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EQUAL PROTECTION AND THE FINANCING OF PUBLIC EDUCATION IN WYOMING

Recent decisions by courts in California,[1] Minnesota,[2] Texas,[3] and New Jersey[4] have cast doubt on the validity of the public school financing systems of nearly every state including Wyoming. The California Supreme Court was the first court to recognize that a financing system which results in discrimination between school districts violates equal protection.[5] Courts in Minnesota, Texas, and New Jersey following the California decision held the financing systems in these states unconstitutional. The methods found to be violative of equal protection relied primarily on local property taxes to raise revenue. The importance of these decisions and their possible effect on public education is apparent; every public school system in the United States with the exception of Hawaii is similarly financed.[6] The purpose of this comment is to examine these decisions and their effect on the method of financing public schools in Wyoming.

Recent Cases

In *Serrano v. Priest,* students and their parents brought a class action seeking declaratory and injunctive relief against state and county officials who were charged with administering the financing of the public school system.[7] The plaintiffs contended that the method of financing the California public schools, largely dependent on property taxes, resulted in unequal educational opportunities. The court held, assuming the facts alleged to be true, that the financing system resulted in a classification based on suspect criteria, which affected a fundamental right. Since no compelling

1. Serrano v. Priest, 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971).
2. Van Dusartz v. Hatfield, 334 F. Supp. 870 (D. Minn. 1971).
3. Rodriguez v. San Antonio Independent School District, 337 F. Supp. 280 (W.D. Texas 1971).
4. Robinson v. Cahill, 119 N.J. Super. 40, 287 A.2d 187 (1972).
5. The decision in *Serrano v. Priest* was not a final determination on the merits. See text *infra* p. 275.
6. Note, *Constitutional Law—Equal Protection—Supporting Public Schools In A Manner So That The Dollar Amount Spent Per Student Is Substantially A Function Of The Community's Wealth Violates The Fourteenth Amendment,* 1971 U. of Ill. L. F. 524, 527 (1971).
7. Serrano v. Priest, 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 607 (1971).

state interest was served by this discrimination, it was found to be violative of the equal protection clause of the fourteenth amendment.[8]

Under the California financing system, funds for public schools were derived almost entirely from two sources. Local property taxes made up the largest share with the remainder coming from the state school fund.[9] State aid was provided to every district in the form of a fixed grant.[10] Additional aid was given by the state to poor districts in order to raise their per pupil expenditure to a minimal amount.[11] This method of finance resulted in large disparities in the expenditures made by different districts for education. For example, the Beverly Hills Unified School District spent $1231.72 per student in the 1968-69 school year, while the plaintiff's district spent only $577.49 per pupil during the same period.[12] This was true even though the property owners in the plaintiff's district were taxed at a higher rate than those in Beverly Hills.[13] Since the property valuation in Beverly Hills was much higher than in the plaintiff's district, more revenue could be raised at a lower tax rate.

The court concluded from the large disparities in expenditures, property valuation, and level of tax rate that educational opportunity was based upon wealth.[14] It further determined that education is a fundamental right, comparing it to the right to vote.[15] Having made both these determinations, the court found that, under recent United States Supreme Court decisions,[16] the state must show a compelling state interest in the classification.[17] The defendants argued that the state had a compelling interest: " 'to strengthen and encourage local responsibility for control of public education.' "[18]

8. *Id.* at 1263.
9. *Id.* at 1246.
10. *Id.* at 1247.
11. *Id.*
12. *Id.* at 1248.
13. *Id.* at 1252 n.15. The tax rate in plaintiff's district was nearly double the rate existing in Beverly Hills Unified School District.
14. *Id.* at 1255.
15. *Id.* at 1258.
16. *E.g.*, Harper v. Virginia State Board of Elections, 383 U.S. 663 (1966).
17. Serrano v. Priest, 5 Cal. 3d 584, 487 P.2d 1241, 1263, 96 Cal. Rptr. 601 (1971).
18. *Id.* at 1260. The quoted language is from the CAL. EDUC. CODE § 17300 (West 1969).

