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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**

MOTION FOR LEAVE TO FILE BRIEF FOR

MAYOR AND CITY COUNCIL OF BALTIMORE,
MARYLAND, A MUNICIPAL CORPORATION

CITY OF EAST ORANGE, NEW JERSEY

CITY OF JERSEY CITY, NEW JERSEY

CITY OF PATERSON, NEW JERSEY

CITY OF PLAINFIELD, NEW JERSEY

AMERICAN FEDERATION OF LABOR-CONGRESS OF
INDUSTRIAL ORGANIZATIONS

AMERICAN FEDERATION OF TEACHERS, AFL-CIO
COUNCIL OF GREAT CITY SCHOOLS

INTERNATIONAL UNION, AMERICAN FEDERATION OF
STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO

INTERNATIONAL UNION, UNITED AUTOMOBILE WORKERS

THE LEAGUE OF WOMEN VOTERS OF THE UNITED STATES

THE NATIONAL URBAN COALITION

THE NATIONAL URBAN LEAGUE

THE EDUCATION FINANCE REFORM PROJECT

THE LEAGUE OF WOMEN VOTERS OF TEXAS

AS AMICI CURIAE IN SUPPORT OF THE DECISION BELOW

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The undersigned cities and urban interest organizations respectfully move for leave to file the accompanying brief in support of the decision below.*

Appellants' own brief and the *amicus* brief filed by certain suburban interests profess great concern for the effect of the decision below on the needs of the Nation's central city schools.** The undersigned agree that the decision in this case will affect millions of central city school children, as well as the cities in which they live, but they believe that interests as important as these should not be heard through surrogate spokesmen. This is particularly so where, as here, the surrogates have interests adverse to the cities. The Nation's cities and other urban interests can and do speak for themselves. And they must do so, for lack of funds for urban schools worsens the most urgent of the cities' other problems—poverty, crime, unemployment, racial tension, drug abuse, blighted neighborhoods and the flight to the suburbs of business and the white middle class.

This brief is filed to ensure that the Court has the benefit of the views of those directly affected, views decidedly contrary to those of appellants and the suburban surrogates.

The interests of Amici and their reasons for requesting leave to file are as follows:

1. The New Jersey cities of Jersey City, Paterson, Plainfield, and East Orange and the City of Baltimore, Maryland have been given the responsibility by their

* The undersigned are authorized to state that counsel for appellants do not object to the filing of this brief, and that counsel for appellees consent to its filing.

** Brief for Appellants, pp. 41-42; Amicus Brief for Montgomery County, et al., pp. 83-95.

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respective states to provide a public education for 300,000 pupils, yet have not been provided sufficient state funds for this purpose. As a result these children are compelled to attend schools with overcrowded classrooms, insufficient textbooks, and outdated physical facilities. The New Jersey cities are plaintiffs in the case of *Robinson v. Cahill*, L-18704-69 (Super. Ct., Hudson County, filed Feb. 17, 1970), in which they established that their children are being discriminated against by "gross inadequacies tied to fiscal inadequacies." The Mayor and City Council of Baltimore, Maryland are plaintiffs in the case of *Parker v. Mandel*, C.A. No. 71-1089-H (D.C.D. Md.) in which they have challenged the system used by the State of Maryland to finance public education on the ground that it makes the expenditure for each child's education a function of the wealth of the child's parents and neighbors as measured by the taxable wealth of the district in which the child resides.

2. The American Federation of Labor-Congress of Industrial Organizations is a federation of 122 national and international labor organizations having a total membership of approximately 12,500,000. The American labor movement has throughout its history sought maximum educational opportunity for all children. Unions played a major role in the establishment of public schools early in the 19th century and have continuously worked for the extension and improvement of public education. This case directly involves the quality of schooling and the integrity of the public education concept in theory and in practice throughout the United States.

3. The American Federation of Teachers is a voluntary association of education workers, which was

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founded in 1916. It has more than 275,000 members throughout the United States. The purpose of the organization is to elevate the character and advance the interests of the occupation of teaching and to promote the cause of education in the United States. In furtherance of this purpose, AFT has long worked to ensure the adequate and equitable financing of public education throughout the nation. The AFT has worked for more than a half century to provide for equal educational opportunity for all American children. The present case deals with the application of the Equal Protection Clause to state allocation of resources to school children, an issue which has major implications for the financing of public education in every American community. For all these reasons the American Federation of Teachers joins in presenting this brief.

4. The Council of Great City Schools, incorporated in 1961 as a nonprofit organization, is comprised of twenty-three of the largest city school districts in the United States. Member cities include Atlanta, Baltimore, Boston, Buffalo, Chicago, Cleveland, Dallas, Denver, Detroit, Houston, Los Angeles, Memphis, Minneapolis, Milwaukee, New York, Oakland, Philadelphia, Pittsburgh, Portland, St. Louis, San Diego, San Francisco and Washington, D. C. The activities of the Council are governed by a board of directors composed of one member of the Board of Education and the Superintendent of Schools from each participating city. The organization seeks to meet the comprehensive public school needs and to improve every facet of education in its member cities. A major concern of the Council has been the increasing disparities in financial support to education in urban centers as compared to suburban areas. It believes that such

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discriminatory treatment of urban centers threatens to severely handicap vast numbers of city school children in the cities it represents.

5. The International Union, American Federation of State, County and Municipal Employees now represents more than a half million employees of state and local governments throughout the nation. It is deeply devoted to social reforms and improved social justice for the poor and particularly the urban minorities adversely affected by our prevailing system of funding our public education.

6. The International Union, United Automobile Workers and its nearly one and a half million industrial-worker members are vitally interested in quality public education for all our children. Having long supported the interests of the disadvantaged and the poor, UAW believes strongly in equality of educational opportunity and believes that a public education system built on inequality plainly violates fundamental constitutional guarantees.

7. The League of Women Voters is a non-partisan organization whose purpose is to encourage the informed and active participation of all citizens in government and politics. It is open to all women citizens 18 years or older, and has a membership of 157,000 in more than 1,275 Leagues in all 50 states, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands. From its inception in 1920 the League has worked at national, state and local levels on various governmental issues selected by the members for study, decision and action. In 1936 the Na-

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tional League published a study entitled, *School Finance and School Districts*, which stated :

“Long years of public discussion have brought agreement that free public education is essential to the well-being of a Democracy, that government has a right to tax the wealth of all to provide schools, that the state should offer all children equal educational opportunities, and that it can compel attendance for the period fixed by law.”

Since 1964, concerted attention has been directed to the goal of equal opportunity. At every level of government, League members are working toward this goal, striving to achieve an American society in which all children will have equality of opportunity in access to education with the further benefits of economic settlement and greater participation in the mainstream of American life.

8. The National Urban Coalition, a private non-profit corporation whose goal is the revitalization of America's cities, has established as one of its major objectives the extension of quality education, particularly to those students from disadvantaged backgrounds. Essential to this task is the removal of the gross inequities resulting from State education finance formulas which presently favor suburban areas at the expense of urban centers. The present case challenges the education financing system of the State of Texas. However, the factual pattern which the case presents and the important constitutional issues it raises extend to metropolitan centers across the nation. It is for this reason—because of the importance of this case to the future of American urban education—that the Nation-

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al Urban Coalition requests leave of this Court to file the attached brief.

9. The National Urban League, as the oldest non-profit, non-partisan human rights organization in the nation, has waged a sixty-year campaign on the historical Four Horsemen Apocalypse that rides through the urban black ghettos of America—Poverty, Racism, Illiteracy and Neglect. In focussing on the amelioration of prevailing economic conditions in the black community, the National Urban League believes that the quality of a child's education should necessarily not depend on the neighborhood in which his parents reside, nor must the nature of that education remain subject to the capriciousness of local wealth.

