In the Supreme Court
OF THE
United States

OCTOBER TERM, 1971

No. 71-1332

SAN ANTONIO INDEPENDENT SCHOOL DISTRICT, et al.,
Appellants,

vs.

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 AMICI CURIAE OF WILSON RILES, SUPERINTENDENT OF PUBLIC INSTRUCTION OF THE STATE OF CALIFORNIA, AND THE CALIFORNIA STATE BOARD OF EDUCATION.

Wilson Riles, Superintendent of Public Instruction of the State of California, and the California State Board of Education, hereby respectively move for leave to file the attached brief amici curiae in this case. The attorney for the appellees has no objection to the filing of the attached brief. The consent of the attorney for the appellants was requested but refused.

The interest of the California Superintendent of Public Instruction in this case arises from the fact he is a party in the case of *Serrano v. Priest* (Los Angeles Superior Court No. C-938254) which matter is pending trial in the California Superior Court, upon remand from the California Supreme Court, *Serrano v. Priest,* 5 Cal. 3d 584, 487 P. 2d 1241 (1971). In the present matter the court below relied heavily upon the decision of the California court in *Serrano v. Priest,* supra. The outcome of the *Serrano* case will probably be determined by the court's decision in the present matter. Other parties in *Serrano* have filed amici briefs in this matter.

Amici are responsible on the statewide level for the administration of the California system of public instruction. The court's decision in this matter may shape tax reform and alter educational finance in the states for some time to come. Amici therefore are vitally concerned that the decision of the court in this matter be consistent with sound and realistic educational practice and philosophy. Amici feel they are particularly qualified to file argument on the issue of the imposition of a judicially manageable standard relative to a school financing system found to be in violation of the Fourteenth Amendment.

Dated, Sacramento, California,
August 15, 1972.

Respectfully submitted,
ROBERT R. COFFMAN,
Chief Counsel,
California State Department of Education,
Attorney for Amici Curiae.

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BRIEF AMICI CURIAE OF WILSON RILES, SUPERINTENDENT OF PUBLIC INSTRUCTION OF THE STATE OF CALIFORNIA, AND THE CALIFORNIA STATE BOARD OF EDUCATION.

INTEREST OF AMICI CURIAE

Wilson Riles

Dr. Wilson Riles, as Superintendent of Public Instruction of the State of California, is the only California education official who is a state-wide elective officer. California Constitution, Article IX, Section 2. The California Legislature has delegated to the Superintendent the function of administering the

California State Department of Education and the duty of superintending California public schools. California Education Code Sections 253, 351-354. In addition, he is responsible for administering and regulating numerous specific programs dealing with every aspect of education as authorized by statutes codified in the voluminous California Education Code. He is responsible for apportioning funds from the State School Fund to school districts and county superintendents of schools. California Education Code Sections 17401, et seq.

The Superintendent of Public Instruction is a party in *Serrano v. Priest,* 5 Cal. 3d 584, 487 P. 2d 1241 (1971), now pending in the Los Angeles Superior Court, Action No. 938254. The course the trial will take in that case will be largely influenced and dictated by the decision of the court in the instant matter.

California State Board of Education

The California State Board of Education is composed of ten members appointed by the Governor with the advice and consent of 2/3 of the California Senate. California Education Code Section 101. The State Board of Education is similarly charged with administering California public school programs by virtue of hundreds of specific California Education Code sections making provision therefor. In addition, the State Board of Education "shall study the educational conditions and needs of the State. It shall make plans for the improvement of the administration and efficiency of the public schools of the state." Cali-

fornia Education Code Section 153. California Education Code Section 152 requires the State Board of Education, among other things, to adopt rules and regulations "for the government of the day and evening elementary schools, the day and evening secondary schools, and the technical and vocational schools of the State, and . . . for the government of such other schools, excepting the University of California and the California State Colleges, as may receive in whole or in part financial support from the State."

At its meeting on June 9, 1972, the State Board of Education unanimously authorized the filing of an Amicus brief in this matter.

