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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

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

Interest of the *Amicus*

The State of New Jersey is filing a separate *amicus curiae* brief in this matter because of its extreme importance to the State and also because an examination of the system of public school financing in New Jersey, and recent efforts to change it, may illustrate in concrete terms the practical implications for a particular state of the present campaign to read far-reaching requirements with respect to public school financing into the Equal Protec-

tion Clause of the Fourteenth Amendment. The brief does not attempt to present a full length argument for reversal of the district court judgment, since those arguments have already been fully set forth in the brief for the appellants, nor does it canvas all posible ramifications of acceptance of appellees' constitutional theories, since this has been done in the *amicus* brief of Montgomery County, Maryland and the State of Maryland, et al. Rather, the objective of the brief is to set forth the particular significance of the case to the State of New Jersey, which is actively seeking reform of public school financing through its legislative and executive branches but at the same time takes the position that the imposition of such change by judicial decree is neither authorized by the Equal Protection Clause of the Fourteenth Amendment nor desirable as a matter of policy if appropriate balances are to be maintained between the federal and state governments and between the judicial and legislative branches.

The present system of financing public school education in New Jersey, enacted as chapter 234 of the Laws of 1970, resulted from the recommendations of a joint legislative and executive commission which spent more than two years studying alternative proposals to improve educational financing. The program of state aid enacted by the Legislature pursuant to the Commission's recommendations, known as "incentive equalization aid," guarantees each district in the State at least $30,000 in equalized valuations per pupil for purposes of raising operating revenues through local property taxation. This amount of guaranteed equalized valuation may be raised as high as $45,000 for a particular school district if it improves the quality of its educational program. If a district has less than the guaranteed quantum of ratables per pupil available, then the State makes up the difference by distributing aid in an amount that allows a district to levy a tax

as if it had the greater amount of ratables per pupil. In determining the number of pupils in a district, the legislation includes a "weighting" factor which in effect causes each pupil from a family receiving aid under the Aid to Families With Dependent Children program to count as 1.75 pupils, thus providing more State aid to poorer districts. Due to the fiscal problems now being encountered by the State of New Jersey, this new program is only partially funded at the present time.

Shortly after assuming office, Governor William T. Cahill created by Executive Order No. 5 of 1970 a Tax Policy Committee which was given the responsibility of studying the entire structure of revenue raising and allocation of the costs of governmental services among the various levels of government in New Jersey. Nearly two years later, the Committee transmitted its report and recommendations, consisting of six volumes and nearly 500 pages, to the Governor. Regarding public school education, one of the main subjects of the report, the Committee noted that while most people agree upon the goal of equality of educational opportunity, there is substantial disagreement as to what it is:

> "There are substantial disagreements as to what constitutes equality of educational opportunity. Among standards discussed are equal expenditures per pupil, equal taxable valuations per pupil, a specified limit to variations among districts, specified minimum attainments such as ability to read by age 9, allocation of resources in accordance with ability to pay, and development of the full potentialities of all pupils." *Summary Report of the New Jersey Tax Policy Committee,* p. 16 (Trenton, N. J. 1972).

After consideration of all aspects of public financing in New Jersey, the Committee concluded that "the time has

come for substantially full funding of the public elementary and secondary school system by the state government." Id. at 17. But while the Committee recommended that the State assume responsibility for all the operating costs of a "standard quality education," it also concluded that local school districts, by public referendum, should be allowed to expend additional amounts to attain a superior system of education for the children residing therein. The State would continue to participate in such additional educational expenditures, in accordance with a formula based upon the equalized valuation per pupil of real property in the district, up to an amount one-third greater than that determined to be necessary for a "standard quality education." In recognition of the fact that the cost of a "standard quality education" is not the same in every school district, the Committee also recommended that additional amounts continue to be alloted to districts in accordance with the number of pupils from families receiving AFDC benefits and that regional cost differences be taken into account. The Committee further recommended that a regional collective bargaining system for teachers' salaries and fringe benefits be established in connection with the assumption by the State of substantially all funding of public education.