10. The Education Finance Reform Project (EFRP) was founded in California for the purpose of examining the evidence regarding the effect of school finance proposals from the perspective of Blacks. The fundamental principle upon which the Project is based is the belief that the allocation of educational opportunity among children is more important than the allocation of money among districts.

While EFRP is premised on the assumption that money alone will not enhance educational opportunities, additional funding is critically required for programs which will do so. In pursuit of this objective, EFRP is doing legislative and legal research, analysis of school statistics, and organizing and training community people to set up local conferences to discuss and explain the issues.

11. The League of Women Voters of Texas is a non-partisan voluntary organization, embracing Texas' 42

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local chapters with an aggregate membership of approximately 4,200 Texas citizens. It is affiliated with the League of Women Voters of the United States. The general purpose of the League is to encourage informed and active participation of citizens in democratic governmental processes. To this end, the League has undertaken numerous studies on issues of public interest and has taken action as a result of these studies, including appearance as *amicus curiae* in judicial proceedings involving important public questions. Among the subjects to which the national, state and local Leagues have devoted extensive study is the impact of inequality in employment, education and housing in the United States, Texas and local municipalities. The League has concluded that lack of equal opportunity in education is of fundamental importance to the problems of poverty, employment, welfare, and the entire aspect of participation in our governmental processes among large segments of the population. This, in turn, underlies the overriding national problem of poverty among large segments of the population. In January, 1969, the League stated that its members believe that all levels of government share with other levels of government the responsibility to provide equality of opportunity in education, employment and housing for all persons in the United States. The Texas League is currently engaged in an intense study of alternative methods of financing public schools in Texas.

* * *

Because the present case, however it is decided, will have an important effect upon millions of central city school children and on the cities in which they live, and because affirmance of the decision below is essential if the states are to be freed to allocate scarce educational resources according to educational criteria rather than

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arbitrarily in accord with local assessed property valuations, the undersigned request leave to file the accompanying brief.

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<i>Hollins v. Shofstall</i> , No. C-253652 (Super. Ct. Maricopa Co. Ariz., Jan. 13, 1972)	20
<i>Pierce v. Society of Sisters</i> , 268 U.S. 510 (1925)	23
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<i>Robinson v. Cahill</i> , 118 N.J. Super. 223, 287 A.2d 187 (1972)	20
<i>Schilb v. Kuebel</i> , 404 U.S. 357 (1971)	21
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<i>Sweetwater Co. Planning Comm. v. Hinkle</i> , 491 P.2d 1234 (Wyo. 1971)	20
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<i>Van Dusartz v. Hatfield</i> , 334 F. Supp. 870 (D. Minn. (1971))	20
<i>Wisconsin v. Yoder</i> , — U.S. —, 32 L.ed 15 (1972)	23

OTHER AUTHORITIES:

Advisor, Comm. on Intergovernmental Relations, Metropolitan Disparities—A Second Reading, table III (1970), derived from Bureau of the Census, Census of Business 1958, vol. II, Census of Business 1963, vol. II, and Census of Business 1968, vol. II	7
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Berke & Callahan, <i>Serrano v. Priest</i> : Milestone or Millstone, 21 Journal of Public Law (1972)	13, 16
Black, The Unfinished Business of the Warren Court, 46 Washington Law Review (1970)	23
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Bureau of the Census, Local Government Finances in Selected Metropolitan Areas and Large Counties, 1969-70, (1971)	14
Bureau of the Census, 1962 Census of Governments, Taxable Property Values	2a
—, 1967 Census of Governments, Taxable Property Values	2a
Bureau of the Census, Trends in Social and Economic Conditions in Metropolitan Areas, Current Population Rep., ser. P-23, No. 27 (Feb. 1969)	7
J. S. Coleman, et al, Equality of Educational Opportunity, U.S. Commission on Civil Rights	11
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Equal Educational Opportunity—1971, Part 16A, Inequality in School Finance, Hearings before Senate Select Committee on Equal Educational Opportunity, 92nd Cong., 1st Sess., Sept. 21, 1971	2, 15, 31
Final Rept. of the Task Force on Urban Education of the Dept. of HEW (Praeger ed. 1970)	14, 16
Guthrie, et al., Schools and Inequality (1971)	11, 23
Levin and Muller, Cost Differentials in Public Schools, (Urban Institute, forthcoming)	9
Levin, Muller, Scanlon, and Cohen, Public School Finance: Present Disparities and Fiscal Alternatives (Urban Institute, 1972)	10
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Nat'l. Educational Finance Project, Future Directions for School Financing 28 (1971)	11
—, Status & Impact of Educational Finance Programs (R. Johns, et. al. eds., 1971)	10
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Simon & Grant, Digest of Educational Statistics (HEW 1970)	21
1970 Survey of Buying Power, Sales Management (June 10, 1971)	6
Staff of Senate Select Comm. on Equal Educational Opportunity, 92nd Cong., 1st Sess., Federal Aid to Education: Who Benefits (Comm. Print 1971) ...	7, 10
Weiss, Existing Disparities in Public School Finance (1970)	27

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INTRODUCTORY STATEMENT

The undersigned cities and urban interest organizations file this brief out of conviction that statutory schemes whereby public school revenues derive largely from property taxes levied in arbitrarily drawn and unevenly endowed school districts, as in Texas, offend the Equal Protection Clause. Such schemes invidiously discriminate, *inter alia*, against central city school children. And without rational justification, they channel scarce education resources to affluent school districts that need them least, while starving hard-pressed urban school districts that bear heavier educational burdens.

Let there be no mistake about the harm done. As Dr. Mark R. Shedd, then superintendent of the Philadelphia schools, testified before the Senate Committee on Equal Education Opportunity last September, “The urban schools of this country are dying. They are dying from financial strangulation. . . .”¹ He did not exaggerate. On June 6, 1972, the Detroit Board of Education, facing a \$50 million deficit on top of the previous year’s \$38 million deficit, adopted a “survival” budget requiring a 36% reduction in spending; this was to be achieved by slicing the school year to 117 days, far short of the 180 days mandated by Michigan law.² On August 2, 1972, the Mayor of Philadelphia announced that lack of funds might require that city to end the 1972-73 school year for its 374,000 children in March, three months early. These extraordinary developments are only symptomatic of a nationwide school financial crisis. Equally harsh announcements of early closings,

¹ Equal Educational Opportunity—1971, Part 16A, Inequality in School Finance, Hearings before Senate Select Committee on Equal Educational Opportunity, 92d Cong., 1st Sess., Sept. 21, 1971, p. 6603 [hereinafter cited as “Inequality Hearings”].

² Moving papers of Detroit Federation of Teachers, June 22, 1972, in *Bradley v. Milliken*, C.A. No. 35257, U.S.D.C. (E.D. Mich.).

teacher layoffs and other cutbacks have been made or can be expected in Boston, New York, Newark, Baltimore, Pittsburgh, Cleveland, Cincinnati, Dayton, Chicago, St. Louis, Portland, Los Angeles and many other cities.

San Antonio's plight may be less dramatic; but it is no less poignant. The 25,000 public school children, mostly Mexican-Americans from low-income families, who live within the governmentally drawn boundaries of the Edgewood Independent School District, the poor central city school district which spawned this litigation, have educational needs at least as great as those of children in other San Antonio area school districts. But Edgewood's poverty, measured by low assessed valuation per student, disables local authorities from providing their children with the same facilities, teachers, supporting personnel, library books, equipment, supplies and breadth of curriculum available in surrounding districts favored by the draftsmen of capricious school district boundaries with greater assessed valuation per student.³ Why are similarly situated school children treated so differently? The answer is clear. The state has drawn school district boundaries so that poor Edgewood, despite a high tax rate, raises only \$26 per child, while affluent Alamo Heights, a nearby suburban oasis, raises \$333 per child with an equivalent tax rate. State "equalizing" contributions do not narrow the gap. In 1968-69, Edgewood received only \$3 more per child (\$225 to \$222) than did its most affluent neighbor.⁴

Dr. Shedd's grim diagnosis of the general plight of city schools, and the record's blunt account of what

³ Affidavit of Dr. Jose Cardenas, App. 234-40.