The major objective of the Superintendent of Public Instruction and the State Board of Education is the establishment and maintenance of quality education and equal education opportunities for all the pupils of the State of California and for that reason they have a special interest in the outcome of the instant case.

SUMMARY OF ARGUMENT

1. The fundamental interest involved in this matter is an interest of people in quality education. Children have suffered injury as a result of Texas' choice to dispense public education according to the wealth of its state-created school districts. Classification by wealth is constitutionally suspect under the Equal Protection Clause. Where, as here, the interest considered is fundamental to a free society, such classifi-

cation constitutes a demonstrable violation of equal protection. The State has not here demonstrated discrimination by wealth is necessary to advance a compelling interest. The interest in local choice of school spending can be better served by permitting local effort rather than local wealth to determine spending. The Texas laws under consideration are invalid under the Equal Protection Clause under any standard of review the Court may apply. The constitutional standard of "fiscal neutrality" formulated by the Court below will not adversely affect other societal interests, e.g., of parents in providing for the education of their children, local community control over school matters, legislative efforts to provide alternatives in attempting to improve public education. Amici are convinced that the holding below will not impose a "straitjacket" upon governmental units but will free the legislative and executive branches to devote their efforts to improving the system of public instruction, to create meaningful alternatives in public education, and to make available local options in the operation of public school systems.

2. It is recognized that no decision of the Supreme Court has held that education is a fundamental interest of the type requiring the application of the strict scrutiny test in determining the validity of legislative classifications, including a classification based on substantial disparities in wealth such as a school finance system. The standard the Court is now being urged to apply is that employed in *Brown v. Board of Education,* 347 U.S. 483 (1954), that when a state

has imposed a system of compulsory education, then a denial by the State of equal education opportunity to some children subject to the State's system of public instruction violates the Equal Protection Clause of the Fourteenth Amendment; that in the present context, the effect that a public school finance system has on the Equal Protection Clause, the discrimination, or denial of an equal education, is clearly demonstrated by an examination of the effects of such financing system, i.e., substantial unequal allocations of funds resulting in discrimination against poor children and children living in poor school districts. This discrimination based on wealth affects a vital interest, education of children. The confluence of these elements: discrimination based on wealth, the importance of education to the individual and society, the denial of an equal education to children where a state mandates the establishment of a system of public education and compels the attendance of children at its schools, provides the court with a unique opportunity to apply a constitutional test heretofore reserved for other basic rights (e.g. voting) and suspect classifications (e.g. race), to a school funding scheme that invidiously discriminates against children.

ARGUMENT

I

STATE SCHOOL FINANCE SYSTEMS DISCRIMINATE AGAINST CHILDREN LIVING IN POOR SCHOOL DISTRICTS

The court below found that the system by which the State of Texas provides for the financing of public elementary and secondary schools discriminates on the basis of wealth by permitting citizens of affluent districts to provide a higher quality education for their children, while paying lower taxes. The three-judge decision in this matter, 337 Fed. Supp. 280 (1971), amply developed the factual framework for its findings by reviewing the Texas school finance system and by enumerating the statistical data forming the basis for its conclusion. It cannot be disputed but that substantial disparities exist among Texas school districts in school revenue and in spending per pupil according to the wealth of each school district.

Serrano v. Priest, 5 Cal. 3d 584, 487 P. 2d 1241 (1971), holding the California system of public school financing violates the Equal Protection Clause of the Fourteenth Amendment, contains a detailed discussion of the California financing scheme. The California court's analysis exposes the gross inequalities of a state mandated system that results in expenditures per pupil ranging from $407 to $2,586, for instance, in elementary school districts in California. See Coons, Clune, and Sugarman, *Private Wealth and Public Education,* 96-148 (Harvard University Press, Cambridge, 1970), for an analysis of financing systems in other states.

