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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1332

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

Appellants,

—VS.—

DEMETRIO P. RODRIGUEZ, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

MOTION OF N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC., FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* IN SUPPORT OF AFFIRMANCE

The N.A.A.C.P. Legal Defense and Educational Fund, Inc., a charitable, non-profit corporation, by its undersigned attorneys, respectfully prays that this Court grant leave pursuant to Rule 42 of the Supreme Court Rules, permitting it to file the appended Brief *Amicus Curiae* in support of affirmance in this cause. The interest of proposed *amicus* in this litigation is fully described *infra* at pp. 1-4 of the Brief; this cause involves matters of exceptional public importance of the sort which have traditionally marked those cases in which this Court has permitted the filing of briefs *amicus curiae.*

Consent to the filing of this Brief has been withheld by appellant State of Texas and thus this motion is submitted.

WHEREFORE, proposed *amicus* respectfully prays that this Court grant leave to file and accept the appended Brief *Amicus Curiae* in support of affirmance of the judgment below.

Respectfully submitted,

N.A.A.C.P. LEGAL DEFENSE AND
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ON APPEAL FROM THE UNITED STATES DISTRICT COURT
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BRIEF FOR THE N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC. AS *AMICUS CURIAE*

The N.A.A.C.P. Legal Defense and Educational Fund, Inc., is a non-profit membership corporation, incorporated under the laws of the State of New York in 1939. It was formed to assist Negroes to secure their constitutional rights by the prosecution of lawsuits. Its charter declares that its purposes include rendering legal aid gratuitously to Negroes suffering injustice by reason of race or color who are unable, on account of poverty, to employ and engage legal aid on their own behalf. The charter was approved by a New York court, authorizing the organization to serve as a legal aid society, and that approval has been renewed. The N.A.A.C.P. Legal Defense and Educational Fund, Inc., is independent of other organizations and supported by contributions of funds from the public.

A central purpose of the Fund is the legal eradication of policies and practices in our society that bear with discriminatory harshness upon Negroes and other minority group citizens, and upon the poor or deprived, who all too often are minority group citizens. Throughout its existence, the Fund has been particularly sensitive to the need to eliminate such discriminations in the educational field. Not only does the failure to provide adequately for the preparation of minority group children condemn them as adults to continue the cycle of poverty and discrimination, but the contrast between the programs made available to them and those afforded children of the dominant racial and ethnic groups affects young minds in a particularly stinging way to produce bitterness and strife.

In part for these reasons, the Fund has pioneered in the legal struggle to eliminate racial and ethnic segregation in the public schools. Its attorneys have been associated with virtually every major school desegregation case decided by this Court between *Brown* v. *Board of Education*, 347 U.S. 483 (1954) to *Wright* v. *Council of the City of Emporia,* 40 U.S.L.W. 4806 (U.S. June 22, 1972), and have likewise participated, with local counsel, in literally hundreds of such actions in federal courts. Typically, these suits involved the segregation of black and white pupils within a school district. Fund attorneys have also worked to eliminate segregation of Mexican-American or Hispanic children, however. In *Keyes* v. *School Dist. No. One, Denver,* No. 71-515, presently before this Court, suit was brought to reverse Denver school policies which separated black, Hispano and white pupils. In *United States* v. *Texas Educ. Agency,* No. 71-2508 (5th Cir., August 2, 1962), attorneys from the N.A.A.C.P. Legal Defense Fund and the Mexican-American Legal Defense Fund (some of whom were associated with the plaintiffs herein at an

earlier stage of the litigation) intervened in a case before the Fifth Circuit in order to fully protect the rights of black and Mexican-American students to a desegregated education in Austin, Texas. And, there are other examples, for we recognize that Negroes are served by the elimination of all racial and ethnic discrimination.

While many of these suits involved intra-district discrimination, we are also sensitive to the ways in which the State may structure its educational process with the result of disadvantaging blacks or other minority group children. *Griffin* v. *County School Bd.*, 377 U.S. 218 (1964) dealt with the State's obligation to furnish equal educational opportunities to all schoolchildren; we are presently engaged in litigation in the lower federal courts which seeks to further define the State's obligation in the context of metropolitan areas. The instant case deals with inter-district discrimination resulting from the State's structuring of its educational financing system. The disparities flowing from the existing system make it virtually impossible for Texas school districts of predominantly Mexican-American population to raise sufficient revenues to even begin to meet the educational needs of its children.* The opinion and judgment below properly recognized and dealt with that discrimination and it should be affirmed. Amicus supports the result reached below because this is a case in which discrimination against Mexican-Americans and against poor people was proved, and the State told to eliminate it.