The court held this argument insufficient because the challenged method of financing was not necessary to the furtherance of the stated compelling interest.[19]

The California Supreme Court's decision was not a final determination on the merits. The case was appealed to test the sufficiency of the plaintiff's complaint. The court found the complaint to state a valid cause of action and remanded the case to the trial court to render a decision on the merits.[20]

Two Federal District Court cases have followed *Serrano;* the courts holding the public school financing systems of Texas[21] and Minnesota[22] unconstitutional. These decisions clarify *Serrano* in respect to what the equal protection clause requires in the area of public school financing. According to the courts in *Van Dusartz v. Hatfield*[23] and *Rodriguez v. San Antonio Independent School District,*[24] the fourteenth amendment does not require that each district spend an equal amount per pupil, but rather that educational opportunity not be dependent on the wealth of the district.[25] These two courts set the constitutional requirement at "fiscal neutrality".[26] To meet this requirement the system of financing must be set up in such a manner as to allow the citizens of each district to decide the amount of money to be spent on education. The existing methods of finance failed this test. Under the systems which existed in Texas and Minnesota the citizens in the districts with low assessed property valuations were limited in the amount of revenue they could raise through property taxes. They therefore were not free to decide the amount which the district should spend on education.

A third case which has followed the *Serrano* holding is *Robinson v. Cahill.*[27] It would serve no good purpose to explore the basic holding that New Jersey's system of school

19. *Id.* at 1263.
20. *Id.* at 1266.
21. Rodriguez v. San Antonio Independent School District, *supra* note 3.
22. Van Dusartz v. Hatfield, *supra* note 2.
23. 334 F. Supp. 870 (D. Minn. 1971).
24. 337 F. Supp. 280 (W.D. Texas 1971).
25. Van Dusartz v. Hatfield, *supra* note 23, at 872; Rodriguez v. San Antonio Independent School District, *supra* note 24, at 284.
26. *Id.*
27. 119 N.J. Super. 40, 287 A.2d 187 (1972).

financing is violative of equal protection because the holding is essentially identical to that of *Serrano*. However, the case does add one dimension to the earlier cases in its application of the education clause of the New Jersey Constitution to the challenged financing system. The education clause provides: "The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all children in the State between the ages of five and eighteen years."[28] The court concluded that the present system of financing education in New Jersey did not meet the constitutional requirements of a "thorough" education.[29] As defined by the court, "thorough" means more than adequate or minimal. A 1969 study of the Camden, New Jersey school system was relied upon to illustrate the failure to provide a "thorough" education. In support of its determination the court pointed to the conclusion reached in the study that nearly all of the elementary schools of Camden were deficient in facilities for programs in art, music, science and home economics.[30] The report also found a need for libraries, remedial reading and other special services. The court did not invalidate the financing system for its failure to meet the requirements of the education clause because it believed that if fully funded, which it was not, the standards would be met.

CONSTITUTIONAL TESTS OF EQUAL PROTECTION

The courts have formulated two different tests of equal protection. The test usually applied to the regulation of state economic or fiscal matters is the "rational basis" test.[31] More recently the courts have developed the "compelling interest" test to be applied to legislation where the state action invokes a suspect classification or adversely affects a fundamental interest.[32]

Under the "rational basis" test the equal protection clause is violated "only if the classification rests on grounds

28. N.J. CONST. art. VIII § IV.
29. Robinson v. Cahill, 119 N.J. Super. 40, 287 A.2d 187, 211 (1972).
30. *Id.* at 201.
31. Note, *supra* note 6, at 525.
32. *See, e.g.*, Shapiro v. Thompson, 394 U.S. 618 (1969).

wholly irrelevant to the achievement of the State's objective."[33] "A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it."[34] The court in *McGowan v. Maryland,* applying the "rational basis" test, found no equal protection violation in Maryland's Sunday Closing Laws.[35] A reasonable basis was found to exist in the exemption of certain commodities from the Sunday sale prohibition. The court pointed to the need of the public for such items as gasoline, drug products, soft drinks, ice cream and newspapers on Sundays as the reasonable basis for the exemption of these items.[36]

