IN THE

Supreme Court of the United States

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 AND BRIEF AMICUS CURIAE ON BEHALF OF:

NATIONAL EDUCATION ASSOCIATION

AMERICAN ASSOCIATION OF SCHOOL ADMINISTRATORS

NATIONAL CONGRESS OF PARENTS AND TEACHERS

COUNCIL OF CHIEF STATE SCHOOL OFFICERS

The above named associations hereby move pursuant to Rule 42 of the Rules of this Court for leave to file the attached brief amicus curiae on the merits of the case at bar. Appellees have consented to the filing of this brief, but appellants have withheld their consent.

The associations joining in this motion represent educators and public officials who are directly involved in the

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operation of the public schools and parents who actively participate in school affairs. These associations and their memberships are as follows:

National Education Association (NEA) is an independent, voluntary organization of educators open to all professional teachers, supervisors and administrators. It presently has over one million one hundred thousand regular members.

American Association of School Administrators (AASA) is a voluntary, nation-wide organization of school administrators. Its membership includes more than 18,000 school administrators.

National Congress of Parents and Teachers (National PTA) is a voluntary organization established to promote the welfare of children. Its membership, which is primarily made up of parents and teachers, is more than 8,500,000.

Council of Chief State School Officers (CCSSO) is an independent organization of the State Superintendents and State Commissioners of Education. Its membership consists solely of the chief state school officers of the 50 states and six outlying areas.

Each of these associations has a deep interest in fostering quality education and equality of educational opportunity. The case at bar touches directly upon these concerns. Moreover, this case bears directly upon the ability of our individual members to fulfill their professional goals as educators, administrators and public school officials.

In view of the substantial impact that this Court's decision may have on the professional interests of the associations and their membership, we desire to participate in this case. We believe we can be of service to the Court in identifying the close relationship between educational opportunity and other basic civil and political rights.

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Moreover, since appellants have, for the first time in this litigation, argued that there is no significant relationship between cost and quality of education, we believe it would be useful to bring to the Court's attention the numerous studies demonstrating a positive relationship between the expenditures for education and the quality of education enjoyed by the child.

Wherefore, National Education Association, American Association of School Administrators, National Congress of Parents and Teachers and Council of Chief State School Officers request that this Court grant leave to file the accompanying brief amicus curiae in support of the judgment below.

Respectfully submitted,

STEPHEN J. POLLAK
RALPH J. MOORE, JR.
RICHARD M. SHARP
734 Fifteenth Street, N.W.
Washington, D.C. 20005

Attorneys for Amici

DAVID RUBIN
1201 Sixteenth Street, N.W.
Washington, D.C. 20036

Attorney for Amicus Curiae
National Education Association

Of Counsel:

SHEA & GARDNER
734 Fifteenth Street, N.W.
Washington, D.C. 20005

LoneDissent.org

INDEX

LoneDissent.org

INDEX—Continued

TABLE OF CITATIONS

CASES:

LoneDissent.org

INDEX—Continued

LoneDissent.org

INDEX—Continued

LoneDissent.org

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BRIEF AMICUS CURIAE FOR THE NATIONAL EDUCATION ASSOCIATION

AMERICAN ASSOCIATION OF SCHOOL ADMINISTRATORS

NATIONAL CONGRESS OF PARENTS AND TEACHERS

COUNCIL OF CHIEF STATE SCHOOL OFFICERS

STATEMENT

This case is before the Court on appeal to review the district court's holding that the Equal Protection Clause bars Texas from allocating funds for public education on the basis of wealth other than the wealth of the State as a whole.

The parties stipulated in the court below that the facts relevant to this case "are generally not in dispute"

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(A.45).[1] The evidence presented to the lower court, for the most part, related to the operation of the laws governing school financing and the disparities in revenue available to the school districts.

A. The System of Allocating Funds in Texas.

The parties stipulated that "the duty to provide education pursuant to the Texas Constitution is a function of the State" (A.53). For its own "convenience" in maintaining public schools, the State has created "independent school districts" which are "political subdivisions of the State" (A.53). At last count the State of Texas was divided into approximately 1200 school districts (A.261). Generally the districts are not coterminous with municipal or county lines or any other political subdivision of the State. For example, there are seven school districts lying wholly or partly within the City of San Antonio and its environs (A.53).

1. *Revenue Derived from the School District:* Pursuant to Article VII, Section 3 of the Texas Constitution, school districts may tax real and personal property located within the district. In fact, virtually all of the revenues derived from within the district come from the real property tax.[2] The rate of tax which the school district is authorized to establish is fixed by statute, and any additional levy requires a majority approval by those voting in the district's bond election (A.329-30). Revenues collected by the school district "must be used solely within the district in which it is collected" (A.54).

2. *Revenue Derived from the State of Texas.* The State of Texas provides funds for the school districts under

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[1] Citation is to Appendix. Appellants' brief will be cited as "App. Br." followed by the page reference.

[2] Plaintiffs Exhibit XVIIIc.

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two major programs.[3] First, the Available School Fund provides a flat grant to every school district for each pupil in the district (A.70). In 1968-69, for example, the state paid each district $97.75 for every child in average daily attendance in the school district.[4] In actual effect, this program benefits only the richest school districts in the State because the flat grant is deducted from the amount each school district receives from other state programs which serve all but the richest districts (A.56).

The second, and more complex, grant program is the Minimum Foundation Program (MFP). One of the avowed purposes of the Foundation Program is to equalize, at least to some extent, the disparities in revenues available to the school districts from their property tax (A. 70-71). Most of the funds (about 80%) are paid out for teachers' salaries (A.249).[5]

Under the Foundation program the State determines the number of teachers and other professionals that will be needed by the school district on the basis of average daily attendance (A.249). The State then allocates funds for these teachers, taking into account the education and experience of the teachers employed in the school district. Thus, for example, a school district receives less for a first year teacher than for one in his fifth year of service, and less for a teacher with a bachelor's degree than for a

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[3] There are several minor programs usually available to the district on a matching grant basis. For example, the State provides for educational television in a participating school district on a matching grant basis. 5 Governor's Committee on Public School Education, *Public Education in Texas—The Financing System,* pp. 18-19 (1969) (Hereafter cited as "Governor's Committee").

[4] *Id.* at 35.

[5] In addition to the grants made for teaching and professional salaries, the Minimum Foundation Program pays a small amount to each school district for "operating costs" and "transportation costs" (A.249).

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teacher with a master's degree.[6] Here again, the richer districts tend to be advantaged. Inasmuch as there is no upward limit on the amount a district may pay in salaries, the districts with greater financial resources, by paying larger salaries than the poorer districts, can and do attract teachers with greater experience and more advanced degrees (A.115-18). In that way the district qualifies for more funding under the Minimum Foundation plan (A.244).

Approximately 20% of the costs of the Minimum Foundation Program is paid by the local districts (A.250). In making up this 20%, a fixed sum or obligation is assigned to each county and each school district in the county is charged according to its pro-rata share of real property in the county.[7] The sum charged against the school district is then deducted from the MFP grant to the district.[8] In this respect the MFP affords some equalization of funding among the districts.

B. The Disparity of Funds Allocated for the Education of Texas Children.

1. *Funds Derived from Local Taxes.* As a result of the variations in property value among the school districts there is a marked variation in the amount of funds allocated per pupil among various school districts.

The cause and nature of variations in per pupil funding among Texas school districts is epitomized in the evidence relating to the seven school districts serving the

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[6] Texas Education Code §§ 16.301-312. A.249.

[7] Memorandum Brief of Defendants, p. 3. (This memorandum was filed in response to the court's request of September 5, 1969 for information relating to the manner in which funds are distributed under the Minimum Foundation Plan.)

[8] *Id.*

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City of San Antonio.[9] For these school districts, market costs for school plant, supplies, and professional personnel are generally the same (A.53). The financial resources of these seven districts, however, differ significantly. In 1967-68 the market value of property per student in each of the seven districts was as follows (A.229):

MARKET VALUE OF PROPERTY PER STUDENT

Edgewood	$ 5,429
Northeast	28,317
Alamo Heights	45,095
San Antonio	19,659
Harlandale	10,463
Northside	20,330
South San Antonio	9,974

The revenue per pupil derived from the property by these seven school districts in 1967-68 was as follows (A.230):

PROPERTY TAX YIELD PER STUDENT

Edgewood	$ 21
Northeast	161
Alamo Heights	307
San Antonio	125
Harlandale	67
Northside	106
South San Antonio	88

The plaintiff's demonstrated that the differences in the per pupil revenue generated by the property tax in each of the seven districts spring from the value of the property therein rather than from the willingness of the residents to tax themselves for education. When the tax rates are equalized, *i.e.*, adjusted for comparison purposes to indicate the percentage of market value paid in

[9] The record contains a study of variations in per pupil funding among 110 Texas school districts. The variations in funding revealed in the 110 district survey correspond closely to the variations in funding in San Antonio. (A.197-210).

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taxes,[10] the taxes paid per 100 dollars of property at market value in 1970 were as follows (A.226):

TAX RATE PER $100 AT MARKET VALUE

Edgewood	$1.05
Northeast	.90
Alamo Heights	.85
San Antonio	.76
Harlandale	.89
Northside	1.02
South San Antonio	1.00

Thus, in 1970 the poorest district, Edgewood, was taxing its property at the highest rate of the seven districts in San Antonio.