⁴ App. 219. Counsel has been advised that the statement in text is correct, and that the cited table inadvertently inverted the Edgewood and Alamo Heights figures in this one category—state aid.

actually happens when the level of school spending is made to turn largely upon an unevenly distributed property tax base, are not disputed even by those who seek to defend such arrangements. Indeed, they purport to find ground in the special needs of the Nation's central city schools and their disadvantaged school children for continuing to tolerate the Texas pattern. Consider, for example, the nearly 20 pages devoted to urban school needs in the amicus brief filed on behalf of suburban interests. Amicus Brief for Montgomery County et al., pp. 83-99. Like counsel for appellants,⁵ these suburban spokesmen contend that because prescription of the statutory linkage between school funding and local wealth would not automatically "guarantee" more money for urban schools, and because a possible application of the decision below so as to require mathematically equal expenditures per student might even reduce the flow of school funds to some cities, arrangements like the one in Texas should be preserved no matter how egregious their disparities.⁶

⁵ Brief for Appellants, pp. 41-42.

⁶ How to reconcile this professed concern for adequate urban school funding with the contention that money cannot be equated with "academic achievement" we leave to appellants. The fact is that their last-ditch fight to preserve the current maldistribution of state educational resources speaks louder than words and belies the contention that money is irrelevant. If money is totally unrelated to academic achievement, after all, why do suburban schools with the resources to do so spend so much more than their poorer urban and rural neighbors? We cannot believe the Court will be persuaded that billions of dollars for buildings, maintenance, libraries, books, supplies, gymnasiums and professional and supporting salaries are so unimportant that invidious discrimination in their distribution can be deemed constitutionally irrelevant—whether or not arithmetically related to "academic achievement." As to the relationship between resources and achievement, see *Gaston County v. United States*, 395 U.S. 285, 294-96 (1969), where both Congress (in the Voting Rights Act of 1965) and the Court forthrightly concluded that correcting resource imbalances would enable resource-starved schools to produce more equal educational achievement.

Central cities support this judicial challenge to the Texas statutory scheme because it irrationally allocates scarce educational resources chiefly on the basis of local wealth rather than according to legitimate educational considerations. Such schemes disserve the cities, which typically combine extraordinary educational needs with fewer available resources for education than the suburbs that surround them. Indeed, such schemes have helped to create today's urban school crisis, and now stand stubbornly in the way of any rational solution.

It is the considered judgment of the undersigned that affirmance of the decision below is an absolutely necessary and essential step if the Nation's urban schools are to be enabled to cope with their financial crisis.

ARGUMENT

I. STATUTORY SCHEMES LIKE THE ONE IN TEXAS INVIDIOUSLY DISCRIMINATE AGAINST CENTRAL CITY SCHOOL CHILDREN.

A. The Texas scheme precludes meeting the special and acute educational needs of the cities.

Most educational aid formulas are archaic vestiges of the first decades of the century, when some of the Nation's central cities were "wealthy" in the limited sense that they reported above average assessed valuation per student, and when state aid was designed to reduce disparities between "rich" central cities and outlying areas. These formulas remain in operation although the conditions for which they were designed no longer exist.⁷

First, shifts in population and economic activity have converted most central cities into "have-nots."

⁷ S. Sacks, *City Schools/Suburban Schools, A History of Fiscal Conflict* 1-2, 28-45 (1972).

Since 1950, central cities have grown increasingly poor and black, as middle-class whites (whose children have fewer educational problems), business and industry have fled to the suburbs. With them went a portion of the city's tax base. Left behind was the high-cost population of the racially concentrated and educationally disadvantaged. By 1966 the incidence of poverty was nearly twice as great in central cities as in suburbs.⁸ By 1970, twenty-six of the seventy-two largest cities were more than one-quarter black; at the same time, sixty-seven of the seventy-two largest suburban rings were more than 90% white.⁹ Detroit and Cleveland offer striking examples of these trends. Between 1950 and 1966, Detroit suffered a net loss of 20–30,000 families but gained 50–60,000 school children as blacks replaced less prolific whites; Cleveland lost 130,000 in net population, but experienced a public school enrollment increase of 50,000.¹⁰ Indeed, blacks comprise a

⁸ A. Downs, *Who Are the Urban Poor* 14 (Committee for Economic Development 1968). 1970 figures show that in the seventy-two largest standard metropolitan areas central cities also have approximately 20% fewer high-income households than their suburbs. 1970 Survey of Buying Power, *SALES MANAGEMENT* (June 10, 1971).

⁹ Data taken from Bureau of the Census, *General Demographic Trends for Metropolitan Areas, 1960-1970*, Table I (PHC-2 Series). See also Rept. of Nat. Advisory Comm. on Civil Disorders 242-243 (Bantam ed. 1968).

¹⁰ Rept. of Nat. Advisory Comm. on Civil Disorders, 430–31. It should be noted that the combination of high city taxes and relatively poorly funded city schools not only fuels the white middle-class flight to the suburbs, but the “Balkanization” of school finance frees the suburbanite of any financial stake in city schools—and helps to motivate suburban resistance to integration involving the inferior city schools. This is a vicious circle which cannot be broken without reform of the way public schools are funded.

majority or near majority of public school students in seven of the ten largest American cities.¹¹

As industry, business and affluence have shifted from central cities to suburbs, so have economic resources. Central cities are losing employment in manufacturing, wholesale and retail sectors at about 0.5 percent per year, while suburban area employment in these sectors is increasing at about 2.5 percent a year.¹² In similar fashion, the central city share of metropolitan retail sales declined from 63% in 1958 to 54% in 1963 to 46% in 1967.¹³

Second, the combined impact of these demographic and economic changes has seriously depressed the tax base of central cities. The value of suburban property for the nation as a whole has grown in recent years more than two and one-half times as fast as that of central cities.¹⁴ Appendix A shows the dramatic growth within a recent five year period in suburban property values as compared to the central city in the nation's thirty-seven largest standard metropolitan statistical

¹¹ *Ibid.*

¹² Bureau of the Census, Trends in Social and Economic Conditions in Metropolitan Areas, Current Population Rep., ser. P-23, No. 27, at 36 (Feb. 1969).

¹³ Advisory Comm. on Intergovernmental Relations, Metropolitan Disparities—A Second Reading, table III (1970), derived from Bureau of the Census, Census of Business 1958, vol. II, Census of Business 1963, vol. II, and Census of Business 1968, vol. II.

¹⁴ Regional variations were even greater. In the Northeast suburban property values climbed about three times as fast as those of central cities. In the Midwest the value of suburban property grew at more than six times the rate of its central cities. Staff of Senate Select Comm. on Equal Educational Opportunity, 92d Cong., 1st Sess., Federal Aid to Education: Who Benefits 17 (Comm. Print 1971) [hereinafter cited as "Federal Aid"].

areas. Baltimore is typical. As recently as 1950, the suburbs around Baltimore reported only 81% of the assessed per capita valuation of the central city. By 1960, the ratio had shifted to the suburbs' favor; they then had 110% of the city's per capita valuation—and much lower revenue needs. Property values in Milwaukee County follow the same pattern. Suburban property values per capita were 105% of those in the central city in 1935, 120% by 1940 and 138% by 1960. The most recent data show that the property value per capita of suburban Bexar County is more than twice as great as per capita values in San Antonio, its central city.¹⁵ As the prestigious Advisory Committee on Intergovernmental Relations has put it, once “well-balanced” communities have been replaced by “lopsided” metropolitan communities, characterized by poor, increasingly black core cities surrounded by affluent suburban areas.¹⁶

The cities, thus, have not only ended up with higher proportions of poor and minorities, and their harder to educate children, but also with less of a tax base to deal with them.

