1989

The Quest for Efficiency: Public School Funding in Texas

Robert L. Manteuffel
PUBLIC school funding issues cut to the heart of the relationships between parents, children, and the state. The tension between a state's taxpayers and its school children, heightened by firmly rooted traditional expectations, is well illustrated by recent judicial opinions. The traditional role of the state in the education of its citizens is one of fiscal responsibility. The constitutional rights of children to an education are protected by the state, which is held responsible for their education through the income of its citizens. This is evident in cases such as Serrano v. Priest, 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971) (Serrano I) (public school finance system based on local property taxes violates equal protection clause of fourteenth amendment). 

1. See Michelson, What is a “Just” System for Financing Schools? An Evaluation of Alternative Reforms, 38 LAW & CONTEMP. PROBS. 436, 438-41 (1974); see also Shofstall v. Hollins, 110 Ariz. 88, 515 P.2d 590 (1973) (state constitution establishes education as fundamental right and assures every child basic education, but disparity in school finance system does not deny equal protection); Dupree v. Alma School Dist., 279 Ark. 340, 651 S.W.2d 90 (1983) (statutory public school finance system is unconstitutional in absence of any rational relationship between disparity and needs of individual districts); Serrano v. Priest, 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971) (Serrano I) (public school finance system based on local property taxes violates equal protection clause of fourteenth amendment); Lujan v. Colorado, 649 P.2d 1005 (Colo. 1982) (wealth-based distinctions alone do not create suspect class under equal protection provisions of United States Constitution); Horton v. Meskill, 172 Conn. 615, 376 A.2d 359 (1976) (right to an education is so basic and fundamental that any infringement of that right must be strictly scrutinized); McDaniel v. Thomas, 248 Ga. 632, 285 S.E.2d 156 (1981) (property-tax-based school finance system bears rational relationship to legitimate state purpose and is not unconstitutional violation of state equal protection); Thompson v. Engeling, 96 Idaho 793, 537 P.2d 635 (1975) (property-tax-based school finance system does not violate Idaho Constitution or deny equal protection); Hornbeck v. Somerset County Bd. of Educ., 295 Md. 597, 458 A.2d 758 (1983) (Maryland system of public school financing does not violate equal protection guarantees of United States Constitution or Maryland Declaration of Rights); Milliken v. Green, 390 Mich. 389, 212 N.W.2d 711 (1973) (request of Governor for certification of questions as to constitutionality of state public school finance system was improvidently granted); Opinion of the Justices, 118 N.H. 347, 387 A.2d 333 (1978) (proposed bill excusing school board from its duty to provide education to minor children residing on federal military installation, absent reasonable basis for such denial, violates New Hampshire and possibly United States Constitutions); Robinson v. Cahill, 62 N.J. 473, 303 A.2d 273 (1973) (system of financing public education that relies heavily on local taxation and has no apparent relation to mandate for equal educational opportunity violates constitutional provision that imposes upon the state obligation to furnish thorough and efficient system of public schooling), cert. denied, 414 U.S. 976 (1973); Board of Educ. v. Nyquist, 57 N.Y.2d 27, 439 N.E.2d 359, 453 N.Y.S.2d 643 (1982) (state's public school finance system does not violate equal protection clause of state or federal constitution or the education article of state constitution), appeal dismissed, 459 U.S. 1138 (1983) (dismissed for want of substantial federal question); Britt v. North Carolina State Bd. of Educ., 86 N.C. App. 282, 357 S.E.2d 432 (disparity in educational opportunities between counties with large and small tax bases does not violate state constitution), cert. denied, 320 N.C. 790, 361 S.E.2d 71 (1987); In re G.H., 218 N.W.2d 441 (N.D. 1974) (failure to provide educational opportunity for handicapped children is denial of equal protection under both state and Federal Constitutions); Board of Educ. v. Walter, 58 Ohio St. 2d 368, 390 N.E.2d 813 (1979) (disparity in per pupil expenditures between school districts does not violate equal protection clause of Ohio Constitution or clause requiring general assembly to provide thorough and efficient system of common schools), cert. denied, 444 U.S. 1015 (1980); Olsen v. State, 276 Or. 9, 554 P.2d 139 (1976) (state school financing system
tions, forces legislators, administrators, and judges alike to make hard, often unpopular decisions. For example, the Texas Supreme Court in *Edgewood Independent School District v. Kirby* held the Texas public school finance system unconstitutional. As a result, the Texas Legislature must design and implement a system to ensure that children from both rich and poor districts alike are "afforded a substantially equal opportunity to have access to educational funds." This Comment attempts to aid legislators and others who must resolve the complex school funding problem in a short amount of time. First, the Comment provides an overview of the development of the public school funding issue in federal and state courts. Second, it focuses on the current state of the law in Texas and addresses the impact of *Edgewood Independent School District v. Kirby* on the Texas funding system. Third, it surveys the school funding issue in other states, with a particular emphasis on California, since the California Supreme Court declared the state's public school funding system unconstitutional under the state equal protection laws in 1977. Fourth, it describes the Texas funding program and examines the political, social, and economic costs associated with different financing systems. Finally, the Comment concludes that, in order for the new system to be successful, the legislators must view the public schools as an integrated information management and distribution system instead of an uneasy alliance of disjointed and parochial territorial interests.

## I. The Issue of Public School Funding in Federal and State Courts

### A. Litigation in Federal Courts

Litigation concerning public school finance traces its roots back to the Supreme Court's decision in *Brown v. Board of Education*. The Court noted that when a state provides its children with an education, it must make that education available on equal terms to all children. This statement seemed

---

2. 777 S.W.2d 391, 397 (Tex. 1989).
3. Id.
6. Id. at 493. The court stated that "the opportunity of an education . . . , where the state has undertaken to provide it, is a right which must be made available to all on equal terms." Id.
to imply that education was a fundamental or at least a protected right that required equality of expenditure.\footnote{7}{Henke, Financing Public Schools in California: The Aftermath of Serrano v. Priest and Proposition 13, 21 U.S.F. L. Rev. 1, 5 (1986).}

In addition to the Supreme Court, other federal judges gave support to civil rights plaintiffs during the Warren era and encouraged activists interested in changing the country's public school finance system to press federal claims.\footnote{8}{See id. at 5-6; Hubsch, Education and Self-Government: The Right to Education Under State Constitutional Law, 18 J. L. & Educ. 93, 102 (1989).}

Waves of litigation crossed the nation as school districts and courts grappled with the problems associated with busing.\footnote{9}{See Henke, supra note 7, at 6.}

Desegregation and the attainment of intradistrict equality burdened the federal courts.\footnote{10}{Hubsch, supra note 8, at 103.}

After first appearing willing to monitor equalization of funding or access across district lines, the courts retreated by refusing to mandate interdistrict busing.\footnote{11}{Henke, supra note 7, at 6; see Milliken v. Bradley, 418 U.S. 717, 743 (1974).}

Undaunted, proponents of equal school funding and desegregation attacked their local school finance systems claiming that these systems violated their rights under the equal protection and due process clauses of the fourteenth amendment.\footnote{12}{Hubsch, supra note 8, at 104.}

The Supreme Court crippled this line of attack, however, in San Antonio Independent School District v. Rodriguez.\footnote{13}{411 U.S. 1 (1973).}

In that case, the parents of Mexican-American students from an urban school district argued that education was a fundamental right, that wealth was a suspect classification resulting in discrimination against the poor, and that a property-tax-based finance system violated the equal protection clause of the fourteenth amendment. The Court refused to acknowledge any of these claims and articulated a rational basis test rather than a strict scrutiny standard.\footnote{14}{Id. at 40-44; Hubsch, supra note 8, at 106.}

The Court's holding meant, in effect, that a state's school financing plan was constitutional as long as it was rationally related to a legitimate state interest.\footnote{15}{411 U.S. at 17.}

The property-tax-based finance system sufficiently furthered the state's legitimate purpose of maintaining local control of public schools. Accordingly, this enabled Texas to maintain that system in 1973.\footnote{16}{Id. at 50-51.}

Rodriguez forced poor school districts across the nation to turn back to their individual state courts and constitutions for relief.\footnote{17}{Hubsch, supra note 8, at 114-32.}

B. Litigation in the State Courts

I. State Equal Protection Clauses

While the U.S. Supreme Court wrestled with its Rodriguez decision, California was embroiled in a unique public school finance case of its own. In
Serrano v. Priest 18 the plaintiffs brought claims under the equal protection guaranties of both the federal and state constitutions. When the Rodriguez decision eliminated federal claims, the Supreme Court of California turned to its own constitutional equal protection provisions and declared that the state’s school finance system was unconstitutional.19