The stricter "compelling interest" test is called into action when the state's action involves a suspect classification or adversely affects a fundamental interest. Suspect classifications have been found where lines are drawn on the basis of wealth or property[37] and race.[38] The United States Supreme Court has held voting[39] and criminal rights[40] to be fundamental interests. In *Harper v. Virginia Board of Elections* the Court held Virginia's poll tax violative of the equal protection clause, finding both a suspect classification—wealth, and a fundamental interest—voting, to be present.[41]

The courts in *Serrano, Van Dusartz, Rodriguez,* and *Robinson,* applied the "compelling interest" test to the questioned financing systems. As in *Harper,* the court in *Serrano* found both a suspect classification—wealth, and a fundamental interest—education, to be present.[42]

In support of its finding that California's system of financing classified on the basis of wealth the California court stated, "[T]he wealth of a school district, as measured by its assessed valuation, is the major determinant of educational expenditures."[43] Of course revenue is also a function

33. McGowan v. Maryland, 366 U.S. 420, 425 (1961).
34. *Id.* at 426.
35. *Id.* at 428.
36. *Id.* at 426.
37. *E.g.,* Harper v. Virginia State Board of Elections, *supra* note 16.
38. *See, e.g.,* McLaughlin v. Florida, 379 U.S. 184 (1964).
39. *E.g.,* Harper v. Virginia State Board of Elections, *supra* note 16.
40. *E.g.,* Griffin v. Illinois, 351 U.S. 12 (1956).
41. 383 U.S. 663, 670 (1966).
42. Serrano v. Priest, 5 Cal. 3d 584, 487 P.2d 1241, 1263, 96 Cal. Rptr. 601 (1971).
43. *Id.* at 1250.

of the tax rate, but poorer districts cannot raise revenue equal to that of rich districts even at a high tax rate.

The defendants argued that classifications based on wealth are constitutional when the wealth is that of the district and not the individual. The court answered this contention negatively stating, "[D]iscrimination on the basis of district wealth is equally invalid."[44] To support this conclusion the court noted:

> The commercial and industrial property which augments a district's tax base is distributed unevenly throughout the state. To allot more educational dollars to the children of one district than to those of another merely because of the fortuitous presence of such property is to make the quality of a child's education dependent upon the location of private commercial establishments. Surely, this is to rely on the most irrelevant of factors as the basis for educational financing.[45]

The basic rationale relied upon to hold that education is a fundamental interest was found in its importance to a democratic society. Comparing education to the fundamental interest of voting the court concluded that both interests are essential in preserving the rights and liberties of the populace.[46] In further support of its determination the California court quoted a passage from the United States Supreme Court opinion in the case of *Brown v. Board of Education:*

> In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be available to all on equal terms.[47]

These same arguments were relied upon by the courts in *Van Dusartz, Rodriguez* and *Robinson* in their determinations that the "compelling interest" test is the correct test of equal protection for education financing systems.

44. *Id.* at 1252.
45. *Id.* at 1252-53.
46. *Id.* at 1258.
47. *Id.* at 1256, *quoting from* 347 V.S. 483, 493 (1954).

PUBLIC SCHOOL FINANCING IN WYOMING

Recently the Wyoming legislature enacted the Wyoming School District Organization Law of 1969.[48] One of the stated purposes of the Act is to "provide a wiser and more efficient use of public funds for education by making it possible to reduce the disparity in per pupil valuation among school districts."[49] The act also includes a list of requirements to be met in organizing districts, one of which is:

> In developing plans of organization, the county committees shall consider a ratio of average daily membership to assessed valuation as nearly equalized as practicable among the unified districts in the various counties.[50]

These stated goals of the Wyoming School District Organization Law of 1969 would appear to be in line with the holdings of *Serrano, Van Dusartz, Rodriguez,* and *Robinson.* In actuality the reorganized districts do not achieve these goals.

