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"Equal Protection and California Public School Finance"

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EQUAL PROTECTION AND CALIFORNIA PUBLIC SCHOOL FINANCE

The financing of public schools in the state of California as well as the rest of the United States has been the subject of criticism and reform since the early 1970s. The focus of this paper is how public school financing is impacted by the Equal Protection Clause of Amendment 14, Section One, of the United States Constitution; the Equal Protection Clause of the California Constitution; and other states' equal protection clauses or constitutional provisions. Each of these has played an indisputable role in the progress of education finance.

This paper is organized in six sections:

First, an in-depth discussion of *San Antonio Independent School District v. Rodriguez*,[1] which essentially eliminated the possibility under the Fourteenth Amendment that education is a fundamental right or that wealth is a suspect classification for purposes of education under an equal protection clause analysis.

Second, an in-depth discussion of *Serrano v. Priest I*[2] and *II*.[3] The former grounds its holding in both federal and California equal protection. The latter grounds its holding solely under California equal protection in the wake of the *Rodriguez* decision.

Third, a brief examination of how the highest courts of several other states have handled disputes over public school financing by interpretation of relevant provisions of their respective state constitutions, and of how post-*Serrano* and *Rodriguez* funding disparities are being handled by lower federal courts under the Equal Protection Clause of the Fourteenth Amendment.

[1] 411 U.S. 1 (1976).
[2] 5 Cal. 3d 584 (1971) (*Serrano I*).
[3] 18 Cal. 3d 728 (1976) (*Serrano II*).

Fourth, a detailed review of the changes in and effects of public school funding in California as reformed in the wake of *Serrano*.

Fifth, a discussion of why the Supreme Court of the United States would likely reaffirm the divergence between federal and California constitutional law should it revisit *Rodriguez* and its rejection of the constitutional reasoning of *Serrano*.

Sixth, an overview of the spectrum of public opinion provoked in California by *Serrano* and the continuing policy challenges posed by *Serrano*'s continuing mandate for greater equality in public school funding in California.

The paper concludes with a reflection of the progress of education finance and where it is headed. It also proposes considerable intervention at the federal level in the form of statutory additions or a constitutional amendment providing for a right to public education.

I.

SAN ANTONIO INDEPENDENT SCHOOL DISTRICT v. RODRIGUEZ

The landmark federal case interpreting the Equal Protection Clause as applied to public school finance is *San Antonio Independent School District v. Rodriguez*.[4] The case is a class-action lawsuit initiated by Mexican-American parents whose children attended school in a district located in San Antonio, Texas.[5] The lawsuit was brought on behalf of school children throughout Texas who identify as a member of a minority group or who are poor and reside in school districts having a low property tax base.[6] The Texas State

[4] 411 U.S. 1.
[5] *Id*. at 6.
[6] *Id*.

Constitution, promulgated in 1845, established a system of free public schools.[7] The Permanent School Fund, The Available School Fund, and ad valorem taxes with the consent of local taxpayers per state constitutional amendment funded this system.[8]

A. Wealth as a Suspect Classification

Initially, the system thrived because the population and property values were spread throughout the mostly rural state.[9] Population distribution and assessable property values saw sizable changes with increased industrialization, and these progressions over time were responsible for increasing disparities in levels of local education expenditures.[10]

Efforts to lessen the funding gap led to the establishment of the Texas Minimum Foundation School Program under the Gilmer-Aikin bills.[11] Contributions were earmarked for teacher salaries, operating expenses, and transportation costs, and the State funds 80 percent of the program through general revenues.[12] The remaining share was apportioned according to the Local Fund Assignment using a formula designed to "reflect each district's relative taxpaying ability."[13] After the fund was pooled, the Assignment was divided among 254 Texas counties taking into account the relative value of the County's contribution to the State's total income, payrolls paid, and considerations of each county's share of property within the State.[14] Each county then divided its assignment among its districts

[7] *Id*. at 7.
[8] *Id*. at 8.
[9] *Id*. at 8-9.
[10] *Id*. at 9.
[11] *Id*. at 10.
[12] *Id*.
[13] *Id*. at 11.
[14] *Id*.

according to each district's share of assessable county property.[15] Finally, each district financed its Assignment share from local property tax revenue.[16]

Throughout the litigation of the case, the plaintiff-appellees compared Edgewood Independent School District (where their children attend school and the least affluent district in the San Antonio area) with Alamo Heights Independent School District (the most affluent district in the San Antonio area).[17]

Edgewood Independent School District was located in the "core-city sector" of San Antonio.[18] It was a residential neighborhood, had little commercial or industrial property, and its student population of 22,000 was approximately 90 percent Mexican-American and 6 percent African-American.[19] The average assessed property value and median family income in the district were the lowest in the metropolitan area.[20] Edgewood contributed $26 in education per child for the 1967-68 school year above its Local Fund Assignment for the Minimum Foundation Program with an equalized tax rate of $1.05 per $100 of assessed property.[21] The Foundation contributed $222 per student and federal funds added $108, for a total of $356 spent per student.[22]

On the other side of the spectrum, Alamo Heights Independent School District was a residential area with Mexican-American students accounting for 18 percent and African-Americans accounting for less than 1 percent of the district's population.[23] The assessed

[15] *Id*.
[16] *Id*.
[17] *Id*. at 12.
[18] *Id*. at 13.
[19] *Id*.
[20] *Id*.
[21] *Id*.
[22] *Id*.
[23] *Id*. at 13-14.

property value per student was over 800 percent of that of Edgewood's, and its median family income was approximately 170 percent of that of Edgewood's.[24] The local tax provided $333 per student (a local tax rate of $0.85 per $100 of valuation), plus $225 per student provided from the Program, and $36 per student from federal funding, resulting in a grand total of $594 spent per student during the 1967-68 school year.[25] These numbers increased in the following years, but significant disparities among districts remained.[26]

The United States District Court for the Western District of Texas found the dual system of public school financing to violate the Equal Protection Clause as discrimination based on wealth as a suspect classification in which education is provided to its citizens as a fundamental interest.[27] Applying this standard, the District Court found that the State did not establish even a rational basis, let alone demonstrate a compelling state interest.[28] On appeal, the State maintained that its system satisfied the reasonable basis standard.[29]

The Supreme Court framed the following issues on the appeal in determining the presence of an Equal Protection Clause violation under the Fourteenth Amendment. First, whether Texas's public education financing system was to the disadvantage of a suspect class, or alternatively, whether it "impinges upon a fundamental right explicitly or implicitly protected by the [United States Constitution]."[30] If there was an affirmative finding of either question, a strict judicial scrutiny analysis under the equal protection