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* Many small predominantly black districts which formerly existed in Texas and which were similarly affected by the Texas school funding system, were eliminated as the result of the decision in *United States* v. *Texas,* 321 F. Supp. 1043 (E.D. Tex. 1970), 330 F. Supp. 235 (E.D. Tex. 1971), *aff'd* 447 F.2d 441 (5th Cir.), *stay denied sub nom. Edgar* v. *United States,* 404 U.S. 1206 (1971).

This is not a case in which the lower court did, or this Court should, attempt to delimit the permissible remedy. Elimination of the features of the Texas system which discriminate against Mexican-Americans will also eliminate features which discriminate against (at least some of the Texas) poor, because in this case the proof showed a correlation between (district) taxable property wealth and personal income. That identity may not occur elsewhere; some large cities in other States have significant low-income and minority populations but high property value on a district-wide basis as the result of past capital expenditures. These cities also have a "municipal overburden" which affects their ability to raise funds for educational purposes. The remedy suited to eliminating the discrimination proved and found inherent in the present Texas system may not be suited to discriminatory features of other State educational funding systems. The primary interest of *amicus* here is that this Court affirm the judgment below because it is plainly correct, without passing upon more general questions which are not necessary to decision here and the resolution of which must depend upon the circumstances of each individual case.

ARGUMENT

I.

The Judgment Below Can and Should Be Affirmed Upon the "More Narrow" Ground of Decision by the District Court: That Texas' School Financing Scheme Worked a Substantial Discrimination Upon Predominantly Minority School Districts Without Any Compelling Or Even Rational Justification Therefor.

This case has been presented by the State of Texas and some *amici* as though it inevitably draws into question all aspects of education financing throughout the nation. While the District Court's opinion and order can be construed not only as invalidating the entire Texas system as it presently operates, but also as casting doubt upon the validity of similar schemes, they need not be so construed. Rather, they should be read in the context of this lawsuit, initiated by specific plaintiffs, seeking specified forms of relief on the basis of the evidence and argument presented to the District Court. Whatever this Court's views on the broader questions not necessary to the decision of this case, we urge that it administer justice to the plaintiffs in this case.

The amended complaint (App. 13) does not simply allege that the Texas education-financing system violates the equal protection clause. It claims, in behalf of all children of Mexican-American descent[1] who attend schools in the Edgewood District (Para. 3), that the Texas system violates the equal protection clause *because* it results in

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[1] *See, e.g., Hernandez* v. *Texas,* 347 U.S. 475 (1954); *Alvarado* v. *El Paso Independent School Dist.,* 445 F.2d 1011 (5th Cir. 1971); *United States* v. *Texas Educ. Agency,* No. 71-2508 (5th Cir., August 2, 1972); *Cisneros* v. *Corpus Christi Independent School Dist.,* 324 F. Supp. 599 (S.D. Tex. 1970).

significant disparities in financial support for education between the Edgewood District and other (predominantly Anglo) districts in the State, which occur solely because of differences in school-district property wealth and which are not reasonably related to any educational objective (Para. 12); and that the system thereby discriminates against Mexican-Americans (Para. 13).

The basic facts and conclusions pertinent to this narrow claim of racially correlated, unreasonable discrimination in education support were not disputed by defendants in the trial court.[2] The existence of enormous disparities was patent. Further, the Pre-Trial Order (App. 43), after noting that the facts were generally not in dispute (App. 45), specifically recites as conceded that the educational needs of children in certain named Texas school districts were no greater than the needs of children in the Edgewood district (Para. 24); that the educational costs in the named districts were no greater than those in the Edgewood district (Para. 25); and that more than 95% of the children in the Edgewood district are of

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[2] For example, the motion which has been raised here: that the expenditure of financial resources for educational services, facilities and supplies is unrelated to the provision of educational opportunity (see pp. 13-17 *infra*), was not presented below, and appellees-plaintiffs had no occasion nor opportunity to rebut such a statement, which is at best contrary to generations of accepted educational practice.