2. *Funds Derived from the State and Federal Government.* The disparity in revenues available to the school districts from the property tax are not ironed out by state and federal aid. While figures are not available for one of the seven districts in San Antonio (South San Antonio), the state aid per pupil for 1967-68 in the other six districts varied by only $28.00 per pupil between the richest and poorest of the six districts, whereas the difference between the property tax yield per student in Edgewood, the lowest, and Alamo Heights, the highest, was $286.00. Only federal aid affected in any meaningful degree the relative wealth and poverty of the six school districts, and even with the infusion of federal aid, the per pupil expenditure in the six districts showed a wide variation as indicated in the following table (A.219):

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[10] In Texas the school districts assess property values at rates lower than market value. The ratio of assessed valuation to market value differs among districts, as does the tax rate levied on assessed valuation. Accordingly, before interdistrict comparisons can be made, the tax ratio of the district must be adjusted to reflect the rate of tax on property at market value (A.226).

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REVENUES OF SELECTED SAN ANTONIO SCHOOL DISTRICTS IN 1967-68

School Districts	Local Revenues [11] Per Pupil	State Revenues Per Pupil	State & Local Revenues Per Pupil	Federal Revenues Per Pupil	Total Revenues Per Pupil (State-Local-Federal)
Edgewood	$ 26	$222	$248	$108	$356
Northeast	$182	$233	$415	$ 53	$468
Alamo Heights	$333	$225	$558	$ 36	$594
San Antonio	$134	$219	$353	$ 69	$422
Harlandale	$ 73	$250	$323	$ 71	$394
Northside	$114	$248	$362	$ 81	$443

[11] The revenues per pupil reported in this column differ in minor amounts from those reported in the second table on page 5, *supra*. We understand that the differences arise because the computations in the table on page 5 are based on the absolute number of students enrolled in each of the school districts, whereas the computations in the above table are based on the number of students in average daily attendance in each school district. When average daily attendance figures are used, the number of students will be slightly lower than the actual number of students enrolled in the school district (A.135).

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The variations in the revenue of the San Antonio school districts do not indicate that the educational needs of the children in these districts vary from one district to another. Defendants stipulated that "the educational needs of the children in the [other] named districts [of San Antonio] are no greater than the educational needs of the children in the Edgewood district" (A.54). Nevertheless, the educational offering in Edgewood, measured not only in terms of dollars but in results of dollars, is substantially inferior to the other districts in San Antonio.[12] For example, the State officially recognizes that those teachers teaching on "emergency permits" have "substandard preparation" for teaching (A. 117), and in the year 1966-67 Edgewood had a significantly greater percentage of teachers with substandard preparation than any other district in San Antonio (A.114, 117).[13]

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[12] The disparity in educational offering in the San Antonio schools is demonstrated, in part, by the comparison made between the offering at Edgewood (the poorest district in San Antonio) and that at Northeast (the second richest district in San Antonio). Edgewood's Superintendent testified that in terms of classroom space the Northeast children had an estimated 70.36 square feet per child, whereas Edgewood had an estimated 50.4 square feet per child (A.236). Northeast had 9.42 library books per child; Edgewood had 3.9 library books per child. Northeast had a teacher/pupil ratio of 1/19; Edgewood's ratio was 1/28. Northeast had one counselor for every 1,553 children; Edgewood had one counselor for every 5,672 children. And Northeast had educational television available; whereas Edgewood did not because it did not have the funds to meet the matching grant program. (A.236-38).

[13] The State did not produce figures beyond 1966-67 on the number of teachers in each district who are employed on the strength of emergency permits (A.117). But the record does show that for each of the academic years from 1967-68 through 1970-71, Edgewood's faculty had the highest percentage of teachers who had not earned a college degree (A.115, 181).

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TEACHERS EMPLOYED ON EMERGENCY PERMITS

	Number of Teachers	Number of Teachers Holding Emergency Permits	Percent of Teachers Holding Emergency Permits
Edgewood	780	412	52.6%
Northeast	984	82	8.3%
Alamo Heights	248	28	11.7%
San Antonio	2746	478	17.1%
Harlandale	620	149	24.2%
Northside	508	109	21.2%
South San Antonio	245	99	40.1%

C. The Lower Court's Decision.

The district court found that the Texas financing system "makes education a function of the local property tax base" (A.261). The defect in the system is that the system "assumes" that the tax base of the various districts "will be sufficiently equal to sustain comparable expenditures from one district to another" (A.261). The evidence, on the other hand, demonstrated the contrary. Plaintiffs' survey of 110 districts revealed that in the 10 districts having taxable property of more than $100,000 per pupil, a tax rate of 31 cents per 100 dollars would yield $585 per student. In the four poorest districts surveyed, which had taxable property of less than $10,000 per pupil, a tax rate of 70 cents per 100 dollars would yield only $60 per pupil. So too, the study of the seven districts in the San Antonio area showed that the taxable property per student in the Edgewood District amounted to $5,429, whereas the taxable property per student in Alamo Heights amounted to $45,095. Taxes as a percent of market value were highest in Edgewood and lowest in Alamo Heights; but the yield from

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Edgewood was "a meager twenty-one dollars per pupil from the local ad valorem taxes, while the lower rate of Alamo Heights provided $307 per pupil." (A. 261-62).

The court further found that the "State financial assistance [does not] serve to equalize these great disparities." When all state and local funds are accounted for, the Edgewood district had $231 per pupil in 1967-68 whereas Alamo Heights had $543 per pupil. Thus, "any mild equalizing effects that state aid may have do not benefit the poorest districts" (A. 262). "For poor school districts educational financing in Texas is . . . a tax more spend less system" (A. 262).

In measuring the Texas school financing methods against the Equal Protection Clause, the district court concluded that Texas allocates educational funds according to wealth,[14] and "lines drawn on the basis of wealth or property, like those of race are disfavored" (A. 263, quoting *Harper* v. *Virginia Board of Elections*, 383 U.S. 663, 668 (1966)). Furthermore, in view of the "grave significance of education to the individual and to our society" (citing *Brown* v. *Board of Education*, 347 U.S. 483, 493 (1954)), the court concluded that Texas must demonstrate a compelling justification for its method of school finance (A. 264).

The State argued that its financing system was justified by the need to grant authority to local districts and local parents to determine how much would be spent on schooling their children. But the court found that the Texas financing plan does not promote this interest (A. 266-67). The State has "in truth and in fact, limited

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[14] The court also noted that "In this type of case 'the variations in wealth are state created. This is not the simple instance in which a poor man is injured by his lack of funds. Here the poverty is that of a governmental unit that the state itself has defined and commissioned.'" (A.259-60, quoting *Van Dusartz* v. *Hatfield*, 334 F. Supp. 870, 876 (D. Minn. 1971)).

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the choice of financing by guaranteeing that 'some districts will spend low (with high taxes) while others will spend high (with low taxes).'" (A. 266). Accordingly, the court concluded that there was neither a compelling justification nor a rational basis for the State's wealth classification (*Id.*).[15]

The court enjoined defendants from giving force and effect to the current financing system, but stayed its mandate for two years in order to provide defendants and the Legislature with the opportunity to restructure the school financing plan (A. 272-73).

SUMMARY OF ARGUMENT

In establishing a system of free public schools, the Texas Constitution states that "a general diffusion of knowledge" is "essential to the preservation of the liberties and rights of the people." Art. VII § 1. The question presented by this case is whether, notwithstanding the importance of educational opportunity to the citizen and to democratic society, Texas may limit the educational opportunities of some groups of children because they live in school districts such as Edgewood where property values are low. The lower court held that Texas could not.

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[15] The court found defendants' reliance on *McInnis* v. *Shapiro*, 394 U.S. 322 (1969) and *Burruss* v. *Wilkerson*, 397 U.S. 44 (1970) was misplaced. Those cases challenged the failure of state financing plans to distribute funds according to the pupils' needs and the lower courts denied relief for want of a judicially manageable standard. Here, on the other hand, the lower court was called upon to determine whether "the quality of education . . . may be a function of wealth, other than the wealth of the state as a whole." (A.265-66). In short, there was no need for the court in *Rodriguez* to identify the nature and extent of the educational needs of children. The court was required to decide only whether the state could make the wealth of the school district a basis for allocating funds that would be used to educate the children in the district.

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1. The decisions of this Court, particularly *Harper* v. *Virginia State Board of Elections*, 383 U.S. 663 (1966), establish that participation in the political process cannot be conditioned on wealth. Those decisions govern the case at bar. The right to education is at the foundation of our political and economic system. Education is essential not only to economic and social success, but to intelligent and effective participation in the political system. From the standpoint of both society and the individual, educational opportunity is an interest that includes, and transcends, the interests which society and the individual have in securing to the individual the right to vote. Through education and voting the State affords the individual the means for effecting orderly political and social change, and these means, as *Harper* and the Texas Constitution declare, are essential to the preservation of the individual's rights and liberties. Beyond that, the "general diffusion of knowledge" is necessary if our democratic society is to endure, for this society is predicated on the assumption that the guarantees of free speech, press and association will enhance the quality of government and that the people have the capacity to direct the operation of that government. Accordingly, the detriment to society and to the individual is at least as great when the State limits educational opportunity on the basis of wealth as when it limits the opportunity to vote on the basis of wealth.