[24] *Id*. at 13-14. Comparing Edgewood's assessed property value per student of $5,960 and median family income of $4,686 to Alamo Height's assessed property value per student of over $49,000 and median family income of $8,001. Edgewood's figures were the lowest of all districts in the San Antonio metropolitan area.
[25] *Id*. at 14.
[26] *Id*. at 16.
[27] *Id*. at 17.
[28] *Id*.
[29] *Id*.
[30] *Id*.

clause of the Texas public school finance system was necessary.[31] Rational basis was required in judicial review if the answer to both questions was in the negative.[32]

The Supreme Court immediately pointed to several flaws in the District Court's reasoning to apply strict scrutiny.[33] Justice Lewis F. Powell, Jr., writing for the majority, stated that the District Court relied on decisions that focused on the equal treatment of indigents in the criminal process and wealth restrictions on the right to vote.[34] For example, indigents involved in the criminal process can be "identified or defined in customary equal protection terms" as a class.[35] In *Rodriguez*, the Court stated that there is "no definitive description of the classifying facts or delineation of the disfavored class."[36]

The Court deciphers several possible identifications or definitions of the suspect class based upon the district court's opinion and the students' complaint, briefs, and contentions. These include a specified income level below an identified poverty line, those "who are relatively poorer than others," or those who happen to live within the boundaries of "relatively poorer school districts."[37]

As indicated by the language used in framing the two latter classes, the Court quickly dismissed these after examining other cases.[38] In each, the Court was critical of

[31] *Id*.
[32] *Id*.
[33] *Id*.
[34] *Id*. at 19.
[35] *Id*. at 20.
[36] *Id*.
[37] *Id*. at 21.
[38] *Id*. at 21. Referring to Griffin v. Illinois, 351 U.S. 12 (1956) (invalidating laws preventing indigent criminal defendants from obtaining an actual or adequate substitute for a court transcript for trial and appeal purposes); Douglas v. California, 372 U.S. 353 (1963) (establishing an indigent defendant's right to court-appointed counsel on appeal); Williams v. Illinois, 399 U.S. 235 (1970) (striking down criminal penalties subjecting indigent defendants to incarceration for failure to pay fines they were unable to pay).

prohibitive measures in processes that impacted a criminal defendant.[39] The clearest example of this comes from *Douglas*.[40] The Court stated that in *Douglas*, the right to court-appointed counsel was at issue for those who had no means of providing representation.[41] *Douglas* does not provide relief for those who are able to pay but face a great burden in doing so, and it does not deal with the quality of counsel of any defendant.[42] This is a definite class that can be identified with precision.

The Court also dismissed the comparison of the latter alleged classes to voting and election cases.[43] There, primary election filing fees were found to be so high that they "effectively barred all potential candidates who were unable to pay the required fee."[44] This is also a definite class that can be identified with precision.

The former class of identifying a definitive range of income for "poor" persons comes closest to meeting the criteria, but the Court stated that neither of the "two distinguishing characteristics of wealth classifications" – (1) a system operating "to the peculiar disadvantage of any class fairly definable as indigent" or (2) composing "of persons whose incomes are beneath any designated poverty level," are present within the facts of *Rodriguez*.[45] The Court pointed to a study of Connecticut school districts concluding that the poorest families were not all grouped together in the poorest property districts, and that although the California Supreme Court in *Serrano* factually assumed the contrary, no evidence from the record in *Rodriguez* or otherwise supports this

[39] *Id*.
[40] 351 U.S. 12.
[41] 411 U.S. at 22.
[42] *Id*.
[43] *See* Bullock v. Carter, 405 U.S. 134 (1972).
[44] 411 U.S. at 23, citing Bullock at 149.
[45] 411 U.S. at 23-24.

contention.[46] Furthermore, as mentioned above, the Court stated that the "lack of personal resources has not occasioned an absolute deprivation of the desired benefit."[47]

Next, to dismiss the comparative wealth discrimination claim, a survey relied on in an affidavit on behalf of the students only supported the "wealthy district, highest median family incomes" and "poorer district, lowest median family incomes" arguments at the ends of the spectrum, and that the inverse was true for almost 90 percent of the districts.[48]

In addition, there was no district wealth discrimination. Whether the disadvantaged class was every district except the one with the most assessable wealth spending the most on education or every district falling bellowing some statewide average, the Court stated the class is "large, diverse, and amorphous" and only unified by "residence in districts that happen to have less taxable wealth than other districts.[49]

B. Education as a Fundamental Right

The Court began by recognizing the important role of education and its importance as a government function.[50] However, its importance alone cannot create a fundamental right. First, "virtually every state statute affects important rights.[51] Second, the Court lacks the authority and competence to assume this legislative role.[52] Third, the Court merely "recognizes…an established constitutional right, and gives to that right no less protection than the Constitution itself demands."[53]

[46] *Id*. at 24.
[47] *Id*.
[48] *Id*. at 27-28.
[49] *Id*. at 28-29.
[50] *Id*. at 30-31.
[51] *Id*. at 32. Citing Shapiro v. Thompson, 394 U.S. 618 (1969) (Justice Harlan dissenting).
[52] 411 U.S. at 31.
[53] *Id*. at 32. Citing Justice Stewart in Shapiro, 394 U.S. 618).

The Court again dismissed case comparisons made by the students to cases involving fundamental rights.[54] The Court stated that a fundamental right exists if it is explicitly or implicitly guaranteed by the Constitution.[55] Whether education is a fundamental right is not found by comparing its relative social significance or importance to established fundamental rights.[56]

The students claimed that a fundamental right to education can be grounded in the fact that "it bears a peculiarly close relationship to other rights and liberties protected under the Constitution," such as First Amendment freedoms and the right to vote.[57] They argued, and the Court agreed, that the aforementioned fundamental rights are relatively meaningless unless the individual is equipped with an education to articulate their thoughts, participate in the "marketplace of ideas," and intelligently cast a ballot.[58] However, the Court again denied these propositions as supporting the conclusion that education is a fundamental right. Although the Court has "long afforded zealous protection against unjustifiable governmental interference with the individual's rights to speak and to vote," the Court has never, and cannot, guarantee the "most effective speech" or "most informed electoral choice."[59]

[54] 411 U.S. at 33-34. Referring to Lindsey v. Normet, 405 U.S. 56 (1972) and Dandridge v. Williams, 397 U.S. 471 (1970).
[55] 411 U.S. at 34.
[56] *Id*.
[57] *Id*. at 36.
[58] *Id*. at 36-37.
[59] *Id*. at 37.

