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San Antonio Independent School District v. Rodriguez: Inequitable but Not Unequal Protection under the Fourteenth Amendment

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product or any potential costs arising out of the product, is one that should be reached on its own merits, not through the confusing process of redefinition of the words written tentatively to define that very responsibility.

Steve Brook

San Antonio Independent School District v. Rodriguez: Inequitable but Not Unequal Protection Under the Fourteenth Amendment

In January 1972 a three-judge federal court in San Antonio, Texas, found that the current system of financing public education in Texas[1] discriminated on the basis of wealth against all school children living in school districts with low property values, because the system permitted citizens in affluent districts to provide a higher quality education for their children while paying lower taxes.[2] Having found wealth to be a suspect classification and education a fundamental interest, the district court could find no compelling state interest to justify the present system and held as a matter of law that plaintiffs had been denied equal protection of the law under the fourteenth

Sw. L.J. 1, 2-4 (1973). In both articles, another approach is taken, using a changing balance concept which is perhaps not altogether inconsistent with an enterprise liability theory. "[A product] is unreasonably dangerous if a reasonable person would conclude that the magnitude of the scientifically perceivable danger *as it is proved to be at the time of the trial* outweighed the benefits of the way the product was designed and marketed." (Emphasis in original.) Keeton, *supra* note 23, at 38. This concept was generally employed in Metal Window Prods. Co. v. Magnusen, 485 S.W.2d 355 (Tex. Civ. App.—Houston [14th Dist.] 1972), *error ref. n.r.e.* (manufacturer not liable for the fact that a glass door is clear and is hard to detect when in place and without any warning decals affixed, when the door is otherwise non-defective).

[1] The Texas system for financing public education employs a combination of flat grant and foundation grant systems. *See* J. COONS, W. CLUNE & S. SUGARMAN, PRIVATE WEALTH AND PUBLIC EDUCATION 63-197 (1970); Coons, Clune & Sugarman, *Educational Opportunity: A Workable Constitutional Test for State Financial Structures*, 57 CALIF. L. REV. 305, 312-17 (1969). A flat grant is given to each district according to the number of pupils in average daily attendance. TEX. EDUC. CODE ANN. art. 15.01(b) (1972). The Texas Foundation School Program provides funds for three specific purposes: professional salaries, current operating expenses, and transportation expenses. *Id.* art. 16.71. Twenty percent of this fund is furnished by the local school districts according to the taxpaying ability of each district. *Id.* arts. 16.72-.76. The districts are empowered by *id.* arts. 20.01-.08 to raise their local share through the levying and collection of ad valorem property taxes. This system ensures a Minimum Foundation School Program for each pupil in the state.

If the district's share, when combined with the per pupil grant, is less than the amount necessary to support a Minimum Foundation School Program in that district, the state provides the additional funds necessary to attain the minimum per student expenditure. *Id.* art. 16.79. Therefore, the amount of revenue available from local districts is totally dependent on the taxable wealth in the district and upon the tax rate which the district imposes upon itself. Consequently, a district with high real property valuations can generate more revenue at a lower rate than a poorer district at the highest rate. This is the aspect of the system challenged by *Rodriguez* and its forerunners. *See* Note, *An Attack on the Texas School Financing System: Rodriguez v. San Antonio Independent School District*, 26 SW. L.J. 608 (1972).

[2] Rodriguez v. San Antonio Ind. School Dist., 337 F. Supp. 280 (W.D. Tex. 1972).

amendment of the United States Constitution.[3] On the state's appeal, the Supreme Court noted probable jurisdiction. *Held, reversed*: The Texas public school financing system does not operate to the disadvantage of any suspect class nor impermissibly interfere with the exercise of a fundamental interest recognized by the Constitution; though concededly imperfect, the system bears a rational relationship to a legitimate state purpose. *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973).

I. Strict Judicial Scrutiny Under the Equal Protection Clause

The Supreme Court has developed two standards for reviewing cases alleging a denial of equal protection.[4] The standard applied is related to the nature of the state legislation and the interests of the citizens affected thereby. In most cases the Court has employed the "traditional standard" of review. Under this standard, the Court seeks to determine whether there is a rational relationship between the statute and a legitimate purpose to be achieved by it.[5] The Court accords a presumption of constitutionality to the legislation, thereby placing the burden of proof upon the challenging party.[6] However, when a classification employed by the state is inherently suspect or affects a fundamental interest, the Supreme Court applies a different test referred to as the "strict judicial scrutiny" test.[7] Under this standard, the ordinary presumption of constitutionality is denied and the burden of justification is placed upon the state to demonstrate a "compelling state interest" which the classification promotes.