At about the same time that the Governor's Committee began its investigation of the tax structure of New Jersey, a suit was filed challenging the validity under the State and Federal Constitutions of the present system of financing public school education in New Jersey. One month before the Committee issued its report, the trial court before whom the case had been brought issued an opinion declaring the entire present system of financing public schools in New Jersey to be unconstitutional and ordered the Legislature to enact a "nondiscriminatory system of taxation" prior to

January 1, 1973. *Robinson* v. *Cahill,* 118 N. J. Super. 223, 280 (Law Div. 1972). The opinion nowhere indicates what specific legislative amendments will be required to satisfy the trial judge's conception of a "nondiscriminatory system of taxation." Would a uniform state real property tax or increase in the state sales tax suffice, even though such taxes are generally considered to be regressive, or is the Legislature required to fund education through an income tax? The court also declined to determine whether its constitutional theories would require invalidation of any local expenditures for public education beyond the state funding needed to provide an adequate education. 118 N. J. Super. at 278 n. 21. The court further ordered that if the Legislature does not act by January 1, 1973, then some of the funds which the Legislature has previously appropriated to implement the duly enacted present system of public school financing are to be redistributed in a manner which will satisfy the court's notions of equality. The Attorney General has appealed from this judgment to the Supreme Court of New Jersey, where the matter is now pending.

On May 18, 1972 Governor Cahill delivered to the Legislature a message entitled, "A Master Plan for Tax Reform," which urged the enactment of legislation embodying the recommendations of the Tax Policy Committee. The primary means proposed to pay for a "standard quality education" wholly from State revenues were an income tax and a 1% State tax on real property. The Governor also took specific note at p. 41 of his message of recent equal protection challenges to the school financing law, and expressed the hope that the efforts of some school districts to provide superior educational programs would not be thwarted by judicial mandate:

> "Localities must be permitted to supplement State funds with local resources as the people from each

> community determine the wisest course for the education of their children. I recognize there are unresolved constitutional differences in this area. Unless judicially mandated to the contrary, we should not foreclose a district where the citizens desire to provide the ultimate in educational programs."

The tax reform bills proposed by Governor Cahill were introduced in the New Jersey Legislature, but initial attempts to secure enactment have been unsuccessful.

The State of New Jersey is therefore currently operating under the "incentive equalization aid" program described in the second paragraph of this brief, as modified by the trial court order directing certain redistribution of funds appropriated for this program if the Legislature does not enact "non-discriminatory system of taxation" by next January 1. Since the trial court judgment is based partly on State constitutional grounds, a decision favorable to the appellant in this case would not be dispositive of the pending challenge to the New Jersey system of financing public school education. However, an affirmance of the district court judgment would result in the imposition upon New Jersey by judicial decree of a system of school financing with an immense impact not only on the educational and fiscal programs of the State, but also on the fundamental allocation of responsibility for public services among the different levels of government, which the people of the State, through their duly elected representatives in the Legislature, have only recently refused to modify. Such alteration of the tax structure and responsibility for public services in New Jersey by the federal judiciary would be fundamentally inconsistent with basic democratic principles. Furthermore, even if the view is taken that the end result

of "equality of educational opportunity" justifies departure from the normal process of democratic decision making, there is substantial disagreement as to what system meets this ideal. This makes the entire subject an inappropriate one for resolution by constitutional adjudication, because the judicial decision making process lends itself to the establishment of an inflexible rule of "equality" of educational opportunity in accordance with the views in vogue at the present time which further study may show to be imperfect. Thus, the present system of "power equalization" contained in the New Jersey law is considered by most people to be a progressive system to achieve the goal of "equality of educational opportunity" even though inequalities may occur with respect to districts which have ratables per pupil in excess of the guaranteed level or which vote to spend more than neighboring communities on education, but that system has been held to be in conflict with the Equal Protection Clause. *Robinson* v. *Cahill, supra,* 118 N. J. Super. at 207-80. So too the proposals of the Tax Policy Committee are almost universally thought to be progressive social measures which would still further improve the system of educational financing in New Jersey. However, the recent cases discerning in the Equal Protection Clause a rigid requirement of equality of expenditures for education cast substantial doubt on the validity of the proposal to allow local school districts to spend more than the sum appropriated by the state to provide a "standard quality education." It is clear, therefore, that the State of New Jersey, along with the other states participating as *amici curiae* in this matter, has a vital interest in preserving the authority of its Legislature to adopt provisions for financing public education which are consistent with its views of proper allocation of functions among the various levels of government, and which will enable local school districts to provide the highest quality education possible.

ARGUMENT

The State interest in local control of education constitutes a rational basis for delegating the primary responsibility for public education, including the power to raise necessary revenues, to local school districts.