The Serrano II court held that education was a fundamental interest and that wealth was a suspect classification for determining its availability.20 To arrive at this decision, the court relied on its previous holdings that individual rights under the state constitution could be more expansive than those granted under the federal constitution even though the constitutions are substantially the same.21

Plaintiffs in several states initiated suits similar to Serrano in the early seventies. This approach, however, produced limited results and fell into disfavor.22 Once again, advocates of school finance reform had to change their strategy and select a new target. Accordingly, these advocates of reform chose the education articles of state constitutions.23

2. State Education Articles

Robinson v. Cahill24 represents the archetypal case brought under a state education article. In Robinson, the New Jersey Supreme Court upheld a lower court ruling that the New Jersey public school finance system violated the thorough and efficient clause of the state constitution.25 The clause mandates that the legislature “provide . . . a thorough and efficient system of free public schools.”26

The New Jersey court limited its holding to the education clause and did not uphold the lower court’s holding that the system violated the state’s equal protection clause.27 The court wanted to avoid expanding the state’s equal protection doctrine to the point where the constitution would mandate equal spending for every government service.28 The New Jersey education article, however, enabled the court to steer clear of the equal protection is-

20. Id. at 765-66, 557 P.2d at 951, 135 Cal. Rptr. at 367.
21. Id. at 764, 557 P.2d at 950, 135 Cal. Rptr. at 366.
23. See Hubsch, supra note 8, at 127-32.
27. See Robinson v. Cahill, 62 N.J. at 480, 303 A.2d at 276; Note, supra note 25, at 207.
sue, an option that California did not have.  

The different approaches adopted by the courts in *Serrano* and *Robinson* gave school finance plaintiffs two major methods of attacking funding systems. State courts, however, in large part, have not followed the *Serrano* decision because of the reluctance to expand the protection of state equal protection clauses outside the bounds defined by the Supreme Court in *Rodriguez*. The *Robinson* case, on the other hand, provided plaintiffs in many states a vehicle for getting around the boundaries defined in *Rodriguez*. Included in this group, who relied on *Robinson* as a way to circumvent *Rodriguez*, was the plaintiff in *Edgewood Independent School District v. Kirby*.  

### II. School Finance in Texas and the Impact of Edgewood Independent School District v. Kirby

#### A. Historical Development of Public School Finance in Texas

1. Constitutional Development

In Texas, the state has had responsibility for public education since 1836. The constitution adopted in 1845 imposed the duty on the legislature “to establish free schools throughout the State, and . . . [to] furnish means for their support, by taxation on property.” Within ten years, the state instituted measures to set aside revenue-producing lands to subsidize the cost of public education.

As noted by the Texas court of appeals, the Reconstruction Constitution of 1869, in the aftermath of the Civil War, established a tax-supported educational system for the State of Texas. The law of 1871 imposed a rigid school system under the control of the state board of education. Later, in 1875, the people of Texas regained control of their state government and drafted a new constitution.

The electorate of Texas expressed its disgust with the Reconstruction era school system, and, consequently, the 1876 Constitution did not support schools with local taxes. The mood of the public changed shortly thereafter.
ter, however, and the people amended the constitution in 1883 to finance schools through a combination of state taxes and local ad valorem taxes levied in the school districts across the state. The 1883 system is the ancestor of the present system of public school funding in Texas.

2. The Texas Public School Funding System Today

Public schools in Texas are responsible for educating approximately three million children annually. The system receives forty-two percent of its funds from the state, fifty percent from local property taxes and the remainder from other sources, including federal funds. The heavy reliance on local property taxes causes significant disparities in the tax base available in different districts.

To ensure that each student receives a minimum level of education, the state uses a foundation program. Despite this approach, however, gross

---

41. TEX. CONST. art VII, § 3.
42. Id.
43. Id.; see also Note, supra note 33, at 253 (school finance system based on property wealth causes inequity between taxpayers). "The wealthiest district has over $14,000,000 of property wealth per student, while the poorest has approximately $20,000; this disparity reflects a 700 to 1 ratio." Edgewood, 777 S.W.2d at 392. This difference in taxable wealth causes property-poor districts to spend less money per student even though they tax at a higher rate. Id. Expenditures range from $2,112 to $19,333 per student, while the poorest districts tax at a rate over one and one half times that found in wealthier districts. Id.
45. Edgewood, 777 S.W.2d at 392. For a detailed definition of foundation plans and comparison to other funding alternatives, see infra notes 80-94 and accompanying text.
disparities in spending exist between rich and poor districts. The Supreme Court, fifteen years previously in Rodriguez, faced disparities highlighted by an almost identical ratio of expenditure. This ratio, in large part, moved the Texas Supreme Court to act in Edgewood Independent School District v. Kirby.

B. Edgewood: The Inefficient System

1. Development of Edgewood

On May 23, 1984, the Mexican American Legal Defense and Education Fund filed suit on behalf of parents, children, and poor school districts in a Texas district court. The Texas Legislature responded with a school reform law on June 30, 1984. The plaintiffs amended their complaint on March 5, 1985, and the district judge in Austin ruled that the Texas public school finance system was unconstitutional on April 29, 1987.

The plaintiffs used both the Serrano and Robinson approaches to attack the constitutionality of the school financing system. The district court held that the system violated the equal rights, due course of law, and efficient school system clauses of the Texas Constitution. The court then enjoined state officials from enforcing the contested statutes after September 1, 1989.

In arriving at its decision, the district court held that education is a fundamental right under the Texas Constitution. The court then ruled that wealth was a suspect classification and applied a strict scrutiny analysis to declare the system unconstitutional. In addition, the court concluded that the system was inefficient and accordingly found it unconstitutional under this analysis also.

The court of appeals applied Rodriguez as well as the political question

46. "In the 1985-1986 school year...the 600,000 students in the wealthiest districts had two-thirds more spent on their education than the 600,000 students in the poorest districts." Kirby v. Edgewood Indep. School Dist., 761 S.W.2d 859, 868 (Tex. App.—Austin 1988) (Grammage, J., dissenting), rev’d, 777 S.W.2d 391 (Tex. 1989).
48. See 777 S.W.2d at 392-93.
50. Id.
52. The plaintiffs specifically attacked the Foundation School Program, which is provided for in chapter 16 of the Texas Education Code. Id.; see also supra notes 18-32 and accompanying text (describing the Serrano and Robinson theories).
53. Edgewood, 761 S.W.2d at 866. The trial court upheld the plaintiffs’ claims under both the Serrano and Robinson theories. See supra notes 18-32 and accompanying text.
54. Edgewood, 761 S.W.2d at 860-61.
55. Id. at 862.
56. Id. at 860. This is the classic Serrano approach. See supra notes 18-23 and accompanying text.
57. Edgewood, 761 S.W.2d at 867. This represents the theory used by the New Jersey courts in Robinson. See supra notes 24-29 and accompanying text.
doctrine to reverse the lower court. First, the court of appeals refused to consider education a fundamental right under the state constitution. Second, the court held that wealth was not a suspect classification and, consequently, applied only a rational basis test in deciding whether or not there was a legitimate state interest that warranted the school funding system. Once again, as in Rodriguez, the court determined that the goal of local control was sufficient to uphold the constitutionality of the finance system.

The court used the political question doctrine to dismiss the plaintiff's efficiency clause argument. It declared that the enormity and complexity of the school system make a determination on whether a system is efficient or not unsuitable for judicial review. While admitting that the education system in Texas is not ideal, the court concluded that any change in the system must come from the people through legislation or constitutional amendment.