Several classifications are now recognized as being suspect, such as race,[8] nationality,[9] and alienage,[10] and the Court has consistently invalidated legislation which is based on any of these classifications. Another disfavored classification which has emerged is that based on the wealth of the individual. The several cases indicating this classification involve either the element of indigency of the individual[11] or the inability to pay a fee.[12] As

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[3] *Id.* at 285.

[4] *Developments in the Law—Equal Protection*, 82 Harv. L. Rev. 1065 (1969).

[5] McLaughlin v. Florida, 379 U.S. 184 (1964); Williamson v. Lee Optical Co., 348 U.S. 483 (1955); Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61 (1911).

[6] McGowan v. Maryland, 366 U.S. 420 (1961); Madden v. Kentucky, 309 U.S. 83 (1940).

[7] *Developments in the Law—Equal Protection, supra* note 4, at 1087. The term "invidious discrimination" has been used by the Court to express the effect produced by a suspect classification or an infringement of a fundamental interest. *See, e.g.*, Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1966); Skinner v. Oklahoma, 316 U.S. 535 (1942).

[8] Loving v. Virginia, 388 U.S. 1 (1967); McLaughlin v. Florida, 379 U.S. 184 (1964); Brown v. Board of Educ., 347 U.S. 483 (1954).

[9] Oyama v. California, 332 U.S. 633 (1948); Korematsu v. United States, 323 U.S. 214 (1944); Hirabayashi v. United States, 320 U.S. 81 (1943). In both *Korematsu* and *Hirabayashi* the Supreme Court ruled against the petitioners, presumably because the Government was able to show a compelling state interest which justified the classification.

[10] Graham v. Richardson, 403 U.S. 365 (1971); Takahashi v. Fish & Game Comm'n, 334 U.S. 410 (1948).

[11] Douglas v. California, 372 U.S. 353 (1963); Griffin v. Illinois, 351 U.S. 12 (1956).

[12] Bullock v. Carter, 405 U.S. 134 (1972); Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1966).

such, these cases are ambiguous as to whether wealth per se is a suspect classification, and the Supreme Court has cited the cases indistinguishably.[13] Wealth as a classification lacks the element of precision of identification evident in the other classifications, and this fact has prompted commentators to speak of distinctions drawn solely on the basis of an individual's wealth as being de facto rather than per se discriminations.[14]

Equally forbidden under the Constitution is legislation which infringes upon an individual's procurement or enjoyment of certain fundamental rights or interests. Interests which have been recognized as fundamental are voting,[15] procreation,[16] travel,[17] and criminal process.[18] However, the Court has never advanced a test by which it could be determined which interests are fundamental and thereby entitled to constitutional protection. The importance of the interest to the individual and to society has been advanced as a unifying thread,[19] but a more basic theme is the necessity that the interest be founded either explicitly or implicitly in the Constitution.[20]

An interest which has received much judicial attention recently is that of education. It has frequently been recognized by the Supreme Court as being an area of extreme importance and one in which it has taken an active part in recent years.[21] However, there are several barriers to regarding education as a fundamental interest. First, it is not explicitly guaranteed by the Constitution and thus is a matter to be left to the state and local governments. As such, there is the question of distinguishing the importance of education from the variety of other social and municipal services provided by the local governments. Secondly, while the Court has had the opportunity in school desegregation cases to declare education a fundamental interest, it has been content instead to rely on the impermissible use of the race classification to invalidate the state action.[22]

The strict judicial scrutiny test made its foremost gains under the Warren

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[13] Harper v. Virginia Bd. of Elections, 383 U.S. 663, 668 (1966). The Supreme Court blurred the rather obvious distinction between saying that no one can be made to pay a fee for a given service and saying that one who cannot afford to pay for a given service cannot for that reason alone be deprived of it. *See* Goldstein, *Interdistrict Inequalities in School Financing: A Critical Analysis of Serrano v. Priest and its Progeny*, 120 U. PA. L. REV. 504, 528 (1972).

[14] Michelman, *The Supreme Court, 1968 Term, Foreword: On Protecting the Poor Through the Fourteenth Amendment*, 83 HARV. L. REV. 7, 20-21 (1969); Comment, *The Evolution of Equal Protection—Education, Municipal Services, and Wealth*, 7 HARV. CIV. RIGHTS—CIV. LIB. L. REV. 105, 138 (1972).

[15] Bullock v. Carter, 405 U.S. 134 (1972); Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1966).

[16] Doe v. Bolton, 410 U.S. 179 (1973); Roe v. Wade, 410 U.S. 113 (1973).

[17] Shapiro v. Thompson, 394 U.S. 618 (1969).

[18] Douglas v. California, 372 U.S. 353 (1963); Griffin v. Illinois, 351 U.S. 12 (1956).