A party who challenges the validity of legislation under the Equal Protection Clause of the Fourteenth Amendment generally bears the heavy burden of demonstrating that the Legislature has acted in an invidiously discriminatory or palpably unreasonable manner. *Jefferson* v. *Hackney,* —— U.S. ——, 92 S. Ct. 1724, 32 L. Ed. 2d 285 (1972). The principles governing equal protection in any challenge were most recently summarized in *Schilb* v. *Kuebel,* 404 U.S. 357 (1971):

> " 'The prohibition of the Equal Protection Clause goes no further than invidious discrimination.' *Williamson* v. *Lee Optical Co.,* 348 U.S. 483, 489 (1955). 'Legislatures are presumed to have acted constitutionally . . . and their statutory classifications will be set aside only if no grounds can be conceived to justify them. . . . With this much discretion, a legislature traditionally has been allowed to take reform "one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind." ' *McDonald* v. *Board of Election Commissioners,* 394 U.S. 802, 809 (1969). The measure of equal protection has been described variously as whether 'the distinctions drawn have some basis in practical experience,' *South Carolina* v. *Katzenbach,* 383 U.S. 301, 331 (1966), or whether the legislature's action falls

> short of 'the invidious discrimination,' *Williamson* v. *Lee Optical Co., supra,* 348 U.S., at 489, or whether 'any state of facts reasonably may be conceived to justify' the statutory discrimination, *McGowan* v. *Maryland,* 366 U.S. 420, 426 (1961); see *United States* v. *Maryland Savings-Share Ins. Corp.,* 400 U.S. 4, 6 (1970), or whether the classification is 'on the basis of criteria wholly unrelated to the objective of [the] statute,' *Reed* v. *Reed,* 404 U.S. ——, ——, 92 S. Ct. 251, 254, 30 L. ed. 225 (1971)."

The same principles clearly control any equal protection challenge to the assessment of taxes (*Carmichael* v. *Southern Coal & Coke Co.,* 301 U.S. 495 (1937)) or allocation of government revenues. *Dandridge* v. *Williams,* 397 U.S. 471 (1970). In *Dandridge* the Court rejected a claim that a Maryland welfare regulation, establishing a maximum grant for any AFDC family, denied equal protection to children in large families, saying:

> "In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some 'reasonable basis,' it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality.' *Lindsley* v. *National Carbonic Gas Co.,* 220 U.S. 61, 78." 397 U.S. at 485. See also *Jefferson* v. *Hackney, supra.*

In this case the disparities in expenditures for education among children and in the taxes assessed by different school districts are simply by-products of the legislative determination to delegate the primary responsibility for

public education to the local school districts of the State. From an early date in our history each school district has been considered "a miniature democracy where the people, within certain limits, enact their own laws, levy their own taxes, and choose their own officers," which thereby fosters "a spirit of vigorous self-government." 1 Howard, *Local Constitutional History of the United States,* 234-236. Local self-government in the area of education is only one aspect of the home rule principle, which also involves local decision making with regard to police and fire protection, health, land use planning and various other areas vital to the health, safety and welfare of the citizenry. This principle is so fundamental that it even finds expression in the New Jersey Constitution, *Art.* IV, § 7, para. 11, also *Art.* IV, §7, paras. 8, 9(7), (11), (12) and (13), and 10.

Moreover, there are substantial policies which are served by the legislative emphasis on local responsibility for education. The fact that the educational accomplishments of the local children immediately affect the well-being of the district acts as an incentive to the citizens thereof to allocate sufficient sums for educational purposes. At the same time, the fact that local tax revenues are allocated for this purpose motivates the citizens of the area to prevent wasteful and unnecessary expenditures. Such planning at the local level also allows the citizens to weigh carefully the various services to be provided by the local governmental unit and to determine what percentage of the tax revenues shall be allocated for each one. As a natural and expected consequence of such local control, diversity exists throughout the State in the amount of money spent on education. However, these differences are not mandated by the Legislature, nor do they result

from a legislative policy which separates the wealthy from the poor. The Legislature has simply recognized the value of community control and has entrusted to the local school district the duty to provide for the education of the children residing therein.

Since there is a rational basis for reposing the primary responsibility for public education with local school districts, the controlling Federal and State case law leave no doubt that this legislative judgment is consistent with the equal protection guarantees of the Federal Constitution. In *James* v. *Valtierra,* 402 U. S. 137 (1971), the Court upheld the power of local governmental units to exclude low-income housing projects from within their boundaries through referendums mandated by the State Constitution. It found that the referendum which effectively excluded such housing was basically a procedure for democratic decision making, and since the State did not single out low income people desiring public housing for such mandatory referendums, it was constitutionally valid. The court said:

> "This procedure ensures that all the people of a community will have a voice in a decision which may lead to large expenditures of local governmental funds for increased public services and to lower tax revenues. It gives them a voice in decisions that will affect the future development of their own community." 402 U. S. at 143.