2. The Holding in Edgewood: The Supreme Court Demands Action

The Supreme Court of Texas, in a unanimous decision, reversed the court of appeals and upheld the trial court's determination that the current public school finance system violates the efficiency clause in the education article of the Texas Constitution. By upholding the Robinson argument under the education article, the court did not have to consider the Serrano equal protection argument and thereby avoided the slippery slope that possibly could

58. Edgewood, 761 S.W.2d at 862-64.
59. Id. at 863; see also San Antonio Indep. School Dist. v. Rodriguez, 411 U.S. 1, 30-31 (1973) (recognizing Court lacks competence and authority to choose which rights are classified as fundamental; rather, the Court may only give to recognized constitutional right protection it demands).
60. Edgewood, 761 S.W.2d at 864. If a statute restricts a fundamental right or creates a suspect classification, the state must demonstrate that it has a compelling interest in the implementation of that statute. Id. at 861. Courts consider this a strict scrutiny analysis. Id. If a fundamental right is not infringed and a suspect class is not created, courts presume the statute constitutional. Id. at 862. Courts consider this a rational basis analysis. Id. at 861-62. The courts sustain the constitutional presumption if the statute rationally furthers some legitimate state purpose. Rodriguez, 411 U.S. at 17; Edgewood, 761 S.W.2d at 862. While state courts are free to establish their own standards for the determination of a statute's constitutional validity, Texas courts have relied on federal analysis. Id. at 861 n.3 and cases cited therein.
61. Edgewood, 761 S.W.2d at 864. Utilizing local property taxation revenues to partly finance free public schools is rationally related to effectuating local control of education ... It allows a school district the freedom to devote more funds toward educating its children than are otherwise available in the state-guaranteed minimum amount. It also enables the local citizen greater influence and participation in the decision-making process as to how these local dollars are spent.
62. Id. (citing Mumme v. Marrs, 120 Tex. 383, 40 S.W.2d 31 (1931)).
63. Id. at 867.
64. Edgewood, 761 S.W.2d at 867.
have led to providing for all state services on an equal basis. In order to analyze the efficiency of the current system, the court considered the disparity in school expenditures in light of the framers' intent when they drafted the Texas Constitution.

First, the court reviewed the extent and magnitude of differences between expenditures in rich and poor districts. The disparity exists despite the fact that the poorest districts tax property at substantially higher rates than their wealthy neighbors. Compounding the problem is the fact that the state's Foundation School Program does not provide aid for school facilities. These factors produce a lack of educational opportunities as exemplified by the plight of one school district, noted by the court, that could not offer chemistry, physics, or foreign language.

To decide on a standard to use in measuring the efficiency of the current system, the Texas Supreme Court in Edgewood compared several definitions of efficiency that were available when the drafters met to frame the constitution. The justices observed that the definition of efficiency has not changed substantially between 1875 and the present day. The court concluded that the system actively should produce the effect for which it was made and that the framers would neither have envisioned nor condoned the present system with its gross disparities.

The supreme court highlighted the constitutional requirement that the system provided for a "general diffusion of knowledge" across the entire state. The court then set forth some general guidelines for the legislature to follow when remodeling the system: (1) the correlation between a dis-

66. See id. at 398; see also Henke, supra note 7, at 16 (impact on police and fire protection if district wealth defines a suspect class).
67. Edgewood, 777 S.W.2d at 394.
68. Id. at 392-93. The court noted that "[u]nder the existing system, an average of $2,000 more per year is spent on each of the 150,000 students in the wealthiest districts than is spent on the 150,000 in the poorest districts." Id.
69. Id. at 393.
In 1985-86, local tax rates ranged from $.09 to $1.55 per $100 valuation. The 100 poorest districts had an average tax rate of 74.5 cents and spent an average of $2,978 per student. The 100 wealthiest districts had an average tax rate of 47 cents and spent an average of $7,233 per student. In Dallas County, Highland Park I.S.D. taxed 35.16 cents and spent $4,836 per student while Wilmer-Hutchins I.S.D. taxed at $1.05 and spent $3,513 per student.
70. Id.
71. Id. at 392.
72. Id. at 393.
73. Id. at 395. The court specifically quoted one dictionary that was available to the framers which defined efficient as "[c]ausing effects; producing results; actively operative; not inactive, slack or incapable; characterized by energetic and useful activity ...." Id. (quoting N. WEBSTER, AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE 430 (1864)).
74. Id. at 395-96. The delegate to the 1875 constitutional convention who proposed the use of the word "efficient" particularly felt that education should be made available to all children of the state and not hoarded by the wealthy. Id. at 395 n.4 (citing S. MCKAY, DEBATES IN THE CONSTITUTIONAL CONVENTION OF 1875, at 217-18 (1930)).
75. Id. at 396 (emphasis in the original); see TEX. CONST. art. VII, § 1.
district's tax effort and the funds available for the children of that district must be direct and close; (2) all children must be afforded substantially equal access to educational funds; (3) the legislature must provide funding for the school system before allocating other funds because the education system is mandated constitutionally; (4) the legislature may act directly or enlist the aid of local governments to meet its obligation; (5) local communities may supplement their system, but that enrichment must come from local taxes alone; (6) the system must be overhauled completely, and merely reallocating money between rich and poor districts under the present system will not suffice. The court concluded its opinion with the acknowledgement that the task before the legislature was not an easy one and modified the trial court's injunction to stay its effect until May 1, 1990.

3. The Court's Challenge to the Legislature

The Texas Supreme Court and the Texas Legislature are bound together to find a solution to the school funding problem. The Governor called for a special session of the legislature to address the issue in the spring of 1990, and the court is in the unenviable position of performing quality control evaluation of the legislature's handiwork. The experience of other states that have tried to revamp their school funding system has been mixed. Unless the Texas Legislature can learn from these previous experiences and avoid the pitfalls associated with this issue, there likely will be more bitterly contested court battles.

III. FINANCING SYSTEMS: ALTERNATIVES AND EXPERIENCES

A. Basic Alternatives

There are a tremendous number of alternatives to consider when a legislature restructures the school finance system. Texas currently uses a foundation plan of state subsidy to provide funds for individual school districts. Four of the more common alternatives are: (1) increased state aid; (2) district power equalizing; (3) full state funding; and (4) the family choice or voucher system. These four alternatives are listed in the order that they

76. Edgewood, 777 S.W.2d at 397-98.
77. Id. at 399. The Texas Legislature, as of this writing, has begun the special session but has not enacted a specific plan.
78. Austin Report, The Richardson News Plus, Dec. 21, 1989, at 4, col. 1. The Texas Supreme Court suggested that the problem be addressed at a special session beginning November 14, 1989, but the legislature devoted that session to worker's compensation reform. See Edgewood, 777 S.W.2d at 399 n.8.
79. See infra notes 95-165 and accompanying text (describing the school finance reform experiences of California, New Jersey, and Michigan).
80. Edgewood, 777 S.W.2d at 392. Texas tries to ensure that each district has the funds necessary to provide at least a minimal education to every student. Id. (citing Tex. Educ. Code Ann. § 16.002 (Vernon Supp. 1990)).
81. See Michelson, supra note 1, at 446-58 (comparing flat grants, district power equalization, and full state funding); Sugarman, Family Choice: The Next Step in the Quest for Equal Education Opportunity?, 38 Law & Contemp. Probs. 513, 517-54 (1974) (explaining advantages of voucher plans); Note, supra note 24, at 197-99 (comparing foundation plans, district power equalization, and full state funding).
deviate from today’s system in Texas.

1. Increased State Aid or Foundation Plan (FP)

Under this alternative, distribution of state aid is altered to reduce the disparity between districts. The legislature can execute the increased state aid plan within the confines of a state’s existing flat grant or FP system. The appeal of this alternative is that it represents a quick fix that gets the voters’ attention because the shift in funds or increase in spending is apparent immediately. It also leaves local school districts and parents with considerable control over the level of expenditures.

2. District Power Equalizing (DPE)

Under a DPE system, disparities between district spending are lessened by allocating the state’s educational funds based upon the amount of local “tax effort.” This system has appeal because it maintains the structural appearance of a district wealth-based system and does not appear on its face to be a radical departure from such a system. A further advantage is that it leaves some control over expenditure to the local districts.

3. Full State Funding (FSF)

The FSF alternative places all responsibility for school funding at the state level. The state allocates monies back to the individual school districts based upon a per capita amount that can be adjusted to reflect regional cost differences or costs associated with teaching handicapped or disadvantaged children. The advantage of FSF is that it creates some equality between the districts and distributes money primarily based upon attributes associated with the child. The disadvantage of FSF is that it substantially alters the finance system and leaves individual school districts administrative as opposed to fund-raising entities. FSF also leaves parents with the perception that they have no immediate impact on the quality of the education that children receive.

82. Cf. Dallas Morning News, supra note 49, at 10A, col.2 (increased state funding was method most recently used by Texas Legislature to reduce disparities in funding in June of 1984).

83. See id. col.3. “[M]ost lawmakers have talked about increased state aid for poor districts as the best solution to the problem.” Id.; see also Edgewood, 777 S.W.2d at 397. “The legislature’s recent efforts have focused primarily on increasing the state’s contributions . . . . A band-aid will not suffice; the system itself must be changed.” Id.