[19] Serrano v. Priest, 5 Cal. 3d 584, 605, 487 P.2d 1241, 1255, 96 Cal. Rptr. 601, 615 (1971); Comment, *Equality and the Schools: Education as a Fundamental Interest*, 21 AM. U.L. REV. 716, 724 (1972).

[20] This standard has been crystalizing in the recent opinions of Eisenstadt v. Baird, 405 U.S. 438 (1972); Lindsey v. Normet, 405 U.S. 56 (1972); Dandridge v. Williams, 397 U.S. 471 (1970).

[21] The traditional statement of the Court's dedication to the importance of education is found in Brown v. Board of Educ., 347 U.S. 483, 493 (1954).

[22] Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1 (1971); Monroe v. Board of Comm'rs, 391 U.S. 450 (1968); Cooper v. Aaron, 358 U.S. 1 (1958); Brown v. Board of Educ., 347 U.S. 483 (1954).

Court.[23] However, the altered membership of the Court now indicates that the extension and implementation of the test has fallen into disfavor.[24] Recent cases[25] suggest that while traditional classifications and interests are still recognized, the Burger Court has refrained from extending the standard to cases in which the extension could be justified.

II. CHALLENGES TO EDUCATIONAL FINANCING SYSTEMS: THE EMERGENCE OF THE SERRANO RATIONALE

The systems employed by the states to finance public education are uniformly similar.[26] All depend to some extent upon an ad valorem property tax administered by the school district. Consequently, districts rich in taxable wealth can generate more revenue at a lower tax rate than poorer districts taxing themselves at a much higher rate and thereby provide more expenditure per pupil. Arguments challenging this system consistently allege the violation of the pupil's right to equal treatment under the law, for the financing system fosters variations in educational expenditures among

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[23] Shapiro v. Thompson, 394 U.S. 618 (1969); Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1966). In *Shapiro* the Court recognized the right to travel as being fundamental but refused to ascribe its fundamentality to any particular constitutional provision. *Harper* came the closest of any case to declaring wealth in any form to be a suspect classification. *See* Schoettle, *The Equal Protection Clause in Public Education*, 71 COLUM. L. REV. 1355, 1367 (1971).

[24] While admittedly the Court has not totally refused to apply strict judicial scrutiny as evidenced by Roe v. Wade, 410 U.S. 113 (1973), and Graham v. Richardson, 403 U.S. 365 (1971), the discussions of strict judicial scrutiny are markedly different in tone and emphasis from those in *Shapiro* and *Harper*.

[25] James v. Valtierra, 402 U.S. 137 (1971); Dandridge v. Williams, 397 U.S. 471 (1970). In *Dandridge* the Court upheld a Maryland regulation which placed a ceiling on the amount of assistance payments a family could receive even though this prevented larger families from receiving the minimum level of assistance defined by the state as necessary to meet their needs. 397 U.S. at 474-75. While recognizing that the administration of public welfare assistance involved the most basic economic needs of impoverished persons, the Court was unable to find a basis for applying the strict judicial scrutiny standard. The Court concluded that "the intractable economic, social, and even philosophical problems presented by public welfare assistance programs are not the business of this Court." *Id.* at 485-87. Read broadly, this language suggests that the strict judicial scrutiny standard is not applicable in areas of social and economic welfare such as public assistance, housing, and municipal services.

The tone and rationale of *Dandridge* were reiterated in Lindsey v. Normet, 405 U.S. 56 (1972), in which the Court rejected the contention that there is a fundamental right to decent housing. "We do not denigrate the importance of decent, safe, and sanitary housing. But the Constitution does not provide judicial remedies for every social and economic ill. . . . Absent Constitutional mandate, the assurance of adequate housing . . . are legislative and not judicial functions." *Id.* at 74.

In James v. Valtierra, 402 U.S. 137 (1971), the Supreme Court validated a provision of the California constitution requiring voter approval before low-income housing projects could be developed or constructed. The Court was unable to find any suggestion of racial discrimination and no mention was made by the majority of the possibility of wealth discrimination. However, this omission cannot be viewed as a mere oversight, for Justice Marshall in his dissent vehemently attacked the article of the California constitution as "explicitly [singling] out low-income persons to bear its burden. . . . It is . . . an explicit classification on the basis of poverty—a suspect classification which demands exacting judicial scrutiny." *Id.* at 144. Just as *Dandridge* must be read as indicating a reluctance to enlarge the group of fundamental interests, so must *Valtierra* be viewed as signalling an intent to limit the suspect classifications, thereby limiting the application of strict judicial scrutiny.