II

THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE FEDERAL CONSTITUTION PROHIBITS MAKING THE QUALITY OF A CHILD'S EDUCATION A FUNCTION OF THE WEALTH OF HIS SCHOOL DISTRICT

A threshold question facing the court in its resolution of this matter concerns the proper constitutional test to be applied in judging plaintiffs' assertion of a violation of the Equal Protection Clause. Certain legislative classifications impinge upon fundamental interests or involve suspect classifications and thus are subject to a "compelling interest" or "strict scrutiny" standard requiring the State to demonstrate that the legislation is necessary to promote a compelling state interest. *Shapiro v. Thompson,* 394 U.S. 618 (1969). Legislation not involving such interests or classifications is said to be subject to a "reasonable basis" or "rational basis" test providing in essence that legislation alleged to be in violation of the Equal Protection Clause is presumed valid with the burden of establishing otherwise on the party challenging the legislation. *Dandridge v. Williams,* 397 U.S. 471 (1970).

1. Education is fundamental and specially protected by the equal protection clause.

When the court, in *Brown v. Board of Education,* 347 U.S. 483 (1954) invalidated state-imposed segregation by race in public schools, it expressed itself at length on the development of public education and its current place in American life. The court felt that "only in this way can it be determined if segregation

in public schools deprives these plaintiffs of the equal protection of the laws." (at page 493).

In *Brown* the court's examination into the issue of equal education opportunity, although involving a suspect classification based on race, appeared to be necessary to the resolution of the controversy presented in that case. The court's conclusion as to the fundamental importance of education resulted in the Court invalidating a state-imposed system of segregation.

In approaching the problem presented by the instant case, the court is again confronted with the Equal Protection Clause as it is related to equal education opportunity. The discrimination involved in the present matter, however, is more sophisticated and subtle in that it relates to a school financing system rather than to a classification based on race. The present discrimination is at least as pervasive in its resultant effect of state mandated unequal treatment and perhaps lends itself to more readily discernible measurements of unequal protection. If in *Brown* it was shown that the state spent $200 per child for the education of each black child in segregated schools and $1,200 per child for the education of each white child in separate schools, the Constitution would have been violated even under the separate but equal doctrine. Under the Texas and the California school finance structures, there exists the anomaly that many black children are not receiving an education equal to that which would have been provided them under the separate but equal doctrine. It could hardly have

been the intent of the court in *Brown,* by holding that racially separate schools are unequal as a matter of law, to foreclose the principle now urged: That state imposed discrimination, based upon wealth rather than race, resulting in unequal educational opportunities for public school children, is a denial of equal protection in the absence of a compelling state interest justifying such discrimination.

It is submitted that the expression of the court in *Brown* is the most eloquent argument yet rendered on the question whether equal education opportunity is a fundamental interest warranting the protection of the Fourteenth Amendment. The court in *Brown* declared that:

> "Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms."

The language in *Brown* that the opportunity to an education "where the state has undertaken to provide it, *is a right which must be made available to all on equal terms",* (emphasis added) epitomizes the principle the court is now urged to renew. The principle involved in this case is the same; the application of that principle to a broader set of circumstances is valid when measured by the invidious nature of the discrimination and the appropriate standard available to remedy the wrong. (See Part III, infra.) Critics have attempted to obscure what this case is all about. That is, when a state mandates a system whereby one child receives a $1,500 education and another child is relegated to a $400 education, the opportunity for an education is being abridged with respect to the latter child; the state is manifestly not providing the opportunity for an education to all on equal terms.

To reject the strict scrutiny standard in this case because the discrimination applies to some black children and some white children (and other racial groups) rather than black children only is to conceptualize a difference without logic or rationale in that such doctrine would signal a retreat from the Court's pronouncement in *Brown* by sanctioning as constitutionally permissible discrimination prohibiting a child from the opportunity of obtaining his full intellectual capacity and exercising his obligations as a citizen.