84. Yudof & Morgan, supra note 34, at 402; Note, supra note 24, at 198.

85. 777 S.W.2d at 397; Note, supra note 24, at 198 (DPE distributes money back to school districts in direct proportion to property tax rate within district).


87. Note, supra note 24, at 233; Note, supra note 33, at 268.

88. Note, supra note 24, at 233; Note, supra note 33, at 268.

89. Michelson, supra note 1, at 440. Educational resources should be distributed according to the characteristics of children as opposed to those of their parents or other relatives. Id.
their children receive.90

4. Family Choice or Voucher Plans (VP)

The VP represents the most radical departure from the typical school finance system that is centered around school districts.91 This system, a variant of FSF, distributes a voucher that parents "spend" at the school of their choice.92 The VP, similar to FSF, creates an equalization of funds spent on each student and has the additional advantage of giving some measure of choice back to parents.93 The disadvantage of a VP is that it opens the borders of school districts and substantially alters their territorial nature.94

B. The Experience in Other States

The history associated with school finance legislation and litigation in other states is extensive.95 As case studies, the experiences of California, New Jersey, and Michigan are particularly helpful. The California Supreme Court set the pace in the area of school finance reform with the Serrano decision. The similarities between California and Texas in the area of school finance reform are many.96 The New Jersey Legislature instituted a new school finance system in 1975 after the Robinson case but that system is, again, being challenged.97 The battle over school finance reform in Michigan continues, and both the courts and the legislature have taken unusual actions.98

1. California

Before 1971 and the Serrano I decision, California used a system of school financing that relied on school districts and local property taxes99 similar to

---

90. Cf. Yudof & Morgan, supra note 34, at 394 (belief of Texans during Rodriguez trial that movement away from property-tax-based system would result in statewide mediocrity).
91. See supra note 81 and sources cited therein for comparison of VP and other methods of public school funding.
92. See Sugarman, supra note 81, at 520.
93. See id. at 514-17.
94. Cf. id. at 520-21 (allowing children to enroll across district lines will reduce power of school districts and could lead to their elimination). Parents from wealthy districts want to pass on the advantages of their status to their children. See Michelson, supra note 1, at 458; Yudof & Morgan, supra note 34, at 409.
96. See infra note 99 and accompanying text (school finance system used in California before reform was FP). Both states have significant Hispanic populations, a similarity that is of particular importance to Texas. See infra notes 173-178 and accompanying text.
97. Note, supra note 24, at 194.
98. See Milliken v. Green, 389 Mich. 1, 203 N.W.2d 957 (1972), vacated, 390 Mich. 389, 212 N.W.2d 711 (1973) (Supreme Court of Michigan declared school finance system unconstitutional, then vacated opinion on rehearing).
99. See Serrano v. Priest, 18 Cal. 3d 728, 731, 557 P.2d 929, 932, 135 Cal. Rptr. 345, 348 (1977) (Serrano II); Henke, supra note 7, at 1.
that found in Texas today. The California Legislature responded to *Serrano I* by passing the Property Tax Relief Act of 1972\textsuperscript{100} that almost doubled the amount of foundation aid allocated to school districts.\textsuperscript{101} The plan also provided for the gradual phase-out of reliance on local property taxes as a means of raising revenue for school districts.\textsuperscript{102}

The fatal flaw in the 1972 Act was a "voter override" that enabled taxpayers in individual school districts to increase the level of property taxation.\textsuperscript{103} The system tended to maintain disparities between districts, and the California Supreme Court, therefore, declared the system unconstitutional in *Serrano II*.\textsuperscript{104} The legislature reacted by enacting a DPE\textsuperscript{105} plan.\textsuperscript{106}

Before the DPE plan took effect, the California voters passed Proposition 13.\textsuperscript{107} In effect, Proposition 13 created a program of FSF, and the legislature was forced to create a system that allocated state funds to support the schools.\textsuperscript{108} The few disparities in spending that remained diminished with the passage of time. In fact, by 1984, the difference in the amount spent on each student was practically eliminated for ninety percent of all students,\textsuperscript{109} and the trial court upheld the constitutionality of the reform in *Serrano III*.\textsuperscript{110}

Today, after more than thirteen years of legislation and litigation, California maintains an FSF system and has participated in VP experiments.\textsuperscript{111} The progression from property-tax-based funding to increased state aid and then FSF is logical, in that it represents a gradual shift from the familiar to the unfamiliar. The remaining issue is the legality of supplemental fund-raising within school districts by parents who want to increase the quality of education in their schools.\textsuperscript{112}

2. New Jersey

The school funding system in New Jersey came under attack in 1954, and

\begin{thebibliography}{9}
\bibitem{Karst1973} Id. (citing CAL. EDUC. CODE §§ 17655.5-17665.5 (West Supp. 1974)); see Grubb, supra note 95, at 472.
\bibitem{Karst1974} Karst, *supra* note 100, at 335 (citing CAL. EDUC. CODE §§ 20902-20909.1 (West Supp. 1974)).
\bibitem{Id} Id.
\bibitem{See} See supra notes 85-86 and accompanying text.
\bibitem{Id1978} Id. at 23 (citing CAL. CONST. art. XIII A (passed June 6, 1978)). Proposition 13 "limited the property tax to one percent of full market value for all purposes throughout the state with no local property tax overrides permitted." Id.
\bibitem{Id1986} Id. at 23 (citing CAL. CONST. art. XIII A, § 1(a), which forces the legislature to allocate property tax revenue).
\bibitem{Serrano1986} Id. (citing *Serrano v. Priest*, 180 Cal. App. 3d 1187, 1242, 226 Cal. Rptr. 584, 620 (1986) (*Serrano III*). For these ninety percent, the difference was "reduced to less than two hundred dollars." Id.
\bibitem{Sugarman} Sugarman, *supra* note 81, at 555.
\end{thebibliography}
accordingly, the state established a FP.\footnote{113} Under that plan, the state provided roughly twenty-eight percent of school funds, and local revenues provided sixty percent.\footnote{114} The proportion provided by the state was markedly lower than that in most states, and as a consequence, there were severe disparities in funding between rich and poor districts.\footnote{115} In addition to the great disparities, a high percentage of poor districts in New Jersey were located in urban areas, which worsened the problem.\footnote{116}

In 1970, the legislature passed the Bateman Act,\footnote{117} which was designed to be an "incentive equalization" program or a rudimentary attempt at DPE.\footnote{118} The New Jersey Supreme Court in Robinson I, however, held the new system unconstitutional.\footnote{119} The court noted that even if fully funded, the system would not reduce disparities in spending enough to meet the requirements of the New Jersey Constitution.\footnote{120} The court went on to charge the state with the responsibility of both defining the "thorough and efficient clause" in educational terms as well as implementing a new financing plan.\footnote{121}

Shortly thereafter, the court in Robinson II extended the legislature's deadline\footnote{122} and, in 1975, extended it even further in Robinson III.\footnote{123} In Robinson IV, the court put an end to legislative inertia by instituting its own remedies.\footnote{124} This prompted the legislature to pass the 1975 School Finance Act.\footnote{125} That act produced a sort of hybrid FP-DPE system that made allowances for disparity in property wealth between districts but provided little opportunity for poor school districts to catch up.\footnote{126} One year later, the New Jersey Supreme Court found the new system constitutional in Robinson V.\footnote{127} Though the problem was solved for the time being, the difficulties with the school financing system were not over.

In 1981, a group of urban residents filed suit claiming that the 1975 Act

\begin{itemize}
\item \footnote{113} Note, supra note 24, at 203 (citing N.J. STAT. ANN. §§ 18A:58-1 to -37 (West 1968) (amended by 1970 Bateman Act)).
\item \footnote{115} Id. at 315.
\item \footnote{116} Id. at 316. The plight of urban school systems is made more severe by higher cost and "high municipal overburden (noneducational public service expenditures)," which drains away funds from education in order to pay for police, fire, sanitation, and other services. Id. For a contrary view that municipal overburden is a myth, see Brazer & McCarty, Interaction Between Demand for Education and for Municipal Services, 40 NAT'L TAX J. 555, 557 (1987).
\item \footnote{118} Tractenberg, supra note 114, at 314 n.22.
\item \footnote{119} Robinson v. Cahill, 62 N.J. 473, 519, 303 A.2d 273, 297 (1973) (Robinson I).
\item \footnote{120} Id.
\item \footnote{121} Id.
\item \footnote{122} Robinson v. Cahill, 63 N.J. 196, 198, 306 A.2d 65, 66 (1973) (Robinson II).
\item \footnote{123} Robinson v. Cahill, 67 N.J. 35, 335 A.2d 6, 7 (1975) (Robinson III).
\item \footnote{124} Robinson v. Cahill, 69 N.J. 133, 351 A.2d 713, 721-22 (1975) (Robinson IV).
\item \footnote{127} Id. at 467, 355 A.2d at 139.
\end{itemize}
was unconstitutional. The trial court dismissed the case and noted that the Commissioner of Education should hear the case before the courts. After the appellate division reversed, the defendants appealed to the New Jersey Supreme Court. The supreme court remanded the case to an administrative law judge in order to create a full factual record. The administrative judge held the New Jersey finance system unconstitutional. The Governor and Education Commissioner rejected those findings, however, and the case now is back before the state supreme court.