[26] *See* note 1 *supra* for the Texas system. *See also* Comment, *Educational Financing, Equal Protection of the Laws, and the Supreme Court*, 70 MICH. L. REV. 1324, 1325-26 nn.5, 6 (1972).

districts, thus providing some pupils with a better education than others.[27]

The first major test of a state's educational financing system was in *McInnis v. Shapiro*,[28] in which a three-judge district court held that unequal educational expenditures based on property values and tax rates of school districts did not constitute an invidious discrimination. While admitting that alternative methods might be superior to the existing system, the court, in the absence of evidence of arbitrary exercise of state power or invidious discrimination, was unable to find the system unconstitutional. In reaching this conclusion, the court applied the traditional standard of review, being unpersuaded by plaintiff's attempts to show that wealth was a suspect classification and education a fundamental interest.[29] Equally untenable to the court was the alternative system proposed by the plaintiff which suggested that expenditures be based solely on the pupil's educational needs,[30] a standard which the court found to be judicially unmanageable for determining whether the equal protection clause had been violated.[31] *McInnis* was summarily affirmed by the Supreme Court, presumably ending the challenges to educational financing systems.[32]

However, in 1971 the California supreme court revitalized the issue in *Serrano v. Priest* by holding that a complaint challenging the California school financing system as violating the fourteenth amendment stated a cause of action, thereby overruling defendant's demurrer and returning the case to the trial court for further proceedings.[33] In so doing, the court found that

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[27] Rodriguez v. San Antonio Ind. School Dist., 337 F. Supp. 280, 281 (W.D. Tex. 1972); Van Dusartz v. Hatfield, 334 F. Supp. 870, 871 (D. Minn. 1971); McInnis v. Shapiro, 293 F. Supp. 327, 329 (N.D. Ill. 1968), *aff'd sub nom.* McInnis v. Ogilvie, 394 U.S. 322 (1969); Serrano v. Priest, 5 Cal. 3d 584, 589-90, 487 P.2d 1241, 1244, 96 Cal. Rptr. 601, 604 (1971).

[28] 293 F. Supp. 327 (N.D. Ill. 1968), *aff'd sub nom.* McInnis v. Ogilvie, 394 U.S. 322 (1969).

[29] *Id.* at 334.

[30] *Id.* at 329.

[31] *Id.* at 335-36. A year later, a federal district court in Virginia reached the same conclusion in Burruss v. Wilkerson, 310 F. Supp. 572 (W.D. Va. 1969), *aff'd per curiam*, 397 U.S. 44 (1970).

[32] 394 U.S. 322 (1969). A summary affirmance on appeal from a three-judge federal court is entitled to the precedential weight of a decision on the merits. *See* Barton v. Sentner, 353 U.S. 963 (1957); R. STERN & E. GRESSMAN, SUPREME COURT PRACTICE 197-99 (4th ed. 1969). *But see* text accompanying note 35 *infra*. In 1970 a suit challenged one particular aspect of the Florida financing system which conditioned participation in the foundation program on the county limiting its tax rate to 10 mills. Hargrave v. Kirk, 313 F. Supp. 944 (M.D. Fla. 1970), *vacated and remanded sub nom.* Askew v. Hargrave, 401 U.S. 476 (1971). On motion for summary judgment the limitation was held unconstitutional. However, the system itself was not challenged and the court never determined its constitutionality.

[33] Serrano v. Priest, 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971). While the court in *Serrano* was limited to determining the sufficiency of plaintiff's complaint against defendant's demurrer, it seems that the court was using the opportunity to pass on this controversial issue. By treating defendant's demurrer as admitting all material facts properly pleaded and by taking judicial notice of recent literature on the constitutionality of educational finance systems, the court was free to examine the substantive arguments presented. Several cases, including *Rodriguez*, depended heavily upon these examinations, which were undertaken merely on properly pleaded complaints and not in a trial on the merits with full presentation of evidence by both sides. Consequently, the later courts were content merely to rely on the *Serrano* rationale rather than requiring litigants to submit data and correlations to substantiate the *Serrano* assumptions. *See* Parker v. Mandel, 344 F. Supp. 1068 (D. Md. 1972). *But see* Oas v. Commonwealth, 8 Pa. Cmwlth. 118, 301 A.2d 93 (1973).

the challenged system invidiously discriminated against the poor because it made the quality of a pupil's education dependent upon the wealth of the child's parents and neighbors. The court had little trouble distinguishing *McInnis*, never really considering it a barrier to the examination of this question.[34] While the court acknowledged the summary affirmance of *McInnis*, it noted that the significance of such affirmance is not always clear and that often the practical effect is merely the equivalent of a denial of certiorari.[35] More importantly, the court felt that the contentions in *Serrano* were significantly different from those in *McInnis* since in *Serrano* the plaintiff had presented the court with a judicially manageable standard lacking in *McInnis*, namely that education cannot be a function of wealth.[36]