Third, consideration of three crucial variables—the cost of educational facilities and services, students' educational needs, and competing demands upon local tax revenues—shows that the Texas scheme for funding schools that ties the education of central city children to a weakening tax base, rather than benefiting city child as appellants and their supporters argue, signifi-

¹⁵ Dept. of HEW, Rep. of the Commissioner's Ad Hoc Group on School Finance appearing in General Appendixes to Hearings on Equal Educational Opportunity Before the Senate Select Comm. on Equal Educational Opportunity, 92d Cong. 1st Sess. pt. 16-D-3, at 8367-8370 (1971) [hereinafter Ad Hoc Group Report].

¹⁶ Advisory Commission on Intergovernmental Relations, *Urban American and the Federal System*, 9 (1969).

cantly contributes to the growing crisis in urban education:

1. Educational facilities and services typically cost more in the cities.

Urban education facilities and services typically cost more. Urban land is more costly to acquire, urban schools are more costly to build and maintain, and urban faculties and staff more expensive to recruit and retain. This point is tellingly made by the United States Commissioner of Education's Ad Hoc Group on School Finance. The Group's 1969 report noted that in 1967 the City of Detroit, for example, paid more than \$100,000 per acre for school sites, whereas surrounding suburban districts with access to undeveloped land paid only one-sixteenth as much, or \$6,000 per acre.¹⁷ A recent study made by the Urban Institute research staff also found that cities with over 25,000 people spend more for site acquisition (land) and buildings compared to suburbs and smaller cities.¹⁸

Central city school districts must compete for teachers with the suburban districts in their metropolitan area, but they must often assign new teachers to classrooms crowded with difficult to educate children located in an antiquated building in a depressed area. Thus it is not surprising to find that central cities have had to offer teacher salaries equal to or above those paid by wealthy suburban districts where working conditions may be perceived by teachers as less strenuous

¹⁷ Ad Hoc Group Report at 8372.

¹⁸ Levin & Muller, *Cost Differentials in Public Schools*, (Urban Institute, forthcoming). The study found, for example, that the city of Rochester spent \$110,673 per acre of land between 1965 and 1970 for elementary schools, its suburbs only \$2,066. New York City exclusive of land, spent \$5,045 per pupil to build new secondary schools in 1970, compared to \$3,074 for similar facilities in suburbs and \$2,889 in small jurisdictions.

and anxiety producing. For example, the entry level salary for Detroit teachers for 1968-69 was \$7500, nearly \$600 more than the average in 35 surrounding suburban districts, and \$300 above the closest suburban district.¹⁹

2. Special central city problems such as large concentrations of the educationally disadvantaged generate the need for relatively greater urban school funds.

Not only does the city school dollar buy less, it has vastly more to do. The educational needs of the cities have always been more complex and more expensive to meet than those of suburban and rural areas.

Central city schools have had to cope, for example, with large concentrations of non-English speaking children, children from poor and culturally deprived homes—frequently migrants or the offspring of migrants from the poorest and most educationally deprived areas of the country, and victims of racial discrimination and other physical, mental and social handicaps.²⁰ Numerous studies document the greater

¹⁹ Ad Hoc Group Report, at 8372. An Urban Institute study also found average teachers salaries in large cities in eight states to be higher than in fast growing suburbs in close proximity to these cities. Levin, Muller, Scanlon, and Cohen: Public School Finance: Present Disparities and Fiscal Alternatives 99 (The Urban Institute, 1972)

²⁰ Status & Impact of Educational Finance Programs, 4 National Educational Finance Project 50 (R. Johns, et. al., eds., 1971). Federal Aid, *supra*, n.14 at 19. The task of central city schools is even greater than it might appear from total population statistics because non-white children and poor children in large cities compose a far larger proportion of school enrollments than of the total population. For example, in 1965, 52% of the public school enrollment in Chicago was non-white, although non-whites composed but 28 percent of the total population.

And the schools in cities such as Baltimore, Detroit, Boston, Cincinnati and Philadelphia, in 1967, had more than twice their expected proportion of low income pupils. Baltimore, for example, had 27% of Maryland's pupil enrollment in 1967, but 51% of the state's Title I (ESEA) children. Federal Aid at 27.

frequency of low achievement and other disabilities among minority group and lower social class pupils.²¹

As a consequence the large cities enroll a disproportionate percentage of students in special programs. The six largest cities in New York State, for example, enroll 38% of the State's pupils yet must provide special programs for 63% of the State's handicapped, 62% of the pupils in the State from impoverished families, and 65% of the State's full-time vocational pupils.²²

Even supporters of the present system must concede that such factors interfere with "academic achievement" and vastly enlarge the job of city schools, for the cost per pupil is much higher, for handicapped children, for compensatory education for the culturally disadvantaged, for the education of non-English speaking pupils and for vocational education.²³ The New York City schools, to cite one example, presently serve 290,000 Spanish-surnamed students, 135,000 of them insufficiently skilled in English to benefit from regular classroom instruction. But bilingual education is expensive and there is money for

²¹ Among the many studies on the relation between race or social class and pupil performance, see especially J. Guthrie, G. Kleindorfer, H. Levin & R. Stout, *Schools and Inequality* (1969); James S. Coleman et. al., *Equality of Educational Opportunity*, U.S. Commission on Civil Rights; *Racial Isolation in the Public Schools*, Vol. 1 (1967).

²² Conference of Large City Boards of Education of New York State, Program 1971, at 5-6 (1970)

²³ Current practice places the cost of vocational-technical education and compensatory education at about 2 times the cost of a basic elementary school program and physically and emotionally handicapped programs at about 3 times a basic program. Nat'l. Educational Finance Project, *Future Directions for School Financing* 28 (1971)

bilingual classes for only 4000 of these children.²⁴ What suburban or rural jurisdiction has so difficult a problem—or one so patently amenable to solution if more money were available?

Finally, the school plant in most central cities is poorly located, aging and badly in need of replacement. In 1965, over 50% of all school buildings in Boston, Cleveland, Pittsburgh and St. Louis were over 45 years old, as were over 36% of all school buildings in the 15 largest cities. The suburban school plant, on the other hand, is largely of recent construction and well located. As a result, suburban districts are entering an era of low capital requirements, while the cities must soon replace a large part of their total plant—at today's and tomorrow's inflated costs.²⁵

3. Central city school funds are limited because the tax dollar must meet other pressing municipal needs.

Defenders of the statutory dependence of school funding upon local wealth blandly suggest it is all a matter of “priorities”, that if cities spend less on schools, it is because they have “chosen” to tax themselves less. Precisely the opposite is true. Both the record and the national figures demolish this contention, for the record shows that Edgewood would have to tax itself at more than eight times Alamo Heights' rate to generate equivalent revenues. (App. 218). Nationally, although the cities raise less for schools than do non-urban districts, they tax themselves 40% more heavily overall.²⁶ Moreover, the city dweller in 1970

²⁴ Report of the New York State Commission on the Quality, Cost, and Financing of Elementary and Secondary Education 1.62 (1972) [hereinafter the Fleischmann Report].

²⁵ Sacks, *supra*. n.7 at 52-53.

²⁶ Ad Hoc Group Report, at 8370

paid a substantially higher percentage of his income in local taxes—7.3%—than did his more affluent suburban neighbor—5.1%.²⁷

The urban property tax base, already strained by higher educational costs and greater pupil needs, must support a much greater range of non-educational government services than suburban or rural jurisdictions. Expensive but unavoidable municipal services such as police, firefighting, health care, welfare, sewage, mass transit and sanitation compete for the education dollar. In general, central cities spend twice as much per capita as outlying areas for non-educational services.²⁸ Ironically, many of these dearly paid for municipal services benefit not only city taxpayers, but nontaxpaying suburbanites as well.

