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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

NO. 71-1332

SAN ANTONIO INDEPENDENT SCHOOL DISTRICT, ET AL.,
Appellants,

v.

DEMETRIO P. RODRIGUEZ, ET AL.,
Appellees.

On Appeal from the United States District Court for the Western District of Texas

REPLY BRIEF FOR APPELLANTS

The arguments presented by appellees and their friends are the arguments that have been advanced by the advocates of reform in the literature on this subject that has developed in the last few years. They were anticipated by appellants in our main brief and, we think, adequately disposed of there. Only a few points need be made by way of reply.

1. The first of these points is to make clear again what this case is *not* about, for some of the arguments presented in support of the judgment below go to issues that are not now before the Court.

The issue is not whether children in some Texas districts receive less than an adequate education. Plaintiffs did not seriously claim below, nor did the District Court find, that Texas has failed to provide them with an adequate education.

Nor, despite some contention by plaintiffs (Appellees Brief 15), is this a case in which a state has imposed an arbitrary limit that makes it impossible for

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some districts to spend as much as they would like on education. It is true, as plaintiffs point out, that the maximum rate for school maintenance is $1.50 per $100 valuation, TEXAS EDUCATION CODE § 20.04(d) (App. 330), although additional taxes can be levied to retire bonds, *id.* § 20.04(b) (App. 330). In 1969-70 the rate for school maintenance taxes in the Edgewood District was 55¢ (App. 174).[1] It will be time enough to consider whether Texas can validly limit the tax rate for school maintenance when some district is taxing to the limit and complains because it cannot tax more.

The imperfections and anomalies in the formulae by which the state assists public education, on which we commented in our initial submission (Appellants Brief 11), are also not the issue. Those defects are under intensive review in Texas and the observations about them by amici are quite pertinent (Serranos Brief 16 n. 2), but amici concede "it is not this part of the finance scheme which gives rise to the system's unconstitutionality" (Serranos Brief 15).

What the case *is* about is that Texas, like every other state, allows local school districts to tax in order to provide money for their schools in excess of that made available under the state foundation program and that the districts vary widely in the amount of property within them subject to the ad valorem tax. The constitutionality of this long-established and universally practiced means of financing public education raises an important question for this Court. Thus it is rather surprising to find the briefs for the plaintiffs and for two of the principal amici approaching the case as if it were an automobile accident case in which the appel-

[1]The figure of $1.05 shown at Appellees Brief 14 is the combined rate, on an equalized basis, for both maintenance and bonds. (App. 226).

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late court is confined to the record below in determining whether there is support for a jury verdict.

Defendants are repeatedly accused of having "largely ignored the record" (Appellees Brief 8), of relying on arguments that were not presented below (ACLU Brief 13, 18; NAACP Brief 8, 9, 15), and of seeking to "retry this case *de novo*" (Appellees Brief 43). The suggestion that no evidence was presented below contesting the plaintiffs' assumptions that "quality is money" and that individual poverty coincides with district poverty is simply wrong, as we shall show.[2] To the charge that we have called the attention of the Court to material that "pertains to States other than Texas" (NAACP Brief 10; see also ACLU Brief 28) and that the phrase "quality is money" comes from "a book, rather than from anything in the record of this case" (NAACP Brief 14) we cheerfully plead guilty.[3] As the lengthy list of amici on both sides indi-

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[2]Pp. 4-6 below.

The further suggestion by an amicus that defendants were derelict for failing to comment in our trial brief on the questions we had put to a witness for plaintiffs raising one of these points (NAACP Brief 12) reflects an unfamiliarity with the course of the proceedings below. Although this case had been pending since 1968, the prepared testimony of plaintiffs' experts was not furnished to defendants until October 5, 1971 (Appellees Brief 7). On that day, as the docket entry reflects (App. 8), the court ordered all discovery to be completed within 30 days and ordered defendants' trial brief filed by November 15th. The depositions then taken were not transcribed and filed until dates ranging from November 22nd to December 7th (App. 8-9). Defendants protested this unusual schedule vociferously in their trial brief, observing that "the lengthy cross-examination by Defendants is not yet ready for use in either preparing this brief nor is it likely to be ready sufficiently in time for the Court to give it ample consideration prior to the hearing on the merits in this case" (Defendants Trial Brief 3).