Even if the Court were to find that education was constitutionally necessary to provide meaningful exercise of the specified rights, the facts do not indicate that the Texas system for educational expenditures would fail to meet a minimal necessitated level.[60]

Furthermore, the Court differentiated cases where strict scrutiny is proper from the facts of *Rodriguez* by the affect or purpose of the legislation. In the former, the legislation "deprived," "infringed," or "interfered" with "the free exercise of some…fundamental personal right or liberty."[61] Here, the Court saw the Texas legislation as growing public education and improving its quality.[62]

C. Rational Basis

The Court described the students' claim as an attack on the way Texas chooses to raise and disburse state and local tax revenues, an area that the Court has traditionally left to state legislatures.[63] The Court quoted *Madden v. Kentucky*[64] in declaring that when dealing with the Equal Protection Clause, "…in taxation, even more than in other fields, legislatures possess the greatest freedom of classification. [A legislature's members are necessarily familiar with] local conditions which [the Court] cannot have," and therefore, "the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against

[60] *Id*. at 38.
[61] *Id*. at 39. *See also* Justice Brennan writing for the Court in Katzenbach v. Morgan, 384 U.S. 641 (1966).
[62] 411 U.S. at 39.
[63] *Id*. at 40.
[64] 309 U.S. 83 (1940).

particular persons and classes."[65] The Court lacks the "expertise and the familiarity with local problems" necessary to make such decisions affecting public revenues.[66]

With regard to educational policy, financial and management problems faced by public schools are complex and they may be addressed in multiple rational ways.[67] Furthermore, judicial interference with rational state actions in this area may "circumscribe or handicap" developments in policy, many aspects of which contain "ever-changing conditions" that could hardly provide for one definitive lasting approach.[68]

D. How the Texas School Finance System Operates and Its Direct Bearing Upon the Demands of the Equal Protection Clause

The Court found that the State establishes a rational basis for a system providing different levels of per-pupil expenditures.[69] The "foundation grant" theory, which Texas researched, was based off of educational reformers in New York during the 1920s that tried to find a way to guarantee a minimum statewide educational program without sacrificing local participation.[70] Some local control preserves the freedom for people to devote more money to their children's education and participate in the decision making process for spending that money.[71]

A state must only show it chose the least restrictive alternative where the state action impinges on the exercise of a fundamental constitutional right or liberty.[72] The students attacked the Texas system because they believed methods are available that

[65] 411 U.S. at 42.
[66] *Id*.
[67] *Id*. at 43.
[68] *Id*. at 44.
[69] *Id*. at 48.
[70] *Id*. at 49.
[71] *Id*. at 50-51.
[72] *Id*. at 52.

would have less disparity in expenditures while preserving and encouraging local control and fiscal flexibility in all districts.[73] However, the inequality proposed by the students did not rise to the level of requiring the state to show it followed the least restrictive alternative.[74]

The students also attacked the system as dictated by "happenstance" because local taxable resources and their assessments were variable over time.[75] The Court responded to this in two ways. First, any local taxation would be subject to some arbitrary determinations, such as jurisdictional boundaries, and local wealth was not a static quantity.[76] Second, if the Court found local taxation unconstitutional as pertaining to education, they opened up to attack other local necessities, such as emergency services.[77]

Because of the above reasons, the Court refused to find that unequal expenditures between children in Texas school districts are the "product of a system that is so irrational as to be invidiously discriminatory."[78] The system involved intense research before implementation, continues to evolve, and the methods utilized are not unique to Texas or any state.[79]

E. Final Points of the Majority

The Court made note of the fact that they do not believe the conclusions reached by the District Court, the *Rodriguez* dissent, and the California Supreme Court in *Serrano v.*

[73] *Id*.
[74] *Id*.
[75] *Id*. at 54.
[76] *Id*. at 55.
[77] *Id*.
[78] *Id*. at 55-56.
[79] *Id*. at 56.

Priest would lead to "an unprecedented upheaval in public education."[80] The Court said there was no consensus among researchers and commentators and studies reach different conclusions about the benefits to students or affects on taxation and expenditures.[81] Finally, the Court noted that although they were including this outside information, those considerations "play no role in the adjudication of the constitutional issues presented" and the solutions must come from lawmakers and the democratic process.[82]

F. Concurrence – Justice Potter Stewart

Justice Potter Stewart wrote that the public education systems in almost every state were chaotic and unjust, but that they were not constitutional violations.[83] The Equal Protection Clause only serves to measure the validity of state law classifications, not to create substantive rights or liberties.[84] Justice Stewart agreed that there as no objectively identifiable class; even assuming that there was a class, it was not based upon suspect criteria; the system was not irrelevant to achieving the State's objective; and the system did not impinge on any substantive constitutional right or liberty.[85]

G. Dissent – Justice William J. Brennan, Jr.

Justice William J. Brennan, Jr., agreed that the Texas public school finance system did not have a rational basis.[86] He disagreed with the majority's conclusion that a right is "fundamental" under an equal protection analysis if it is explicitly or implicitly guaranteed

[80] *Id*. at 57.
[81] *Id*. at 57-58.
[82] *Id*. at 59-60.
[83] *Id*. at 60.
[84] *Id*.
[85] *Id*. at 63.
[86] *Id*.

by the Constitution.[87] Justice Brennan agreed with Justice Marshall that whether a right is fundamental is largely a function of the right's importance "in terms of the effectuation of those rights which are in fact constitutionally guaranteed."[88] Here, he stated that there is "no doubt" that education is "inextricably linked" to participation in the electoral process, free speech, and association, so the finance system must be subjected to, and fails, strict judicial scrutiny.[89]

H. Dissent – Justice Byron White, joined by Justices William O. Douglas and William J. Brennan, Jr.

Justice Byron White agreed that local control and local decision making for public school finance is a legitimate state interest.[90] However, such a goal must be effectuated by means rationally related to achieving that goal, and the Texas system did not provide meaningful options for districts with low per-pupil real estate tax bases because they did not control the property values in their districts.[91] Therefore, the parents and students in those districts were discriminated against when the system made it impossible for them to have "comparable school revenues [to the wealthier districts] by resort to the real property tax."[92]

I. Dissent – Justice Thurgood Marshall, joined by Justice William O. Douglas

Justice Thurgood Marshall was critical of the majority's decision on several grounds. He viewed the majority's holding as "a retreat from our historic commitment to equality of

[87] *Id*.
[88] *Id*.
[89] *Id*. at 64.
[90] *Id*. at 65. Quoting James v. Valtierra, 402 U.S. 137 (1971) for the proposition that local control and local decision-making play an important part in our democratic system of government.
[91] *Id*. at 65-66.
[92] *Id*. at 71.

educational opportunity and as unsupportable acquiescence in a system which deprives children in their earliest years of the chance to reach their full potential as citizens."[93] Justice Marshall believed that waiting for a political solution to the issue of public school finance as unacceptable, as it would result in "countless children [unjustifiably receiving] inferior educations."[94]

Justice Marshall firmly believed the finance system had a discriminatory impact on school-age children in Texas.[95] He disagreed that determining whether a right is fundamental in an equal protection analysis is determined by whether the interest is an explicit or implicit constitutional guarantee.[96] He cited various rights the Court has previously deemed fundamental as not explicitly or implicitly present in the United States Constitution.[97]