Public schools in Wyoming are financed by a property tax system which is very similar to those in California, Minnesota and Texas. Wyoming statutes authorize the levy of property taxes for the support of public education at the district, county and state governmental levels.[51] The proceeds of the state property tax are placed in the Foundation Fund and are distributed as follows: first, to bring all districts up to a minimum standard, and second, to supplement those districts which have a below average assessed property valuation per classroom unit.[52] The mill rates at which the district, county and state may tax are set by statute.[53]

A wide disparity exists among Wyoming Unified School Districts in property tax rates, assessed property valuation,

48. WYO. STAT. §§ 21.1-105 to 135 (1971 Supp.).
49. WYO. STAT. § 21.1-106 (1971 Supp.).
50. WYO. STAT. § 21.1-109(e) (1971 Supp.).
51. WYO. STAT. § 21.1-214(d) (1971 Supp.) provides the maximum mill rate which may be charged by unified school districts. Unified districts may levy a tax of 28 mills for combined elementary and high school purposes of which 6 mills can only be levied if approved by a majority of voters voting on the proposition. WYO. STAT. § 21.1-217 (1971 Supp.) provides that each county shall levy a 12 mill tax for public schools. WYO. STAT. § 21.1-226 provides for a 6 mill tax levy by the state for public schools.
52. WYO. STAT. § 21.1-236 (1971 Supp.).
53. *See,* note 51 *supra.*

assessed property valuation per pupil and expenditures per student. An overall view of the existing disparities makes it apparent that the same constitutional problems respecting public school financing are present in Wyoming as existed in California. An examination of two districts of nearly identical enrollment will illustrate the inequities of the present system of public school finance. Big Piney School District Number Nine had an enrollment of 509 in 1971-72 while Saratoga School District Number Nine had an enrollment of 503 during the same period.[54] Big Piney School District Number Nine reported an effective expenditure per average daily membership of $1371.92 as compared to $847.61 reported by Saratoga School District Number Nine.[55] The property owners of the Saratoga School District were taxed at a total mill rate (i.e., state, county and district) of 41.140 mills whereas the rate in the Big Piney District was only 34.603 mills.[56]

It is readily apparent that education expenditures in these two districts are not a direct function of the tax rate. The determining factor is the assessed property valuation per pupil in each district. Assessed valuation per pupil varied from $58,947 for the Big Piney District to $14,215 for the Saratoga District.[57] One other example will serve to further illustrate the existing disparities. Laramie High School District Number One has the highest total mill levy in the state.[58] This high tax rate is, however, not reflected in expenditures per student as the Laramie District ranks in the lower quarter of all unified districts in that category.[59] The Wyoming method of financing public schools does not meet the constitutional tests laid down in the recent decisions. Educational opportunity depends not on a free decision by the district's citizens, but rather on the wealth of the district.

54. STATE DEP'T OF EDUCATION, PROPERTY TAX REPORT, UNIFIED SCHOOL DISTRICTS 1971-72 Table I.
55. *Id.* Table III.
56. *Id.* Chart A.
57. *Id.* Chart C.
58. *Id.* Chart A.
59. *Id.* Table III.

The Wyoming Constitution has a provision very similar to the one in the New Jersey Constitution which was applied to the education finance system in *Robinson*.[60] Article 7, Section 1 provides, "The legislature shall provide for the establishment and maintenance of a complete and uniform system of public instruction. . . ."[61] A "complete" system apparently means more than minimal as was found to be true of a "thorough" system by the New Jersey court. Although it is somewhat beyond the scope of this article, it is certainly conceivable that the Wyoming education system shares some of the faults in the provision of services that were found in the New Jersey system.

The Wyoming Supreme Court has stated its opinion concerning the state's financing system in a related case on district reorganization.[62] The case concerned a dispute between districts in Carbon and Sweetwater Counties over the inclusion of Bairoil in the reorganized District Number One of Sweetwater County. Bairoil is an area of high property valuation and therefore was desired by both districts. The inclusion of Bairoil in either of the districts would raise the assessed property valation per student and provide more revenue for education. In its opinion the court stated:

> If ad valorem taxes for school purposes were equalized throughout the state, . . . cases such as the one being dealt with would not arise.
>
> The time has come when we can no longer ignore inequities throughout our state in the matter of taxation for school purposes.[63]

The court left the task of revamping the financing system to the state legislature. However, it did outline a method of financing which it felt would be constitutional.