[3]But cf. the testimony of Professor Berke that "dollar expenditures are probably the best way of measuring the quality of education afforded students * * *" (Berke Deposition 10).

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cates, this case is of nationwide significance. In giving a reading to the Fourteenth Amendment that can be applied in 50 states,[4] we assume that the Court will continue in the tradition well-established at least since *Muller* v. *Oregon,* 208 U.S. 412, 419-421 (1908), that it will not consider itself bound by the conclusions Professor Berke draws from his sample of data, and that its vision will not be limited to a comparison of Edgewood with Alamo Heights.

2. We devoted some attention in our initial submission to the assumptions that "quality is money" and that district poverty can be equated with individual poverty (Appellants Brief 16-25). On both of these points there is conflicting evidence in the record. Professor Berke testified that dollar expenditures are the best way of measuring quality.[5] Assistant Commissioner Graham, a witness for defendant, was asked whether the quality of education that students in various school districts receive could be determined merely on the basis of the amount of funds spent per student, and replied: "No, I don't think you can determine it merely on the amount of money spent per student, no" (Graham Deposition 38). After developing at some length his thesis that other factors are involved, he concluded by saying "it is not just necessarily the money, no. It is how wisely you spend it" (Graham

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[4] A decision by the United States Supreme Court, however, attempting to differentiate among the states, would be entirely inappropriate. It would be most unwise to have basically similar state systems held invalid or valid depending on where the state's poor lived, or more accurately, depending on judges' views of the difficult statistical analysis demonstrating a correlation between poor people and poor school districts.

Goldstein, *Interdistrict Inequalities in School Financing: A Critical Analysis of* Serrano *v.* Priest *and Its Progeny,* 120 U.PA.L.REV. 504, 525 (1972).

[5] Berke Deposition 10, quoted note 3 above.

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Deposition 39).[6] The judgment below assumes that money is the measure of quality but it made no finding on this point. Professor Coons and his associates recognize that they can do no more than "assume" that dollars are a reasonable measure of quality. COONS, CLUNE, & SUGARMAN, PRIVATE WEALTH AND PUBLIC EDUCATION 30 (1970). We have already presented to the Court data from many responsible sources casting grave doubt on that assumption and suggesting that beyond some minimum there is reason to believe that there is no relation between expenditures and quality of education.[7]

The trial court did find a relation between family income and market value per pupil of taxable property

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[6]Amici are correct that our further citation of the Stockton deposition on this point was inadvertent (Serranos Brief 20).

[7]Appellants Brief 16-20.

Other studies that have subsequently come to our attention are to the same effect. BROOKINGS INSTITUTION, SETTING NATIONAL PRIORITIES: THE 1973 BUDGET 357 (1972): "The statistical tests that have been performed seem to indicate that school resources do not have much independent effect on school achievement, after controlling for other factors." Averich et al., *How Effective is Schooling? A Critical Review and Synthesis of Research Findings*, FINAL REPORT TO THE PRESIDENT'S COMMISSION ON SCHOOL FINANCE 155 (RAND Corporation, 1971): "Finally, the educational practices for which school systems have traditionally been willing to pay a premium do not appear to make a major difference in student outcomes. Teachers' experience and teachers' advanced degrees, the two basic factors that determine salary, are not clearly related to student achievement. Reduction in class size, a favorite high-priority reform in the eyes of many school systems, seems not to be related to student outcomes."

To the objection that the evidence we have cited on this point deals only with test scores and the attainment of cognitive skills (NEA Brief 31-32; Serranos Brief 26-27), we note that this is the measure used also by the Rand Corporation in its report of the President's Commission on School Finance, from which we have just quoted, because research efforts on non-cognitive outcomes "are sparse and largely inconclusive and offer little guidance with respect to what is effective." *Id.* at ix.