As recently as May, 1972, the court in discussing education in the context of a state's interest in the education of its citizens as reflected through its com-

pulsory education laws, as opposed to the First Amendment guarantee of religious freedom, stated that "Providing public schools ranks at the very apex of the function of a state." *Wisconsin v. Yoder,* 40 U.S. Law Week 4476. In *Yoder* the court felt education was subject only to its effect *"on other fundamental rights and interests"*, such as first amendment guarantees (emphasis added).

An exhaustive analysis of the unique role education plays in our society and its impact on the individual child is found elsewhere; it is unnecessary to repeat that education is clearly distinguishable from other governmental services. *Serrano v. Priest,* 5 Cal. 3d 584, 487 P. 2d 1241 (1971); Coons, Clune, and Sugarman, Educational Opportunity: *A Workable Constitutional Test for State Financial Structures* (1969) 57 Cal. Law Rev. 305.

The cries of the alarmists that the doctrine set forth herein would lead to all governmental services being classified as fundamental has been dispelled by state and federal courts considering this issue. *Van Dusartz v. Hatfield,* 334 Fed. Supp. 870 (D. Minn. 1971); *Serrano v. Priest,* supra; *Robinson v. Cahill,* 118 N.J. Super. 223, 287 A. 2d 187 (1972) and by the three judge district court opinion reported in this matter in 337 F. Supp. 280 (1971).

2. Discrimination against children by wealth is constitutionally suspect.

The court has repeatedly declared that classifications based upon wealth are suspect under the Equal Pro-

tection Clause. *Harper v. Virginia,* 383 U.S. 663 (1966); *McDonald v. Board of Election Commissioners of Chicago,* 394 U.S. 802 (1969).

The variations in wealth among individual school districts are a product of governmental action in that school funding schemes are mandated in detail by state constitutions and statutes. The California Supreme Court in *Serrano* stated the effect of such a governmental classification based upon wealth in the following language:

> "Obviously, the richer district is favored when it can provide the same educational quality for its children with less tax effort. Furthermore, as a statistical matter, the poorer districts are financially unable to raise their taxes high enough to match the educational offerings of wealthier districts. (Legislative Analyst, Part V, *Supra,* pp. 8-9.) Thus, affluent districts can have their cake and eat it too: they can provide a high quality education for their children while paying lower taxes. Poor districts, by contrast, have no cake at all." (pp. 599-600.)

Some claim that the discrimination inherent in the Texas school finance system is against taxpayers and not children. Amici's interest in school finance is based solely on the result of tax dollars, i.e., the benefits to be derived therefrom by children. The injury resulting from the present Texas and California school finance systems is a real one: It is the discriminatory effect of such legislation upon the interest of children in receiving an education.

3. Quality of education is related to the cost of education.

The fact that grossly different amounts of money are being expended per pupil is sufficient to establish a violation of the Equal Protection Clause without the necessity of factually proving a correlation between dollars spent and the quality of educational opportunity provided by the State. The court in *Van Dusartz,* supra, summarized this principle as follows:

> "In any event, the Legislature would seem to have foreclosed this issue to the State by establishing a system encouraging variation in spending; it would be high irony for the state to argue that large portions of the educational budget authorized by law in effect are thrown away. . . .
>
> * * * * *
>
> "While the correlation between expenditure per pupil and the quality of education may be open to argument, the court must assume here that it is high. To do otherwise would be to hold that in those wealthy districts where the per pupil expenditure is higher than some real or imaginary norm, the school boards are merely wasting the taxpayers' money. The court is not willing to so hold, absent some strong evidence. Even those who staunchly advocate that the disparities here complained of are the result of local control and that such control and taxation with the resulting inequality should be maintained would not be willing to concede that such local autonomy results in waste or inefficiency." (*Van Dusartz v. Hatfield,* supra, p. 873.)

Robinson v. Cahill, 287 A. 2d 187, 199-205, contains an extensive discussion of the various studies

and statistics indicating a high degree of correlation between expenditures for education and the quality of education. The court in *Robinson* concludes, at page 203, that "better education does make a difference regardless of the child's social environment."