While we subscribe wholeheartedly to the relevance and importance of intangible factors in education, *see McLaurin* v. *Oklahoma State Bd. of Regents,* 339 U.S. 637 (1950); *Sweatt* v. *Painter,* 339 U.S. 639 (1950); Coleman, J., et al., *Equality of Educational Opportunity* (1966), we are equally cognizant of the enormous impact of resource allocation upon educational offering and opportunity. See generally, Guthrie, J., et al., *Schools and Inequality* (1971). These views do not, however, compel identical expenditures for every student any more than that result is compelled by the decision below interdicting a system which provides the victims of racial discrimination with the fewest dollars, and those more fortunate who have lesser needs with the greatest resources.

Mexican-American descent (Para. 30), a far higher percentage than in the named districts (Para. 31).

That expenditure levels are lowest for Texas districts with heavy concentrations of Mexican-American students was amply proved and specifically found as a fact. Professor Berke's affidavit contained sample data showing that the ten wealthiest Texas districts, spending $815 per pupil, contain 8% minority pupils, whereas the four poorest districts, spending $305 per pupil, contain 79% minority pupils (App. 200-03). In addition, random sample data collected and analyzed by the U.S. Commission on Civil Rights and introduced into the record showed a strong correlation between the proportion of Mexican-American students in Texas school districts and expenditure levels (App. 98-99). Relying on these uncontroverted data,[3] the District Court explicitly found that Mexican-American students were discriminated against. 337 F. Supp. at 285.

Appellants try hard to ignore this significant fact by asserting that "the court did not rely at all on racial considerations in its determination of unconstitutionality. . . ." Brief for Appellants, p. 23. But this is not a case such as *Serrano* v. *Priest,* 5 Cal. 3d 584, 487 P.2d 1241 (1971) or *James* v. *Valtierra,* 402 U.S. 137 (1971), where the racial factor was either absent or subordinated. *Plaintiffs are all Mexican-Americans.* They claimed relief as and for Mexican Americans. And their claim based on

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[3] An affidavit filed by Dr. Arena noted the past history of racially segregated housing and education in Texas. *See also, e.g., United States* v. *Texas Educ. Agency, supra; Cisneros* v. *Corpus Christi Independent School Dist., supra, aff'd* No. 71-2397 (5th Cir., August 2, 1972); *Blackshear Residents Org.* v. *Housing Authority,* Civ. No. A-70-CA-51 (W.D. Tex., Dec. 3, 1971); *Graves* v. *Barnes,* Civ. No. A-71-CA-142 (W.D. Tex., Jan. 28, 1972) (3-judge court).

race was specifically upheld. Nothing this Court does, therefore, should deny them relief to which they are entitled.[4]

II.

The Judgment Below Also Can and Should Be Affirmed On Its Holding That, Based Upon the Evidence Presented to the District Court, the Texas School Financing System Impermissibly Links Wealth and Educational Opportunity.

A related claim of plaintiffs—that the Texas system discriminated against them as poor citizens—was also resolved in their favor. Affidavits filed with the District Court detailed the case for a correlation between lower levels of support and poor districts. *See, e.g.,* Berke Affidavit, App. 193-200. District wealth was measured exactly as the State mandates that it be measured—by market value of all taxable property per student. No one contests the existence of this correlation, or the obvious fact that poor districts "are systematically incapable of raising as many education dollars as rich districts." Affidavit of Prof. Morgan, App. 241; Affidavit of Dr. Webb, App. 223-25.

Plaintiffs went further, however, and showed a correlation between the poverty of especially poor school districts, such as Edgewood, and the poverty of residents in such districts. See Berke Affidavit, App. 200. Defendants did not contest this evidence in the District Court,

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[4] Whether the solution adopted by the Texas Legislature to end discrimination against Mexican-Americans will, upon scrutiny by the court below, be found to pass muster under the equal protection clause upon other grounds, will depend upon the contours of the new financing scheme enacted, and thus other constitutional questions are not appropriate for resolution by this Court at this time.

and the Court expressly found for the plaintiffs that the poorest and richest districts by taxable property wealth were also, respectively, the districts with the lowest and highest income. "As might be expected," the Court found, "those districts most rich in property also have the highest median family income and the lowest percentage of minority pupils, while the poor property districts are poor in income and predominantly minority in composition." 337 F.Supp. at 285.