The disparity in demand for non-educational services between central city and suburbs—the so-called “municipal overburden”—has been increasing. In 1957, the 37 largest central city areas had 82 per cent higher per capita non-educational expenditures than their suburban rings. By 1970, this disparity had increased to 95 per cent.²⁹ The problem is most obvious in older Northeastern and Midwestern cities where the disparity averaged over 100 per cent by 1970.³⁰ Per capita non-

²⁷ *J. S. Berke and J. J. Callahan, Serrano v. Priest: Milestone or Millstone*, 21 JOURNAL OF PUBLIC LAW 23, 48 (1972). See Appendix B hereto for Baltimore, Boston, Philadelphia, Cleveland, San Antonio and Portland examples.

²⁸ S. Sacks and J. Callahan, *Central City-Suburban Fiscal Disparities in the 72 Largest Metropolitan Areas*, 75 (Advisory Commission on Intergovernmental Relations study, based on data supplied by the U.S. Bureau of the Census, 1972) [hereafter cited as *City-Suburban Disparities*] ; Appendix B hereto.

²⁹ *City-Suburban Disparities*, 59; Appendix B hereto.

³⁰ *City-Suburban Disparities*, 75.

educational expenditures in Denver, Colorado, for example, were more than three times greater than those in surrounding suburbs.³¹

Central cities as a result cannot devote as large a percentage of their total budget to education as suburbs do. On the average, education expenditures comprised 30-35 per cent of central city budgets between 1957 and 1970. During the same time span, education expenditures were generally about 55 per cent of suburban budgets.³² Due in large measure to such municipal tax overburdens, central city per capita educational expenditures in 1970 were only 85 per cent of suburban levels.³³

B. In practice, statutory schemes like the one in Texas have precipitated a crisis in central city school finance.

The fact is that many central city school systems have been driven to the brink of bankruptcy by these factors that are at work in every American city and make a mockery of rhetoric about "local control."

1. Philadelphia.

Dr. Shedd testified that the City of Philadelphia, in the face of the ever-growing educational needs of its 374,000 students, many of them severely disadvan-

³¹ Bureau of the Census, *Local Government Finances in Selected Metropolitan Areas and Large Counties, 1969-70*, Table 3 (1971).

³² *City-Suburban Disparities*, 61. Cf. *Final Rept. of the Task Force on Urban Education of the Dept. of HEW 43* (Praeger ed. 1970) [hereinafter *Urban Education Rept.*]. See Appendix B hereto.

³³ *City-Suburban Disparities*, 75.

taged,³⁴ was forced in the preceding year to eliminate 600 teaching positions, 800 support personnel, and sharply cut purchases of books, supplies and equipment. Financial pressures compelled an increase in class size, although his *educational* judgment was that a decrease was necessary. A badly needed school-building program had to be stopped despite the fact that 30 schools serving 30,000 children were unsafe, 400 classrooms were being rented from churches and other nonacademic sources, and four high schools were already on “dual” programs. Even with these draconian measures, the Superintendent anticipated that Philadelphia schools would have to close a month and a half early in 1972 because operating funds would then be exhausted. His prognosis for the future, with debt service alone accounting for \$56 million and mounting, was even more bleak unless decisions like the one below have “nationwide repercussions.”^{34a} The March school closing threatened for 1973 bears him out.

2. Detroit.

The Detroit crisis is still more grave. Deficits have grown from \$1¼ million in 1966-67 to \$38 million last year and to a possible \$88 million in the present school year. Halving maintenance on the city's aging school plant (buildings average between 40 and 50 years in age), stopping all painting and redecorating, cutting textbook purchases by 15%, and increasing class size hardly made a dent in the deficit. In April of 1972, 1548 teachers were laid off, effective in June. And in June over one-third of the coming school year was

³⁴ Tests indicated that 40% of the city's elementary school population, or 56,000 children, were “functionally illiterate.” Thirty percent of all secondary school students were “absent” on any given day—a too common pattern in the central cities. *Inequality Hearings*, at 6608-6608.

^{34a} *Id.*, at 6615.

cancelled. Yet Detroit has one of the highest combined tax rates in Michigan. Moreover, cuts in the state's "equalization" payments to Detroit deprived the city's schools of \$91 million over the last ten years. Detroit's new austerity moves threaten continuation of other state and federal programs, which are fashioned to benefit principally those school districts affluent enough not to need them.

Detroit and Philadelphia are far from unique cases. President Nixon's Task Force on Urban Education found such conditions reflected to varying degrees in all of the large cities of the nation. Many it found are faced with: (1) deficits from the preceding years; (2) defeat of bond issues; (3) impossible alternatives of substandard programs or early closing dates; (4) continuing deterioration of facilities for which there is no money to maintain or rebuild; (5) inability to keep good teachers for lack of salary incentives; and (6) inability to hire urgently needed additional staff members.³⁵ The tragedy of this crisis is that the current plight of cities with respect to education is, in considerable measure, the consequence of state fiscal policies.

3. Why these crises

For insight into what this controversy is really about, it is instructive to compare Detroit with three of its affluent suburbs.^{35a} Fully 65% of Detroit's public school population is black or other minority group. In Dearborn the equivalent percentage is 1.3%; in Bloomfield Hills, 1.1%; in Grosse Pointe, 0.3%.³⁶ On

³⁵ Urban Education Rept. at 81.

^{35a} The following comparative figures are from Myers, "From Auto City to School Bus City," City 33-39 (Summer 1972).

³⁶ In the Nation's 15 largest metropolitan areas, the nonwhite segment of the central cities' school population in 1965 ranged from 21% to 88%. Berke & Callahan, *supra* n.27, at 38 (1971).

seventh grade achievement tests, Dearborn students score in the 87th percentile nationally; in Bloomfield Hills, in the 98th percentile; in Grosse Pointe, in the 97th. Detroit's seventh graders score at the bottom, in the first percentile. Per student assessed valuation in 1968-69 in the three suburbs ranged from nearly \$24,000 to over \$42,000. In Detroit it actually fell from \$20,000 in 1960 to \$16,500 in 1968. The suburbs, with their easily educable middle and upper class children, spent from \$965 to \$1,056 per student. The City of Detroit was able to spend only \$756 per student, even with federal aid.³⁷ This inverse relationship of need to resources existed despite the fact that the city taxed itself for education at double the statewide average rate, and its total tax rate was substantially higher than that of *any* suburban jurisdiction.

One can hardly imagine these crises occurring in the panglossian world painted by appellants and their suburban supporters where educational expenditures always increase, where each state's "flat grant" or "foundation program" is to be presumed sufficient to guarantee an "adequate education" for every child, and local school districts have "control" over their own destiny. Just as the fabled fox and stork are "free" to drink from the same milk container,³⁸ so too are urban and suburban school districts "free" to rely upon unevenly distributed local wealth to meet their

³⁷ Here, too, the Detroit pattern is representative. One study of 12 large metropolitan areas showed that whereas 10 of the 12 central cities spent more per student in 1950, by 1965, 7 of the same 12 were outspent by their suburbs. Report of Nat'l Advisory Comm. of Civil Disorders *supra* n.9, at 434-45.

³⁸ Griggs v. Duke Power Co., 401 U.S. 424, 431 (1971).

educational and other needs.³⁹ The result is a tragic inversion of needs and resources.

4. The distribution of state aid under statutory schemes like the one in Texas aggravates the present plight of central cities.

The foregoing analysis demonstrates that any rational scheme would allocate more aid to cities than to suburban areas. But far from meeting the special needs of the cities, state aid systems actually discriminate against the cities. The fact is that most state aid systems still base school support on the educationally irrational measure of local property wealth and still function as if the fiscal positions of central cities were superior to suburban areas.

