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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

MOTION TO AFFIRM

Appellees-Plaintiffs file this Motion to Affirm the Judgment of the trial court.

BACKGROUND

This cause of action was filed on July 10, 1968. A Three Judge Court was duly convened. Preliminary hearings relating to parties were held and amendments of pleadings were filed at the suggestion of the Court in response to defense motions for a more definite statement. Defendants filed motions to dismiss challenging the allegations in the Third Amended Com-

plaint as failing to state a cause of action. The trial Court overruled the motions on October 20, 1969, but stayed further action in order to give the legislature of the State of Texas an opportunity to act.

The Sixty Second Legislature convened in January 1971 and adjourned at the end of May 1971 without considering the matters at issue in this case. The Court then scheduled pre-trial completion and trial. Final arguments were made on December 10, 1970 and the Court entered its decree on December 23, 1970. *Rodriguez v. San Antonio Independent School District*, 337 F.Supp. 280 (W.D.Tex. 1971).

The record is clear and complete. It contains the testimony of nine witnesses and nineteen exhibits, including numerous graphs, charts and reports. The evidence presents a full picture of the operation of the Texas education system in both narrative and statistical form. The extensive facts are summarized in Plaintiffs' Trial Brief filed in the Court below and the stipulations and evidence proving each matter stated in the Third Amended Complaint are set out beginning on page 21 of that Brief. The parties agreed that no material facts were in genuine dispute. Matters not stipulated were proven through more than one source in almost every instance. Each of the matters referred to in this brief are in evidence.

The Texas Public School Financing System

The basic support of the Texas system of financing public school education is the school district's tax on the value of real property within its boundaries. The sums collected from that tax not only account for approximately one-half of the funding under the state

system, but in part determine a district's capacity and entitlement to the funds from the State. Statewide the district tax bases vary widely, ranging from over $500,000 of value per child to below $10,000 of value per child. The State funding is done through the Foundation School Program which was prior to the 1969 codification entitled the Minimum Foundation Program. The codification did not contain substantive changes. The Program benefits the wealthy districts over the poor districts by using the variable unit form of foundation approach and the incentive matching grant approach to calculation of funding (plus an insignificant amount of fixed unit form of foundation approach). More than 80% of the funds coming from the State are used to pay teachers' salaries under the formulas provided in the Texas Education Code, Section 16.31 et. seq. and 16.98. The amount the State pays depends on the "quality" of teacher the local district funds. The State sets the standards of quality for teachers based on a matrix of formal degrees and experience.

The theory and facts are that the more a local district puts into salaries, the more qualified its teachers will be according to State standards of qualification. As a result the more money a school spends on teachers' salaries the greater its share of Foundation School Program funds.

To compound the disparity, the State funding is for minimums and local districts can supplement. Wealthy districts can supplement more readily than poor districts. In a common job market this further expands the disparity since the more qualified teachers will tend to go to those schools that afford the higher

salaries and those higher qualifications entitle that school to more funds under the salary portion of the Foundation School Program.

The State pays 80% of the Foundation School Program and the local districts are responsible for the balance. That balance is apportioned according to an economic index. As described by appellants, this index apportions the local funding according to the wealth of the district. The local district does not raise its local fund assignment from a separate assessment, but pays its share out of its ad valorem tax collection. The local fund assignment, therefore, is in a sense merely a credit to the local district.

The disparity under the incentive matching grants State program is so great that the amounts per pupil paid by the State to the wealthy districts remains greater than the sums paid by the State to the poor districts, even after the State has deducted what the local districts are assigned as its portion of the cost of the program. The State's Foundation Program actually expands the disparity of funds available for education between the poor districts and all the other districts. The testimony on this is clear, unequivocal, and stated in narrative, graphic, and statistical terms.

The trial court described school financing for poor districts as a "tax more spend less system." The districts with high value tax bases consistently have higher revenues than the districts with low value tax bases. Both throughout the State and in the Bexar County area (the area in which the Edgewood District is located) the poor districts are making the greatest tax effort, while the rich districts are making the lowest efforts and their revenues remain the highest.