2. The wealth discrimination revealed in the record in this case cannot withstand the careful scrutiny that *Harper* requires when basic interests of the individual and society are at stake. The record shows that Texas has developed a financing plan which allocates among school districts widely varying amounts of funds for the education of the children in the districts. As a consequence of the State's financing plan, far less is spent for the education of the children of Edgewood, for example, than is spent for the education of children in

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other districts. No educational reason is advanced for funding the Edgewood children's education at levels far below those of other districts. This disparity in funding results, not from differences in the educational needs of the Edgewood children, but from the fact that these children must attend school in a district where the tax base is extremely low. The plight of these children, moreover, is of the State's own making, for the State has taken as its own the duty to educate the children of Texas; it has decided to finance education on a district-by-district basis; it has defined the districts; and it has made real property rather than other tax resources the determinant of the districts' wealth for educational purposes. In short, the State has allocated school funds according to the wealth of the district, and in doing so has provided abundantly for the children in some districts and meagerly for the children in other districts, although recognizing all the time that the educational needs of the children in the poor districts are no less than the needs of the children in the other districts (A. 54). This inexplicable wealth discrimination is as capricious and detrimental as the wealth discrimination struck down in *Harper*.

3. Texas would pass off the great inequalities in educational funding with the argument, made for the first time on appeal, that money really does not have an effect upon the quality of education that a child receives. This argument not only defies common sense and the judgments of parents, educators, school administrators, and taxpayers in Texas who in the past decade more than doubled the per pupil expenditures on a statewide basis, but also ignores a substantial body of research demonstrating a positive relationship between educational funding and learning, whether the latter is measured solely in terms of cognitive achievement or in terms of other qualities such as creativity and socialization.

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4. Texas also attempts to justify the great inequalities in educational funding with the argument that its plan preserves "local control" over the schools. Its plan, however, is ill-fitted to this objective, because the meager resources made available by state law for education of children in relatively poor districts effectively preclude those districts from educational choices made available to wealthier districts. Thus, for the poor districts local control is largely a fiction. Moreover, there are less drastic means available to Texas for securing local control. Other financing plans have been drawn which secure local control without making the child's educational opportunities turn on the wealth of the district.

5. Appellants and others also suggest that the holding of the lower court would necessarily invalidate funding plans for other state and municipal services because these services, in many instances, are financed on a city-by-city basis from revenues derived through the local property tax. Those fears are wholly unfounded, however, for the central role that education must play in our democratic constitutional system is not shared by other local services.

ARGUMENT

I. PUBLIC EDUCATION, LIKE VOTING, MAY NOT BE LIMITED ON THE BASIS OF WEALTH UNDER THE EQUAL PROTECTION CLAUSE.

Amici urge the Court to hold, as the lower court did, that in providing public education the State may not discriminate on the basis of wealth. As we show in this brief, the holding below follows inevitably from this Court's holding in *Harper* v. *Virginia Bd. of Elections*, 383 U.S. 663 (1966) and its progeny. There the interest at bar was voting; here the interest is education. However, the attributes that led the Court to hold that voting may not be restricted on the basis of wealth also inhere in public education. Voting and public education are the

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basic institutions of the state for achieving orderly change. Both are integral parts of the political process; both are essential to the functioning of our democratic society and both are preservative of the citizen's other basic civil and political rights. Thus, under *Harper* and its progeny, education, like voting, may not be limited or denied on the basis of wealth.

A. Harper Holds that the Opportunity to Participate in the Political Process Cannot be Conditioned on Wealth.

In *Harper* v. *Virginia Bd. of Elections*, 383 U.S. 663 (1966), the Court passed upon the constitutionality of Virginia's poll tax. By Virginia law the tax could amount to no more than $1.50 per capita, per year, and was levied, as a condition for voting upon residents of the State who were 21 years of age and over. The Court observed that while there is a constitutional right to vote in federal elections (Art. 1, § 2), the Constitution does not expressly mention the right to vote in state elections. But, the Court ruled, "we conclude that a State violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard." 383 U.S. at 666.

The Court observed that the franchise is "preservative of other basic civil and political rights." *Id.* at 667. Accordingly, limitations on the franchise " 'must be carefully and meticulously scrutinized' " (*Id.*), and the wealth limitation in that case could not withstand such scrutiny. "To introduce wealth or payment of a fee as a measure of a voter's qualifications is to introduce a capricious or irrelevant factor. The degree of discrimination is irrelevant. . . . For to repeat, wealth or fee paying has, in our view, no relation to voting qualifications; the right is too precious, too fundamental to be so burdened or conditioned." *Id.* at 668, 670.

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Since *Harper*, this Court has continued to scrutinize closely, and to bar, any wealth or property classification that limits the right to vote, *Kramer* v. *Union Free School District*, 395 U.S. 621 (1969); *Cipriano* v. *Houma*, 395 U.S. 701 (1969); *Phoenix* v. *Kolodziejski*, 399 U.S. 204 (1970) or the opportunity to run for office or vote for the candidate of one's choice, *Bullock* v. *Carter*, 405 U.S. 134 (1972).[16] The careful scrutiny that this Court gives to limitations on voting springs from the fact that the franchise lies "at the foundation of our representative society." *Kramer* v. *Union Free School District*, 395 U.S. 621, 627 (1969). It is a right or opportunity generally afforded to all adult residents. It is a method by which a democratic society confers political power on its citizens. Together with the fundamental freedoms of speech and association, the franchise permits the individual to work his will with the government.[17]

The just and fair application of all laws, to be sure, is an important interest to be served by the Equal Protection Clause, but equality in the political process necessarily is a transcendent value. That is so because "in view of the Constitution, in the eye of the law, there is [to be] in this country no superior, dominant ruling class of citizens." *Plessy* v. *Ferguson*, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting). Equal protection in the political process is central to the concept of a " 'government of laws and not men.' " *Harper*, *supra*, 383

[16] The Court does not give the same close scrutiny to laws that limit social and economic benefits on the basis of wealth or property. *James* v. *Valtierra*, 402 U.S. 137 (1971) (housing); *Dandridge* v. *Williams*, 397 U.S. 471 (1970) (welfare benefits); *Lindsey* v. *Normet*, 405 U.S. 56 (1972) (housing). None of these cases, however, involve issues relating to a limitation on the individual's opportunity to participate in the political process.

[17] "The protection given speech and press was fashioned to assure unfettered interchange of ideas for bringing about of political and social changes desired by the people." *Roth* v. *United States*, 354 U.S. 476, 484 (1957).

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U.S. at 667, quoting *Reynolds* v. *Sims*, *supra*, 377 U.S. at 568. "The remedial channels of the democratic process [must] remain open and unobstructed." *Minersville District* v. *Gobitis*, 310 U.S. 586, 599 (1940). There is no place in the political process for a mechanism that "tends to deny some voters the opportunity to vote for a candidate of their choosing; [while] at the same time it gives the affluent the power to place on the ballot their own names or the names of persons they favor." *Bullock* v. *Carter*, *supra*, 405 U.S. at 144. When a State, through the political process, "distributes influence" among its citizens, it is called upon to "distribute the influence without regard to wealth." *Id.* at 148.

Accordingly, the law looks with special disfavor on classifications based on wealth when they burden or impair the citizen's participation in the political process. *Harper*, *supra*, 383 U.S. at 668.

B. The Ruling in Harper Governs the Case at Bar.

1. *Public Education, Like Voting, Is an Indispensable Part of the Democratic Process.* We submit that restrictions on educational opportunity must be given the same close scrutiny that is given to restrictions on the franchise. As we show below, education, like voting, is essential to the citizen's meaningful participation in the political process and thus public education is vital to the maintenance of our democratic society and the political processes which sustain it. Moreover, the right to education is every bit as precious to the citizen as the franchise, for without education the right to vote is debased, and in countless other ways participation in our political and economic life is retarded.

Through the ages men have recognized that effective government is dependent upon education of the youth. Aristotle observed that "No one will doubt that the legislator should direct his attention above all to the educa-

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tion of youth; for the neglect of education does harm to the constitution [of the city state] . . . ." Aristotle, *Politics, Book VIII.*

Our own constitutional and political processes have become distinctively dependent upon the existence of an educated people. Few nations have reposed so much confidence and responsibility in their citizens. The Bill of Rights, particularly the guarantees of life, liberty, property, speech and association, reflects a strong confidence in and reliance upon the ability of the individual to accommodate personal freedom with needs of an orderly society. *Whitney* v. *California*, 274 U.S. 357, 375 (1927) (Brandeis and Holmes, JJ. concurring). And the continuing extension of the franchise to new groups of our population, including the youth, demonstrates our belief that the people are capable of directing the political process.

Two years before the Constitution was adopted, the Confederate Congress included in Article III of the Northwest Ordinance this command:

> "Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." 1 U.S.C. p. XL-XLI.

The Founding Fathers repeatedly stressed the role of education in the development and maintenance of a democratic form of government. George Washington urged:

> "Promote then as an object of primary importance, Institutions for the general diffusion of knowledge. In proportion as the structure of a government gives force to public opinion, it is essential that public opinion should be enlightened." Farewell Address, *The Writings of George Washington* (Bicentennial Edition), Vol. 35, p. 230.

Jefferson wrote that the "most important bill" in the Virginia Code was the one providing for "diffusion of

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knowledge among the people. No other sure foundation can be devised for the preservation of freedom, happiness." *The Papers of Thomas Jefferson,* Princeton University Press (1954), vol. 10, p. 244 (Letter to George Wythe). Jefferson wrote to Washington that "our liberty can never be safe but in the hands of the people themselves" but the people should have "a certain degree of instruction." "This it is the business of the state to effect, and on a general plan." *Id.*, vol. 9, p. 151 (Letter to George Washington). And John Adams held that "The instruction of the people, in every kind of knowledge that can be of use to them in the practice . . . of their political and civil duties, as members of society and freemen, ought to be the care of the public, and all who have any share in the conduct of its affairs, in a manner that never yet has been practiced in any age or nation . . . ." *The Works of John Adams* (1851), vol. 6, p. 168.