The experience in New Jersey is similar to that of California. There has been a shift away from a pure FP to one that attempts to equalize power. What makes the New Jersey system different is its continued reliance on the local property tax and its refusal to move closer to an FSF system. Despite New Jersey’s reluctance, however, an FSF system may be the eventual outcome.

3. Michigan

The public school finance experience in Michigan differs from that in California and New Jersey because political factors and the desegregation issue played a crucial role in the outcome in Michigan. The impact of political factors on both the courts and elected officials forced participants throughout the state government to take unusual actions. These actions created confusion that hampered the progress of Michigan’s public school finance reform.

School finance litigation in Michigan began in 1971 with Governor v. State Treasurer. Both the governor and the attorney general, who were from different political parties, positioned themselves as being in favor of school

129. Id. at 64, 477 A.2d at 1280.
130. Id. at 74, 477 A.2d at 1285.
132. Id. at 302-03, 495 A.2d at 393-94.
133. Dallas Morning News, supra note 95, at 6A, col. 6.
134. Id.
135. See supra notes 99-112 and accompanying text (describing California’s school finance reforms); see also supra notes 85-90 and accompanying text (describing DPE and FSF programs).
136. See Note, supra note 24, at 233-38 (advocating FSF as “perfect” solution to public school funding problem in New Jersey).
138. Id. “Curiously, both the Governor and the Attorney General, as plaintiffs, and the Treasurer, as defendant, were represented by deputy attorneys general. Before the final decision by the supreme court, the legislature appropriated funds for the legal expenses of the defendant school districts.” Id. at 352 n.16. The Michigan courts also behaved erratically. See infra notes 151-157 and accompanying text.
139. See infra notes 144-164 and accompanying text (use of school finance issue as political weapon and confusion with desegregation hampered reform movement).
140. 389 Mich. 1, 203 N.W.2d 457 (1972), vacated, 390 Mich. 389, 212 N.W.2d 711 (1973); see Hain, supra note 137, at 351. “The case is styled Miliken v. Green in the unofficial reports and in the circuit court records.” Id. at 350 n.1.
finance reform.\textsuperscript{141} Both sides viewed this position as being politically favorable, especially in light of the upcoming elections.\textsuperscript{142} Consequently, the governor and attorney general sued the state treasurer and some selected school districts. The plaintiffs claimed that the existing property-tax-based finance system violated both the equal protection clause of the state's constitution as well as the fourteenth amendment to the United States Constitution.\textsuperscript{143}

Unfortunately for both plaintiffs, however, they also were involved as defendants in a desegregation case in federal court.\textsuperscript{144} To make matters worse, the voters were to decide upon a referendum that would amend the state's constitution and require an FSF system.\textsuperscript{145} The confusion among voters who were unable to distinguish between these issues made a palatable solution to the problem even more difficult to achieve.\textsuperscript{146}

When the plaintiffs filed suit in Governor v. State Treasurer, it appeared that the ultimate objective was an equality of expenditure per pupil.\textsuperscript{147} After the voters defeated the referendum on FSF, however, the governor had to change tactics.\textsuperscript{148} He adopted an inequality of tax effort approach that would give the courts more flexibility in fashioning a remedy.\textsuperscript{149}

The defendants tried unsuccessfully to remove the case to federal court,\textsuperscript{150} and the Governor sent an executive message to the Michigan Supreme Court requesting an early hearing in the case.\textsuperscript{151} The Michigan Supreme Court granted the request and ordered the trial court to make its findings of facts and certify the controlling law questions within ninety days.\textsuperscript{152} Subsequent hearing was hurried. The Michigan Supreme Court heard oral arguments on June 6, 1972, and issued an opinion on December 29, 1972, in which it held the school finance system unconstitutional.\textsuperscript{153} The court relied on the state constitution's equal protection clause, in conjunction with the

\begin{itemize}
\item \textsuperscript{141} Hain, supra note 137, at 351-52.
\item \textsuperscript{142} Id.
\item \textsuperscript{143} Hain, supra note 137, at 352 (citing Mich. Const. art. 1, § 2 (equal protection clause)).
\item \textsuperscript{144} Plaintiffs were under court order "to prepare a plan for desegregating the schools of the Detroit metropolitan area." Id. at 351.
\item \textsuperscript{145} Id.
\item \textsuperscript{146} Id.
\item \textsuperscript{147} Id. at 352-53. The complaint made provision for some unequal expenditures on the theory that these expenditures were rationally based. Id. at 353 n.20.
\item \textsuperscript{148} Id. at 354-55.
\item \textsuperscript{149} Id. at 354-56. "Plaintiffs' shift in focus from unequal expenditures . . . to unequal revenue raising ability . . . may have occurred because the expenditure approach . . . almost inevitably requires centralized state funding." Id. at 355 (citing Coons, Clune & Sugarman, Educational Opportunity: A Workable Constitutional Text for State Financial Structures, 57 Calif. L. Rev. 305, 338-45 (1969)).
\item \textsuperscript{150} Milliken v. Green, No. G-303-71-C-A (W.D. Mich. Nov. 16, 1971). The federal court refused to hear the case because "all parties to the dispute were officers or instrumentalities of the state and . . . serious questions of state constitutional law were involved." Hain, supra note 137, at 353.
\item \textsuperscript{151} Hain, supra note 137, at 353.
\item \textsuperscript{152} In re Executive Message of Governor, No. 53809 (Mich. Jan. 4, 1972).
\item \textsuperscript{153} Milliken v. Green, 389 Mich. 1, 34, 203 N.W.2d 457, 472 (1972).
\end{itemize}
education article, to arrive at its decision. 154

The defendants filed a motion for rehearing, and the Michigan Supreme Court vacated its Governor v. State Treasurer decision only thirty-two days after it was issued. 155 In the meantime, the United States Supreme Court released its Rodriguez opinion, and the Michigan Legislature adopted a DPE system of school finance. 156 As a result, the Michigan Supreme Court issued a second opinion in Governor v. State Treasurer in December 1973 that dismissed the case on the grounds that it should not have been heard. 157

The Michigan Legislature finally adopted a school finance system that uses a DPE formula to allocate operating funds and revenues. 158 A unique feature of the program is its attempt to adjust for the impact of income taxes on poorer taxpayers and the "municipal overburden" problems that are associated with urban areas. 159 However, the DPE plan remains correlated with property values and wealthy districts are able to spend more money per pupil. 160

Today, Michigan is embroiled again in the school financing controversy. 161 The experience in Michigan differs from that in California and New Jersey in that equal expenditure or an FSF plan appeared to be favored in the early seventies. 162 FSF subsequently became a less attractive alternative, however, as desegregation and busing concerns preoccupied voters' minds. 163 The DPE plan presented a viable compromise when implemented, but litigation will probably continue until the Michigan Legislature adopts some form of FSF. 164

154. Id. at 11-12, 203 N.W.2d at 460-61. The opinion required that "school districts be provided equal financial support and maintenance." Hain, supra note 137, at 353 (emphasis in original) (citing Milliken 389 Mich. at 11-12, 203 N.W.2d at 460-61).


158. Grubb, supra note 95, at 483-85. These revenues are "levied for capital outlay and debt retirement ..." Id. at 484.

159. Id. at 484.

160. See id. at 484 n.107; see also supra note 116 and sources cited therein (discussion of problem of municipal overburden).


163. See supra notes 140-143 and accompanying text.

164. See supra notes 144-146 and accompanying text.

165. See Dallas Morning News, supra note 95, at 7A, col. 1.

Although not yet the subject of a lawsuit in Michigan, school finance has become one of that state's thorniest issues. After failing to solve the problem, the Legislature has decided to let voters choose in November between two competing referendums. One would raise about $400 million in school funds with a sales tax increase; the other would increase sales taxes by $468 million but offer $1.3 billion in property tax relief.