See also generally Finn & Lenkowsky, *"Serrano" vs. the People*, COMMENTARY, September 1972, at 68.

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(337 F.Supp. at 282, App. 262). The only evidence in the record on the point is the table prepared by Professor Berke (App. 198-200; reproduced also at Appellants Brief 21).[8] Although he concludes from his data that a relation is adequately demonstrated by looking only to the small number of districts in the groups at each extreme, the propriety of ignoring the data from the much greater number of districts in the three middle groups was challenged in the defendants' cross-examination of him (Berke Deposition 26; see also *id.* at 29-30). As we have shown the Court, an independent scholar, reviewing the same data, has concluded: "At the least, the study does not support the affirmative correlation of poor school districts and poor people stated by the court and the affiant * * *" (Appellants Brief 21, quoting Professor Goldstein).[9] Other studies made in Kansas and California also refute the notion of a correlation between poor people and "poor" districts (Appellants Brief 22-23).

The important point about these matters is that it is essential to plaintiffs' thesis that these two assump-

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[8]Appellees twice say that Dr. Stockton, a witness for defendants, "testified that a district's assessed valuation is a reasonably accurate measure of income within a district" (Appellees Brief 13; id. at 43). In fact Dr. Stockton was asked whether the assessed valuation figures give an accurate picture of "the taxpaying ability" of a district. He answered that it was "reasonably accurate" because taxes have to be paid out of income and it is no longer true that we can "measure how much income a person had for paying taxes by the amount of property he had" (Stockton Deposition 21).

[9]Correlation is a matter of precise calculation rather than of conclusion by an expert. The data on which Professor Berke relied do show a very positive correlation, 0.973, between market value of taxable property per pupil and state and local revenues per pupil. They show a negative correlation, though less complete, of –0.663 between percentage of minority students and revenues per pupil. The correlation, however, between family income and revenues per pupil is only 0.064, suggesting that there is no direct relation between educational spending and family wealth.

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tions be accepted as true. It is not essential to defendants' position that they be regarded as false. Even if they were true, it would not impair our legal arguments for the rationality of the Texas system and that rationality is all that we need demonstrate. To the extent that they are uncertain, and this is the best that so far can be said of them, they indicate that this is an area in which legislatures must be left free to decide which group of social scientists to believe and that a constitutional mandate cannot be rested on them. Thus it is surprising to read that we have invited "this Court definitively to settle the extraordinarily complex dispute about money and achievement" (NAACP Brief 14; see also ACLU Brief 28). That is precisely what we think the Court cannot and should not attempt to do—but what it would have to do to affirm the judgment below. We submit that so long as these assumptions "remain fighting matters among those concerned about these things" (Appellants Brief 25) the Court should remain out of this thorny fiscal and educational thicket. Legislatures that accept the assumptions would be free to act upon them. Those that share our agnosticism[10] on the point would remain free to provide each district with the minimum number of dollars necessary to ensure an adequate education while allowing districts to decide for themselves whether they find these assumptions persuasive.

3. Plaintiffs and their friends virtually ignore *Gordon* v. *Lance,* 403 U.S. 1 (1971), *Lindsey* v. *Normet,* 405 U.S. 56 (1972) and *Jefferson* v. *Hackney,* 92 S.Ct. 724 (1972). The significance of these recent and authoritative decisions has already been discussed by

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[10] Social science has much to say about the cost/quality problem but the net effect is agnosticism.

Coons, Clune, & Sugarman, *A First Appraisal of Serrano,* 2 YALE REV. OF LAW & SOCIAL ACTION 111, 114 (1971).