The poor districts contain greater proportions of poor people. The willingness of the poor to make the strongest effort and the other evidence proving their great desire for quality education underscores the strong motivation of all citizens regardless of income to provide quality education for their children.

The Texas Public School Financing System as it Operates in Bexar County, Texas

Seven school districts having 93% of the public school students in Bexar County, Texas are located in a single metropolitan area. Neither cities or counties geographically determine the school district boundaries and no natural geographic reasons exist for their present boundaries. The State Commissioner of Education recognizes that the boundaries serve no education function. The costs of goods and services do not vary and these districts are competing in the same economic job pool. As shown statewide, the poorest local school district, Edgewood, makes the highest tax effort and derives the least revenue because of its low tax base. Its residents have the lowest incomes. It is further agreed that the children in Edgewood do have equal motivation and ability and do not have less educational needs than the children in the other districts. The evidence is also unequivocal that in every classification and criteria they are not afforded the quality of education granted in the other districts. The result is lower achievement and higher dropout rates. Edgewood has the highest percentage of minority students among the districts and the districts having higher percentages of minorities are, as statewide, the poorest while the wealthy districts have the lowest percentages of minority students.

PUBLIC SCHOOL EDUCATION IS A FUNDAMENTAL PERSONAL RIGHT

The Court has recently reaffirmed that public school education is a fundamental personal right: "Though the latitude given State economic and social regulation is necessarily broad, when State statutory classifications approach sensitive and fundamental personal rights, this Court exercises a stricter scrutiny. *Brown v. Board of Education,* 347 U.S. 483 (1954); *Harper v. Virginia Board of Elections,* 383 U.S. 663 (1966)." *Weber v. Aetna Casualty & Surety Co.,* 40 Law Week 4460, 4462,____U.S.____(1972). This fundamental right must be made available to all on equal terms. *Brown v. Board of Education,* 347 U.S. 483, 493 (1954). Without considering the *Brown* decision, the trial court should be affirmed. *Missouri ex rel Gaines v. Canada,* 305 U.S. 337 (1938); *Sweatt v. Painter,* 339 U.S. 629 (1950); *McLaurin v. Oklahoma State Regents,* 339 U.S. 637 (1950).

The Court recognizes that public schools cannot be closed to the poor [*Shapiro v. Thompson,* 394 U.S. 618, 633 (1969)] or minorities. The equal protection clause of the Fourteenth Amendment precludes this. Children must attend school. Texas Education Code, §21.032. Appellants contend that it precludes no more than this. Plaintiffs contend that merely opening a school, while providing mass discrimination to minorities and the poor in public school education, does not meet the standards of the Fourteenth Amendment.

The State did not make people poor, but the State did create poor school districts. The State set the boundaries and has control over altering those boundaries. In fact, when a small-poor district becomes by

fortuitous circumstances a wealthy district, i.e., large industrial plants being built in the district, the State provides means for the majority of the community to alter the district lines. *West Orange-Cove Con. I.S.D. v. County Bd. of School Tr.*, 430 S.W. 2d 65 (Tex. Civ. App. 1968) ref. n.r.e.

The Texas System Discriminates On The Basis of Wealth

The property wealth within the boundaries of each state created district determines the quality of education under the Texas system. The strict scrutiny demanded of any statutory classifications approaching sensitive and fundamental personal rights are further called into question when the classifications are based upon wealth. *Griffin v. Illinois,* 351 U.S. 12 (1956); *Harper v. Virginia,* 383 U.S. 663 (1966); *McDonald v. Board of Election Commissioners of Chicago,* 394 U.S. 802, 807 (1969).

The Texas System Discriminates Against Minorities

The evidence statewide and in Bexar County is that as the percentage of minority residents in a district increases, the tax effort increases, while the revenues available for education decrease. This is because of the low tax base in districts which have the high percentages of minorities. The richest districts have the least numbers of minority residents and the most funds.