On this appeal, the District Court's findings with respect to race and income are termed "unsound factual assumptions." Brief for Appellants, pp. 21-25. But the argument made against the District Court's finding of fact is based entirely on evidence and reasoning not presented to that Court, and is in any event both weak and not pertinent to the issues.

The argument raised by Appellants, and by some amici curiae, see Amicus Brief of Various Attorneys General and Others, pp. 66-70; Amicus Brief of Sup't of Schools, Los Angeles, and Others, pp. 22-25, is that data from various sources show that personal income does not necessarily correlate with property value in school districts, and that the proportion of Mexican-Americans does not necessarily correlate with expenditure levels. Neither the data nor the logic supporting this argument was brought to the District Court's attention. The Court's finding must be judged on the basis of the uncontroverted evidence presented to it. Whether a correlation exists *in Texas* between property wealth and income, or race and support, by district are "adjudicative," not "legislative," facts as Appellants contend. Brief, p. 22. The issue is not whether any of the districts involved is "poor," as Appellants mistakenly suggest, but only whether the poorest and richest districts, as measured by taxable property, are also re-

spectively the poorest and richest when measured by personal income. The district court's finding in this regard is amply supported by the evidence of record.

Even if Appellants' arguments and data are considered, the District Court should be upheld. Much of the material on which Appellants and other *amici* rely pertains to States other than Texas. See Brief, pp. 22-23. The only argument presented by Appellants which is probative of the issues in this case is that made in a recent law review article.[5] The argument is quoted at length in Appellants' Brief, pp. 21 and 24, and is essentially that the correlations testified to by Professor Berke are doubtful because the middle groups of districts do not show a consistent pattern. Actually, Professor Berke specifically addressed himself to the issue raised by Professor Goldstein. He said in his affidavit that, "while the relationship [of income and expenditures] near the average are somewhat mixed, they do not work against the prevailing pattern because the range (only $600 in income) is too small to be meaningful." App. 200. He then referred to a graph, App. 201, prepared at the Policy Institute, Syracuse University Research Corporation, which vividly demonstrates the correlation. A similar argument and demonstration was made in his affidavit with respect to the correlation between race and expenditures. App. 204.

Appellants were well aware at the trial level of the overlap commented on by Professor Goldstein. Among the cross-interrogatories propounded to Professor Berke were the following questions and answers (pp. 32-34):

> "Q-68 In view of your statement at page eight of your affidavit that, 'The correlation between the propor-

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[5] *Interdistrict Inequalities in School Financing: A Critical Analysis of Serrano* v. *Priest and its Progeny*, 120 U. Pa. L. Rev. 504 (1972).

tion of Mexican-Americans and Negroes in the schools and the quality of school services is precisely the reverse of the income-school services relationship. That is, the lower the proportion of Mexican-Americans and Negroes, the higher the school expenditure the higher the proportion of minority group enrollment, the lower the resources devoted to education.', how do you explain the fact that in Table I, page six of your affidavit, that a sampling of school districts with a 32 percent ratio of minority pupils has $544.00 of state and local revenue per pupil when a sampling of districts with lower ratios of minority pupils, 23 percent and 31 percent, have lower state and local revenue per pupil [$483.00 and $462.00 respectively]?

"A-68 We're dealing with the same confusion in reading the figures that we have been earlier. The marginal differences in the center of a range are not significant nor determinative. The overall pattern is and the extremes are, and I think I've already covered that in regard to income.

* * *

"Q-71 How do you explain in Chart I at page 11 of your affidavit the fact of the districts sampled those districts with a percentage of Mexican-American enrollment of from 20 percent to 29.9 percent had higher per pupil expenditures of state and local revenue [$484.00] than those districts sampled with a percentage of Mexican-American enrollment of from 10 percent to 19.9 percent [$457.00]?

