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CONSTITUTIONAL LAW DEVELOPMENTS IN THE EQUALIZATION OF PUBLIC SCHOOL FINANCING

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for the

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I BACKGROUND - DEVELOPMENT OF A JUDICIAL STRATEGY

For years the subject to public school finance was the domain of a small group of specialists. The subject was clouded in jargon familiar only to this exclusive group and, not surprisingly, received little attention from the general public. Gradually that situation began to change and the defects in the various state financing systems became clear.

Although it had no direct bearing on school finance, the landmark decision in *Brown v. Board of Education* decided in 1954 did, however, mark the beginning of national concern for social equality and a willingness of the courts to intervene where necessary. Following Brown there was a period of 15-20 years of study and analysis by scholars of various education issues - including school financing.

By the late sixties, analysts concluded that inequities existed between school districts as a result of school finance plans[1] and were not likely to be remedied through the legislative process. For decades property wealthy districts had been able to legislatively protect their taxing and spending advantages; and it appeared likely that, for the most part, they would be able to continue to do so. Reformers thus sought to redress inequities in school funding through the courts. As a result, school finance reform has been largely prompted by legal challenges, or the threat of such challenges, to the basic fairness of state education funding programs.

Initially, advocates of reform were unsuccessful in two cases[2] challenging state school finance laws in federal courts on equal protection grounds. The cases were based on an "equal school outcomes" definition of equality and sought redistribution of financial resources in accord with the educational needs of students. Advocates of the equal outcomes approach maintained that public money for education should be disbursed on the basis of educational needs not local property wealth. The courts in those cases found there were no judicially manageable standards whether evaluational needs were met or not and, thus, whether for determining the Constitution was violated or not.

Following these early defeats, school funding reform plaintiffs developed a strategy which seemed easier for the courts to accept since it did not involve intricate determinations of children's needs and of the manner and amount of educational programming expenditures

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1. See for example the landmark study: Coleman, James S., et. al, Equality of Educational Opportunity Report, (1966)
2. Burruss v. Wilkerson, 310 F. Supp 572 (W.D.Va 1969), aff'd 397 U.S. 44 (1970); McInnis v. Shipiro, 293 F. Supp. 327 (N.D. Ill. 1968), aff'd sub nom. McInnis v. Ogilvie, 394 U.S. 322 (1969)

required. The strategy focused on freeing the tie between the level of expenditure and district property wealth. That approach became known as the "fiscal neutrality" standard and was first articulated in a California case, *Serrano v. Priest*.[3] The fiscal neutrality approach relies on a negative standard -- differences in expenditures per child cannot be the result of differences in property valuation between districts. Or, stated another way: Educational expenditures must be a function of the wealth of the state as a whole, not of the wealth of individual school districts. The same level of spending is not required in all districts; but differences which do exist must be the result of local taxpayer choice and not of the local property wealth.

While social science scholars have been unable to delineate precisely the relationship between expenditures and educational quality, the courts have generally been willing to accept a close, although not necessarily direct, relationship. The courts have said that since many of the conditions which determine the quality of education (e.g., small class size, sound teacher preparation programs, current materials, books and supplies, expanded course offerings and a wide range of extra curricular activities) require high per pupil expenditures, it is reasonable to assume such a relationship. Further, as one commentator put it:

> "We regard the fierce resistence by rich districts to reform as adequate testimony to the relevance of money. Whatever it is that money may be thought to contribute to the education of children, that commodity is something highly prized by those who enjoy the greatest measure of it. If money is inadequate to improve education, residents of poor districts should at least have equal opportunity to be disappointed by its failure."[4]

II SURVEY OF CASES AFFECTING SCHOOL FINANCING

A. Serrano

In the now famous case of *Serrano v. Priest*, which was actually a series of decisions beginning in 1970, the California Supreme Court ruled that the state system of school financing was unconstitutional under the equal protection clauses of the Fourteenth Amendment of the U. S. Constitution and the state constitution. It was unconstitutional because it made the quality of education a function of the taxable property wealth of local school districts. The school finance system with its direct link to property wealth resulted in substantial disparities among districts in money spent per pupil. The court found that condition to constitute discrimination against school children and taxpayers in poor districts.

3. Citations to cases discussed in the text of this paper and to other school funding cases decided as of the date of this paper are found in Table 1.
4. Coons, Clune and Sugarman, Private Wealth and Public Education, p. 80, (1970)

The Serrano decision triggered a series of constitutional challenges to state school funding laws in both state and federal courts. At that time, because of the Serrano decision, the school funding formula in nearly every state in the union was subject to challenge.