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us (Appellants Brief 31-35). Our opponents do attempt to distinguish *Dandridge* v. *Williams,* 397 U.S. 471 (1970), and *James* v. *Valtierra,* 402 U.S. 137 (1971), though on grounds that are likely to be good for this day and train only. The deprecation of welfare as "a form of governmental largesse" (Appellees Brief 30), of housing as "a purely economic interest" (Appellees Brief 41-42), and of the two together as merely "commonplace interests" (Serranos Brief 33) is hardly likely to represent the view of plaintiffs, or of the groups that support them, once the demands of advocacy in this litigation are behind them. This Court, by contrast, has said that welfare "involves the most basic economic needs of impoverished human beings," *Dandridge,* 397 U.S. at 485, and it has refused to "denigrate the importance of decent, safe and sanitary housing." *Lindsey,* 405 U.S. at 74.

With almost all of the comments in the briefs of the other side about the importance of education we agree.[11] But the implication that anything that is important is "fundamental" in the constitutional sense is refuted by *Dandridge, Lindsey,* and *Jefferson.* Indeed it would lead to the astonishing result that a legislature is subject to critical scrutiny and must satisfy the "compel-

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[11]The suggestion, however, by one group of amici that except for New York, which requires in its constitution that the state provide for welfare, education is the only service that is constitutionally mandated by the states (Governors Brief 10, 1a-3a) is incorrect, as the most cursory reference to INDEX DIGEST OF STATE CONSTITUTIONS (2d ed. 1959) demonstrates. The following are illustrative examples, chosen from many that are available, of state services specifically mandated by various state constitutions: public health (Alaska Const., Art. 7, § 4; Michigan Const., Art. 4, § 51); parks (Missouri Const., Art. 3, § 47); welfare (Alaska Const., Art. 1, § 5); public libraries (Michigan Const., Art. 8, § 9); highways (Louisiana Const., Art. 6, § 19; Minnesota Const., Article 16, §§ 1, 2; West Virginia Const., Good Roads Amendment of 1920).

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ling state interest'' test whenever it legislates except on unimportant matters.

A critic who is surely not unfriendly to the position argued for by plaintiffs in this case has undercut the argument that education is ''fundamental,'' in a sense in which welfare and housing are not, and thus entitled to greater constitutional protection. He points out that poor children living in crowded housing neither sleep well nor have a place to do their homework and that often they come to school exhausted and fall asleep in class. He further observes that children from poor families go to school hungry and lack the physical stamina to concentrate on their work and participate in school activities. Schoettle, *The Equal Protection Clause in Public Education,* 71 COL.L.REV. 1355, 1389-1390 (1971). He cites others who have concluded that to improve educational achievement additional public monies should not be spent within the schools but should be allocated to improving the home and neighborhood environment. *Id.* at 1391 n. 226. See also *id.* at 1399. To the extent that this is true—and the force of the contention is obvious—the same arguments about education being ''fundamental'' that are here offered in support of more dollars for teachers in ''poor'' districts would have been available to change the results in *Dandridge, James, Lindsey,* and *Jefferson.*[13]

In an effort to avoid the force of the recent cases and establish a basis on which to find education ''funda-

[13]Judge Friendly links the welfare and the education cases together as examples of cases that ''involve a confrontation of right against right, and require a decision that is essentially political. * * * In many of these cases, perhaps even in most, anyone who truly thinks that either the words or the spirit of the Fourteenth Amendment cast any real light is indulging in dangerous self-deception.'' Friendly, *The ''Law of the Circuit'' and All That,* 46 ST. JOHN'S L.REV. 406, 410 (1972).

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mental," plaintiffs and those who support them endeavor to convert education into a First Amendment right (Appellees Brief 31-35; Flournoy Brief 2-4; Mayor and City Council of Baltimore Brief 22-25; Serranos Brief 32-42). There is a distinction that they have failed to grasp:

> When the effect of state action is total deprivation of the service to the individual, whatever fundamental aspects of the service exist are necessarily eliminated. On the other hand, where a service is only impaired rather than totally withheld, it would seem necessary to determine whether or not the impairment does affect the basis of the fundamentality of the service.