The fundamental value that the Founding Fathers placed on education is now reflected in the laws and constitutions of every State in the Union. The constitutions of every State not only establish the traditional, tripartite branches of government—the executive, legislative and judicial branches of government—but also, with one exception,[18] provide for the establishment of public schools. (See Appendix A.) Beyond that every State, with one exception,[19] compels all mentally and physically able chil-

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[18] After *Brown* v. *Board of Education,* 347 U.S. 483 (1954), South Carolina repealed its constitutional provision for the establishment of public schools. However, South Carolina's Constitution does provide for a "State Superintendent of Education," and a "State Board of Education," and it empowers the General Assembly to appoint "all other necessary school officers." (Art. XI, §§ 1-3).

[19] After *Brown* v. *Board of Education, supra,* Mississippi repealed its compulsory attendance laws. Other states following this course of action have since re-enacted their compulsory attendance laws. South Carolina Code, § 21-757; Virginia Code, § 22-275.1.

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dren within the State to attend school for at least eight years.[20] The state constitutions command the legislatures to "provide for the maintenance and support of a thorough and efficient system of public schools," [21] in recognition that education "is an indispensable governmental function." *Malone* v. *Hayden*, 329 Pa. 223-24, 197 Atl. 344, 352 (1938). The constitutional command "ranks" education "as an element necessary for the sustenance and preservation of our modern state." *Id.* See, *e.g.*, *City of Louisville* v. *Commonwealth*, 134 Ky. 488, 492-93, 129 S.W. 411 (1909); *Herold* v. *Parish Board of School Directors*, 136 La. 1034, 68 So. 116, 119 (1915). Moreover, many of the state constitutions preface this command with the declaration that the general diffusion of knowledge and learning "is essential to the preservation of a free government," [22] or, as in the case of Texas, that the general diffusion of knowledge is "essential to the preservation of the liberties and rights of the people." [23]

This Court, too, has recognized the vital connection between education and government. "Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance

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[20] Two states, Arizona and Washington, require only eight years of education. All other states, save Mississippi, require nine years or more. See the compulsory education laws cited in Appendix B. For a study of compulsory attendance laws, see A. Steinhilber and C. Sokolowski, *State Law on Compulsory Attendance* (1965).

[21] This formulation is from the Pennsylvania Constitution, Art. III, § 14. It also appears, with slight variation, in many others. See Appendix A.

[22] Constitution of Indiana, Art. VIII, § 1. Similar or identical declarations appear in the constitutions of Arkansas, Idaho, Michigan, Minnesota, New Hampshire, North Carolina, North Dakota, South Dakota, and Tennessee. (See Appendix A.)

[23] Texas Constitution, Art. VII, § 1. Similar or identical declarations appear in the constitutions of Maine, Massachusetts, and Missouri. (See Appendix A.)

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of education to our democratic society." *Brown* v. *Board of Education*, 347 U.S. 483, 493 (1954).[24] The public school is the "most powerful agency for promoting cohesion among a heterogeneous democratic people . . . ." *Illinois ex rel McCollum* v. *Board of Education*, 333 U.S. 203, 216 (1948) (Frankfurter J., concurring). "Americans regard the public schools as a most vital civic institution for the preservation of the democratic system of government." *Abbington School Dist.* v. *Schempp*, 374 U.S. 203, 230 (1963) (Brennan J., concurring). See also *Meyer* v. *Nebraska*, 262 U.S. 390, 400 (1923).[25]

In our system "competition in ideas and governmental policies is at the core of our electoral process and of First Amendment freedoms," *Williams* v. *Rhodes*, 393 U.S. 23, 32 (1969). And public education is the institution which the state has established for preparing individuals from all backgrounds for this competition. The state's classroom is the "marketplace of ideas." *Keyishian* v. *Board of Regents*, 385 U.S. 589, 603 (1967).

Education provides the "know-how" that is necessary for the citizen to make his vote and his voice count in the political process. Indeed, studies show that educational attainment is the most significant determinant of

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[24] "In 1970 the United States spent $54 billion for public education or 5½ percent of its Gross National Product." Texas Research League, *Interim Report: Public School Finance Problems in Texas*, p. 1 (1972), derived from U.S. Dept. of Commerce Office of Business Economics, *National Income Accounts*.

[25] The President's Commission on School Finance, *Schools, People and Money: The Need for Educational Reform*, p. 11, observed that "Literally, we cannot survive as a nation or as individuals without . . . [education]." "It is a fact that in a democratic society, public understanding of public issues is necessary for public support. Schools generally include in their courses of instruction a wide variety of subjects related to the history, structure and principles of American government at all levels. In so doing, schools provide students with a background of knowledge which is deemed an absolute necessity for responsible citizenship." *Id.* at 13-14.

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political consciousness and participation.[26] With more schooling comes a greater understanding of the impact of government on the individual. With more schooling comes a greater awareness of political issues, a greater likelihood of participation in a political organization, and a more positive attitude "about the ability of people to govern themselves in a democratic fashion." [27] With more schooling comes a greater likelihood that the individual will cast a ballot. See *Gaston County* v. *United States*, 395 U.S. 285, 289 (1969).[28] The 1968 presidential elections, for example, showed a close and direct relationship between the citizen's educational attainment and his participation in the electoral process as the following table demonstrates.[29]

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[26] Urban Coalition, *Schools and Inequality,* Hearings Before the Senate Select Committee on Equal Educational Opportunity, 92d. Cong., 1st. Sess., 7068 (1971) (hereinafter *"Hearings"*), citing Almond, et al., *The Civic Culture,* pp. 380-81 (1963).

[27] *Id.*

[28] Prior to the Voting Rights Act of 1965, nineteen states conditioned the right to vote on literacy. *Voting Rights Legislation,* Senate Rept. 162, Pt. 3, 89th Cong,. 1st Sess., p. 42 (1965).

[29] Levin, *The Costs to the Nation of Inadequate Education,* Committee Print of the Senate Select Committee on Equal Educational Opportunity, 92d. Cong., 2d Sess. (1972), p. 47.

Educational attainment in the following chart is measured in terms of the number of years that voters and nonvoters have attended school. In this connection, it should be noted that the quality of education offered in a school district may materially affect the length of time that the student will attend school. Those children who graduate from inferior schools are materially handicapped in their quest for admission to college and, if admitted, in their struggle to succeed in college. Even before this stage in the child's life, inferior educational opportunities take their toll. As the Court recognized in *Gaston County* v. *United States,* 395 U.S. 285, 296 (1969), inferior schools offer children "little inducement to enter or remain in school."

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REPORTED VOTER PARTICPIATION IN 1968 PRESIDENTIAL ELECTION [30]

	Proportion Voting			
	Whites		Blacks	
Years of Schooling	Males	Females	Males	Females
0 to 4	45.4	32.0	43.2	34.7
5 to 7	60.5	46.1	54.9	53.5
8	68.4	59.8	59.7	53.3
9 to 11	67.5	62.7	61.7	59.4
12	76.3	75.6	74.8	69.5
13 to 15	80.7	82.5	79.7	79.4
16	85.2	84.2	85.8	83.7
17 or more	86.4	88.3	88.4	--------

The short of the matter is that "virtually all studies on the subject have found a strong positive relation between educational attainment and political participation." [31]

The importance of public education to the individual is not confined to making more meaningful the right to vote and the guarantees of political speech and association. Through public education the state offers to the individual the means for changing his station in life. To the poor and oppressed, public education is the state's offer of a "ticket out." It is the "great equalizer of the conditions of men." Horace Mann, *Twelfth Annual Re-*

[30] U.S. Department of Commerce, Bureau of the Census, "Years of School Completed—Reported Voter Participation in 1968 and 1964 for Persons 25 Years Old and Over, by Race and Sex, for the United States: November 1968," Current Population Reports, series P 20, No. 192, table 11.

[31] *Hearings*, p. 7069. See also Levin, *The Costs To The Nation of Inadequate Education, supra*, pp. 46-47.

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port to the Massachusetts State Board of Education, (1848), Commager, *Documents in American History,* 318 (1958 ed.). It "is a major determinant of an individual's chances for economic and social success in our competitive society." *Serrano* v. *Priest, supra,* 487 P.2d at 1255-56.[32]

In sum, education, like voting, is "crucial to participation in, and the functioning of, a democracy." *Serrano* v. *Priest, supra,* 487 P.2d at 1258. It is one of those "remedial channels of the democratic process [which must] remain open and unobstructed" for all citizens. *Minersville District* v. *Gobitis,* 310 U.S. 586, 599 (1940).[33]

2. *Wealth Is an Impermissible Basis for Distributing Educational Benefits.* The decisions in *Harper, Kramer, Cipriano* and *Bullock* make clear that the opportunity to participate in the political process cannot be withheld, diluted or conditioned according to wealth or property. The degree of discrimination on the basis of wealth is irrelevant. Such discrimination is flatly impermissible because "wealth or fee paying has . . . no relation to voting qualifications." *Harper, supra,* 383 U.S. at 670. So too, the use of wealth of a school district to determine the extent of the educational opportunity or experi-

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[32] In *Brown* v. *Board of Education,* 347 U.S. 483, 493 (1954), this Court identified education as "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." See also, *Wisconsin* v. *Yoder,* —— U.S. ——, 32 L.Ed. 2d. 15 (1972).