In upholding plaintiff's complaint, the court invoked the strict judicial scrutiny test and declared wealth to be a suspect classification and education a fundamental interest. The court was particularly persuaded by the combination of wealth as a suspect classification and education as a fundamental interest as establishing a demonstrable denial of equal protection of the law.[37] The court found education to have two significant aspects: (1) it is a major determinant of the individual's opportunity for social and economic success, and (2) it has a unique influence on the individual's development as a citizen and participant in political and community life.[38] Apart from its importance to the individual and society, education was found to be unique in comparison with other public services provided by the state or local municipalities,[39] thereby establishing its fundamental qualities and justifying the imposition of the strict judicial scrutiny test. While the immediate effect

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[34] The California Court of Appeals relied upon *McInnis* to sustain defendant's demurrer. 10 Cal. App. 3d 1110, 89 Cal. Rptr. 345 (1970). However, the court in *Serrano* considered *McInnis* almost as an afterthought, devoting two pages near the end of the 25-page opinion to it.

[35] Serrano v. Priest, 5 Cal. 3d 584, 616, 487 P.2d 1241, 1264, 96 Cal. Rptr. 601, 624 (1971).

[36] *Id.* at 617, 487 P.2d at 1264-65, 96 Cal. Rptr. at 624-25; *see* text accompanying note 30 *supra*.

[37] 5 Cal. 3d at 604, 487 P.2d at 1255, 96 Cal. Rptr. at 615. It has never been entirely clear whether both elements need to be present in a case to invoke judicial scrutiny or whether one is sufficient. Some commentators have indicated that it might not be the mere presence of the elements but their intensity which is important. *See Developments in the Law—Equal Protection, supra* note 4, at 1122; Comment, *supra* note 14, at 105-06; Note, *The Decline and Fall of the New Equal Protection: A Polemical Approach*, 58 VA. L. REV. 1489, 1497 (1972).

Another theory which has raised much interest is that of a balancing of interests test, similar in many respects to the intensity theory. One of the strongest proponents of this test is Justice Marshall, who explains it as being a test in which "concentration must be placed upon the character of the classification in question, the relative importance to the individuals in the class discriminated against of the governmental benefits that they do not receive, and the asserted state interests in support of the classification." Dandridge v. Williams, 397 U.S. 471, 520-21 (1970) (dissenting opinion). However, the Supreme Court in *Rodriguez* may be indicating that any kind of balancing of interests and classifications is not proper. *See* text accompanying notes 63-65 *infra*.

[38] Serrano v. Priest, 5 Cal. 3d 584, 605, 487 P.2d 1241, 1255-56, 96 Cal. Rptr. 601, 615-16 (1971).

[39] The five factors distinguishing education from other municipal services were: (1) it is essential in maintaining free enterprise democracy; (2) it is universally relevant; (3) it continues over a lengthy period of one's early life; (4) it is unmatched in the extent to which it shapes the personality of youth; (5) it is so important that states have made it compulsory. *See* Comment, *supra* note 26, at 1337-38, for analysis of these factors.

of the Court's decision was merely to deny defendant's demurrer, *Serrano* initiated a new round of attacks on state school financing systems.

The *Serrano* rationale proved to be the most successful means of attacking educational financing systems. *Van Dusartz v. Hatfield*[40] was the first decision to adopt wholesale the *Serrano* reasoning. After finding the Minnesota system structurally indistinguishable from the California system, the court found it "unnecessary to repeat the persuasive analysis of the California court" on the point of education as a fundamental interest, and likewise found the decisions regarding wealth as a suspect classification "convincingly analyzed in *Serrano* . . . and needing no comment here . . . ."[41] *Rodriguez v. San Antonio Independent School District*[42] actually held the Texas system of financing public education unconstitutional under the fourteenth amendment. *Rodriguez* relied heavily upon *Serrano* and consequently failed to develop several contested propositions which *Serrano* had accepted as fact.[43] Also, *Rodriguez*, like *Serrano*, failed to examine recent Supreme Court cases such as *Dandridge v. Maryland* and *James v. Valtierra*[44] to discern what import, if any, they might have had on the question.[45] Nevertheless, each court which invalidated a state's system for financing public education was impressed with the *Serrano* rationale and was not afraid to apply it.[46]

III. SAN ANTONIO INDEPENDENT SCHOOL DISTRICT V. RODRIGUEZ

Rodriguez tolled the death of the *Serrano* rationale for invalidating a state educational finance system under the fourteenth amendment of the United States Constitution. The Supreme Court expressed its disapproval of the district court's analysis of wealth as a suspect classification, noting that there were two threshold questions which the lower court had ignored: who comprised the group who had been discriminated against on the basis of wealth; and what was the nature of the discrimination?[47] The Court examined the cases which had been cited for the proposition that wealth

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[40] 334 F. Supp. 870 (D. Minn. 1971). *Van Dusartz* did not invalidate the Minnesota system, but, like *Serrano*, merely overruled a motion to dismiss in the nature of a demurrer.