Goldstein, *Interdistrict Inequalities in School Financing: A Critical Analysis of* Serrano *v.* Priest *and Its Progeny,* 120 U.PA.L.REV. 504, 534 (1972). One can agree with Thomas Jefferson,[13] as this Court did only last spring, that "some degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system * * *," *Wisconsin* v. *Yoder,* 92 S.Ct. 1526, 1536 (1972), without having to agree that the failure of the state to provide more than the foundation program it now finances has any effect on the ability of students to participate in the political process or to enjoy a First Amendment "right to read." This Court's phrase, "some degree of education," was hardly inadvertent. Several pages later the Court said that there is nothing to indicate that Jefferson had in mind "compulsory education through any fixed age beyond a basic education." 92 S.Ct. at 1538. A basic education may well be necessary in order to enjoy First Amendment rights and thus be "fundamental" but the issue here is whether there is

[13]Jefferson is relied on in Appellees Brief 32, Flournoy Brief 3, and NEA Brief 18-19.

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a "fundamental" interest in a more expensive education than the basic education Texas already provides. The discussion of the First Amendment implications perceived in this case fails to meet that point.[14]

4. Plaintiffs and their friends urge this Court to affirm the judgment below merely by finding the present Texas system of school finance invalid without indicating what plan of financing schools would satisfy the principle of "fiscal neutrality," should that now be found in the small print of the Equal Protection Clause. In large measure this is sound counsel. To the extent that there are a variety of plans that would meet that test, choice among them must surely be for the legislatures. But we earnestly submit that there is one choice among remedies that the Court must now consider because its resolution has a strong impact in determining whether Proposition I is, as the court below ruled, a constitutional requirement. This is whether "district power equalizing" would be a permissible response. The authors of Proposition I, not surprisingly, find the answer to the question of the constitutionality of "district power equalizing" to be "simple indeed" (Serranos Brief 55-56). Others of our opponents are noncommittal (Appellees Brief 50-51; NEA Brief 35-37; Mayor and City Council of Baltimore Brief 28). As we pointed out in our

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[14]The same analysis also disposes of the argument that education is "fundamental" because it is compulsory (Appellees Brief 29). That argument has been adequately dealt with in the literature. Brest, *Book Review,* 23 STAN.L.REV. 591, 605 (1971); Goldstein, *Interdistrict Inequalities in School Financing: A Critical Analysis of* Serrano *v.* Priest *and Its Progeny,* 120 U.PA.L.REV. 504, 538-540 (1972). See particularly *id.* at 540:

> A child compelled to go to a poor school (rather than not compelled to go to school at all) is not hurt by that compulsion vis-à-vis another child compelled to go to a better school. He is only hurt by that compulsion if that poor school is worse than no school.

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initial submission, Professor Coons and his associates seem to have persuaded no one except themselves that "district power equalizing" is constitutional (Appellants Brief 44-46).

If "district power equalizing" would itself be unconstitutional, because a child's "fundamental" interest in having as many dollars spent on him as on other children similarly situated elsewhere in the state would be dependent on a vote of his neighbors, then the only permissible solution would be determination on a statewide basis of the allocation of funds. The state could take objective factors into account (Appellants Brief 15) but local choice would be irrelevant and no district would be free to supplement the state subvention from its own resources. If this is what fiscal neutrality requires, local control and local choice would be gone, and, as amici have pointed out, "apparently everyone on both sides is in agreement" on the importance of local control and the undesirability of imposing on the states a constitutional straitjacket that would prevent localities from spending additional sums on education as they see fit (Serranos Brief 49). Because plantiffs concede that Texas has "a strong interest in decentralizing educational decision-making" (Appellees Brief 50), a principle that would destroy that interest can hardly be constitutionally required.