The minority represented herein has been discriminated against in education (in 1950 the State school system was under an injunction not to participate in the segregation of Mexican Americans), housing, and employment opportunities. Mexican Americans live in

poor neighborhoods for reasons other than poverty. Restrictive covenants which the record reflects were enforced by Texas Courts barred Mexican Americans from any but the poorest neighborhoods prior to *Shelley v. Kraemer,* 344 U.S. 1 (1947). The continuation of this discrimination was recognized by the Congress of the United States in 1968 by its enactment of Title 42 U.S.C., §3601, et seq., commonly known as the Fair Housing Act.

The Texas System Meets No Fourteenth Amendment Standard

Summary affirmance is further warranted because the Texas system does not bear some rational relationship to a legitimate state purpose. The trial court recognized the Texas system fails to establish a reasonable basis for these classifications. The defendants urge rationality on the ground the system permits local determination on the basis of parental desire. The evidence shows in fact the system in Bexar County and statewide limits the choice of financing by guaranteeing that poor districts have little to spend despite great desire and effort and other districts have large sums resulting from little effort. The Texas system affords different treatment of different classes on the basis of criteria wholly unrelated to the objective of the statutes and does not meet the criteria of being reasonable, not arbitrary, and resting upon a fair and substantial relation to the object of the legislation. *Reed v. Reed,* 404 U.S. 71, 75-76 (1971).

The Relief Sought Is Judicially Manageable

The affirmances in *McInnis v. Ogilvie*, 394 U.S. 322 (1969), and *Burrus v. Wilkerson*, 397 U.S. 44 (1970), are not inconsistent with the decision of the trial court. The Plaintiffs in *McInnis* and *Burrus* complained on the ground the Equal Protection Clause of the Fourteenth Amendment mandates that each child be educated according to his individual need. The trial courts in *McInnis* and *Burrus* were correct in stating the relief sought was not judicially manageable and was not required by the Equal Protection Clause. In the present case, the Plaintiffs seek merely to enjoin a system that denies them equal protection of the laws. Judicially manageable equal protection standards are well developed and familiar. *Baker v. Carr*, 369 U.S. 186, 226 (1972). The state is left to choose among a variety of systems.

The Relief Sought is Moderate

There is no doubt that the equal protection clause of the Fourteenth Amendment applies to the discrimination imposed upon the public school students who live in the Edgewood School District. Appellants do not contest the vast discrimination. They do raise the unsupported spectre of massive change and *amicus* attempts to raise fear of a mass conspiracy. Can the parents and students in Edgewood or the lawyer who alone handled the burden of this case be accused of being mass conspirators? Plaintiffs only challenge the discrimination of Texas school financing. Are plaintiffs to be denied equal protection because others may be affected? Recently, the Court stated in *Cole v. Pecaros*, 40 Law Week 4381, 4384, _____ U.S._____ (1972): "... bear in mind that many of the hazards

of human existence that can be imagined are circumscribed by the classic observation of Mr. Justice Holmes, when confronted with prophecy of dire consequences of certain judicial action, that it would not occur 'while this Court sits'."

Appellants do not contest either at the trial level or in this Court the findings of fact in the Court below. They ask only for legitimation of the State created wealth and racial discrimination in public school education. This Court is asked to redeem the statutory system that requires this discrimination in the allocation of public funds. Plaintiffs do not contend the Fourteenth Amendment guarantees them good education or the privileges private education may bring. Their protest is against a discriminatory State public school system.

Since the decision below could well have been reached on the ground of racial discrimination and the finding that the Texas system has no rational basis, summary affirmance would not necessarily imply either a wealth discrimination decision or a decision involving a fundamental interest. The school wealth discrimination question is now being considered in a number of State and lower Federal Courts. Critical literature is being generated. Summary affirmance would permit development of more judicial and professional thought which could help this Court to reach a more fully informed resolution of the wealth discrimination problem in the future. Since many legislatures are enacting public school education systems to meet State and lower Federal Court decisions future determination will give the Court greater opportunity to view the effect of the relief sought.

Conclusion

For the foregoing reasons it is submitted that this Court should summarily affirm the decision below.

Respectfully submitted,

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