[33] This Court has suggested that education is a fundamental interest. As we read *Wisconsin* v. *Yoder, supra,* the Court acknowledged that universal education ranked with "other fundamental rights and interests." The Court said, "Thus, a State's interest in universal education, however highly we rank it, is not totally free from a balancing process when it impinges on *other fundamental rights and interests* specifically protected by the Free Exercise Clause of the First Amendment and the traditional interest of parents with respect to the religious upbringing of their children . . . ." —— U.S. ——, 32 L. Ed. 2d. 15, 24 (emphasis supplied).

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ences that will be offered to a child is impermissible. The school district's wealth or lack of wealth, as we show below, has no relationship to any educational purpose.

The record makes clear, and appellants recognize (App. Br. 11), that there are wide variations in the tax bases of the school districts of Texas. Under the present system of school financing, these wide variations in the tax bases result in wide variations in the funds available to each district for the education of the children within the district. In principal measure these varations in available funds have been caused by the State of Texas. For, as appellants concede, "the duty to provide education is a function of the state"; the State has established a plan for financing education on a district-by-district basis; the State has defined the districts; the State has decided that real property rather than other tax resources will determine the wealth of the district for educational purposes; and the State has decided that the tax return from real property within the district may not leave the district (A. 53-54).

Pursuant to the State's plan, the amount of funds derived from the local property tax is, of course, a function of two factors: (1) the value of taxable property within the district and (2) the rate of the tax levied by the inhabitants of the district. But the basic disparities in local revenues among school districts are generally attributable to the first factor—the value of taxable property in the district. As the record shows, the poor districts are taxing themselves at rates higher than the wealthier districts (A. 205). Their failure to obtain revenues approximating the state average is not due to a lack of will, but to a lack of valuable property within the district. Thus, it is clear, as the district court found, that the State has created a plan which yields widespread variations in the per pupil expenditures of the various districts and that the State has made educational oppor-

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tunity "a function of the local property tax base" of the district (A. 259-60 n. 1, 261).

While the State has made educational opportunities of children turn in significant measure on the wealth of their district (A.261), no educational purpose is served by this distribution of educational funds. Indeed, the State concedes that the children in poor districts such as Edgewood have no less need for expenditures than the children in other districts of San Antonio; that the costs for basic facilities and services in San Antonio are no less in Edgewood than in the other districts serving the city; and that the lines delimiting Edgewood do not have special educational significance, but serve only as lines establishing a unit for the administrative convenience of the State (A.53-54, 166). There is simply no basis in the record or in common sense for an assertion that the educational needs of the child or of the children in the district are linked in any way to the property values of their school district.

To limit the educational opportunities of some children on the basis of the school district's wealth is to limit the rights of these children on the basis of a capricious factor of the State's own making. Such a limitation is precisely what *Harper*, *Bullock* and other decisions have prohibited.

Appellants, however, contend that *Harper* and *Bullock* must be read very narrowly. In their view these cases prohibit only wealth classifications that are based on "individual ability to pay, not . . . the ability to pay of a collectivity such as a school district" (App. Br. 30-31). When wealth is the criterion by which the State grants or conditions participation in the political process, it makes no difference whether the criterion is the wealth of an individual or the wealth of a collectivity. Either way the wealth limitation is impermissible. The distinction that appellants suggest between wealth of the individual and

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wealth of the collectivity would mean, for example, that under the Fourteenth Amendment, Virginia would be permitted to dilute or deny the right of residents in Prince Edward County to vote because the county is not as wealthy as other counties or is not making an equal contribution to the State's revenues. But *Harper, supra,* 383 U.S. 667-68, and *Reynolds* v. *Sims, supra,* 377 U.S. at 568, clearly reject such a result: "A citizen, a qualified voter, is no more nor less so because he lives in the city or on the farm. . . . The Equal Protection Clause demands no less than substantially equal state legislative representation for all citizens, of all places as well as of all races." [34]

In sum, the wealth discrimination in the case at bar is at least equal in magnitude and effect to the wealth discrimination that was struck down in *Harper.*[35] Such a discrimination cannot be countenanced in a democratic society, for education, like voting, preserves our basic political and civil rights, provides the means for orderly change, and makes the guarantees of free speech, press and association more meaningful and effective. In the terms of *Harper,* "to introduce wealth . . . as a measure of" educational opportunity is "to introduce a capricious or irrelevant factor." *Supra,* 383 U.S. at 668.

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[34] See *Gordon* v. *Lance,* 403 U.S. 1, 4, where the Court said "the defect found in those cases [*Cipriano* v. *Houma,* 395 U.S. 701 (1969) and *Gray* v. *Sanders,* 372 U.S. 368 (1963)] lay in the denial or dilution of voting power because of group characteristics—geographic location and property ownership—that bore no valid relation to the interest of those groups in the subject matter of the election . . . ." See also *Hall* v. *St. Helena Parish School Board,* 197 F. Supp. 649, 656-658 (E.D. La. 1961), *aff'd* 368 U.S. 515 (1962); *Cf. James* v. *Almond,* 170 F. Supp. 331, 339 (E.D. Va. 1959).

[35] See *Shapiro* v. *Thompson,* 394 U.S. 618, 633 (1969) where the Court observed that a state may take steps to limit its expenditures for education, "but a State may not accomplish such a purpose by invidious distinctions between classes of its citizens. It could not, for example, reduce expenditures for education by barring indigent children from its schools."

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In our view, *Harper* is dispositive of the case at bar, but because appellants attempt to justify their finance plan on the basis of educational research and the need for local control—two subjects that are particularly within the ken of amici—we turn to these subjects.

II. THERE IS NO PERMISSIBLE JUSTIFICATION FOR TEXAS' SYSTEM OF UNEQUAL EDUCATIONAL FUNDING.

In justification of the grossly unequal educational expenditures per pupil among various school districts in Texas, the State essentially makes two points. (1) It may not matter that there are wide ranges in pupil expenditures from district to district because educational research fails to demonstrate with certainty that there is a significant correlation between the amount of funds expended and the achievement of the children. (2) The ranges in expenditure are justified by an overriding consideration—the desirability of delegating control to the local school districts. Neither of these contentions is meritorious.

A. The Relationship Between Expenditures And Quality of Education is Well Recognized.

Texas, for the first time in this litigation,[36] seeks to justify the great disparities in per pupil expenditures with the casual observation that money does not matter. Appellants concede that "It is reasonable to suppose that there is some minimum sum of dollars beneath which a sound education cannot be had." But beyond that, ap-

[36] In the court below Texas did not contend that there was no demonstrable relationship between financial expenditures for education and student cognitive achievement. In its own proposed findings, Texas urged upon the court nothing more than to find that "the quality of education that a school child receives . . . cannot be determined *solely* on the amount of money spent per student." (A.73, Defendants' Proposed Findings of Fact. Emphasis supplied.)

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pellants say that two scholars (Coleman and Jencks) "could not find evidence" of a relationship between expenditures and cognitive achievement, and the President's Commission on School Finance observed " 'the relationship between cost and quality in education is exceedingly complex and difficult to document. . . .' " (App. Br. 17-18, quoting the President's Commission on School Finance, *Schools, People and Money,* p. x (1972)).[37] Essentially, appellants are saying that the State is entitled to use a method of school finance that provides abundant resources for some children and meager resources for other children until such time as the children in the poor districts demonstrate that what the State is doing to them hurts (App. Br. 25).

Contrary to appellants' suggestion, there is, in fact substantial and respectable educational research demonstrating a statistically significant correlation between school funding and student achievement. For example, Guthrie and Levin's survey of cost/quality studies finds that:

> "The strongest findings by far are those which relate to the number and quality of the professional staff, particularly teachers. Fourteen of the studies we reviewed found teacher characteristics, such as verbal ability, amount of experience, salary level, amount and type of academic preparation, degree level and employment status (tenured or non-tenured) to be significantly associated with one or more measures of pupil performance." [38]

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[37] In support of their position, appellants also quote Roger Freeman, (who is an economist), the Circuit Court of Ingham County Michigan, a legal scholar and two officers of the Urban Institute (A.17-19).

[38] Quoted in *Report of the Commissioner's Ad Hoc Group on School Finance,* Department of Health, Education and Welfare, Hearings before the Senate Select Committee on Equal Educational Opportunity, 92d Cong., 1st Sess., p. 8388 (1971).

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Similarly, the Urban Coalition reviewed seventeen studies "which deal with the effectiveness of school service components." The Urban Coalition reaffirmed the findings of Guthrie and Levin and noted the "substantial degree of consistency in the studies' findings." [39] The Urban Coalition concluded:

> "In summary, we are impressed with the amount and consistency of evidence supporting the effectiveness of school services influencing the academic performance of pupils. In time, we would wish for more precise information about which school service components are most effective and in what mix or proportion they can be made more effective. ~~Nevertheless, on the basis of information obtained service components are most effective~~. Nevertheless, on the basis of information obtained in the studies we have reviewed, there can be little doubt that schools 'can have an effect that is independent of the child's social environment.' In other words, schools do make a difference." [40]

In addition, the Staff of the Advisory Commission on Intergovernmental Relations (ACIR), recently reviewed cost/quality studies, including those of Coleman and Jencks and those relied upon by the research team of the President's Commission on School Finance.[41] The ACIR Staff concluded that "none of the studies, including those not reported here, has found a complete absence of significant relations between school inputs and out-

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[39] Urban Coalition, *Schools and Inequality,* Hearings Before the Senate Select Committee on Equal Educational Opportunity, 92d Cong., 1st Sess., pp. 7031-32 (1971). The Urban Coalition's review of each study is found at pages 6995 through 7037.

[40] *Id.* at p. 7033.