But there is equal difficulty for plaintiffs' position if it is assumed that "district power equalizing" would be permissible. The arguments now advanced in support of the proposition that fiscal neutrality in education is required by the Constitution would become greatly attenuated, if indeed they would not disappear altogether. The case would then be one to establish taxpayer equity rather than educational equity. Wise, *School Finance Equalization Lawsuits: A Model Leg-*

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islative Response, 2 YALE REV. OF LAW & SOCIAL ACTION 123, 124 (1971); Schoettle, *The Equal Protection Clause in Public Education,* 71 COL.L.REV. 1355, 1405-1409 (1971).

> Viewed from the perspective of the child and his family's interest in equal education, the current system and district power equalizing suffer the same inadequacies. Neither is a wealth classification; they are both residence classifications in their actual effects. To the extent that expenditures are related to educational quality, the child receives a poorer education whether he lives in a poor district or simply one that undervalues education.
>
> Since the court's equal wealth standard allows for these continued educational disparities, the essential concern of *Serrano* is not the school child but the taxpayer. The California court has spawned a new, but perhaps logically inevitable corollary to Proposition I: The *economic burden* of public education may not be a function of wealth other than the wealth of the state as a whole. As such the principle of *Serrano* cannot realistically be limited to education, but applies to all burdens of taxation.

Goldstein, *Interdistrict Inequalities in School Financing: A Critical Analysis of* Serrano *v.* Priest *and Its Progeny,* 120 U.PA.L.REV. 504, 543-544 (1972).[15]

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[15]A further difficulty with "district power equalizing" and an additional reason why it is unrealistic to regard it as an alternative to full state funding is that it assumes a uniform state assessment system, something that only a handful of states now have. There is no way of assuring that power has been equalized without an accurate and uniform measure of power. Thus, the states would be required either to destroy totally local fiscal control of school expenditures or to destroy totally local control of property tax assessments and collections. Either choice would be a deep intrusion into the traditional powers of local government.

This implication has not been lost on those who are pushing Proposition I. Mrs. Sarah Carey, Assistant Director of the Lawyers Committee for Civil Rights under Law, told the Sen-

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If it is assumed that "district power equalizing" would pass constitutional muster, all of the reasons presented in an effort to show that there is a "fundamental" right to equal educational expenditures become irrelevant. The children in Edgewood would still have less spent on them than the children in Alamo Heights if this were the choice of the voters in the two districts. The only effect would be to ease the burden of increased expenditures on taxpayers in districts with assessed valuation below the state median. This is hardly consistent with the arguments that a "fundamental" right of children is at stake. "* * * [F]undamental rights may not be submitted to vote; they depend on the outcome of no elections." *West Virginia State Board of Education* v. *Barnette,* 319 U.S. 624, 638 (1943). The attempts to distinguish education from police, fire, sewers, and other services provided by local government would fail. Once the case is recognized as involving the economic burden on taxpayers, rather than supposed educational disadvantages to children, there would be no basis for limiting the principle to the school tax rather than extending it to all municipal taxes. Finally, the arguments that children deserve special protection from this Court because they do not have the right to vote and are not adequately represented by the vote of their parents (Appellees Brief 52-55; Serranos Brief 42-45) would also pass from the case, since the interest of the children would

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ate Committee on Equal Educational Opportunity that "a State that seeks to equalize local tax efforts, to require property rich communities to provide increased contributions to a state fund that will, in turn, be used to support property poor communities, will face a second set of equal protection challenges unless at the same time it equalizes the manner in which its property taxes are assessed and collected." *Hearings Before the Select Committee on Equal Education Opportunity, United States Senate,* 92d Cong., 1st Sess., at 6876 (1971).

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still be dependent on the votes of their parents and neighbors.

This is the dilemma that confronted the framers of Proposition I. This is the reason that the courts that have accepted that proposition have murmured comfortingly that a wide variety of financing plans are consistent with it without undertaking to specify what they are (Appellants Brief 14). To accept "district power equalizing" is to make the case a taxpayers' case rather than a school children's case. To reject "district power equalizing" is to destroy the widely accepted interest in local choice and local control. Either horn of the dilemma makes Proposition I a very unappealing one for a court, and one very difficult to bring within the framework of past decisions. Yet there is no *tertium quid*. Either "district power equalizing" would be consistent with the Equal Protection Clause or it would not. A court cannot responsibly weigh the arguments for or against fiscal neutrality until it has faced up to this dilemma.