"A-71 The fact that the two sets of districts with the lowest proportion of Mexican-Americans are slightly inverted in regard to the order of the other districts is probably the least important factor on that entire table. What is important is that the districts with the

> lowest proportions of Mexican-Americans have the highest school expenditures, the districts with the highest proportions of Mexican-Americans have the lowest school expenditures, that the patterns is exceedingly well-marked and obvious, and that the difference of less than 20 some dollars per pupil in those top two sets of districts should not distract from the clear and marked disparities between the highest proportion of Mexican-American districts with only $292.00 per pupil and those at the top with approaching $500.00 per pupil."

No comment whatever was made by Appellants on this issue in their trial brief. Now, however, they raise the matter on the basis of a footnote in a law review article. The District Court accepted Professor Berke's analysis, which was subject to critical review by defendants, as were his credentials as an analyst of social science research; its finding was proper and amply supported.

III.

Many Issues Discussed by Appellants Need Not Be Resolved by This Court In Determining This Appeal, and They Are Problematical On This Record In Light of Appellants' Failure To Develop Them Below.

An issue on which much argument has focused in this Court is whether educational expenditures are in fact related to the quality of education supplied. Unlike many of the other issues argued by Appellants, this one was at least raised by them before the District Court. The claim has changed materially, however, and much that is now presented in its support was never presented to the District Court.

Defendants at the trial level did not question the fact that the cost and quality of education may be related. They contended only that the amount spent "does not *necessarily determine* the quality of the education which the students of the school district will receive," Pre-Trial Order, Para. 4(f), App. 44, and that the quality of education "cannot be determined solely on the amount of money spent per student," Defendants' Proposed Finding of Fact, No. 30, App. 74. (Emphases added.) The basis for this argument, moreover, was not the research data now presented to this Court, but the assertion that costs vary within geographical areas, and managerial capacities differ from district to district.[6] The District Court's implicit finding that cost and quality are related is entirely consistent with defen-

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[6] Defendants' full argument in their Trial Brief on this point is as follows (p. 17): "First, the plaintiffs have apparently come to the somewhat questionable conclusion that educational equality can be measured solely on the basis of the dollars available per student. This completely evades the pure facts of life—costs vary dramatically within a geographical area as large as Texas, and it presupposes that the managerial abilities of all school districts, their governing bodies and administrations are of equal ability."

dants-appellants' trial argument. But appellants go much further in this Court. They argue that the District Court's decision must be reversed because it is not clearly enough established that "quality is money." They refer to the Coleman Report and other highly complex social science material as proof that education-finance reform, at least beyond a minimum support level, is pointless. The phrase "quality is money" comes from a book,[7] rather than from anything in the record of this case. This Court need assume no such sweeping finding by the District Court. All that the decision below signifies is that the money differences proved by plaintiffs in this case are material enough to warrant judicial intervention in light of their relationship to the other factors present, including race and poverty.[8]

Appellants invite this Court definitively to settle the extraordinarily complex dispute about money and achievement. The invitation should and must be declined. The District Court had ample evidence before it to warrant

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[7] Coons, Clune & Sugarman, *Private Wealth and Public Education* 25 (1970).

[8] To be educationally material, expenditures need not be shown to correlate with "achievement," as defined by the educational research professional. Dr. Coleman and others are interested in whether expenditure differences affect achievement levels in the basic academic skills, such as reading and writing, as measured by tests most responsible educators concede are socially biased and scientifically primitive both in conception and in administration. However, quality is not just achievement in basic skills, but access to all the material and non-material facilities and resources that experience has led us to believe are related to enabling students to become better citizens, earners, and human beings. A feeling of self respect, the ability to perform a manual skill, special capabilities of one sort or another, may be as important in terms of the objectives of public education as reading or writing achievement in English—especially if English is the student's second language. Furthermore, substantial evidence exists that money spent on teachers, or spent creatively, does make a difference even as measured by achievement test scores. See, *e.g.,* Guthrie, J., *Schools and Inequality* (1971).

its implicit finding that the money differences in this case are material.[9] No effort was made to challenge the evidence proving disparities in educational services and achievement, and none is made now. The attack launched is against a principle—"quality is money"—that has nothing to do with this case, and the evidence and argument marshalled for the attack proceed on an extremely narrow definition of quality (*i.e.*, achievement in basic skills), and is only one side of a highly controversial subject. Even if the subject were pertinent to this case, it should have been explored below; it would have been had it been properly raised by appellants.