[41] Staff of the Advisory Commission on Intergovernmental Relations, *School Spending and Pupil Achievement: A Working Paper* (May 30, 1972). This survey has not been formally submitted to the Advisory Commission for its publication approval.

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puts." [42] As to the ten studies specifically reviewed in the Staff's working paper (which include Coleman and Jencks), the ACIR Staff concluded that "although the investigators all use different formulations of the concept, each study discussed here that tests the significance of individual teacher variables finds some teacher-related factor to have a significant impact on achievement." [43]

Finally, the Staff lays bare a critical problem related to virtually all of the cost/quality studies that have undergone so much evaluation and reevaluation. "All of the studies discussed here [including Coleman and Jencks] use the attainment of cognitive skills (measured by standard achievement tests) as the primary test of school effectiveness. But there are many non-cognitive qualities which may be equally or more important—socialization, independence, maturity, creativity. We know almost nothing about how schools affect these pupil traits." [44]

Educational research with respect to these traits, however, is far more advanced than the Staff indicates. For example, the Institute of Administrative Research, Teachers College, Columbia University, has evaluated the non-cognitive aspects of classroom learning in almost 20,000 classrooms. This survey reveals, *inter alia*, a direct and significant relationship between costs in terms of pupils

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[42] *Id.* at 1.

[43] *Id.* at 2. The Staff also points out that "out of sixteen similar studies surveyed by the Rand Corporation for the President's Commission on School Finance, only two (Kiesling [1969] and Smith) found no teacher variables to be important. The remainder found some teacher variable to have significant effect on learning—particularly experience (Thomas, Hanushek [1968], Katzman, Burkhead, Kiesling [1970], Levin and Michelson), average salary (Cohn, Raymond, and Averch), starting salary (Thomas), and verbal ability (Hanushek [1968], Bowles, and Hanushek [1970])."

[44] *Id.* at 1.

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per teacher and the quality of the classroom experience in terms of non-cognitive factors.[45]

The short of the matter is that, contrary to appellants' suggestion (App. Br. 18), the positive relationship between dollars and quality education is a consistently recurring relationship of statistical significance in many studies.

Moreover, the positive relationship between dollars and quality education is a uniform predicate for the judgments made by public officials, school administrators and parents who send their children to the schools. The State of Texas, for example, acknowledges in its brief that between 1960 and 1970, it increased its expenditures for education "from $750 million to $2.1 billion, while the number of students increased only 37%, so that expenditures per student doubled from $416 to $855." (App. Br. 9; see also Appellants' Jurisdictional Statement, p. 8).[46]

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[45] The Institute's study is based on four "indicators of quality"—individualization, interpersonal regard, group activity, and creativity. Trained observers attend the classroom and evaluate the classroom activity, using a standardized instrument having 51 items. The results of surveying almost 20,000 classrooms show that with "only two small exceptions to an otherwise perfect linear relationship, smaller-class sizes exhibit significantly higher scores than large classes." M. Olson, "Identifying Quality in School Classrooms: Some Problems and Some Answers," *Know How* (published by the Associated Public School Systems) pp. 2-3, 4 (January, 1971). The results of this survey are set forth in tabluar form in Appendix C, *infra.*

[46] While the State has found it sufficiently important to double—on a statewide basis—the amount spent per pupil, the State has only recently raised the per pupil expenditure in Edgewood up to the $416 mark of 1960, a mark which the State has found to be insufficient for the education of its children. In 1967-68 Edgewood was receiving $248 per pupil from state and local revenues (A.219). In 1970-71 Edgewood's combined state and local revenues per student amounted to $418, whereas the statewide average per district was $704. Texas Research League, An Interim Report: *Public School Finance Problems in Texas,* p. 14 (June 1972).

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The President's Commission on School Finance, *supra*, p. x, points out that irrespective of the vagaries of educational research, "what is clear is that when parents, with the means to do so, choose their children's schools, the ones they select, whether public or private, usually cost more to operate than the ones they reject."

The heart of the matter is that the funding level is important because it is a major determinant of the options available. The level of funding determines not only the type of physical plant and the salary level, degrees and experience of teachers, but also whether the school district can implement new programs for teaching reading and mathematics. It determines whether the schools will have such costly programs as vocational guidance, laboratory science, foreign languages, adequate libraries, and educational television; the number of professionals that will be employed as librarians, guidance counselors, and "visiting teachers" (truant officers in other days); and whether there will be special programs for the handicapped children, the unusually bright children, and the slow or wayward children.

In denying the importance of such programs and in claiming that there is no denial of equal educational opportunity for the children in poor districts, Texas once again collides head on with the decisions of this Court. The deprivation that children in the poor districts of Texas experience today [47] is essentially the same type of educational deprivation that this Court struck down in *Sweatt* v. *Painter*, 339 U.S. 629, 633-34 (1950). There Texas established a black law school and insisted that there was substantial equality between the black law school and University of Texas Law School, which at the time served only whites. This Court, however, held that the black students were being denied equal protection. "In terms of number of faculty, variety of courses and

[47] See pp. 8-9, & n. 13, *supra*.

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opportunity for specialization, size of the student body, scope of the library, availability of law review and, similar activities, the Unversity of Texas is superior." *Id.* at 633. Moreover, it is superior in "reputation of faculty, experience of administration, position and influence of alumni, standing in the community, traditions and prestige. It is difficult to believe that one who had a free choice between these law schools would consider the question close." *Id.* at 634. So too, in *Gaston County* v. *United States*, 395 U.S. 285 (1969), the Court found that black citizens had been denied an equal educational opportunity in a segregated school system where, *inter alia*, the black teachers' salaries were lower than the white teachers' salaries, where the number of state certified teachers in the black system was substantially lower than in the white system, and where the "per-pupil valuation of Negro school property" ranged from "20% to about 40% of that of the white schools." On this showing, "it was certainly proper to infer that the County's inferior Negro schools provide many of its Negro residents with subliterate education, and gave many others little inducement to enter or remain in school." *Id.* at 293, 296.[48]

Clearly, the unequal expenditures for pupils in poor districts cannot be justified by pointing out that educational research has not unanimously nailed down how much of a difference various levels of funding make in terms of the child's cognitive achievement. The pivotal facts are that educational funds are "not being collected equitably or spent according the needs of the children." And it is this money that "builds schools, keeps them

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[48] See also, *Keyes* v. *School District No. 1, Denver*, 313 F. Supp. 61, 82-83 (D. Col. 1970), *aff'd in part*, 445 F.2d 990, 1003-04 (10th Cir. 1971), *pending on cert.* in No. 71-507; *Hobson* v. *Hansen*, 327 F. Supp. 844, 854-55 (D.D.C. 1971); *Hargrave* v. *Kirk*, 313 F. Supp. 944, 947 (M.D. Fla. 1970) *vacated sub nom, Askew* v. *Hargrave*, 401 U.S. 476 (1971).

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running, pays their teachers, and in crucial, if not clearly defined ways, is essential if children are to learn." President's Commision on School Finance, *supra*, p. xi.

B. There is No Logical Relationship Between Local Control of Schools and the Texas System of Financing.

The State's principal asserted justification for using a financing plan that makes educational expenditures for children turn in large measure upon the wealth of the school district is that this plan affords the community "local control" over the schools. (App. Br. 35).

At the outset, it should be made clear that the decision below does not in any way affect the degree of control which local school districts retain over how to spend the money they receive. Decisions with respect to curriculum, teachers' salaries, and other educational matters, to the extent they are within the control of local school districts, may, consistently with the lower court's decision, remain under their control.

Assuming that local control over the amount of money to be spent on education is a legitimate objective of the state, the present school financing plan in Texas is ill fitted to achieve that objective. The Texas plan does not assure such local control over schools in the poor districts. For these districts such control is largely a fiction because "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 rolls cannot provide." *Serrano* v. *Priest*, *supra*, 487 P.2d at 1260. The resources available to such a district are not determined by local option, but instead by state law.

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Without debating the merits of local control over the amount of money to be spent on education, it is sufficient to point out that the decision below can be affirmed without necessarily invalidating other financing plans under which this type of local control is preserved. Commentators have proposed various financing methods which are designed to assure that an equal unit of tax effort (tax rate) among school districts will produce an equal number of dollars per pupil among such districts. Thus, for example, a tax of ten mills in each district would produce $600 per pupil in each district.[49] Such plans would permit school districts to decide individually how much of a tax effort they should make in support of their schools.[50]

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[49] In Appendix D we describe one of these plans, "district power equalization." Appellants recognize that "district power equalization" would preserve local control (App. Br. 43), but reject this plan because, in their view, it would inhibit the freedom of poor districts. "Districts with relatively low property values would be under great pressure to tax themselves at a high rate in order to receive the maximum state aid. Communities that wish to emphasize services other than education, and that have property values lower than the state average, would be inhibited from doing so, since tax for education would produce a grant from the state while a tax for a park or library would not." (App. Br. 45). In our view, appellants' argument against power equalization misapprehends the facts. Power equalization rewards those who make the greater tax effort, and it is the poor districts who are currently making the greater tax effort (A.202, 205). The poor districts are taxing themselves at higher rates than the rich districts (*id.*). If the poor districts were to continue their present tax rates under power equalization, they would receive more school revenues than they are currently receiving. On the other hand, if the poor districts desired to maintain their present levels of educational funding, under power equalization they could reduce their tax rate, thus freeing tax resources which could be used for the parks and libraries that appellants want them to have.

[50] Amici advert to these plans not for the purpose of endorsing them or any other particular financing scheme, but only to show that invalidation of the present Texas plan would not necessarily affect the ability of Texas to preserve a measure of control by local school districts over the amount of educational funding in the district.