5. Plaintiffs make the quite surprising suggestion that the Texas system does not assure a minimum educational program (Appellants Brief 17-18, 47). Because of this, it is desirable to look more closely at what it is that Texas does.

The foundation program allots to each district one classroom teacher for every 25 students (with slightly different provisions for very small school districts). TEXAS EDUCATION CODE § 16.13 (App. 285). For every 20 classroom teachers, one special service teacher (librarian, school nurse, school physician, visiting teacher, or itinerant teacher) is provided. *Id.*, § 16.15 (App. 287). One principal is provided for the first 20 classroom teachers and an additional principal for each additional 30 classroom teachers, with further provision

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for part-time principals. *Id.*, § 16.18 (App. 292). If the district has a four-year high school, it is allotted a superintendent. *Id.*, § 16.19 (App. 293). Supervisors and counselors are provided, based on the number of classroom teachers. *Id.*, § 16.17 (App. 291). Additional provision is made for vocational teachers, *id.*, § 16.14 (App. 286), and for professional personnel for special education of children who are physically handicapped, mentally retarded, emotionally disturbed, or who have a language or learning disability. *Id.*, § 16.16 (App. 288). The state specifies minimum qualifications and minimum salaries for teachers. *Id.*, §§ 16.301 *et seq.* (App. 294-305). It provides funds toward operating costs beyond salaries at the rate of $660 per teacher. *Id.*, § 16.45 (App. 306). It makes allotments for transportation of students. *Id.*, §§ 16.51 *et seq.* (App. 306-311). Eighty percent of the money to pay for these positions and services comes from the state but the allocation to districts is made on a formula that takes into account the ability of districts to pay their share. *Id.*, §§ 16.71 *et seq.* (App. 311-320). In some districts the state pays as much as 98% of the cost of the foundation program while in districts with greater ability to pay the state contribution is less than 80% (Graham Deposition 67).

The financing provisions are important—but they are far from all that Texas does to be sure that every child in the state receives an adequate education. The state provides free textbooks for all public school children. *Id.*, § 12.01. The state has created regional media and service centers to make available to schools in an area facilities and services that would be too costly for individual school districts to provide. *Id.*, §§ 11.32, 11.33. The state accredits public schools, *id.*, § 11.26(5), and has established elaborate regulations with which schools must comply to be accredited. TEXAS EDUCATION

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AGENCY, PRINCIPLES AND STANDARDS FOR ACCREDITING ELEMENTARY AND SECONDARY SCHOOLS (Bulletin 560 Revised, 1970).

The state program is far from perfect, but it does guarantee an adequate education to every child. Indeed to describe it as a minimum program is to underestimate what Texas does.[16] Beyond the state program, each district is left free to spend more money as its resources and its desires indicate. This, we submit, is a rational plan for financing public education and meets the test of the Fourteenth Amendment.

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[16] I would like to say that I don't think it is a minimum program any longer. I think it is a basic program, because the Legislature in its wisdom has expanded vocational education tremendously. It has expanded special education tremendously, and it has provided other services in the Foundation Program that were not in the Foundation Program originally. So I personally now, while I certainly don't consider it the maximum program, I would prefer to call it a basic program.
Graham Deposition 15-16.

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CERTIFICATE OF SERVICE

I, Pat Bailey, one of the attorneys for the Appellants, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 22nd day of September, 1972, I served three copies of the foregoing Reply Brief for Appellants upon the Appellees by depositing same in the United States Mail, postage prepaid, and addressed to Appellees' attorneys of record as follows: Mr. Arthur Gochman, 313 Travis Park West, 711 Navarro, San Antonio, Texas 78224, and Mr. Mario Obledo, 145 9th Street, San Francisco, California 94103.

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