The invidious nature of the statutory linkage between school funding and local wealth is not substantially ameliorated by the various forms of “flat grants” and “equalization” formulae that exist in Texas and other states. If they have any one characteristic, it is that they do not equalize. Despite their operation, the grossest disparities continue to exist. Indeed, these devices frequently work to exacerbate disparities. Too often poor urban districts cannot meet all conditions of full entitlement to derive full benefit from these programs—which in fact widens the gap between “haves” and “have-nots.”⁴⁰

³⁹ Except where, as in Florida, Virginia and other states, state law either imposes an absolute ceiling on local tax levies, or punishes “excess” local levies by making off-setting deletions from otherwise available state grants.

⁴⁰ A recent study in New York, for example, revealed that state aid plans “tend to reinforce the inequitable distribution of local resources rather than offset it.” The study noted that aid to central cities averaged \$100 less per student than for suburban students, that aid to the largest cities was in every case below the county average, and in 4 of the 9 cases was the lowest in the area. *Revising School Finance in New York State*, Aug. 1971, p. V-7.

* * *

Because the statutory dependence of school funding on local wealth arbitrarily and irrationally fails to consider differences in school costs, in education needs, and in competing calls upon local tax resources, it has produced the grossest disparities in expenditure levels. Chief among its victims have been the central city schools and the millions of children they serve.⁴¹ The inescapable fact is that central city school children increasingly go to school in firetraps, find their special needs unmet, and begin their “summer” vacations in early spring, while suburban school children live out the American dream. That is the nature of the problem. It is not to be obscured by cant about “local control,” or by highly debatable contentions from affluent and high-spending suburban districts about whether “dollar input” is arithmetically translatable into “academic achievements.” Thus, central city schools and the millions of children who attend them do have a major stake in the outcome of this case, for the present inequitable and irrational system of funding public schools denies them anything like equal treatment. The ruling of the court below which finds the present system unconstitutional, irrational and discriminatory holds out hope at long last for these children of a funding system rationally related to educational criteria.

II. THE DECISION BELOW SHOULD BE AFFIRMED.

The undersigned urge the Court to affirm the decision below. Public school funding has too long been straight-jacketed by the statutory dependence upon the

⁴¹ In 1962 the outlying areas surrounding 29 of the 37 largest cities received greater state educational aid per pupil than those cities. Sacks, *supra*, n.7 at 88.

local property tax. Neither in Texas nor in any other state has it been possible to allocate scarce educational resources on a rational basis. Instead, the availability of funds within each artificially drawn school district has largely remained a function of its local property tax base, discounted by other urgent calls upon those same resources. Districts drawn wealthy enough to generate adequate or surplus funds have been able to do so without regard to cost or need. Adjacent districts with the most compelling educational needs and far greater cost differentials, but without adequate tax resources available for schools, go without.

Judicial invalidation of this arbitrary and irrational scheme for financing public education is essential if the states are to be free at last to make educational criteria controlling in the funding of public schools.

A. Affirmance is constitutionally compelled.

The Court should affirm whether or not it concludes that education is a “fundamental” interest, or that the established doctrine of “wealth” as a “suspect” category applies. Should the Court accept the analysis of these issues adopted by the court below and by state and federal courts in California, Arizona, Florida, Minnesota, New Jersey and Wyoming,⁴² affirmance should follow, for appellants make out no “compelling necessity” to justify the egregious disparities in educational expenditures which characterize the chal-

⁴² *Serrano v. Priest*, 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971); *Van Duzart v. Hatfield*, 334 F. Supp. 870 (D Minn. 1971); *Hargrave v. Kirk*, 313 F. Supp. 944 (M.D. Fla.), vacated, *Askew v. Hargrave*, 401 U.S. 476 (1971); *Hollins v. Shafstall*, No. C-253652 (Super.Ct. Maricopa Co. Ariz., Jan. 13, 1972); *Robinson v. Cahill*, 118 N.J. Super. 223, 287 A.2d 187 (1972); *Sweetwater Co. Planning Comm. v. Hinkle*, 491 P.2d 1234 (Wyo. 1971).

lenged statutory scheme. But should the Court not accept such an analysis, we demonstrate below that it should nevertheless affirm on the ground that the classification here fails even the test of “rationality.”

1. Appellants must demonstrate a “compelling necessity” for the present funding system, and they cannot.

The undersigned believe that education is a “fundamental interest,” that the present system does improperly incorporate the “suspect” category of “wealth” as the basis for deciding on whose children billions of school dollars are spent each year, and that either of these considerations alone requires appellants to convince the Court that the egregious disparities in school funding shown here are “*necessary* to promote a *compelling* state interest.” *Dunn v. Blumstein*, 405 U.S. 330, 335–37 (1972); *Bullock v. Carter*, 405 U.S. 134–144, 147 (1972); *Schilb v. Kuebel*, 404 U.S. 357, 365 (1971).

a. Education as a “fundamental interest.”

Education is a “fundamental interest” not only because of its extraordinary importance, but also because of the unique degree of state involvement in education and its intimate, “perservative” relationship to rights expressly rooted in the Constitution. Cf. *Reynolds v. Sims*, 377 U.S. 533, 562 (1964).

Nearly 50 million Americans participate in public education as students, professionals or other employees.⁴³ Nearly 90% of all American children are forced, by a combination of compulsory school attendance law and lack of viable alternative, to entrust their education to the public schools.⁴⁴ No other governmental en-

⁴³ Simon and Grant, Digest of Educational Statistics 2, 5 (HEW 1970).

⁴⁴ *Ibid.* at 2.

terprise has so firm or complete a grip on so many people. In no other field have the states so long and so deliberately assumed such complete, near monopoly responsibility and required the vast majority of their citizens to participate in a state-run enterprise. The states do not, for example, assume equivalent responsibility for their citizens' food and housing needs; they do not compel the vast majority of citizens to eat state food or live in public housing.

Even more significant, rights to free speech, press, association, and the other political and civil rights guaranteed by the Constitution are inextricably intertwined with the quality and quantity of public education. Daniel Webster put the case well when he said "On the diffusion of education among the people rest the preservation and perpetuation of our free institutions."⁴⁵ Both the Court and Congress have recognized this special relationship between education and voting rights. In *Gaston County v. United States*, 395 U.S. 285, 289 (1969), for example, this Court noted that

"The legislative history of the Voting Rights Act of 1965 discloses that Congress was fully cognizant of the potential effect of unequal educational opportunities upon exercise of the franchise. This close relationship was, indeed, one of the principal arguments made in support of the Act's test-suspension provisions."

It then proceeded to weigh disparities in educational opportunities afforded black and white children in Gaston County, including differences in teacher salaries and certification, and in "per-pupil valuation" of

⁴⁵ Quoted in President Richard M. Nixon's American Education Week Proclamation, Proclamation 4144, July 26, 1972.

school property used to educate black and white children. 395 U.S., at 294. It concluded that such disparities had the effect of subjecting many children to a “subliterate education” with “little inducement to enter or remain in school,” resulting in a disastrous impact upon their ability later to function as voters. The force of *Gaston’s County’s* reasoning is not dissipated by suspension of voter literacy tests. More recently, in *Wisconsin v. Yoder*, _____ U.S. _____, _____, 32 L.Ed. 15 (1972), this Court “accepted” the “propositions” that “some degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence . . . [and] education prepares individuals to be self-reliant and self-sufficient participants in society.”⁴⁶ One set of scholars has concluded,⁴⁷

“Among all of the significant determinants of political consciousness and political participation, schooling appears to predominate. Almond and Verba describe the overwhelming importance of education in determining political orientation and postulate several means by which education relates to political orientation. The more educated person tends to exhibit a greater awareness of government’s impact on the individual than is the case for persons of less education. Moreover, the more

⁴⁶ As long ago as 1925 this Court tacitly recognized that the right to an adequate education was a “fundamental” right reserved to the people under the Ninth Amendment, if not expressly granted by the Constitution. *Pierce v. Society of Sisters*, 268 U.S. 510 (1925). Cf. *Griswold v. Connecticut*, 381 U.S. 479 (1965); Black, *The Unfinished Business of the Warren Court*, 45 *Washington Law Review* 1, 35–45 (1970).