Statistics compiled by the California State Department of Education indicate a positive correlation between achievement and expenditure per pupil. The statistics indicate the magnitude of difference, or index of difference, in achievement test scores is so great that it is impossible for such difference to have occurred by chance or some other random factor. The statistics involved 60% of all unified school districts in California, the top 30% of such districts in per pupil expenditure as compared with the lowest 30% of such districts in per pupil expenditure. The comparison between the top 30% (70 districts) and the low 30% (70 districts) reveals that pupils attending districts with high per pupil expenditures have significantly higher achievement test results than pupils attending districts with lower per pupil expenditures. The differential in achievement test scores between such districts is one of three raw scores, a significant difference.

Even if such correlation between tax dollars and quality of education cannot be proven in all cases, e.g., between each school district in a state compared to every other district in that state, the validity of the principle enunciated by the court below remains intact: The right to access to equal funds or "fiscal neutrality" rather than the result of the availability

of funds to a given school district. That better funding is necessary for better education is indisputable, and is not rendered invalid as a result of a particular district mismanaging its funds or allocating expenditures based on improper priorities.

4. A school finance system may be invalid under the rational basis test of equal protection.

Legislation may be judged by the rationality of the relation between the state's objective and the means chosen to effectuate that objective. Under this test the classification employed must be reasonably related to the achievement of its objectives. *McGowan v. Maryland,* 336 U.S. 420 (1961); *Dandridge v. Williams,* 397 U.S. 471 (1970).

An objective of a state-wide system of public education cannot be achieved when it is funded by substantial disparities of local wealth. The court below specifically stated that defendants "fail even to establish a reasonable basis for these classifications." (at page 284).

The California School Finance System was designed to "strengthen and encourage local responsibility for public education" (California Education Code Section 17300). Section 17300 refers to local control as requiring "that all local administrative units contribute to the support of school budgets in proportion to their respective abilities." The court's comment in *Serrano v. Priest,* supra., relative to the relationship of the legislative objective to the California financing scheme is applicable to the instant case. The court in *Serrano* stated:

> "We need not decide whether such decentralized financial decision-making is a compelling state interest, since under the present financing system, such fiscal freewill is a cruel illusion for the poor school districts. . . .
>
> "In summary, so long as the assessed valuation within a district's boundaries is a major determinant of how much it can spend for its schools, only a district with a large tax base will be truly able to decide how much it really cares about education. The poor district cannot freely choose to tax itself into an excellence which its tax roll cannot provide. Far from being necessary to promote local fiscal choice, the present financing system actually deprives the less wealthy districts of that option." (at page 611).

III

A JUDICIALLY MANAGEABLE STANDARD IS AVAILABLE TO TEST THE CONSTITUTIONALITY OF A SCHOOL FINANCE SYSTEM.

McInnis v. Shapiro, 293 Fed. Supp. 327, (1968) aff'd mem. sub nom. *McInnis v. Ogilvie,* 394 U.S. 322 (1969), involving a challenge to the Illinois school financing system, held that the lack of judicially manageable standards made that controversy nonjusticiable. In that case plaintiffs contended the Equal Protection Clause required school expenditures to be made on the basis of pupils' educational needs.

Serrano v. Priest, supra, distinguished the holding in *McInnis* by enunciating a different standard: The

quality of a child's education cannot be a function of the wealth of his parents and neighbors.

Van Dusartz, supra, refined the standard as follows: The level of spending for a child's education may not be a function of wealth other than wealth of the state as a whole.

The court below felt the necessity for the development of judicially manageable standards in reviewing a complex school finance system and adopted the principle of "fiscal neutrality" as refined above in *Van Dusartz.* The court below found that "this proposal does not involve the court in the intricacies of affirmatively requiring that expenditures be made in a certain manner or amount. On the contrary, the State may adopt the financial scheme desired as long as the variations in wealth among the governmentally chosen units do not affect spending for the education of any child." (at page 284). The court further stated that the new form of financing "may be made from a wide variety of financial plans so long as the program adopted does not make the quality of public education a function of wealth other than the wealth of the State as a whole." (at page 285).