Justice Marshall recognized that the Court had previously stated that state-supported education is a privilege of state citizenship,[98] stating that there is a "close relationship between education and some of our most basic constitutional values."[99] For example, in *Brown v. Board of Education*,[100] the Court stated that the compulsory attendance requirement and great expenditures dedicated to public education emphasize the "importance of education to our democratic society," its requirement "in the performance of our most basic public responsibilities," and that it is "the very foundation of

[93] *Rodriguez* at 72.
[94] *Id*.
[95] *Id*. at 73.
[96] *Id*. at 101.
[97] *Id*. at 101-03. Including the right to procreate, the right to vote in state elections, and the right to have a State provide appellate review or appellate courts.
[98] *Id*. at 112. *See Missouri ex rel. Gaines v. Canada*, 305 U.S. 337 (1938).
[99] *Rodriguez* at 112.
[100] 347 U.S. 483, 493 (1954).

good citizenship."[101] In light of this and many other considerations, Justice Marshall believed that whether a state classification is subject to strict judicial scrutiny should depend on the asserted right, the constitutional and societal importance of the interest, and the invidiousness of the basis of the conclusion.[102] He found a close nexus between education and the right to vote, free speech, and association.[103]

Next, Justice Marshall disagreed with the majority's asserted notion that the Court had generally required two characteristics of a disadvantaged class for a wealth classification, including their "inability to pay for a desired benefit" because of their financial position, and because of this, they "sustained an absolute deprivation of a meaningful opportunity to enjoy that benefit."[104]

In addition, Justice Marshall believed that the substantiality of an alleged state interest to be served should be examined and scrutiny of the reasonableness of the means used to advance that interest.[105] With this in mind, the local control of education is a substantial state interest, but the State's creation of local school districts tied to educational funding is not a rational means of advancing the state interest.[106] This was because the local governments did not have meaningful control over local property values because of land use controls and other factors impacting the residential and commercial use of property within their district.[107]

[101] *Id*.
[102] 411 U.S. at 116-17, 123.
[103] *Id*. at 118-120.
[104] *Id*. at 118-19.
[105] *Id*. at 122-23.
[106] *Id*. at 124-25.
[107] *Id*. at 125.

Justice Marshall disagreed with the majority's contention that affirming the District Court's decision would eliminate local control of educational funding.[108] To the contrary, the Texas system was responsible for constraining local control and creating wide disparities in taxable property violating the Equal Protection Clause.[109]

II.

CALIFORNIA LANDMARK CASES – *SERRANO I* and *SERRANO II*

Two landmark cases appeared before the California Supreme Court in the 1970s on the issue of equal protection in public school financing. *Serrano v. Priest I* preceded *San Antonio Independent School District v. Rodriguez* and found equal protection violations under the 14th Amendment of the United States Constitution and California Constitution with the California public school financing system.[110] In light of *Rodriguez*, the California Supreme Court held in *Serrano v. Priest II* that the California system violated equal protection provisions under the California Constitution.[111]

A. <u>*Serrano v. Priest I*</u>

California maintained a public school system "maintained…by a financing plan or scheme…[which relied] heavily on local property taxes" and causing "substantial disparity" among school districts in the revenue available per pupil.[112] Public school children and parents residing in Los Angeles County filed a claim on behalf of all children except those in

[108] *Id*. at 131.
[109] *Id*. at 131-32.
[110] 5 Cal. 3d 584 (1971) (*Serrano I*).
[111] 18 Cal. 3d 728 (1976) (*Serrano II*).
[112] *Serran*o *I* at 590.

the district "[affording] the greatest educational opportunity in California" against state and county officials with three causes of action.[113]

The first claim was that the financing scheme violated the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.[114] The second claim stated that the parents, "incorporating by reference" the first cause of action and the financing scheme, paid a higher tax rate than taxpayers in other districts for their children to have "the same or lesser educational opportunities" of students in other districts.[115] The third claim, incorporating the first two causes of action, alleged that an actual controversy arose and existed as to the constitutionality of the financing system under both the United States Constitution and California Constitution.[116]

The court first examined the California public school financing system at issue. The California Legislature authorized each city and county to tax real property within a school district "at a rate necessary to meet the district's annual education budget."[117] Under this system, assessed property values and the rate of taxation were the most determinative factors of a district's revenue with many local voters deciding to override the statutory tax limit for additional district revenue.[118]

California also had a "State School Fund pursuant to the 'foundation program'" to provide a "minimum amount of guaranteed support to all districts."[119] The Fund contributed a minimum of $125 per pupil and if the sum of $125 per pupil and the district's

[113] *Id*. at 590-91.
[114] *Id*. at 591.
[115] *Id*.
[116] *Id*. at 592.
[117] *Id*. at 593.
[118] *Id*.
[119] *Id*. at 593-94.

funds per pupil fell below the foundation's minimum determined by a statutory hypothetical formula, the Fund covered the difference.[120] If one of the poorest districts made an additional local tax effort, a "supplemental aid" program was available that provided up to an additional $72 per pupil.[121]

The disparity among districts was significant. The ratio of the assessed valuations per pupil between the districts of Baldwin Park, Pasadena, and Beverly Hills was 1 to 4 to 13.[122] The court noted that the additional $125 afforded per pupil by the state "[widened the gap] between rich and poor districts.[123]

The court rejected an argument that the California system violated California Constitution, Article IX, Section 5 because its meaning is limited to the Legislature providing a system of common schools and does not requiring equal spending.[124]

The court then examined wealth as a suspect classification. After examining opinions of the Supreme Court of the United States where wealth was declared a suspect classification in cases such as poll taxes, the California Supreme Court found it "irrefutable" that the school financing system classified on the basis of wealth.[125]

The court rejected defendants' arguments that "classification by wealth is constitutional so long as the wealth is that of the district, not the individual" and that the de facto unequal treatment in this case is not unconstitutional.[126] In dismissing the latter argument, the court stated that the examined decisions of the Supreme Court of the United

[120] *Id*. at 594.
[121] *Id*.
[122] *Id*. at 595.
[123] *Id*.
[124] *Id*. at 596.
[125] *Id*. at 599.
[126] *Id*. at 600-02.