⁴⁷ Guthrie, Kleindorfer, Levin & Stout, *supra* n.21, at 165-167.

educated the individual, the greater his awareness of political issues, the greater is the range of persons with whom he discusses politics, the more likely he is to be a member of a political organization, and the more positive are his attitudes about the ability of people to govern themselves in a democratic fashion.

Empirical evidence of the schools' effects on political attitudes is found in the extensive study of Hess and Torney. They examined the backgrounds and attitudes of approximately 10,000 elementary school students in grades two through eight selected from 16 middle class and 16 working class schools in eight cities. On the basis of their analysis, they conclude that, "...the school stands out as the central, salient, and dominant force in the political socialization of the young child."

Given this background, it is no surprise that virtually all studies on the subject have found a strong positive relation between educational attainment and political participation. Agger and Ostrom found education to be even more significant than income in predicting political participation. Education appears to be particularly important in explaining who is likely to cast a ballot. Moreover, the greater the individual's educational attainment, the more likely he is to become involved psychologically in politics. One of the best known authorities on the subject concludes:

"Perhaps the surest single predictor of political involvement is number of years of formal education." In short, the link between education on the one hand, and political participation and potential efficacy on the other has been well documented. Persons with higher educational attainment are more able and more likely to become involved in the political process and to influence the outcome of those issues that affect them. Persons with lower levels of education not only are not as

knowledgeable concerning political issues, and thus not as likely to be aware of matters affecting themselves, but also are less well informed about the entire political process and thus not as capable of expressing their views even when they are aware of relevant issues. Clearly, lack of schooling or lack of good schooling restricts one's ability to exercise his political rights." (Footnotes omitted)

When the state teaches future voters to read, instructs them in civics and economics, and cultivates their interests and tastes, it is engaged in activity so closely related to essential constitutional rights that it may not practice invidious discrimination absent the most "compelling necessity." None is even suggested.

b. *"Wealth" as a "suspect" category.*

Equally fatal to the challenged statutory scheme is its endemic focus upon local wealth as a basis for allocating school dollars. It matters little that the "wealth" in issue is collective and not that of plaintiffs themselves, or that in a few districts—we are cited examples in Kansas⁴⁸—there may be poor correlation between family income and assessed valuation per student. This Court laid such objections to rest in *Bullock v. Carter*, 405 U.S. at 144, where it invalidated onerous candidate filing fees on the basis of their impact upon a collective—"the less affluent segment of the community" without regard to the candidate's own economic status—and despite the fact that there were "doubtless some instances" where the "less affluent" were unaffected.

⁴⁸ Appellants' Brief, at p. 23.

What emerges from the record in this case is that Texas' scheme for funding public schools imposes "built-in headwinds" unrelated to any educational objective upon children who live in "poor" districts. Cf. *Griggs v. Duke Power Co.*, 401 U.S. 424, 432 (1971).

2. The challenged scheme for funding public schools fails even the less stringent test of rationality.

The Court need not reach the "fundamental interest" or "suspect category" issues, for the Texas "system"⁴⁹ of funding public schools fails even the most lenient test of equal protection—whether a legislative classification is rationally calculated to further legitimate objectives of the statutory scheme. *Reed v. Reed*, 404 U.S. 71 (1971). Appellants ask the Court to certify the Texas statutory scheme as "rational" on the articulated ground that it makes possible "local control." That simply isn't so, for this statutory scheme is as "extraordinarily ill-fitted to that goal" as was the Texas filing fee system held unconstitutional in *Bullock v. Carter*, 405 U.S. at 146.

To begin with, this litigation has nothing to do with how local districts expend their funds. Indeed, even with respect to funding, the decision below does not prohibit all techniques for achieving local control of revenue raising. And the fact is that the challenged scheme actually interferes with and makes impossible any genuine measures of local control; it arbitrarily confines haphazardly drawn and unequally endowed school districts largely to the revenues yielded by local

⁴⁹ One hesitates to call what Texas does a "system," for the challenged pattern of funding bears little evidence of anything so rational as a "system." See, for example, the appellants' inability to answer appellees' interrogatory asking whether Edgewood's boundaries were "a product of historical accident rather than any logical plan of development." (App. 167).

property taxes and not required for other governmental functions. What “control” does Edgewood, Philadelphia or Detroit, for example, have over its school crisis? ⁵⁰ Districts are “poor” because low assessed valuation in the artificial boundaries drawn by the state minimizes the yield of even the most burdensome tax rate, and because of competing calls upon limited tax revenues. Such districts have little “control” over the gap between their needs and resources. They must suffer their children to be deprived while adjacent but more “affluent” districts meet or exceed their own school needs with substantially less tax effort. As one Federal Reserve Bank economist concluded, “Local options are severely limited under the present systems that closely tie school spending to the community’s property tax base.” ⁵¹

Rationality requires that Texas and its sister states allocate educational resources according to educational criteria rather than the accidental variation of local wealth or poverty.

B. The decision below opens the door to a sound educational policy.

There is no absolute assurance that affirmance of the decision below will be translated into additional funds for urban schools. Nor is there any guarantee that such a decision will not be misapplied by some to yield equal dollars per student on a statewide basis, ignoring cru-

⁵⁰ Indeed, a significant portion of Detroit’s current deficit arises from expenses incurred in implementing state-mandated reorganization programs that imposed \$6 million in start-up costs. On the contrary, in the middle of the school year 1971-72, the state reduced its contribution to Detroit schools by \$4 million, bringing the total below that of the previous year. Moving Papers, op. cit. *supra*, n.2.

⁵¹ Weiss, Existing Disparities in Public School Finance 10 (1970). For a similar conclusion by the Advisory Commission on Intergovernmental Relations, see note 52 *infra*.

cial differences in costs and needs under the banner of a pseudo-equality of expenditure—despite the clear teachings of this Court that “the Fourteenth Amendment does not deny to states the power to treat different classes of persons in different ways,” *Reed v. Reed*, 404 U.S. at 75, and that “The Constitution does not require things which are different in fact . . . to be treated in law as though they were the same.” *Tigner v. Texas*, 310 U.S. 141, 147 (1940). But it has never been an answer to a charge of unconstitutionality that the unlawful regime might be replaced by one equally invidious or by one of doubtful wisdom.

There is no necessity in this case for the Court to fashion any substitute scheme for allocating educational resources, or to choose among alternatives. *Bell v. Burson*, 402 U.S. 535 (1971). As the briefs in this case abundantly document, there are many permissible ways by which states may intelligently and rationally distribute their educational resources. Whether the choice is fully to assume the burden of raising and distributing school dollars to all of the states’ school children, some form of “district power equalizing”, or some other alternative, is a question, in the first instance, for the state legislatures.

The only issue before the Court is whether the scheme by which Texas allocates educational resources among its public school children deprives certain of them of equal protection.

C. The response to judicial decisions striking down statutory schemes like the one in Texas has been encouraging.

It is true that this Court must enforce the imperatives of the Constitution without regard to the popularity or lack thereof of its decisions. But the extraor-

dinary response to decisions like the one below suggest that the inequities endemic to the Texas pattern of financing public schools are widely felt, that there is broad recognition that such patterns do great damage, and that there is a genuine willingness to use the legislative freedom such decisions make possible.