Id. The Michigan electorate defeated the first proposal to raise sales taxes by a margin of 72% to 28% and turned down the alternative, which included included property tax relief, by a vote of 74% to 24%. November's Antitax Fever 21 NAT'L J. 2857 (1989).
4. Common Themes and Lessons

All three of the states examined exhibited movement from traditional FP toward FSF systems. Almost as a matter of default, California was the only state to achieve FSF. Michigan and New Jersey adopted DPE formulas that allow some disparity between districts. Presently both Michigan and New Jersey are going through a period of adjustment in the courts and at the polls. This adjustment period may evidence a move toward an FSF system. The Michigan case highlights the danger of mixing the school funding and desegregation issues. Both are emotional and volatile concerns that can devastate politicians if voters confuse them.

IV. Analysis and Recommendations for the Texas Legislature

"[T]here was something to be done about it, and . . . waiting for the great civilization of the future to arrive was not enough. . . . Destiny, like the god of Jews, gives no unconditional promises."

This section is divided into three parts. Part one defines the problem of school finance reform and identifies constraints associated with it. Part two analyzes the four basic types of school financing systems and their ability to function as an efficient information management and distribution system. Part three discusses tax-base options.

A. The Nature of the Problem

In solving the school funding problem, decision-makers must take note that traditions exist which compete with reform. In addition, decision-makers must keep in mind that if an education system is going to be successful it must address the needs of the future electorate (children) as opposed to satisfying the immediate desires of the current electorate (parents). Finally, lawmakers must remember that there is no static solution to a dynamic problem and school finance reform is a dynamic process. The plan that is adopted must change the system fundamentally. It should be flexible enough to adjust to the needs of children and ideally it should be self-sustaining.

1. Demographics of Change: Political Realities

Elected officials may be expected to vote so as to maximize their own utility, which translates into reelection. Elected officials are reelected by striving to accommodate the desires of the median voter. Where there are

167. Ewell, Inequitable Solution Coping with DISD, The Dallas Times Herald, Oct. 3, 1989, at A-11, col. 1. "Schools are entrenched in centuries of tradition related to race, sex and class. . . . To reform education demands re-educating those who govern and administer the educational enterprise. . . . There is no quick fix possible." Id.
169. See Brazer & McCarthy, supra note 116, at 557.
170. See id. "By acting in such fashion as to maximize the probability of winning the next
disparities in the distribution of resources, the benefit to the median voter from redistribution will exceed the tax costs.171 When disparities are particularly severe in school finance, there likely will be a movement to reform the system.172

Given the disparity in educational funding in Texas, the current movement for school funding reform comes as no surprise.173 Not so apparent, however, is the impact of population growth, particularly in the Hispanic community, on the balance of political power in the state and the future of the reform movement. At present, the numbers of white and minority children in Texas public schools are roughly equal, with whites outnumbering Hispanics approximately two to one.174 By the year 2000, it is estimated that minority children will outnumber whites.175 By the year 2025, Hispanic children alone will outnumber white children.176 This increase in the number of minority children entering the public school system, coupled with the concentration of Mexican-Americans in low-wealth school districts,177 makes it unlikely that the reform movement will abate.178

If the school population is used as a projection of the future electorate and minority voters go to the polls, these minorities undoubtedly will make up a large segment of the median voter population. A shift in the electorate could bring to power politicians who campaign on a reallocation platform and some preference for Democrats would be expected.179 Consequently, a politician or party interested in garnering long-term dividends from the school finance issue should be motivated to promote a system that reallocates funds, such as DPE or FSF.

On the other hand, the current electorate from wealthy districts have an interest in maintaining some form of FP that allows them to retain the com-

172. See id. "It is no accident that the school finance reform movement began in California, where disparities in the distribution of resources available to education are particularly severe." Id.
175. Id.
176. Id. at 17A, col. 3.
177. Edgewood, 761 S.W.2d at 868 (Gamage, J., dissenting). "[W]hile in 1980 twenty-one percent of the State's population was Mexican-American, eighty-four percent of the population in the poorest districts was Mexican-American . . . ." Id.
178. The plaintiffs in both the Rodriguez and Kirby cases were Mexican-American. See San Antonio School Dist. v. Rodriguez, 411 U.S. 1, 4 (1973); supra note 49 and accompanying text.
179. See Bell, supra note 171, at 194-96. However, "[t]he hypothesis that the Democrats . . . are the big public spenders" does not hold up well in the Old South due to the structure of political parties in that region. Brazer & McCarty, supra note 116, at 561.
parative advantage of their district's wealth. Moreover, there is some reluctance on the part of voters to pay for the education of non-white children in a school system, especially as the number of non-whites increases. These forces and the fear of interdistrict segregation can be expected to put pressure on politicians to take a stance that disfavors reallocation.

If only the present electorate is considered, namely the parents, it seems somewhat odd that the Texas Supreme Court would declare the current funding system unconstitutional unanimously. Once the long-range demographic trends are factored in, however, it comes as no surprise. The court made the best decision for the future of the state. It neutralized the funding issue as a political weapon. In so doing, the Texas Supreme Court avoided harming the long-range prospects of either party in an election year with new census figures looming on the horizon.

The court made the hard decision in Edgewood. It freed the legislature to revamp the system by using the judicial impetus to justify a shift from the status quo. If the legislature is to implement a system in line with the court's guidelines, however, it too must consider long-term consequences.

2. Judicial Guidelines

The Texas Supreme Court's decision in Edgewood established constraints limiting the number of viable funding reform alternatives. The court made it clear that the present system must be changed completely and merely reallocating money between rich and poor districts would not suffice. This implies that neither a minor modification to the FP nor a token

---

180. See Bell, supra note 171, at 198. "It is also possible...that the greater the fraction of minority school children in a district, the less the willingness of the majority to provide for their education." Id.

181. See Hain, supra note 137, at 351 n.12 (adverse reaction to busing was major issue in political campaigns when litigation over school finance in Michigan was ongoing); see also supra notes 137-165 and accompanying text (comparing school finance reforms in California, New Jersey, and Michigan).


Hispanic population grew 39 percent in this decade. That was five times the increase among non-Hispanics.

By 1990, the number of people of Mexican heritage will have increased 55 percent in Texas and Arizona. In California, census reports project a 73 percent increase. These states stand to gain eight to 10 congressional seats in the subsequent reapportionment process.

Id. A recent federal court ruling striking down the at-large method of electing state district judges will also have political consequences for minorities and the judiciary. Young, Judicial Hopefuls Energized: Democrats Seen as Prime Beneficiaries of Ruling, The Dallas Morning News, Nov. 12, 1989, at 33A, cols. 3-4. Finally, both the Treasurer and the Attorney General are Democrats who are running for Governor while the school finance issue is being addressed in the legislature under the guidance of a Republican Governor. Funding Schools, The Dallas Morning News, Oct. 3, 1989, at 11A, cols. 1, 4-5. This is similar to the situation faced by Michigan. See supra notes 137-165 and accompanying text.