States and of California involved "'unintentional' classifications whose impact simply fell more heavily on the poor."[127]

One example cited by the court was *Harper v. Virginia Bd. of Elections*,[128] illustrating that a $1.50 poll tax did not purposefully deter poorer citizens from voting, but it nevertheless might result in such deterrence.[129] In addition, although the Supreme Court had not previously ruled on de facto racial segregation, "[the California Supreme Court]…held such segregation invalid, and declared that school boards should take affirmative steps to alleviate racial imbalance, however created."[130]

Next, the court analyzed the students' and parents' claim that education is a fundamental interest. The court stated that the suspect classification of wealth had only been associated with a few fundamental interests, such as rights of criminal defendants and voting rights.[131]

The court found no direct authority supporting the plaintiffs' contention and examined the role of education "in the modern industrial state."[132] The court emphasized education's role in an individual's "chances for economic and social success in our competitive society" and its "unique influence on a child's development as a citizen" in their political and community participation.[133] While not finding a legally controlling case on the issue, they quoted *Brown v. Board of Education*[134] for its recognition that education is

[127] *Id*. at 602.
[128] 388 U.S. 663 (1966).
[129] *Serrano I* at 604.
[130] *Id*. at 604. Referring to Jackson v. Pasadena City School District, 59 Cal.2d 876, 881 (1963).
[131] *Serrano I* at 605.
[132] *Id*. at 605-06.
[133] *Id*. at 506.
[134] 347 US 483, 493 (1954).

required for "our most basic public responsibilities" and that where the state has undertaken to provide an education, it is "a right which must be made available to all on equal terms."[135] The court also cited to several of their own opinions[136] in which they stated that unequal education leads to unequal opportunities, education provided by the state "must be made available to all on an equal basis," and that society has a "compelling interest in affording children an opportunity to attend school."[137]

Next, the court examined the "distinctive and priceless function of education" compelling its treatment as a fundamental interest.[138] Education is essential to "free enterprise democracy," it is "universally relevant," it "continues over a lengthy period of life," "molds the personality of the youth of society" unmatched by other state functions, and the state finds it so important that it has made attendance and assignment to a district and school compulsory.[139]

Finally, the court found that the financing system was not necessary to accomplish a compelling state interest and thus failed strict scrutiny.[140] The State of California asserted a policy of strengthening and encouraging local responsibility for control of public education,[141] which the court split into two aspects: granting local districts effective power over school administration and promoting local fiscal control over education

[135] *Serrano I* at 506.
[136] *Id*. Citing San Francisco Unified School Dist. v. Johnson, 3 Cal.3d 937 (1971); Jackson v. Pasadena City School Dist., 59 Cal.2d 876 (1963); Manjares v. Newton, 64 Cal.2d 365 (1966).
[137] *Serrano I* at 607.
[138] *Id*. at 609-10.
[139] *Id*. at 611.
[140] *Id*.
[141] California Education Code Section 17300

expenditures.[142] The court dismissed the first aspect by stating it can do so regardless of its public education finance system.[143]

The promotion of local fiscal control over education expenditures was given more attention. The court stated, and the defendants conceded, that a poorer district community where the citizens willingly increase their own taxes for local education (e.g., Baldwin Park) are committed to education and possibly even "more devoted to learning than Beverly Hills" where the residents paid less than half a school tax in assessed valuation.[144]

The defendants also asserted that the United States Constitution does not require "territorial uniformity [in the financing system]" and that if "under an equal protection mandate relative wealth may not determine the quality of public education, the same rule must be applied to all tax-supported public services."[145] The court did not believe the case law cited by defendants involved the constitutional interests involved in *Serrano v. Priest I*,[146] and that where fundamental rights or suspect classifications are involved, "a state's general freedom to discriminate on a geographical basis will be significantly curtailed by the equal protection clause."[147] In support of this assertion, the court cited cases involving the closing of schools on discriminatory bases.[148] Furthermore, with regard to apportionment, the court stated that the Supreme Court of the United States "has held that

[142] *Serrano I* at 611.
[143] *Id*.
[144] *Id*. at 612.
[145] *Id*.
[146] *Id*. at 612-13
[147] *Id*. at 613; *See* Horowitz & Neitring, *Equal Protection Aspects of Inequalities in Public Education and Public Assistance Programs from Place to Place Within a State* (1968) 15 UCLA L. Rev. 787.
[148] *Serrano I* at 614. *See also* Griffin v. School Board, 377 U.S. 218 (1964); Salsburg v. Maryland, 346 U.S. 545 (1954) Hall v. St. Helena Parish School Board, 197 F. Supp 649 (E.D.La. 1969) (affd. mem. 368 U.S. 515 (1962).

accidents of geography and arbitrary boundary lines of local government" cannot be grounds for discrimination among state citizens.[149] Education is a unique public activity that must comply with the equal protection clause.[150]

The court dismissed defendants' final argument that the Supreme Court of United States' affirmance in the *McInnis*[151] line of cases, even where a three-judge district court panel unanimously held against the plaintiffs, was equivalent to a denial of certiorari and not controlling.[152]

i. Dissent

Justice Marshall F. McComb stated he would affirm the judgment for the same reasons written by Justice Gerold C. Dunn of the California Court of Appeal.[153]

B. *Serrano v. Priest II*

The Supreme Court of the United States decided *San Antonio Independent School District v. Rodriguez* while *Serrano v. Priest I* was in the middle of trial on remand from the California Supreme Court.[154] In addition to taking into account two new California bills and several hundred findings of fact, the California trial court considered the impact of *Rodriguez* on *Serrano v. Priest*.[155] The trial court ruled in favor of the plaintiff parents and children, and the defendant school districts appealed, resulting in *Serrano v. Priest II*.[156]

[149] *Serrano I* at 614. Citing Griffin v. Illinois, 351 U.S. 12, (1956) Reynolds v. Sims, 377 U.S. 533, 566-67 (1964).
[150] *Serrano I* at 615.
[151] McInnis v. Shapiro, 293 F. Supp. 327 (N.D.Ill. 1968); McInnis v. Ogilvie, 394 U.S. 322 (1969).
[152] *Serrano I* at 616-18.
[153] *Id*. at 620. 89 Cal. Rptr. 345. *See also* 10 Cal. App. 3d 1110 (Justice Dunn, majority opinion).
[154] *Serrano II*, 18 Cal. 3d 728, 736-37 (1976).
[155] *Id*.
[156] *Id*. at 737.

The California Supreme Court briefly re-examined the finance system in place prior to and after the passage of Senate Bill (S.B.) 90 and Assembly Bill (A.B.) 1267.[157] Next, the court examined the trial court's findings of fact and conclusions of law and judgment.[158]

The defendants made three substantive arguments. First, that the trial court improperly focused on "fiscal neutrality" and excluded other relevant factors in finding that S.B. 90 and A.B. 1267 violated equal protection standards.[159] Second, that the proper standard of equal protection review under state constitutional provisions was a rational relationship "between the financing method chosen and some legitimate state purpose."[160] Third, if the financing system did conflict with state equal protection provisions, those provisions are in conflict with other state Constitution provisions and "should be made to yield *pro tanto*" to avoid conflict to promote consistent constitutional interpretation.[161]

First, defendants contended that the trial court overlooked factors other than wealth-related disparities and fiscal neutrality, such as educational programs' "'adequacy' and 'equality.'"[162] They suggested the trial court should have also looked at results in overall opportunities and supplementation rather than solely on the mechanisms and application of the finance system.[163] The court dismissed this argument, in accordance with their holding in *Serrano I*, by stating that the plaintiff's allegations were sustained not only on the disparate treatment, but on the effect of such treatment.[164]

[157] *Id*. at 738-45.
[158] *Id*. at 745-51.
[159] *Id*. at 751.
[160] *Id*.
[161] *Id*.
[162] *Id*. at 754.
[163] *Id*. at 755.
[164] *Id*.