[41] *Id.* at 875. *Van Dusartz* acknowledged and attempted to distinguish *Dandridge*, which was noticeably missing in *Serrano*. *Van Dusartz* agreed with the holding in *Dandridge* since there was no suspect classification involved and the importance of welfare assistance was not alone sufficient to deserve constitutional protection. *Id. McInnis* was again distinguished by limiting its holding to its determination that educational need was not a judicially manageable standard. *Id.* at 877.

[42] 337 F. Supp. 280 (W.D. Tex. 1972).

[43] *See* note 33 *supra*. One of the weaknesses of *Rodriguez* was its failure adequately to establish correlations between the wealth of the school district and the wealth of the individuals. *Rodriguez* also failed to establish and define a group that had been subject to discrimination. *See* Oas v. Commonwealth, 8 Pa. Cmwlth. 118, 301 A.2d 93 (1973).

[44] *See* note 25 *supra*.

[45] *See* Parker v. Mandel, 344 F. Supp. 1068 (D. Md. 1972), in which the strict judicial scrutiny test was rejected in reliance on *Dandridge*. This case is also very critical of *Serrano* and *Rodriguez*.

[46] *See, e.g.*, Van Dusartz v. Hatfield, 334 F. Supp. 870 (D. Minn. 1971); Milliken v. Green, 389 Mich. 1, 203 N.W.2d 457 (1972); Sweetwater County Planning Comm'n for the Organization of School Dists. v. Hinkle, 491 P.2d 1234 (Wyo. 1971).

[47] 411 U.S. 1, 19 (1973).

is a suspect classification and found that the individuals who had been discriminated against were those who, because of their impecuniosity, were completely unable to pay for some desired benefit and as a consequence thereof sustained an absolute deprivation of the opportunity to enjoy that benefit.[48]

Within this framework the Court had a difficult time discerning who had allegedly been discriminated against, but concluded that it could only be those persons who could be characterized as truly indigent.[49] However, the facts in the case clearly demonstrated that this group had not been discriminated against, for there was no showing that the poorest people resided in the poorest school districts nor that there had been an absolute deprivation of education in this group. Since the equal protection clause does not require absolute equality or precisely equal advantages,[50] the Court found that the appellee's argument of relative deprivation must fail.[51]

Being aware that the district court had not solely relied upon the wealth classification to invoke strict judicial scrutiny, the Court examined the proposition that education was a fundamental interest. While fully aware of its long-time recognition of the importance of education both to the individual and to society, the Court was quick to add that the mere importance or societal significance of an interest was not determinative of the question of fundamentality. Rather the key to determining whether education is fundamental lies in ascertaining "whether there is a right to education explicitly or implicitly guaranteed by the Constitution."[52] While the right to education is not explicitly guaranteed in the Constitution, the lower court, relying on the *Serrano* rationale, found that due to the peculiarly close relationship it bears to recognized fundamental interests, education takes on

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[48] *Id.* at 20. The Court examined *Griffin* and *Douglas* to show that indigent criminal defendants, because of their indigency, were deprived of their access to criminal appellate procedure. (Justice Stewart in his concurring opinion cited *Griffin* as an example of a suspect classification which he labeled "functional indigency." *Id.* at 61 n.6.) In the area of voting, the Court examined *Bullock*, which invalidated filing fees for primary elections, "as absolutely depriving individuals of a position on the primary ballot." *Id.* at 22. Noticeably absent, however, was *Harper*, relied on by the district court, in which the Supreme Court invalidated a $1.50 poll tax. To be consistent with its analysis, the Court in *Harper* should merely have invalidated the tax for those unable to pay the tax and who were thereby unable to vote. Goldstein, *supra* note 13, at 523-25.

[49] 411 U.S. at 19-20. The Court suggested three possible groups that were subject to discrimination under the Texas system: (1) those who could be characterized as indigent; (2) those who were relatively poorer than others; or (3) all those who happened to reside in those school districts which had relatively less taxable wealth than other districts. It is on this point that *Rodriguez* was most vulnerable, having relied largely on conclusions drawn from *Serrano* without having the statistical data to substantiate their conclusions. Goldstein, *supra* note 13, at 519-34; Schoettle, *supra* note 23, at 1378.