Most of the arguments made in this Court to show that rational or compelling interests exist to support the present Texas scheme are advanced for the first time. This is not to say these arguments have merit; on the contrary, they are frivolous. But whatever arguable merit they may have, they are not properly before this Court, since underlying them all are issues of fact and law that require hearing and argument at the trial level. The sole rationale

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[9] The complaint alleged that "the children *in the Edgewood District* are provided a substantially inferior education compared to the children in other . . . districts." Para. 9, App. 21. (Emphasis added.) Affidavits demonstrated that cost was related to quality among the relevant Texas districts by several measures, including professional salaries, the degrees held by teachers, the proportion of teachers on "emergency" permits, student-counselor ratios, the number of professionals per 100 students, drop-out rates, achievement levels, etc. Berke Affidavit, App. 209-214; Morgan Affidavit, App. 241. The Superintendent of the Edgewood School District, Dr. Cardenas, specifically and eloquently testified to his funding problems, pointing out that, because of its sharply lower level of support, Edgewood "cannot hire sufficient qualified personnel, nor provide the physical facilities, library books, equipment and supplies afforded by other Bexar County districts." App. 234. And he documented the inadequate space and maintenance of Edgewood schools, their inadequate libraries and curriculum, the extremely large classes, the lack of counselors, the loss of federal matching funds, and the far higher-than-average dropout rate. App. 234-238.

for the present Texas scheme raised below—the need to foster and preserve local autonomy—was appropriately disposed of by the District Court. Furthermore, the opinion in this case rests, not only on the "compelling interest" aspect of equal protection, but also on the ground that not even a rational basis exists to support the discrimination inherent in the Texas scheme.

Among the arguments raised for the first time in Appellants' Brief are the claims that the only certain result of the District Court's ruling will be to put more dollars in the pockets of teachers, and that the ruling will exacerbate the problems of inner city schools. Appellants' Brief, pp. 40-45. The Amicus Brief for various Attorneys General claims that the ruling below will destroy the fiscal powers of the State legislatures; will lead to a shift from the property tax to other forms of taxation; will compel full state funding, with huge increases in overall spending; and, once again, will adversely affect the interests of urban areas and racial minorities. Brief, pp. 17-35, 83-99; in short, the same dire predictions which this Court has heard prior to its major decisions, such as *Baker* v. *Carr,* 369 U.S. 186 (1962).

Obviously, whether any or all of these things might come to pass is dependent upon the initiative of the Texas Legislature and not the judgment below. That teachers may get increased pay if Edgewood receives more funds is hardly a ground for criticism, even if the assertion were properly proved. The State is obliged only to eliminate the offending discrimination. This may be achieved by equalizing at any support level, or by basing disparities on rational policy grounds. The flexibility allowed State legislature under the District Court's flexibility allowed State legislatures under the District Court's rationale is broad indeed, and does not compel centralized financing

or control. Neither does the opinion create problems for inner city schools which they do not face today. Legislatures will obviously be free to adjust distribution formulae to provide for greater costs or needs associated with urban schools, or schools with high concentrations of low achievers.

The contention that Texas allows discriminations in support levels in order to allow and foster local control is, as the District Court found, not even a rational justification for the system. "Not only are defendants unable to demonstrate compelling state interests for their classifications based upon wealth," the Court ruled, "they fail even to establish a reasonable basis for these classifications." 337 F. Supp. at 284. Local control implies the availability of resources sufficient to fund more than a minimum (often a State mandated) program. Districts like Edgewood have few local decisions to make. If local control and choice is the objective of the Texas system, the system fails to achieve its aim in many districts—especially districts which are predominantly poor and non-white. Furthermore, the extent of local control that actually exists is a matter of considerable dispute. State requirements now mandate much that local districts once used to determine, not because courts have ordered centralization, but because State legislatures have chosen it. The district court correctly perceived the lack of any correlation with reality in the arguments presented by the State.

CONCLUSION

The judgment below should be affirmed and the determination of the proper remedy left to the court below in the first instance.

Respectfully submitted,

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