The trial court used the examination formulated by the California Supreme Court in *Serrano I* to decide the validity of a system if there is no sufficient justification satisfying the equal protection test: "(1) the conditioning of the availability of school revenues upon district wealth, with resultant disparities in school revenue, and (2) the dependency of the quality of education upon the level of district expenditure."[165] According to the court, because *Serrano* involved both a "suspect classification" (discrimination based on wealth) and affected a "fundamental interest" (education), they probably applied the examination as a part of strict scrutiny.[166]

The next issue addressed by the court was whether the system in its operation violates constitutional guarantees. The court quoted *Serrano I* quoting *Westbrook v. Mihaly* as stating the United States Supreme Court, in cases involving "suspect classifications" or touching "fundamental interests," the court employs "an attitude of active and critical analysis" in the strict scrutiny standard, under which the state bears the burden of establishing "not only that it has a *compelling* interest, which justifies the law but that distinctions drawn by the law are *necessary* to further its progress."[167]

The court's conclusions in *Serrano I* regarding wealth and education under the federal Constitution's equal protection clause were explicitly overruled in *Rodriguez*, in which the United States Supreme Court said that there was no suspect classification on wealth and that education was not fundamental because it is "not explicitly or implicitly guaranteed or protected by the terms of the federal Constitution."[168] Indeed, the California Supreme Court stated, "it is clear that *Rodriguez* undercuts [*Serrano I* to the extent that the

[165] *Id*. at 757.
[166] *Id*. at 756.
[167] *Id*. at 762, *Serrano I* at 597, Westbrook v. Mihaly, 2 Cal.3d 765 (1970).
[168] *Rodriguez*, 411 U.S. at 33-34, 61-62.

California Supreme Court] held the California public school financing system to be invalid as in violation of the equal protection clause of the Fourteenth Amendment."[169]

The California Supreme Court next avoided any concern by the defendants that *Serrano I* precludes an application of the California Constitution's equal protection clause. In *Dept. of Mental Hygiene v. Kirchner*,[170] which the court cites to in footnote 11, the court declared that (currently article IV, section 16 and article I, section 7(b) of the California Constitution) is construed as "substantially the equivalent" of the Fourteenth Amendment's equal protection clause of the federal Constitution.[171]

In light of *Rodriguez*, the court stated they must decide which of three interpretations to give the aforementioned.[172] The defendants argued that under *Kirchner*, a classification or interest not satisfying federal equal protection standards must also not satisfy California state constitutional provisions.[173] The plaintiffs argued that the federal ruling leaves *Serrano I* "wholly intact on *state* grounds."[174] The plaintiffs suggested in the alternative, and the trial court held, that the Supreme Court of the United States' test for determining if a fundamental interest exists under the federal equal protection clause must be used by California to determine the same under its own constitutional provisions.[175]

The court agreed with the plaintiff's former argument.[176] Although California's equal protection provisions are "substantially the equivalent" of the federal guarantees, the state provisions are "possessed of an independent vitality which…may demand an analysis

[169] *Serrano II* at 763.
[170] 62 Cal.2d 586, 588 (1965).
[171] *Serrano II* at 763-64.
[172] *Id*. at 764.
[173] *Id*.
[174] *Id*.
[175] *Id*. at 764-65.
[176] *Id*. at 765.

different from that which would obtain if only the federal standard were applicable.[177] Furthermore, United States Supreme Court decisions "defining fundamental rights are persuasive authority…but are to be followed by California courts only when they provide no less individual protection than is guaranteed by California law."[178]

Because of this, the court stated they would adhere to the *Serrano I* determinations that "for purposes of assessing [California's public school financing system] in light of [California's constitutional provisions] guaranteeing equal protection of the laws (1) discrimination in educational opportunity on the basis of district wealth involves a suspect classification, and (2) education is a fundamental interest" which are violated when substantial and convincing evidence is produced regarding the school financing system here supporting the existence of suspect classification, fundamental interest, or both, that "strict and searching scrutiny" is appropriate.[179]

In support of this decision, the court distinguished itself from the United States Supreme Court. While the latter declared in *Rodriguez* that it lacked the "expertise and familiarity with local problems of school financing and educational policy," the California Supreme Court is not subject to those constraints of federalism, involved a thorough and extensive trial record and comprehensive findings, and involved "voluminous briefing…and no less than nine amici curiae."[180]

Next, the court concluded that the trial court correctly found that the state failed to meet its "burden of establishing that the classification is necessary to achieve a compelling

[177] *Id*.
[178] *Id*. *See also* People v. Longwill, 14 Cal.3d 943, 951 fn. 4 (1975).
[179] *Serrano II* at 766.
[180] *Id*. at 768.

state interest."[181] The court reiterated a basic summary of the finance system at issue stated in *Serrano I*:

> "[So] long as the assessed valuation within a district's boundaries is a major determination of how much it can spend for its schools, only a district with a large tax base [per ADA] will be truly able to decide how much it really cares about education. The poor district cannot freely choose to tax itself into an excellence which its tax rolls cannot provide. Far from being necessary to promote local fiscal choice, the present financing system actually deprives the less wealthy districts of that option."[182]

Next, the court addressed the defendants' claim that other provisions of the California Constitution authorize the finance system based on article XIII, section 21.[183]

After examining the language used in *Serrano I* and in the constitutional provisions mentioned, the court stated that the defendants were merely trying to circumvent *Serrano I*'s rationale by "emphasizing isolated words out of context."[184] For example, the defendants emphasized the use of the phrase "shall provide" in the California provision and the word "mandated" in *Serrano I*, which only mean that "there be a system allowing for local decision" for school expenditures an that the mechanism utilized in executing this mandate was a county levy of school district taxes.[185] The authorization of a county levy by the state Constitution does not give free reign to the Legislature to establish any mechanism it wishes.[186] Rather, a constitutional provision "creating the duty and power to legislate in a particular area always remains subject to general constitutional requirements" unless contrary intent plainly appears in the Constitution.[187]

[181] *Id*. at 769.
[182] *Serrano I* at 611.
[183] *Serrano II* at 770-71.
[184] *Id*. at 772.
[185] *Id*. at 772.
[186] *Id*. at 774.
[187] *Id*.