[50] The Court relied, in part, on Bullock v. Carter, 405 U.S. 134, 137, 149 (1972), and Draper v. Washington, 372 U.S. 487, 495-96 (1963). 411 U.S. at 24 n.57.

[51] 411 U.S. at 25-27. The Court hypothesized a case in which wealth might be considered as a suspect classification, but it is readily apparent that such a case is far from any situation which has challenged the financing systems to date. *Id.* at 25 n.60. *But see* Shapiro v. Thompson, 394 U.S. 618, 633 (1969).

[52] 411 U.S. at 33-34. While this standard has never been previously pronounced in such precise terms, the essence of it has appeared in recent decisions. *See* Eisenstadt v. Baird, 405 U.S. 438 (1972); Dunn v. Blumstein, 405 U.S. 330 (1972); Lindsey v. Normet, 405 U.S. 56 (1972).

many of the aspects of a fundamental right.[53] Education was cited as being acutely necessary to exercise effectively one's first amendment right to free speech and one's right to utilize intelligently his right to vote. This was not disputed by the Court; however, it drew a marked distinction between the right to exercise a guaranteed right and the right to exercise that right effectively.

> [W]e have never presumed to possess either the ability or the authority to guarantee to the citizenry the most *effective* speech or the most *informed* electoral choice . . . .
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> Even if it were conceded that some identifiable quantum of education is a constitutionally protected prerequisite to the meaningful exercise of either right, we have no indication that the present levels of educational expenditure in Texas provide an education that falls short . . . . [N]o charge fairly could be made that the system fails to provide each child with an opportunity to acquire the basic minimum skills necessary for the enjoyment of the rights of speech and of full participation in the political process.[54]

The Court recognized *Rodriguez* as being nothing short of a direct attack on the way Texas had chosen to raise and disburse state and local tax revenues, an area in which the Court has traditionally refrained from interference.[55] Several factors militated against the Court's intrusion into this area of state affairs: a lack of both the expertise and the familiarity with local problems which the Court felt necessary to raise and disburse public funds properly; the lack of perfect alternatives to the present system combined with the possibility that there is more than one constitutionally permissible method within the limits of rationality to solve these problems; and finally, the difficult considerations of federalism always inherent in any case concerning the equal protection clause.[56] These considerations were relevant to the Court in the determination of whether the Texas system, with its imperfections, still bore some rational relationship to a legitimate state purpose under the traditional standard of review.

The Texas system for financing public education was designed to provide an adequate minimum educational offering for every student in the state without sacrificing the vital element of local participation in and control of each district's schools.[57] Local control means in part the freedom to devote more money to the education of one's children as well as determining how local dollars will be spent. The appellees did not denigrate the importance of local control but insisted that the Texas financing system provides

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[53] 337 F. Supp. 280, 283 (W.D. Tex. 1972); *see* notes 38-40 *supra*, and accompanying text.

[54] 411 U.S. at 36-37. Furthermore, the Court added that among the most ineffective participants in the political process are the ill-fed, ill-clothed, and ill-housed, and yet the Court in *Dandridge* and *Lindsey* found no fundamental right to decent food or shelter. To have distinguished education from these necessities would indeed have cast serious doubt on these recent decisions.

[55] *See* Madden v. Kentucky, 309 U.S. 83, 87-88 (1940).

[56] 411 U.S. at 42-44. "It must be remembered also, that every claim arising under the Equal Protection Clause has implications for the relationship between national and state power under our federal system." *Id.* at 44.

[57] *Id.* at 48-49. The merit of local control was recently reaffirmed in Wright v. Council of the City of Emporia, 407 U.S. 451, 469 (1972).

less freedom of choice for the poorer districts than for others.[58] However, the Court refrained from invalidating Texas' system merely because the benefits and burdens fell unevenly on the school districts.[59] While local districts may not have as great a choice in how much they may spend on their children's education, they nevertheless retain the power to decide how the available funds will be allocated.[60] Absent a showing that the inequities are the result of a system so irrational as to be invidiously discriminatory, the Court concluded that the Texas educational finance system rationally furthered the legitimate state purpose for which it was intended.

IV. CONCLUSION

The Court's detailed discussion of the components of the strict judicial scrutiny test is the most significant aspect of this case. The Court could have summarily disposed of appellee's arguments by noting that wealth per se has never been acknowledged as a suspect classification nor education as a fundamental interest. However, *Rodriguez* offered the Court an excellent opportunity to interpret, define, and thereby limit the scope and applicability of the strict scrutiny test.