Nearly everyone who has studied the problem in depth has concluded that the statutory dependence of school funding upon local wealth has been unfortunate, and that the alternatives posited offer greater hope. The conclusion of the New York State Commission on Quality, Cost and Financing of Elementary and Secondary Education is typical. This group, popularly called the Fleischmann Commission, voiced the consensus when it wrote that:

“It is repugnant to the idea of equal educational opportunity that the quality of a child’s education, insofar as that education is provided through public funds, is determined by accidents of birth, wealth, or geography; that a child who lives in a poor district is, by reason of that fact alone, entitled to lower public investment in his education than a child in a rich district. It is unconscionable that a poor man in a poor district must often pay local taxes at higher rates for the inferior education of his child than the man of means in a rich district pays for the superior education of his child. Yet, incredibly, that is the situation today in most of the 50 states, and that is the case in New York.

“The New York State school system does not provide educational equality. In fact, its structure insures the continuance of basic inequality in educational revenue raising and expenditure.”

The Commission recommends that reliance upon local property taxes be replaced by full state funding of education costs, utilizing a state property tax or other statewide taxes. Prestigious organizations like the Advisory Commission on Intergovernmental Relations have come to similar conclusions, and appear to support the changes presaged by decisions like the one below.⁵² President Nixon for example, in his January 20, 1972 State of Union Message promised that later this year he would make his “final recommendations for relieving the burden of property taxes and providing both fair and adequate financing for our children’s education.” The President’s Secretary of Health, Education & Welfare, Elliott Richardson, on April 17, 1972, said:

“We recognize as inherently inequitable and unfair the situation which now exists under which the disparity of local property taxes for school financing results in such wide disparities between one school system and another.”

United States Commissioner of Education Sidney Marland, Jr., has characterized the California Supreme Court’s decision as a

“very fundamental breakthrough in the concept of equity in state educational systems.”

He was quoted in the New York Times for January 10, 1972 as saying that the

“overwhelming reliance on property taxes so basically hinged to fiscal financing today is regressive, anachronistic, and resting on inequity. From

⁵² ACIR, *State Aid to Local Government*, 14-16 (1969). The ACIR concluded that this “should leave ample room for local initiative and innovation in the field of public education,” and indeed would free local school officials to concentrate on education. *Id.*, at 15.

state to state the record shows that the present system of raising and allocating funds for the schools adds up to a rigged lottery and cheats students and taxpayers alike.”

Even sociologist Daniel Moynihan, whose writings are much relied upon by appellants and their supporters, wrote in the New York Times on January 10, 1972 that

“I would wish to repeat that the Texas school decision seems to me to be just, if only because it will strike most persons as adhering to a principle of fairness.”

CONCLUSION

Decisions like the one below are not panaceas to all of the ills of public education. But they offer the hope that our problems can be dealt with intelligently and rationally. That hope was well expressed by Professors Berke and Kelly, who told the Senate Select Committee that what the courts have done is to

“provide only an opportunity, not an answer, only a starting point for reform, not a solution to the unfairness and irrationality of the pattern of education in America.”⁵³

The undersigned are deeply concerned about urban education. They believe that substantial additional funds are needed for the schools of the central cities. They are convinced that any rational system for allocating educational resources will ultimately take into account differences in educational costs and burdens. They are prepared to take their case to the legislatures

⁵³ Inequality Hearings, 6652.

once school funding is freed of the straightjacket imposed by the unwarranted dependence of school funding on local wealth.

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APPENDIX

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APPENDIX A**Growth of Property Values****Inside (CC) and Outside Central City (OCC) Areas
37 Largest Standard Metropolitan Statistical Areas
1961 & 1966**

Area	% Values in CC		% Growth in Values 1961-1966	
	1961	1966	CC	OCC
Washington	43.0%	34.9%	30.2%	83.6%
Baltimore	47.9	40.6	4.3	40.3
Boston	23.1	16.7	2.3	52.8
Newark	20.8	17.6	109.0	157.9
Patterson-C.P.	na.	na.	na.	na.
Buffalo	44.6	42.1	.3	11.0
New York	79.8	78.3	22.1	48.5
Rochester	49.4	41.6	2.5	40.8
Philadelphia	58.4	48.4	8.8	62.6
Pittsburgh	30.2	27.9	2.2	14.5
Providence	33.7	29.7	-.2	20.2
Northeast	43.1	37.8	18.2	53.2
Chicago	49.4	44.5	4.5	26.8
Indianapolis	50.1	43.4	14.0	49.5
Detroit	48.9	37.2	-4.6	54.3
Minn.-St. Paul	59.6	49.1	1.8	56.0
Kansas City	55.0	52.8	13.8	24.1
Cincinnati	42.3	30.6	7.4	67.5
St. Louis	32.8	29.8	5.7	21.2
Cleveland	40.4	34.3	-5.1	23.5
Columbus	57.9	56.0	21.9	31.6
Dayton	na.	30.3	na.	na.
Milwaukee	51.6	46.5	9.7	34.9
Midwest	48.8	41.3	6.9	38.9

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Area	% Values in CC		% Growth in Values 1961-1966	
	1961	1966	CC	OCC
Miami	na.	29.2	na.	na.
Tampa-St. Pete	na.	na.	na.	na.
Atlanta	43.5	33.7	24.7	88.4
Louisville	50.9	49.1	227.3	251.8
New Orleans	83.0	78.2	10.2	49.6
Dallas	na.	na.	na.	na.
Houston	na.	51.7	na.	na.
San Antonio	72.3	na.	na.	na.
South	62.4	48.4	87.4	129.9
Los Angeles-L.B.	40.1	41.6	44.4	39.4
San Bernardino	na.	na.	na.	na.
San Diego	54.5	54.3	26.2	27.3
San Francisco	39.6	33.3	19.6	57.4
Denver	55.7	49.9	11.2	40.8
Portland	53.0	40.2	-23.4	28.8
Seattle	55.5	46.7	21.2	72.4
West	49.7	44.3	16.5	44.4
Total	48.9	41.9	21.1	54.4

Source: U. S. Bureau of the Census. 1962 Census of Governments. *Taxable Property Values*; U.S. Bureau of the Census. 1967 Census of Governments. *Taxable Property Values*. Vol. II.

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APPENDIX B**Selected Fiscal Characteristics Central City and
Suburban Areas 1970****1. Per Capita Total Expenditures for Government Services**

City	Central City	Outside Central City	C.C./O.C.C. Ratio *
Baltimore, Md.	\$638	\$349	183%
Boston, Mass.	531	365	146
Philadelphia, Pa.	495	325	152
Cleveland, Ohio	512	368	139
San Antonio, Texas	252	258	98
Portland, Ore.	486	328	148

2. Per Capita Non-educational Expenditures

City	Central City	Outside Central City	C.C./O.C.C. Ratio *
Baltimore, Md.	\$416	\$134	310%
Boston, Mass.	392	188	209
Philadelphia, Pa.	321	122	263
Cleveland, Ohio	302	173	172
San Antonio, Texas	129	60	202
Portland, Ore.	298	115	259

**3. Education Expenditures as a Percent of
Total Expenditures**

City	Central City	Outside Central City	C.C./O.C.C. Ratio *
Baltimore, Md.	35%	62%	56%
Boston, Mass.	26	49	53
Philadelphia, Pa.	35	63	56
Cleveland, Ohio	41	53	78
San Antonio, Texas	49	77	64
Portland, Ore.	39	65	60

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4. Taxes as a Percent of Income

City	Central City	Outside Central City	C.C./O.C.C. Ratio *
Baltimore, Md.	8.0%	5.1%	157%
Boston, Mass.	11.6	6.4	181
Philadelphia, Pa.	7.9	4.7	168
Cleveland, Ohio	9.6	5.2	184
San Antonio, Texas	4.0	2.4	166
Portland, Ore.	7.0	4.5	156

* Central City as percentage of Outside Central City.

Source: S. Sacks, and J. J. Callahan, Central City—Suburban Fiscal Disparities in the 72 Largest Metropolitan Areas, a report compiled from 1970 data of the U.S. Bureau of the Census, Local Government Finances in 72 Metropolitan Areas, prepared for the Advisory Commission on Intergovernmental Relations (1972).