B. Rodriques

The school funding reform movement suffered a brief setback in 1973 when the U. S. Supreme Court issued its opinion in *Rodriques v. San Antonio*. The issues were essentially the same as Serrano. However, the plaintiffs in Rodriques based their argument solely on the equal protection clause of the Fourteenth Amendment of the U. S. Constitution and the case was tried in the federal courts. The Supreme Court held, in a 5 to 4 decision, that district property wealth was not a suspect classification and that education was not a "fundamental" interest because it was not explicitly or implicitly provided for in the U. S. Constitution. Therefore, the state's school funding system had to meet only a "rational basis" test, not the more rigorous "compelling state interest" test for validity. The Court ruled that retention of local control over education matters constituted a rational basis for the Texas system and was sufficient to protect it. Rodriques made it impossible to rely on the Fourteenth Amendment of the U. S. Constitution to invalidate school finance laws.

C. Robinson

Thirteen days after the U. S. Supreme Court decision in Rodriques, the New Jersey Supreme Court handed down its decision in *Robinson v. Cahill*. The court in Robinson found in a unanimous decision that the N.J. funding system violated the state constitutional requirement that the legislature provide for the "thorough and efficient" education of all the state's children. The Robinson decision made it clear that Rodriques could be circumvented and that school finance reform could be precipitated at the state court level based on state constitutional protections even if it necessitated separate suits tailored to the legal and factual details of each state system.

D. Constitutional theories used by challengers

Since Robinson, numerous school finance laws have been challenged in state courts (See Table 1). Challenges have been based on:

1. The education clause in the state constitution,

2. The equal protection clause or other equal guaranty provision of the state constitution or

3. Both clauses.

Every state except Mississippi has an *education clause* in its constitution. Because the wording of the clauses, and, thus the educational guarantee, vary from state to state, the cases which have been brought so far cannot be easily summarized. Each state court must interpret the standard of education guaranteed by the state constitution and determine whether the State's funding system prevents that standard from being met.

To determine whether a school funding formula violates the *equal protection clause* or similar clause in the state constitution, a state court must develop a framework (or use an already articulated framework) for analysis of the equal protection challenge. Many states can be expected to use the equal protection analysis which has been established by the U. S. Supreme Court. In that analytical framework, the court first examines the right involved to determine if it is a fundamental right, or examines any class created to determine if it constitutes a suspect classification. Second, the court applies the appropriate standard of review to determine if the right has been violated. Although state courts universally recognize the importance of education, they have disagreed on whether it is a fundamental right in the constitutional sense, or some lesser right. Likewise, state courts which have addressed the issue in the context of school funding have divided on whether "poor" school districts or students represent a suspect class. If education is determined to be a fundamental right or students in poor districts a suspect class, the school finance system is subject to strict judicial scrutiny. That means the state must show that there is a compelling state interest served by its system and that the funding system established is the best method available for attaining that interest. That is a difficult test to meet. Courts which have found education to be a fundamental right or students in poor districts to be a suspect class have generally overturned school finance systems which result in large spending inequities. Specifically, local control of education matters has been found not to be a compelling state interest in many of these cases.

On the other hand, if education is found not to be fundamental right under the state constitution, the school finance system is subject to a less strict standard -- the rational basis test. The state must show only that there is a rational basis for the system it has established. Furthermore, it is immaterial that the system is not the best one available, nor even a particularly good one. The court will not overturn it as long as there is some reasonable relation between the system and a legitimate state objective. In these cases, local control has been found to be a legitimate state objective.

E. Summary

In the decade since Robinson, education finance reform litigation has progressed sporadically. At least 16 state high courts have ruled on challenges to their state's school finance law. More challenges have been unsuccessful than successful. (See Table 1 for states, results and case citations) There appears to be no clear trend as to which constitutional theories will be successful or as to the differences in per pupil expenditure or local effort which will be tolerated and which will be struck down.

The reason that more cases have failed may be that the courts feel they have gone as far as they can with the fiscal neutrality theory. That is, the clear cases of discrimination where gross disparities of spending and tax effort existed and where the funding system made little or no effort to equalize spending between rich and poor districts were easy to decide and were disposed of in the mid-70's. Now the cases are less clearcut. Many of the school finance systems challenged in the late 1970's and early 1980's have already undergone some reform following Serrano. Those systems appear to make an attempt to equalize spending per student and to result in less disparity in spending and tax effort. Where basic education needs are met and where there are equalizing features in the finance law, the courts seem to be saying that fine-tuning or even major reform of the school finance system is best left in the hands of the Legislature.

III MAINE LAW

The Maine Constitution contains both an *education clause* and an *equal protection clause*.