Amici are vitally concerned with two aspects of this matter. First, that the judiciary does not intrude upon educational decision-making with respect to questions such as the specific manner in which funds for education should be allocated, or the needs of individual pupils, or groupings of pupils according to classifications such as handicapped or disadvantaged.

Second, that the court does not invalidate a state's prerogative to delegate to local school districts decision-making power over the administration of their schools, including local fiscal control over the amount of funds to be spent on education.

Amici believe that the holding below, in following *Serrano v. Priest,* supra, not only obviates its fears as expressed above, but affirmatively promotes the interests of education by permitting the strengthening of principles of local control, quality education, and equal education opportunity to a degree unsurpassed in the history of American education. The principle of "fiscal neutrality" enunciated by the court below allows local communities, educators, and legislators to cooperate in achieving these often expressed objectives, the fulfillment of which have been heretofore all too often impeded by the intrusion of an inequitable and invalid system of school finance.

It has been contended by others that because the details of a system of taxation and method of financing public schools may involve somewhat complex features foreign to the experience of the judiciary, such matters should be left to the Legislature and to school authorities. The answer to this is two-fold. (1) Amici fully agree that the details of school financing should not be determined by the courts; (2) this court has always acted when the Constitution has been violated. A decision in this matter prohibiting legislative classifications resulting in invidious discrimination would not prevent the legislature from performing its historic role in formulating policy and enacting details

with respect to the system of taxation to be utilized to finance public schools so long as such does not violate the Constitution.

It has also been forecast by others that the truly important governmental interests of local control, experimentation, innovation, funding for special educational problems, democratic values, etc., will be destroyed by decisions such as that rendered below. Amici, as well as most school officials in the United States, respectfully contend otherwise. Such values and interests will be strengthened by affirmance in this matter. Neither the appellant nor amici supporting appellant's position, can state how or in what manner these important interests would be adversely affected by adoption of the equal protection standard found applicable by the court below. It can only be concluded that this is simply because the values inherent in the public school system, along with the ability to plan and implement innovative programs, will not be destroyed or impaired by action of this court in affirming the decision below.

Subsequent to the decision of the California Supreme Court in *Serrano,* the California State Board of Education appointed a school support committee to review the California school finance structure and to make recommendations to the Board that could lead to legislation that would meet the needs of the California public school system and also bring such system within the requirements imposed by *Serrano.* The committee's deliberations resulted in recommendations, meeting the requirements of *Serrano,* which were sub-

sequently submitted to the California Legislature in the form of Assembly Bill 1283 and Senate Bill 1171, 1972 Session of the California Legislature. The committee's recommendations were made without opposition by any member of the committee. Amici feel it important to bring this to the court's attention as an example of the diverse groups and interests that have been able to arrive at a consensus in implementing the holding in *Serrano*. It is contended such could not have occurred if the dire consequences of *Serrano* suggested by its opponents had any validity in fact.

The committee on school support consisted of representatives of four private corporations, Arthur Young and Company, Golden State Mutual Life Insurance Company, SOLAR Division of International Harvester Company, and First California Corporation; a California State Assemblyman, and the following organizations: California State Chamber of Commerce, California Taxpayers Association, League of California Cities, California School Boards Association, California State Department of Finance, California State Controller, League of Women Voters, California Farm Bureau, California State Grange, California County Supervisors Association, NAACP, California Teachers Association, Association of California School Administrators, Northern California Industry-Education Council, California Congress of Parents and Teachers, California Junior College Association, California Association of School Business Officials, Schools for Sound Finance, California Federation of Teachers, and the Association of Mexican-American Educators.

CONCLUSION

For the reasons stated it is respectfully submitted that the judgment of the District Court below should be affirmed.

Dated, Sacramento, California,
August 15, 1972.

Respectfully submitted,
ROBERT R. COFFMAN,
Chief Counsel,
California State Department of Education,
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