their constitutionally protected right to equal protection under the law in that that system allegedly makes the quality of education afforded children dependent on the wealth of their individual district rather than the wealth of the state as a whole.

Sufficient state action is present to satisfy 28 U.S.C. §1343, for the school districts are unquestionably administrative units of the State of Texas, as they are in Pennsylvania and the other forty-nine states with similar systems. Any challenge to the jurisdiction of this Court is frivolous.

(c) The Court should not be deterred from hearing this appeal because of the spectre of administrative and educational chaos raised by amici for appellants.

Amici for appellants stress that for this Court to hear this case would run counter ". . . to seven centuries of Anglo-American history . . ." and be an ". . . unparalled affront to the fundamental principles of government. . . ." (Brief of Amici Curiae in Support of Jurisdictional Statement at 22). Further, it is argued that irreparable damage will be done to the political institutions and processes of all but one of the States, with concomitant administrative and social disruptions, such as drastic reductions in educational expenditures, wholesale teacher firings, disruptions, and teacher strikes. Id. at 3.

The Commonwealth of Pennsylvania does not share this gloomy, cataclysmic view. Everyone involved in this appeal, as well as professional educators and men charged with the responsibility of government throughout the country, recognize that a crisis exists in our public schools, especially with regard to financing. We must be prepared to explore new and more appropriate methods of revitalizing our educational system. Responsibility for implementing the changes required by fiscal neutrality should be left with the states.

However, to term such adjustments as "impossible" and the advent of "socialized education" obscures the far more difficult constitutional questions of whether a "fundamental" right is involved and what standard

for evaluating the pertinent state interests should be invoked.

The administrative burdens created by ultimately affirming the principle of fiscal neutrality adopted by the court below would not be unduly onerous. Formulas involving density and sparcity can be incorporated into the tax structure, and alternative revenue producing sources can be found.

CONCLUSION

Because of the vast importance of the question presented by this appeal, and its suitability for judicial action, your amicus, the Commonwealth of Pennsylvania, respectfully urges this Court to forestall further needless litigation and conflict and resolve the ever increasing confusion in the lower courts and the state courts by noting probable jurisdiction and setting the appeal for argument. Only then will the states be able to formulate meaningful plans for dealing with the problem.

Respectfully submitted,

J. SHANE CREAMER
Attorney General
LAWRENCE T. HOYLE, JR.
ALEXANDER KERR
Deputy Attorneys General
Counsel for the Commonmonwealth of Pennsylvania and Governor Milton J. Shapp