A. Education clause

Article VIII, section 1 of the Maine Constitution states, in part:

> "Section 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 their own expense, for the support and maintenance of public schools; ...

There are no Maine cases directly interpreting the requirements of an education finance scheme under the education clause. There are some cases which may be helpful in anticipating how the court might rule, however. Beginning with an Opinion of the Justices in 1876, court opinions make it clear that provision of an education system is a legislative function. That Opinion states:

> "[t]he legislature has 'full power' over the subject matter of schools and of education to make all reasonable laws in reference thereto..."[5]

That Opinion also made it clear that education was not to be left merely to the towns as the language might indicate.

> "[f]or if left to them there would be no uniform and definite rule. The 'suitable provision' in such case would be a variable quantity..."[6]

Other cases have addressed the definition of "suitable provision." The Supreme Judicial Court has stated:

> "[t]he requirement is left wholly to the discretion of the Legislature, because their duty is to require the several towns to make "suitable" provision. Who is to determine what is suitable? Clearly the Legislature itself. "Suitable" is an elastic and varying term, dependent upon the necessities of changing times. What the Legislature might deem to be suitable and therefore necessary under some conditions, they might deem unnecessary under others."[7]

The common theme in the cases seems to be that the court will give great weight to the Legislatures' determination of what is a suitable education and of the system set up to provide that education. Presumably including the school finance scheme.

B. Equal Protection

The Maine Constitution at Article I, Section 6A states:

> Section 6-A. No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of his civil

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5. Opinion of the Justices of the Supreme Judicial Court, 68 ME 582, 1876.
6. Ibid. at p. 584
7. Sawyer v. Gilmore 109 Me 169, 1912.

rights or be discriminated against in the exercise thereof" Maine courts have not ruled whether education is a fundamental right under the State Constitution which would trigger a hightened level of scrutiny of the school funding formula.

There are a number of cases citing the importance of education. However, until the nature of that right is characterized, it is difficult to predict what equal protection standard of review the court would apply if it were called on to review the Maine School finance law.

IV CONCLUSIONS FOR MAINE

What does all this mean for Maine? First of all, it is difficult to predict how the Maine courts would react to a challenge to the Maine school finance law because of the absence of Maine cases directly on point and because cases from other states used for comparison are based on different state constitutional language and different judicial precedents. However, based on the development of education finance case law to date, it seems likely that the Maine Courts would uphold the constitutionality of the school finance law. Unless it were demonstrated that a basic education was not being provided, the Court would probably find that disparities in spending between districts would be insufficient to overturn the entire system and ought to be addressed by the Legislature. That leaves open the possibility that if the disparities persist or are allowed to grow and if more sophisticated theories to demonstrate injury are developed by future plaintiffs, the Court would then be able to say the system is unconstitutional.

TABLE 1

State Education Finance Cases

I Cases supporting challenge to education finance laws

Case	Citation
Serrano v. Priest (I)	487 P2d 1241 (Calif-1971)
Serrano v. Priest (II)	557 P2d 929 (Calif-1976)
Robinson v. Cahill	303 A2d 273 (N.J.-1973)
Buse v. Smith	247 NW2d 141 (Wisc-1976)
Knowles v. St. Bd. of Education	547 P2d 699 (Kan-1977)
Horton v. Meskill	376 A2d 359 (Conn-1977)
Seattle Sch. Dist. No.1 v. State	585 P2d 71 (Wash-1978)
Pauley v. Kelley	255 SE2d 859 (W.Va-1979)
Washakie Cty Sch. Dist. v. Herscler	606 P2d 310 (Wyo-1980)

II Cases rejecting challenge to education finance laws

Case	Citation
San Antonio v. Rodriques	411 US1 (Tex-1973)
Shofstall v. Hollins	515 P2d 590 (Ariz-1973)
Milliken v. Green	203 NW2d 457 (Mich-1972) 212 NW2d 711 vacated mem. (Mich-1973)
State ex. rel. Woodkahl v. Straub	520 P2d 776 (Mont-1974)
Thompson v. Englelkory	537 P2d 635 (Idaho-1976)
Olsen v. State ex rel Johnton	554 P2d 139 (Ore-1976)
People v. Adams	350 NE2d 376 (Ill-1976)
Danson v. Casey	399 A2d 360 (Pa-1979)
Bd. of Educ. Cincinnati v. Walter	390 NE2d 813 (Ohio-1979)
McDaniel v. Thomas	285 SE2d 157 (Ga-1981)
Lujan v. Colorado	649 P2d 1005 (Colo-1982)
Levittown v. Nyquist	453 NYS2d 643 (N.Y.-1982)