The plan which the court proposed would rely on property tax, levied at both the state and county level, for revenue.

60. *Supra* note 4.

61. WYO. CONST. art. 7 § 1.

62. Sweetwater County Planning Committee For the Organization of School Districts v. Hinkle, 491 P.2d 1234 (Wyo. 1971).

63. *Id.* at 1236-37.

The state property tax would be continued at its present rate of six mills.[64] The scheme differs from the present system in the collection and distribution of the county property tax. Each county would be allowed to levy a property tax of twelve mills for distribution to districts within the county.[65] An additional property tax would also have to be levied by the county and paid to the state treasurer.[66] This tax would be at a rate determined by the State Department of Education, to be sufficient, when distributed according to need, to equalize funds available, on a per pupil basis, for education in each district.[67] The court also stated that it would find no invidious discrimination if the legislature allowed a district, by vote of its citizens, to raise additional revenue by the imposition of a district property tax.[68] This additional revenue would have to be limited to ten or fifteen percent of the guaranteed amount.[69]

The suggested method appears to conform to the holdings in *Serrano, Van Dusartz, Rodriguez* and *Robinson.* Equal tax rates in the different counties would result in equal funds for public education for all students. A constitutional question might arise if the legislature should provide a means by which the districts could raise their revenue an additional ten or fifteen percent as the Supreme Court suggested. The courts in *Van Dusartz* and *Rodriguez* set the constitutional standard at "fiscal neutrality". This standard requires that all districts have equal taxing ability to raise revenue. By allowing districts to raise additional funds by the imposition of a district property tax the legislature would be providing a system of unequal taxing ability. The districts with higher assessed property valuations would be able to raise more revenue with a district tax of ten or fifteen percent than the poorer districts with a tax at the same rate. Such a provision would allow citizens of the district a voice in the determination of how much money would be spent on education. By allowing a cer-

64. *Id.* at 1237.
65. *Id.* at 1238.
66. *Id.*
67. *Id.*
68. *Id.*
69. *Id.*

tain amount of local decision making the plan would quell many of the protests against enlarging centralized responsibility in decision making. The goal of such a provision is laudable but the means do not meet the constitutional standard.

There is a method by which the above stated goal may be achieved constitutionally. The method, called "Power Equalizing", is set out in a recent book by Coons, Clune and Sugarman.[70] The desire behind the plan is to provide for local determination of the amount to be spent for education by each district without making educational opportunity dependent on the wealth of the district. The plan provides that an equal tax effort (mill levy) in different districts will yield an equal amount of revenue. A table would have to be set up which would provide how much revenue should be raised by different tax rates. To determine the amount of state aid to be distributed to a district the state official would merely subtract the amount of revenue raised by the district at its tax rate from the amount stated in the table at that rate.[71] The citizens of a district, under this plan, are free to determine the property tax rate for their district. Whatever tax rate they choose will yield the same amount of revenue as any other district which chooses that same rate. Educational opportunity, under this plan, is dependent on a free decision by the district's taxpayers rather than the wealth of the district. "Power Equalizing" appears to be a plan which is both constitutional and politically feasible.

CONCLUSION

The traditional methods of financing public education which rely heavily on local property taxes for their revenue are in jeopardy. Recent decisions have found that these financing systems which result in wide disparities in expenditures per student between districts do not measure up to the

70. COONS, CLUNE & SUGARMAN, PRIVATE WEALTH AND PUBLIC EDUCATION (1970).

71. For example, if the table created by the State Department or Education provided that a tax of 10 mills would yield $500 per average daily membership and the voters of the district decided to tax themselves at this rate, the state would be required to pay to the district the difference between the guaranteed $500 and what the district would raise from the levy.

constitutional requirement of equal protection. The Wyoming Supreme Court has noted that the method of financing public education in Wyoming likewise fails when measured against the equal protection clause. The Wyoming court left the task of revamping the financing system to the legislature. It remains to be seen what, if anything, the Wyoming legislature will do to correct the constitutional defect.

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