185. Id at 397.
increase in state aid will pass muster and are constitutionally unfeasible. 186

The court's mandate that a close correlation must exist between a district's
tax effort and the funds available to that district, combined with the freedom
given to local communities to supplement their school districts by using local
taxes, indicates that, at a minimum, some form of DPE is needed. 187

The requirement that every child be afforded substantially equal access to
the system's funds sounds, at first hearing, as if the court is mandating equal
per capita expenditure, which would push Texas toward an FSF system. 188

The court selected the word access rather than expenditure, however, be-
cause a child may have equal access to the system based upon the parents' tax
efforts without full equality of expenditure. This wording leaves room for
local enrichment and makes possible differing levels of expenditure on children based upon individual traits such as physical handicaps. 189

The court noted that the legislature must provide funding in light of the fact that education is mandated constitutionally. 190 In addition, the court
required only that children be afforded substantially equal access to the sys-
tem's funds. These factors indicate that the disparity between districts must be reduced and that the level of state involvement will increase. 191 These
more subtle statements indicate a weak preference for an FSF system. 192

When all of the Edgewood requirements are read together, the court seem-
ingly is requiring, at a minimum, a DPE 193 system that leans to FSF. Such a
system would help minimize the amount of disparity between districts and allow for local enrichment. Given the experience of California, New Jersey,
and Michigan this position is not surprising. 194 It points in the direction of
an FSF system while giving the legislature the room to implement a DPE system first to reduce an initial backlash from voters in wealthier school
districts. 195 The final constraint imposed by the court is a concept of what the system should do and a measure of how it should perform. The system ultimately must provide for a general diffusion of knowledge statewide and should be financially efficient. 196

186. See id.
187. See id at 397-98.
188. See id at 397.
189. See supra notes 147-149 and accompanying text and sources cited therein.
190. See Edgewood, 777 S.W.2d at 398.
191. See id.
192. See id. “[L]ocal communities would [not] be precluded from supplementing an effi-
cient system established by the legislature. . . .” Id.; see also supra notes 87-90 and accompanying
text (describing FSF systems).
193. See supra notes 85-86 and accompanying text and sources cited therein (describing
DPE systems).
194. See supra notes 95-165 and accompanying text.
196. See Edgewood, 777 S.W.2d at 397. “We hold that the state's school financing system
is neither financially efficient nor efficient in the sense of providing for a 'general diffusion of
knowledge' statewide. . . .” Id. (quoting TEX. CONST. art. VII, § 1).
B. Selecting an Alternative

1. Defining a School System

Before designing a system one needs a basic concept upon which to build. Fortunately, in the case of the Texas school system, the constitution and the supreme court have spelled out the basics. The system must diffuse knowledge throughout the state—not money or teachers, but knowledge. The school system is an information distribution network through which knowledge flows.

The court also provided the measure of success. The system must be financially efficient or minimize costs. There are three types of costs to consider: (1) operating costs; (2) opportunity costs; and (3) political costs. Operating costs are the most visible costs and include teachers, buildings, books, and transportation. Opportunity costs are almost invisible and relate to the loss of income that children suffer when their income-earning potential is not realized. Political costs are those related to elected officials who are forced from office because of unpopular decisions. Ideally, when selecting a school funding system, only operating and opportunity costs should impact on the school finance system decision. Political costs will be considered only because they are a reality and impact on the ability of the legislature to implement a new system.

2. The Model

If the school system is viewed as an information network, and if each child is viewed as a destination or receptacle with a fixed capacity to use information, then it is the duty of the system to join the child and the information at the least possible cost. The information can be shipped to the child by means of a teacher, film, video, book, record, or computer, and cost can be used as the decision variable. If the system transports information to the child based solely on the child's capacity to use it, opportunity costs will be

---

197. See id.
198. See infra notes 199-200 and accompanying text.
200. Id. at 12, col. 4. The United States loses $25 billion a year because workers are poorly educated. Id. Seventy-five percent of new workers entering the job market between now and 2001 will be “women, nonwhites and immigrants” and failing to educate them will harm the nation's economy. Id.
201. See Hain, supra note 137, at 351 (backlash over school funding issue was an important factor in Michigan Attorney General's 1972 race for United States Senate); see also supra notes 137-165 and accompanying text (impact of politics on school funding decisions in Michigan).
202. This is a model similar to the transportation algorithm used by airlines to program flights. See F. Hillier & G. Lieberman, Introduction to Operations Research 172-204 (1967) (describing use of transportation algorithm, a type of linear programming, to determine optimal shipping patterns) (a detailed explanation of this type of algorithm is beyond the scope of this paper); see also D. Phillips, A. Ravindran & J. Solberg, Operations Research: Principles and Practice 65-78 (1976) (describing transportation and assignment algorithms). The assignment algorithm, which is a specialized form of transportation algorithm, is used to solve problems involving the assignment of machines to jobs in factories to "maximize the total efficiency of the shop." Id. at 65.
reduced.\(^{203}\) The theory is that children should produce more income over their lifetime if they have access to the maximum amount of information possible.\(^{204}\)

There is one aspect to the problem, however, that makes it different from the transportation algorithm.\(^{205}\) Children, unlike airports, can be moved within the system to cut cost. In order to take advantage of this, the artificial barriers known as school districts must become permeable. This will enable low demand but high payoff information to be transferred to those children that have the capacity to use it without cost duplication in every school in every district.\(^{206}\)

3. Alternatives and Efficiency

If efficiency is the ratio of input to output\(^{207}\) then the system selected will be most efficient when it minimizes total costs (operating cost plus opportunity cost). Graphically, the system becomes more efficient as you move from left to right across the alternatives.\(^{208}\)

<table>
<thead>
<tr>
<th>EFFICIENCY</th>
<th>*</th>
<th>*</th>
</tr>
</thead>
<tbody>
<tr>
<td>*</td>
<td></td>
<td></td>
</tr>
<tr>
<td>FP</td>
<td>DPE</td>
<td>FSF</td>
</tr>
</tbody>
</table>

If the same four alternatives are examined from the viewpoint of parental control, the expected outcome would be as follows:\(^{209}\)

<table>
<thead>
<tr>
<th>CONTROL</th>
<th>*</th>
<th>*</th>
<th>*</th>
</tr>
</thead>
<tbody>
<tr>
<td>*</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FP</td>
<td>DPE</td>
<td>FSF</td>
<td>VP</td>
</tr>
</tbody>
</table>

From the viewpoint of equality of expenditure on a per capita basis, the expected outcome would be as follows:\(^{210}\)

---


204. Id.

205. See supra note 202 and sources cited therein (concerning uses of transportation algorithm).


207. THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 228 (paperback ed. 1973) (one definition of efficient is "exhibiting a high ratio of output to input").

208. See Michelson, supra note 1, at 457-58 (advocating FSF over DPE); Sugarman, supra note 81, at 517. "[M]arket-like distribution of educational services is more efficient than the present monopolistic system." Id.

209. See Edgewood Indep. School Dist. v. Kirby, 777 S.W.2d 391, 398 (Tex. 1989) (addressing argument that reform in school finance will eliminate local control); Armor, supra note 206, at 14, 19 (describing different types of choice plans to increase parental involvement in education); Michelson, supra note 1, at 440 (advocating FSF because it is not as dependent on parental choice).

210. Cf. Henke, supra note 7, at 24-39 (describing California's shift to FSF and the impact on expenditures); Armor, supra note 206, at 17 (schools in choice programs will have differing costs); supra notes 99-112 and accompanying text (school reform in California).
If only the above three variables are considered, a VP would be preferable. The VP system adjusts the information flow based upon attributes associated with the child and allows the system to optimize its efficiency by moving the child to the information. If control is considered, there will be tension between wealthy and poor voters, and the wealthy districts would be expected to want to maintain a DPE system as opposed to FSF. On the other hand, poorer voters likely will perceive that they are being short-changed by any system that does not guaranty equal per capita expenditure. These perceptions might be altered over time, however, if wealthy voters could be convinced that a VP system, with freedom of choice at the local level, is preferable to an FSF system imposed by a growing minority population. Minority voters might also be willing to accept a VP system if they could be convinced that their children would have equal access to the total information system and that children would advance through the system based on their abilities.

Unfortunately, however, there is one more variable to consider. Fear of interdistrict desegregation would be expected to look like the following:

<table>
<thead>
<tr>
<th>FEAR OF INTERDISTRICT DESEGREGATION</th>
<th>FP</th>
<th>DPE</th>
<th>FSF</th>
<th>VP</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>*</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>*</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>*</td>
<td></td>
</tr>
</tbody>
</table>

The fear of desegregation will combat efficiency and may drive wealthier voters away from a VP to a DPE system, as was the case in Michigan. The growing minority population in Texas, however, probably will push hard for an FSF system. Consequently, the desegregation issue may not be a strong factor, and the Texas experience with school finance reform could be more like that of California.

4. The Feasible Solution

Given all factors mentioned, there is no immediate and ideal solution to the Texas school funding question. If legislative energy is expended to manage transitions rather than to fight change, then the legislature can create a successful evolution of systems. The change to a DPE system must occur

---

211. See generally Michelson, supra note 1 (DPE systems do not remove influence of parental wealth on education as opposed to FSF plans; consequently, wealthy parents likely would prefer DPE).