The court examined cases in California where the Legislature overreached in authority by following one provision and violating another, such as by granting "greater jurisdiction to city courts in populous townships than to the same class of courts of less populous townships – regardless of the population of the particular city"[188] or creating and regulating irrigation districts but exempting those adopting a charter prior to a specific date."[189] Nor, the court found, was the school financing system at issue necessary pursuant to California Constitution, Article Nine, Section One.[190] This section, stating the Legislature should encourage the promotion of "intellectual, scientific, moral, and agricultural improvement" by all suitable means cannot be said to allow conditioning educational opportunity on the taxable wealth of a district.[191]

The court concluded that the trial court properly found that the public finance system as it existed, and under the provisions of Senate Bill 90 and Assembly Bill 1267, modifying the system was invalid under the California Constitution's article IV, section 16 and article I, section 7.[192] *Serrano I* constituted the law of the case and strict scrutiny was properly applied, the Governor and Legislature were properly not joined as indispensable parties, and there was no conflict between California equal protection provisions and other provisions that would require "the former to yield as the determinative law of this case."[193]

[188] *Id*. *See also* In re Jacobson, 16 Cal. App.2d 497 (1936).
[189] *Serrano II* at 773-75. *See also* Mordecai v. Board of Supervisors, 183 Cal. 434 (1920).
[190] *Serrano II* at 776.
[191] *Id*.
[192] *Id*. at 777.
[193] *Id*. at 778.

i. Dissent – Justice Richardson

Justice Richardson disagreed with the majority's reconciling of the different meanings of the constitutional provisions at issue.[194] The equal protection provisions may provide some guarantees, but the "*same Constitution expressly authorizes the essential elements of the challenged system*."[195] Also, because of the constitutional principle that "all presumptions and intendments favor the validity of legislation," and that we must therefore "presume that the Legislature properly construed...its authority," the school financing system is constitutional.[196]

ii. Dissent – Justice Clark

Justice Clark discussed the conflict in goals of both sides, and concludes that "we cannot have absolute equality of opportunity in school funding," and that such equality was unobtainable if we also preserve "fiscal responsibility and local control – both compelling interests."[197]

III.

SCHOOL FUNDING CASES IN OTHER STATES, THE SUPREME COURT OF THE UNITED STATES, AND THE LOWER FEDERAL COURTS

Federal courts have applied *Rodriguez* on numerous occasions to strike down challenges to public school finance systems on various equal protection clause bases. The overwhelming response by states' highest courts has been to distinguish their respective state constitutional provisions from the United States Supreme Court's application of the federal Constitution's equal protection clause.

[194] *Id*. at 779.
[195] *Id*.
[196] *Id*. at 785.
[197] *Id*. at 786, 796.

In *Certain Named & Unnamed Non-Citizen Children & Their Parents v. Texas*,[198] the Supreme Court of the United States vacated the stay of an injunction to enjoin the state of Texas from enforcing an Education Code statute prohibiting the expenditure of state funds to school districts for non-citizen undocumented immigrants.[199] The District Court stated their decision was consistent *Rodriguez* on the ground that the suspect classification was not wealth, but citizenship, so strict scrutiny applied.[200] Justice Powell wrote that it was a close question, but that "it is not unreasonable to believe that five Members of the Court may agree with the District Court," while also stating that he had not reached a decision on the merits.[201]

In *Citizens of Decatur for Equal Educ. V. Lyons-Decatur Sch. Dist.*,[202] the Nebraska Supreme Court reviewed a case involving the consolidation of several grade levels from one district to another amidst a budget crisis.[203] The court held that the Nebraska Constitution, Article VII, Section 1, referred to as the "free instruction clause," does not confer a fundamental right to equal and adequate funding of schools.[204] The Citizens Coalition did not set forth a proper suspect class, and applying a rational basis review, the court found that the consolidation was rationally related to the legitimate goal "of providing an education to all children in the district" over concerns regarding the increasing budget deficits.[205]

[198] 448 U.S. 1327 (1980).
[199] *Id*. at 1335.
[200] *Id*. at 1333.
[201] *Id*.
[202] 274 Neb. 278 (2007).
[203] *Id*. at 282.
[204] *Id*.
[205] *Id*. at 305.

In *Conn. Coalition for Justice in Educ. Funding, Inc. v. Rell*,[206] the Connecticut Supreme Court reviewed an action of behalf of public school children alleging that the Connecticut public school finance system failed to provide "suitable and substantially equal educational opportunities (quotations omitted) because of inadequate and unequal inputs" which violated the Connecticut Constitution, Article Eight, Section One, which they allege guaranteed in public schools "the right to a particular minimum quality of education, namely, suitable educational opportunities."[207] The court held that the provision "entitles Connecticut public school students to an education suitable to give them the opportunity to be responsible citizens able to participate fully in democratic institutions, such as jury service and voting.[208] The court recognized that "[the court's] explication of a constitutionally adequate education under article eight, section 1 is crafted in broad terms" and that this reflects the recognition of "the political branches' constitutional responsibilities and…greater expertise" with implementing educational policies "pursuant to the education clause."[209]

In *Campaign for Fiscal Equity, Inc. v. State*,[210] the high court of New York addressed New York's education clause[211] in a claim concerning the state's financing scheme failing to provide "public school students in the [c]ity of New York…an opportunity to obtain a sound basic education."[212] The court found that the clause requires a sound basic education which "should consist of the basic literacy, calculating, and verbal skills necessary to enable

[206] 295 Conn. 240 (2010).
[207] *Id*. 244-46.
[208] *Id*. at 315.
[209] *Id*. at 318.
[210] 86 N.Y.2d 307 (N.Y. Ct. of Appeals 1995).
[211] New York State Constitution, Article Eleven, Section One.
[212] 86 N.Y.2d at 314.

children to eventually function productively as civic participants capable of voting and serving on a jury."[213] The New York Court of Appeals gave further meaning to the standard in *Campaign for Fiscal Equity, Inc. v. State*.[214] There, the high court stated the right was to a "meaningful high school education…[preparing] them to function productively as civic participants."[215] They declared this should be done by "ensuring…the resources necessary" and "a system of accountability" to provide such an opportunity.[216]

The New Hampshire Supreme Court addressed school property taxes, their proportionality, and reasonableness in *Claremont School District v. Governor*,[217] the court followed Kentucky's criteria of a "constitutionally adequate educational policy from *Rose v. Council for Better Education, Inc.*[218] and expanded on them with seven "aspirational guidelines" pertaining to providing public school children by providing them such abilities as "sufficient oral and written communication skills" and an understanding of history, wellness, and skills to compete and make "informed choices" in an evolving world.[219]