No case had held wealth per se to be a suspect classification, and only one could be relied upon for the proposition that inequality in wealth is a suspect classification.[61] The remainder of the cases support the majority's interpretation that only when an individual is totally unable to pay for a certain benefit could it be said that wealth is suspect. Wealth, by its very nature, is a matter of degree rather than kind, lacking the quality of arbitrariness present in the traditional classifications of race or alienage. The cases which had established certain rights as fundamental involved states' attempts to deprive, infringe, or interfere with the opportunity to exercise those rights. This threshold question of the opportunity to acquire an education was never examined by the Court, thus obviating the need to examine the possibility that just as great a hardship might be imposed by a relative denial of access to a fundamental right as in an absolute denial of that right.

Rodriguez strengthened the recent decisions denying fundamentality to interests much more basic to the individual than education and indicated the Court's intention to withhold fundamental interest recognition from other municipal services.[62] If differences in educational expenditures per

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[58] 377 F. Supp. 280, 284 (W.D. Tex. 1972).

[59] 411 U.S. at 54. *See* Dandridge v. Williams, 397 U.S. 471, 478 (1970); McGowan v. Maryland, 366 U.S. 420, 425-26 (1961). The Court made it quite clear that education is no different from the host of state and municipal services financed through the use of local property taxes.

[60] Justice Marshall, in his dissent, vehemently criticized the majority's reliance on the local-control argument because "[i]n Texas statewide laws regulate in fact the most minute details of local public education." 411 U.S. at 126. This argument prompted Justice Powell to launch into a lengthy defense of local control by listing the specific powers of local school authorities under Texas law. *Id.* at 51 n.108.

[61] *See* note 48 *supra.*

[62] This does not preclude examination of cases under the equal protection clause regarding the providing of municipal services. *See* Hawkins v. Town of Shaw, 461 F.2d 1171 (5th Cir. 1972).

district were unconstitutional, there would be little justification for allowing such differentials to exist in the provision of other municipal services which are financed in a similar fashion.

Arguably, *Rodriguez* decided the much discussed question of whether an important, but non-fundamental interest, when combined with a disfavored, but non-suspect classification, could require the imposition of the strict judicial scrutiny test. The physical division of the opinion into each aspect of the test is a clear indication of this policy decision not to adopt a balancing of interests standard of review.[63] Besides expanding the strict judicial scrutiny test beyond its current limits, a step which the Court had demonstrated prior to *Rodriguez* that it was unwilling to take, adoption of the balancing test would have had a greater effect than the acceptance of either wealth as a suspect classification or education as a fundamental interest. Inevitably it would have led the Court to "pick out particular human activities, characterize them as 'fundamental,' and give them added protection under an unusually stringent equal protection test."[64]

The most recent analysis of the equal protection cases decided by the Burger Court[65] suggests that the Court has adopted a "means-scrutiny" model of review which assesses the means employed by the state in terms of a substantial legislative purpose having a basis in actuality rather than in mere theory or conjecture. In *Rodriguez* there were several discernible considerations upon which the Court's finding of rationality was based, considerations which actually may have been more persuasive than the stated legislative purpose recognized by the Court.

Of significant concern to the Court was its lack of competency to deal with some of the crucial questions raised in this case. Its lack of familiarity with local problems militated against its interference in state fiscal affairs, and the myriad of complex practical and philosophical considerations inherent in the area of education, problems which have yet to be resolved by educators, assured the Court that their interference would only create more problems than it would solve.[66] In addition, there was the very real possibility that there was more than one constitutionally permissible method of financing public education, and it was not the position of the Court to

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[63] *See* note 37 *supra.*

[64] Shapiro v. Thompson, 394 U.S. 618, 662 (1969) (Harlan, J., dissenting).

[65] Gunther, *The Supreme Court, 1971 Term, Foreword: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection*, 86 HARV. L. REV. 1 (1972). Gunther feels that the Warren Court strayed from the requirements of even a minimum rationality test. *Id.* at 19. Consequently, the means-scrutiny test is an attempt to return to genuine judicial scrutiny. This model of "modest interventionism" is characterized by decisions based on narrow grounds which avoid confrontations with broad value choices, and is limited by considerations of judicial competency. *Id.* at 24. While the Court is not unified in its adherence to this model, several of the elements identified as indicia of the means-scrutiny test are apparent as bases for the Court's decision in *Rodriguez.*

[66] Such intricate questions as the relationship of educational expenditure to quality of education, 411 U.S. at 43 n.86, the effect of teacher-pupil ratios and teachers' salaries on the quality of education, *id.* at 46 n.101, and even general questions of the proper goals for public education, all added to the Court's feeling of impropriety to legislate in this area. *See* Simon, *The School Finance Decisions: Collective Bargaining and Future Finance Systems*, 82 YALE L.J. 409 (1973).