212. Cf. supra notes 137-165 and accompanying text (school finance reform in Michigan and desegregation).

213. Cf. Oliver, supra note 183 (growth of Hispanic populations in Texas and California); supra notes 99-112 (school reform in California).
immediately, however, with an infusion of state resources in order to lessen the gap between rich and poor districts. Before the year 2000, Texas should near FSF. If this is the case, differences in school expenditures based upon district fund-raising will be minimal, as is the situation in California. The growing percentage of minority children in public schools will require that shift toward an FSF approach to public school finance. Between the years 2000 and 2025, Texas should arrive at FSF with near equal per capita expenditures. At that point, a transition to a limited VP might be palatable. A VP would encourage local enrichment and give some choices to parents, while it would take advantage of more efficient ways of providing information to children. By the year 2025, growth in traditional minority populations likely will have impacted on the electorate to such a degree that a full VP system would be achievable.

In short, change is inevitable. Such a dramatic change can be managed only if planned for. The transition from FP to VP will not be easy. If voters in poor districts can gain as much resource reallocation from the transition plan as through the court system, however, costly, nonproductive litigation and economic class warfare can be avoided.

C. Taxes—Paying for the System

1. Alternatives

The legislature has four options for funding the school system: (1) raise taxes; (2) shift funds from property rich districts; (3) shift funds from other state services; or (4) implement a combination of all three. While shifting funds from other state programs, was, at one time, the method of choice, it will now suffice. A DPE system will have the effect of shifting current funds from rich to poor districts because the state's funds will be allocated differently. The court made clear, however, that mere reallocation of existing funds will not pass constitutional muster. This suggests that a combination of all measures, including raising new taxes, will have to occur. If new revenue is to be raised, however, how should it be done?

2. Inadequacy of Property Taxes

As exemplified by the experience of New Jersey, continued reliance on

216. Id.
218. See Dallas Morning News, supra note 49, at 10A, col. 2. The Texas Legislature increased state aid to poor districts by several hundred million dollars per year on May 23, 1984. Id.
219. See supra notes 85-86 and accompanying text.
220. See Edgewood Indep. School Dist. v. Kirby, 777 S.W.2d 391, 397 (Tex. 1989). “More money allocated under the present system would reduce some of the existing disparities between districts but would at best only postpone the reform that is necessary to make the system efficient.” Id.
property tax as a base for public school revenue only serves to create large disparities between school districts. These disparities hamper the evolution from a DPE to an FSF system. Property taxes themselves are hard to maintain, and the annual valuation of property is a difficult task that is subject to abuse. In fact, many school districts have developed into pure tax havens where wealthy taxpayers hide to escape the responsibility of paying for the school system. Although there may be a place in the system for a limited reliance on property taxes to fund local enrichment, this variance likely will shrink as a portion of the total school budget over the next thirty-five years.

3. Income-Related Taxes

The value of education lies in its ability to make people more productive. This increase in productivity should result in higher wages during a child's lifetime. This wage increase represents the return on the investment of educational monies in the child. Some portion of this increase should be cycled back into the school system so that the child, in effect, pays for his or her own education over time. If this process continues, then the system becomes self-sustaining.

Any tax that correlates highly with income would help serve the purpose of creating a self-sustaining system. While income tax would probably be the easiest to modify, a sales tax, if not too regressive, would also work. Since Texas does not have an income tax, a sales tax likely would be the most readily available alternative. Over time, as the makeup of the electorate changes, however, an income tax might become more appealing.

Oddly enough, the framers of the Texas Constitution indirectly adopted an income-related tax revenue approach by tying school funding to the market value of land. This system not only tied education to the income that the land was capable of producing, but also had the additional advantage of forcing owners to develop land to its highest potential in order to minimize the tax burden.

221. See supra notes 113-136 (school finance reform in New Jersey).
222. See Yudof, The Property Tax in Texas Under State and Federal Law, 51 TEx. L. REV. 885, 885 (1973). “[T]he property tax is widely perceived as more inequitable, inefficient, and corrupt than other revenue sources.” Id. (citing E. SELIGMAN, ESSAYS IN TAXATION 62 (10th ed. (1931)).
223. Id. at 889-94; see Note, supra note 33, at 259-61.
224. Edgewood, 777 S.W.2d at 393.
225. Id. at 398.
226. Bell, supra note 171, at 204 n.6. “[M]ost of the benefits of an education will be captured by the students in the form of high lifetime earnings.” Id.
227. See Note, supra note 33, at 269.
230. See Yudof, supra note 222, at 897. “The Texas Constitution requires that property be assessed in proportion to its market value.” Id. (citing TEX. CONST. art. VIII, § 1).
In a state with an agrarian economy and a uniformly dispersed population, this was a workable system. Today, with urbanization, the average family is tied to residential property. While this may be an indicator of past income, it is not an indicator of future income. For this reason a tax on what a person makes, as opposed to what he should have made, is more appealing. There are, of course, transitional problems to be overcome, particularly the interplay between state and federal taxes. Here too, however, change will have to be managed as the voter population and the makeup of the school population changes.

4. The Importance of Capital Expenditures

The framers understood the importance of capital expenditure to an efficient system. In fact, the framers provided for free textbooks. Today, however, there are other mediums of information exchange that may well prove to be more cost effective. Until all of the schools in the state have the ability to transmit and receive information across the spectrum of various mediums, there will be inefficiency in the transfer of information from the system to the student. Achieving this capability, will likely call for the greatest increase in funding to poorer districts, but it will also present the greatest rate of return.

5. Involvement of the Business Community

The business community, as the ultimate consumer of educated adults, has a direct stake in the school system. When children went to work on their parents' farms, the parents were the future employers and, as such, maintained a strong voice in school administration. Today, business leaders must make their needs known so that the school systems can make information and skills available that will support the economy Texas wants thirty-five years from now. In short, the business community must understand the fundamental changes that will be taking place in the system over the next thirty-five years and should enlist as an ally to make the transition as smooth as possible.

6. Planning for Change in the Tax System

The tax issue is vulnerable to the same political forces described in section

231. See Note, supra note 33, at 254; see also San Antonio Indep. School Dist. v. Rodriguez, 411 U.S. 1, 7-8 (1973) (recounting history of Texas as rural state that only recently industrialized).

232. See supra note 40 (TEX. CONST. art. VII, § 3, providing for erection and maintenance of school buildings).

233. See id. (provision of free textbooks).

234. See Sagan, supra note 199, at 12. "There are furniture factories, for example, in danger of going out of business—not because there are no customers but because few entry-level workers can do simple arithmetic. A major electronics company reports that 80% of its job applicants can't pass a fifth-grade math test . . . ." Id. (emphasis in original).

IV. A. above. The tax base, therefore, must be managed through transitions to mirror the corresponding shifts in the school funding systems as a whole. Under a DPE system, there will be increased reliance on state funds, so a gradual shift to an income-related tax should be expected. The system should attempt to wean itself from almost all property-tax-based funding by the year 2000 as the state moves toward FSF. After the year 2000, as the limited VP system is phased in, individual school districts might choose to rely on local property taxes as a source of enrichment revenue only. The price of allowing local taxes to enrich a district should be entry into the cost-driven VP system. By the year 2025, as income-related revenues are cycled back into the system, reliance on property taxes should be a rare exception. At that point, a system of matching funds given to school districts interested in entering new information markets should be feasible. With the ultimate VP system, all children within the system would have substantially the same access to the educational information.

V. CONCLUSION

With the Texas Supreme Court's decision in Edgewood v. Kirby, Texas embarks on the transition from an antiquated property-tax-based school funding system with disparities to a more efficient information distribution system. Legislators will not likely be able to provide an ultimate solution in the near term. Instead, the legislators should agree on an objective and move the state through a number of transitions in order to meet voter expectations and the needs of children.

The immediate future will require a DPE system accompanied by an increase in state funding for capital improvements so that information can be transferred throughout the school system. By the year 2000, there will be a shift to FSF with local enrichment. Growth in the minority population will help drive that change in public school funding. Between the years 2000 and 2025, Texas should adopt a VP system. The VP system provides the best alternative for achieving efficiency in public school funding. Greater increases in minority populations in the school systems and the desire of parents to control some portion of their local school's growth should make this possible.

The transition of the school system will require a corresponding change in the tax base. Under the DPE, there will be greater reliance on income-related taxes and a gradual retreat from property taxes. When FSF is imple-
mented, there will be almost no need for local property tax support. Later, as the VP system eases into place, property-related funding should taper off until completely phased out as the VP system becomes a reality.

The experience in other states indicates that a gradual shift in school funding systems is inevitable. The state's leaders must act to enlist the aid of voters, educators, and the business community to manage the transition and not waste precious resources fighting reactionary battles. If the rate of transition to more equitable funding systems is faster than the rate of return possible through the courts, Texas can keep the issue out of inefficient litigation and minimize the disruption in the schools.