The position of prospective low income residents of a municipality which determines to exclude low income housing is akin to that of students in a municipality which does not make available funds for education comparable to those provided by a neighboring municipality. *See also Salsburg* v. *Maryland,* 346 U. S. 545 (1954); *West Morris Reg. Bd. of Ed.* v. *Sills,* 58 N. J. 464 cert. den. 404 U. S. 986

(1971); *United States ex rel. Buonoraba* v. *Commissioner of Cor.,* 316 F. Supp. 556 (S. D. N. Y. 1970).

The ultimate jurisprudential question posed by the decision below and the cases which have followed it is whether such judicial activism can be reconciled with basic democratic principles. As set forth in the interest of the *amicus* portion of this brief, the New Jersey Legislature, duly elected by the people of this State, has determined to delegate the primary responsibilty for public education to local school districts. This determination has far-reaching implications with respect to the structure of state government, the exercise of the power of taxation, and the allocation of governmental revenues. *See* Kurland, *Equal Protection Opportunity: The Limits of Constitutional Jurisprudence Undefined,* 35 U. of Ch. L. Rev. 583 (1968). These are all areas of controversy primarily entrusted to the Legislature to resolve in conformity with the will of the majority of the people, and not to be resolved for all time by the judiciary in accordance with notions of equality currently in vogue. In this respect, the legislative judgment challenged in this case is fundamentally different from questions of criminal procedure or the exercise of the franchise, with respect to which the judiciary has a primary responsibility for the protection of individual rights. *See e.g., Harper* v. *Virginia Bd. of Elections,* 383 U. S. 663 (1966); *Reynolds* v. *Sims,* 377 U. S. 533 (1964); *Douglas* v. *California,* 372 U. S. 353 (1963). In fact, the active role which the court has assumed in voting rights cases such as *Harper* v. *Virginia Bd. of Elections* and *Reynolds* v. *Sims* is in furtherance of the fundamental democratic principle that all citizens have a right to cast an effective ballot to influence decisions concerning the structure of government, taxation, the distribution of governmental revenues and other matters of vital concern. This

point was well made in *Kramer* v. *Union Free School District,* 395 U. S. 621 (1969) where the Court, in explaining its reasons for applying a strict standard of judicial review in votings rights cases, said:

> "The presumption of constitutionality and the approval given 'rational' classifications in other types of enactments are based on an assumption that the institutions of state government are structured so as to represent fairly all the people. However, when the challenge to the statute is in effect a challenge of this basic assumption, the assumption can no longer serve as the basis for presuming constitutionality." 395 U. S. at 628.

By contrast, the recent decisions invalidating state financing legislation on equal protection grounds do not protect the democratic political process, but to the contrary, they effectively remove one of the most important areas of public policy from that process. It is certainly not the function of courts to choose between competing claims for public revenues or conflicting educational and political theories. Even assuming that the present system of financing public education in many states leaves much to be desired, it should be remembered that ". . . the Constitution does not provide judicial remedies for every social and economic ill." *Lindsey* v. *Normet,* 404 U. S. 818 (1972).

CONCLUSION

The District Court failed to give due consideration to the equal protection principles governing this case set forth expressly in *Jefferson* v. *Hackney,* —— U.S. ——, 92 S. Ct. 1724, 32 L. ed. 2d 285 (1972); *Dandridge* v. *Williams,* 397 U.S. 471 (1970); and *Carmichael* v. *Southern Coal & Coke Co.,* 301 U.S. 495 (1937), and implicitly in the Court's summary affirmances in *McInnis* v. *Shapiro,* 293 F. Supp. 327 (N.D. Ill. 1968), affirmed Mem. *sub nom. McInnis* v. *Ogilvie,* 394 U.S. 322 (1969) and *Burruss* v. *Wilkerson,* 310 F. Supp. 572 (W.D. Va. 1969), *aff'd mem.* 397 U.S. 44 (1970). It is respectfully, submitted that the application of those principles to this case clearly demonstrates that the decision below is erroneous and therefore that it should be reversed.

Respectfully submitted,

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