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To summarize, if it is local control that Texas means to secure through its financing plan, it has chosen a plan that is "ill-fitted to that goal" and "other means to protect those valid interests are available." *Bullock* v. *Carter*, *supra*, 405 U.S. at 145-46. *Carrington* v. *Rash*, *supra*, 380 U.S. at 95. The wealth classification inhering in the State's school finance plan is not "necessary to achieve the articulated state goal" of local control. *Kramer* v. *Union School District*, *supra*, 395 U.S. at 632. Accordingly, the State's local control argument is no justification for limiting educational opportunity on the basis of wealth. *Id.*, *Bullock* v. *Carter*, *supra*, 405 U.S. at 145-46. See also, *Dunn* v. *Blumstein*, 405 U.S. 330, 343 (1972).[51]

III. THE DECISION BELOW DOES NOT REQUIRE REVISION OF PLANS THAT FUND OTHER STATE AND MUNICIPAL SERVICES.

Appellants and various amici supporting appellants[52] suggest that the decision below should not be affirmed because that would necessarily require the States to change their current, district-by-district, method of financing other important municipal and state services (App. Br., 29-30).

These dark warnings are unfounded. Our point is not simply that public education, like fire protection, police protection, welfare payments, and a host of other municipal services, is designed to meet important needs of citizens. Rather the point is that the attributes which

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[51] Thus, it is unnecessary for purposes of this case for this Court to resolve the question whether local control over the amount of educational funding would constitute a compelling justification for inequalities in educational offerings to children based on the wealth of the school district in which they happen to live.

[52] See, *e.g.*, Brief Amicus Curiae: Richard M. Clowes, et al., of Los Angeles County, pp. 3-4, 18, n. 11, 54-55.

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bring public education under the ruling of *Harper* and other decisions of this Court are not shared by other municipal and state services.

As we have shown above (pp. 16-26, *supra*) education, like voting is essential to our form of political organization. Public education preserves and makes meaningful the rights of speech, association and voting. Public education offers to each citizen the means for political and social change. In brief, public education is a critical part of the political processes of this society, and this quality sets education apart from the other services provided by state and municipal governments.

CONCLUSION

For the foregoing reasons the judgment of the lower court should be affirmed.

Respectfully submitted,

STEPHEN J. POLLAK
RALPH J. MOORE, JR.
RICHARD M. SHARP
734 Fifteenth Street, N.W.
Washington, D.C. 20005

Attorneys for Amici
DAVID RUBIN
1201 Sixteenth Street, N.W.
Washington, D.C. 20036

Attorney for Amicus Curiae
National Education Association

Of Counsel:

SHEA & GARDNER
734 Fifteenth Street, N.W.
Washington, D.C. 20005

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APPENDICES

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APPENDIX A

STATE CONSTITUTIONAL PROVISIONS ESTABLISHING PUBLIC SCHOOLS

Alabama—Art. XIV, Amendment CXI, § 256

It is the policy of the state of Alabama to foster and promote the education of its citizens in a manner and extent consistent with its available resources, and the willingness and ability of the individual student, but nothing in this Constitution shall be construed as creating or recognizing any right to education or training at public expense, nor as limiting the authority and duty of the legislature, in furthering or providing for education, to require or impose conditions or procedures deemed necessary to the preservation of peace and order.

The legislature may by law provide for or authorize the establishment and operation of schools by such persons, agencies or municipalities, at such places, and upon such conditions as it may prescribe, and for the grant or loan of public funds and the lease, sale or donation of real or personal property to or for the benefit of citizens of the state for educational purposes under such circumstances and upon such conditions as it shall prescribe.

Alaska—Art. VII § 1

The legislature shall by general law establish and maintain a system of public schools open to all children of the state and may provide for other public educational institutions.

Arizona—Art. XI § 1

The legislature shall enact such laws as shall provide for the establishment and maintenance of a general and unique public school system. . . .

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Arkansas—Art. XIV § 1

Intelligence and virtue being the safeguards of liberty and bulwark of a free and good government, the state shall ever maintain a general, suitable and efficient system of free schools and shall adopt all suitable means to secure to the people the advantages and opportunities of education.

California—Art. IX § 5

The legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established.

Colorado—Art. IX § 2

The general assembly shall, as soon as practicable, provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state, wherein all residents of the state between the ages of six and twenty-one years, may be educated gratuitously.

Connecticut—Art. VIII § 1

There shall always be free public elementary and secondary schools in the state. The General Assembly shall implement this principle by appropriate legislation.

Delaware—Art. 10 § 1

The general assembly shall provide for the establishment and maintenance of a general and efficient system of free public schools, and may require by law that every child, not physically or mentally disabled, shall attend the public school, unless educated by other means.

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Florida—Art. IX § 1

Adequate provision shall be made by law for a uniform system of free public schools, and for the establishment, maintenance and operation of institutions of higher learning and other public education programs that the needs of the people may require.

Georgia—Art. VIII § 1

The provision of an adequate education for the citizens shall be a primary obligation of the state of Georgia, the expense of which shall be provided for by taxation.

Hawaii—Art. IX § 1

The state shall provide for the establishment, support and control of a statewide system of public schools free from sectarian control, a state university, public libraries and such other educational institutions as may be deemed desirable, including physical facilities therefor.

Idaho—Art. IX § 1

The stability of a Republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the legislature of Idaho to establish and maintain a general, uniform and thorough system of public, free common schools.

Illinois—Art. X § 1

A fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities.

The State shall provide for an efficient system of high quality public educational institutions and services. Education in public schools through the secondary level shall be free. There may be such other free education as the General Assembly provides by law.

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The State has the primary responsibility for financing the system of public education.

Indiana—Art. VIII § 1

Knowledge and learning, generally diffused throughout a community, being essential to the preservation of a free government: it shall be the duty of the general assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement; and to provide by law for a general and uniform system of Common Schools wherein tuition shall be without charge, and equally open to all.

Iowa—Art. IX Pt. 1 § 12

The Board of Education shall provide for the education of all the youths of the state, through a system of Common Schools and such schools shall be organized and kept in each school district at least three months in each year.

Kansas—Art. VI § 1

The legislature shall provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools, educational institutions and related activities which may be organized and changed in such manner as may be provided by law.

Kentucky—§ 183

The General Assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the state.

Louisiana—Art. XII § 1

The legislature shall provide for the education of the school children of the state. The public school system

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shall include all the public schools and all institutions of learning operated by state agencies.

Maine—Art. VIII § 1

A general diffusion of the advantages of education being essential to the preservation of the rights and liberties of the people; to promote this important object the Legislature are authorized, and it shall be their duty to require, the several towns to make suitable provision, at at their own expense, for the support and maintenance of public schools; and it shall further be their duty to encourage and suitably endow, from time to time, as the circumstances of the people may authorize, all academies, colleges and seminaries of learning within the state. . . .

Maryland—Art. VIII § 1

The General Assembly, at its First Session after the adoption of this Constitution, shall by law establish throughout the State a thorough and efficient System of Free Public Schools; and shall provide by taxation, or otherwise, for their maintenance.

Massachusetts—§ 91 (Pt. 2, ch. 5, § 2)

Wisdom, and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of people it shall be the duty of the legislatures and magistrates, in all future periods of this commonwealth, to cherish the interests of literature and the sciences and all seminaries of them; especially the university at Cambridge, public schools and grammar schools in the towns. . .

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Michigan—Art. VIII §§ 1 & 2

Sec. 1. Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.

Sec. 2. The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law.

Minnesota—Art. VIII § 1

The stability of a republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the legislature to establish a general and uniform system of public schools.

Mississippi—Art. VIII § 201

The legislature may, in its discretion, provide for the maintenance and establishment of free public schools for all children between the ages of six (6) and twenty-one (21) years, by taxation or otherwise, and with such grades as the Legislature may prescribe.

Missouri—Art. IX § 1(a)

A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the general assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this state within ages not in excess of twenty-one years as prescribed by law.

Montana—Art. XI § 1

It shall be the duty of the legislative assembly of Montana to establish and maintain a general, uniform and thorough system of public, free common schools.

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Nebraska—Art. VII § 6

The legislature shall provide for the free instruction in the common schools of the state of all persons between the ages of five and twenty-one years.

Nevada—Art. 11 § 2

The legislature shall provide for a uniform system of common schools, by which a school shall be established and maintained in each school district at least six months in every year. . . .

New Hampshire—Part II, Art. 83

Knowledge and learning, generally diffused through a community, being essential to the preservation of a free government; and spreading the opportunities and advantages of education through the various parts of the country, being highly conducive to promote this end; it shall be the duty of the legislators and magistrates, in all future periods of this government, to cherish the interest of literature and the sciences, and all seminaries and public schools, to encourage private and public institutions, rewards and immunities for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and economy, honesty and punctuality, sincerity, sobriety, and all social affections, and generous sentiments, among the people . . . .

New Jersey—Art. VIII § 4 ¶ 1.

The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years.

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New Mexico—Art. XII § 1

A uniform system of free public schools sufficient for the education of, and open to, all children of school age in the state shall be established and maintained.

New York—Art. XI § 1

The legislature shall provide for the maintenance and support of free common schools, wherein all the children of this state may be educated.

North Carolina—Art. IX §§ 1 & 2

Sec. 1. Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and libraries and the means of education shall forever be encouraged.

Sec. 2. The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools . . . .

North Dakota—Art. VII §§ 147 & 148

Sc. 147. A high degree of intelligence, patriotism, integrity and morality on the part of every voter in a government by the people being necessary in order to insure the continuance of that government and the prosperity and happiness of the people, the legislative assembly shall make provision for the establishment and maintenance of a system of public schools which shall be open to all children of the state of North Dakota and free from sectarian control.

Sec. 148. The legislative assembly shall provide for a uniform system of free public schools throughout the state . . . .

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Ohio—Art. VI § 3

Provision shall be made by law for the organization, administration and control of the public school system of the state supported by public funds . . . .

Oklahoma—Art. XIII § 1

The legislature shall establish and maintain a system of free public schools wherein all the children of the state may be educated.

Oregon—Art. VIII § 3

The legislative assembly shall provide by law for the establishment of a uniform and general system of common schools.

Pennslyvania—Art. III § 14

The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth.

Rhode Island—Art. XII § 1

The diffusion of knowledge, as well as of virtue, among the people, being essential to the preservation of their rights and liberties, it shall be the duty of the general assembly to promote public schools, and to adopt all means which they may deem necessary and proper to secure to the people the advantages and opportunities of education.

South Carolina—Art. XI. §§ 1, 2, & 3

Sec. 1. The supervision of public instruction shall be in a State Superintendent of Education . . . .

Sec. 2. There shall be a State Board of Education composed of one member from each of the judicial circuits of the state . . . .

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Sec. 3. The General Assembly shall make provision for the election or appointment of all other necessary school officers, and shall define their qualifications, powers, duties, compensation and terms of office.

South Dakota—Art. VIII § 1

The stability of a republican form of government depending on the morality and intelligence of the people, it shall be the duty of the Legislature to establish and maintain a general and uniform system of public schools wherein tuition shall be without charge, and equally open to all; and to adopt all suitable means to secure to the people the advantages and opportunities of education.

Tennessee—Art. XI § 12

Knowledge, learning, and virtue, being essential to the preservation of republic institutions, and the diffusion of the opportunities and advantages of education throughout the different portions of the State, being highly conducive to the promotion of this end, it shall be the duty of the General Assembly in all future periods of this Government, to cherish literature and science. And the fund called common school fund, and all the lands and proceeds thereof, dividends, stocks, and other property of every description whatever, heretofore by law appropriated by the General Assembly of this State for the use of common schools, and all such as shall hereafter be appropriated, shall remain a perpetual fund, the principal of which shall never be diminished by Legislative appropriations; and the interest thereof shall be inviolably appropriated to the support and encouragement of common schools throughout the State, and for the equal benefit of all the people thereof; and no law shall be made authorizing said fund or any part thereof to be divested to any other use than the support and encouragement of common schools.

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Texas—Art. VII § 1

A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.

Utah—Art. X § 1

The legislature shall provide for the establishment and maintenance of a uniform system of public schools, which shall be open to all children of the State, and be free from sectarian control.

Vermont—Chapt. 2, § 64

Laws for the encouragement of virtue and prevention of vice and immorality ought to be constantly kept in force, and duly executed; and a competent number of schools ought to be maintained in each town unless the general assembly permits other provisions for the convenient instruction of youths.

Virginia—Art. VIII § 1

The General Assembly shall provide for a system of free public elementary and secondary schools for all children of school age throughout the Commonwealth, and shall seek to ensure that an educational program of high quality is established and continually maintained.

Washington—Art. IX § 2

The legislature shall provide for a general and uniform system of public schools.

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West Virginia—Art. XII § 1

The legislature shall provide, by general law, for a thorough and efficient system of free schools.

Wisconsin—Art. X § 3

The legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as practicable; and such schools shall be free and without charge for tuition to all children between the ages of four and twenty years . . . .

Wyoming—Art. VII § 1

The legislature shall provide for the establishment and maintenance of a complete and uniform system of public instruction, embracing free elementary schools of every needed kind and grade, a university with such technical and professional departments as the public good may require and the means of the state allow, and such other institutions as may be necessary.

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APPENDIX B

STATE COMPULSORY ATTENDANCE LAWS

Alabama
Code of Alabama, Title 52, § 297.

Alaska
Statutes of Alaska, § 14.30.010.

Arizona
Arizona Revised Statutes, § 15-321.

Arkansas
Statutes of Arkansas, § 80-1502.

California
California Code, § 12101.

Colorado
Colorado Revised Statutes, § 123-20-5.

Connecticut
Connecticut General Statutes, § 10-184.

Delaware
Delaware Code Annotated, Title 14, § 2702.

Florida
Statutes of Florida, § 232.01.

Georgia
Georgia Code, Title 32, § 2104.

Hawaii
Hawaii Revised Statutes, Title 18, § 298-9.

Idaho
Idaho Code, § 33-202.

Illinois
Statutes of Illinois, Ch. 122, § 26-1.

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Indiana
Statutes of Indiana, § 28-5310.

Iowa
Iowa Code, § 299.1.

Kansas
Statutes of Kansas, § 72-1111.

Kentucky
Kentucky Revised Statutes, § 159.010.

Louisiana
Louisiana Revised Statutes, § 17:221.

Maine
Maine Revised Statutes, Title 20, § 911.

Maryland
Code of Maryland, § 77-231.

Massachusetts
Laws of Massachusetts, Ch. 76, § 1.

Michigan
Statutes of Michigan, § 15.3731.

Minnesota
Statutes of Minnesota, § 120.10.

Missouri
Statutes of Missouri, § 167.031.

Montana
Revised Codes of Montana, § 75-6303.

Nebraska
Nebraska Revised Statutes, § 79-201.

Nevada
Nevada Revised Statutes, Ch. 392.040.

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New Hampshire
New Hampshire Revised Statutes, Ch. 193.1.

New Jersey
Statutes of New Jersey, § 18A:38-25.

New Mexico
Statutes of New Mexico, Ch. 77, § 10-2.

New York
Laws of New York, § 3205 (1)(a).

North Carolina
General Statutes of North Carolina, § 115-166.

North Dakota
North Dakota Century Code, Title 15, § 34.1-01.

Ohio
Revised Code of Ohio, § 3321.01 & 3321.03.

Oklahoma
Statutes of Oklahoma, Title 70, § 10-10.

Oregon
Oregon Revised Statutes, Ch. 339.010.

Pennsylvania
Statutes of Pennsylvania, Title 24, § 13-1326 & 1327.

Rhode Island
General Laws of Rhode Island, § 16-19-1.

South Carolina
Code of Laws of South Carolina, Title 21, § 21-757.

South Dakota
South Dakota Compiled Laws, § 13-27-1.

Tennessee
Tennessee Code, § 49-1708.

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Texas

Texas Education Code, § 21.032.

Utah

Utah Code, Title 53, § 24-1.

Vermont

Statutes of Vermont, Title 16, § 1121.

Virginia

Code of Virginia, § 22-275.1.

Washington

Revised Code of Washington, § 28A.27.010.

West Virginia

West Virginia Code, § 18-8-1.

Wisconsin

Statutes of Wisconsin, § 40.77.

Wyoming

Statutes of Wyoming, § 21.1-48.

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APPENDIX C

THE RELATIONSHIP BETWEEN CLASS SIZE AND NONCOGNITIVE LEARNING[1]

Elementary and Secondary Observations
Scored by Size of Class

Class Size	Elementary		Secondary	
	Number of Classrooms	Mean Score	Number of Classrooms	Mean Score
Under 5	155	10.61	77	8.31
5-10	218	8.34	505	8.45
11-15	310	8.34	1248	6.25
16-20	1395	7.26	2032	4.77
21-25	3736	6.45	2427	4.25
26-30	2898	4.73	1361	3.93
31-35	931	4.66	361	3.51
36-40	129	3.17	136	4.41
41-50	64	4.38	121	3.65
50+	94	2.22	260	3.22
Totals	9961		8567	
Means		5.96		4.83

[1] M. Olson, "Identifying Quality In Classrooms: Some Problems and Some Answers" *supra*, p. 4.

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APPENDIX D

District Power Equalization [1]

"The objective of this method of sharing education costs among districts and the State is to guarantee to every district a given revenue yield for any tax rate a district chooses to impose on itself. In effect, if two districts, whatever their relative wealth and tax base, established school property taxes at the same rate, the State would guarantee—through payments—that per-pupil revenue for each district would be equal. Differences in district revenues, therefore, would depend not on their respective tax bases but on the rates at which they chose to tax themselves.

The following example demonstrates the way this method operates, assuming a State guaranteed a return of $25 per pupil in revenue for each mill levied and both districts chose the $750 per-pupil expenditure level which would require a 30 mill tax rate:

District	Tax Rate Selected (in mills)	Guaranteed Yield 1 Mill	Guaranteed Yield 30 Mills	Actual Yield 1 Mill	Actual Yield 30 Mills	Difference Between Actual Guar.
Rich	30	$25	$750	$35	$1050	+$300
Poor	30	$25	$750	$15	$ 450	—$300

[1] This description of district power equalization is taken from the President's Commission on School Finance, *Schools, People and Money: The Need for Educational Reform*, pp. 32-33 (1972).

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As can be seen in this example, in the rich district, the tax rate of 30 mills produces the equivalent of $35 per pupil per mill for a per-pupil total of $1,050, which is $300 per pupil more than the guaranteed level based on $25 per mill. This surplus would accrue to the State. The poor district, taxing at the same rate of 30 mills, generates only $15 per pupil per mill or $450 per pupil. But since this district has taxed at the same rate as the wealthy district, under this plan, the State would supplement this district to the degree necessary to provide it with $25 per pupil per mill, or $300 per pupil. This method would equalize the yield in the different property evaluation of both districts."

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