The Washington Supreme Court has also addressed the issue under Washington Constitution, article nine, section 1 – which states it is "the paramount duty of the state to make ample provision for the education of all children residing within its borders."[220] The Washington high court provided some of the opportunities that the state constitution guarantees while also reserving a broader interpretation by stating that they did not "deal with the [educational concepts mentioned] as fully definitive of the State's paramount

[213] *Id*. at 316.
[214] 100 N.Y.2d 893 (2003) (*Campaign II*).
[215] *Id*. at 908.
[216] *Id*. at 930.
[217] 142 N.H. 462, 470 (1997).
[218] 790 S.W.2d 186 (KY Supreme Ct. 1989).
[219] 142 N.H. at 474-75.
[220] Seattle School District v. State, 90 Wn.2d 476, 511 (WA Supreme Ct. 1978).

duty."[221] Some of the educational opportunities mentioned were "[equipping] children for their role as citizens and as potential competitors," to be able to "participate intelligent and effectively in our open political system," to "prepare them to exercise their First Amendment freedoms as sources and receivers of information," and to "[inquiry, study, evaluate, and gain] maturity and understanding."[222]

The Arizona Supreme Court considered the issue of public school finance in *Roosevelt Elementary School Dist. No. 66 v. Bishop*,[223] in which several districts and parents opposed the state's public school finance system violated the Arizona Constitution, as "[t]he quality of elementary and high school facilities in Arizona [varied] enormously" by district.[224] The cost of public education in Arizona was allocated as 45 percent from the state, 45 percent from local districts, and 10 percent from the United States and the "counties collectively."[225] Rather than focus on the privileges or immunities clause of the Arizona Constitution,[226] the Arizona high court relied on article eleven, which is dedicated in its entirety to education.[227] Article Eleven, Section One provides that "[t]he Legislature shall enact such laws as shall provide for the establishment and maintenance of a general and uniform public school system."[228]

The Arizona high court found that the statutes "are inherently incapable of achieving their constitutional purpose" by providing that 45 percent of revenue was

[221] *Id*. at 519.
[222] *Id*. at 518-19.
[223] 179 Ariz. 233 (1994).
[224] *Id*. at 236.
[225] *Id*. at 238.
[226] Arizona Constitution, Article Two, Section 13
[227] 179 Ariz. at 244.
[228] *Id*. at 240.

dependent upon property values in each district.[229] However, the high court emphasized that although the system does not satisfy the constitutional mandate, the state constitution "does not require perfect equality or identity," suggesting that providing for special needs in some districts would not violate the uniformity clause, and that disparities other than those resulting from the state's financing system do not implicate article eleven.[230] The high court also noted that the Arizona Constitution acknowledged that an "enlightened citizenry is critical to the existence of free institutions, limited government, economic and personal liberty, and individual responsibility," so "financing a general and uniform public school system is in our collective self-interest."[231] The high court concluded that the article eleven, section 1 "requires the legislature to enact appropriate laws to finance education in the public schools in a way that does not itself create substantial disparities among schools, communities, or districts." *Id*.

The Supreme Court of Oregon examined the issue of public school financing in *Coalition for Equitable School Funding, Inc. v. State*.[232] Plaintiffs similarly situated to those in the aforementioned cases claimed the state legislature violated Oregon Constitution, article eight, section 3 by failing to provide "for the establishment of a uniform, and general system of Common schools" and violated article one, section 20 by "[denying] the equal 'privileges, or immunities" guaranteed by that section.[233]

[229] *Id*. at 243.
[230] *Id*. at 243-44.
[231] *Id*. at 244.
[232] 311 Ore. 300 (1991).
[233] *Id*. at 305-06.

In finding against the plaintiffs, the Oregon high court relied on a provision added to the Oregon Constitution[234] specifically addressing the funding of public schools.[235] The "Safety Net" constitutionally "requires reliance on local property taxes" to fund public schools "including funding to meet state standards."[236] Thus, the Oregon Supreme Court states, they are following the state Constitution. The state high court reiterated its observation made in *Olsen v. State ex rel Johnson*,[237] that the high court should not be interpreted as believing "that the [Oregon system] is politically or educationally desirable" because the high court's "only role is to pass upon [the system's] constitutionality."[238]

A. Funding Disparities

The issue of funding disparities in public school finance has been addressed by case law in many states where the courts often cite to *Rodriguez* as a measure for meeting the rational basis test.

One example is *School Board v. Louisiana State Board of Elementary & Secondary Education*.[239] There, the Fifth Circuit compared inter-parish disparities in Louisiana educational expenditures to those in *Rodriguez*.[240] Some of the Court's reasoning for rejecting an equal protection challenge was that the percentages of funding were slightly less disparate compared to those in *Rodriguez* by 4 to 16 percent.[241] Furthermore, districts

[234] Oregon Constitution, Article Eleven, Section 11(a), the "Safety Net."
[235] 311 Ore. at 308.
[236] *Id*. at 312.
[237] 276 Ore. 9 (1976).
[238] 311 Ore. 313; Citing Olsen, 276 Ore. 9, 27 (1976).
[239] 830 F.2d 563 (5th Cir. 1987).
[240] *Id*. at 574.
[241] *Id*.

in Louisiana had greater ability to control public school finance than the Texas districts, such as a sales tax authority and no limit to local ad valorem taxation.[242]

IV.

POST-*SERRANO* SCHOOL FUNDING REFORM IN CALIFORNIA

A. Following *Serrano v. Priest*

Following *Serrano*, the California legislature made various attempts to correct the system.[243] The legislature tried to equalize revenue limits per student based on the 1972-73 revenue per pupil.[244] The state provided some assistance to districts to achieve this goal, such as temporarily limiting revenue increases for high spending districts while allowing poorer districts to increase revenue faster.[245] However, a flaw in this system was that "several large, urban districts were high-spending districts" with "large percentages of disadvantaged students," but the limits were applicable to the districts under the system.[246] In response to criticism, the legislature created Education for Disadvantaged Youth, one of many future categorical programs that would "[direct] additional state funds to large urban districts."[247]

The Los Angeles Superior Court, on later review of *Serrano* on remand, rejected the legislature's response efforts because they did not equalize revenue fast enough and local residents could override their respective district's revenue limits with a majority vote.[248]

[242] *Id*. at 575.
[243] Eric J. Brunner & Jon Sonstelie, California's School Finance Reform: An Experiment in Fiscal Federalism, Ch. 3, page 55. Page 65
[244] *Id*.
[245] *Id*.
[246] *Id*.
[247] *Id*.
[248] *Id*. at 66.

The resulting system continued to receive criticism. First, it was argued that the resulting system was actually more unequal than its predecessor.[249] Second, the system resulted in the distribution of some local funds to other districts.[250] This may have been a factor in local districts voting to lower their ad valorem taxes with the knowledge that some of their money could go elsewhere.[251] In addition, it may have discouraged giving at the local level. Finally, it may have contributed to decreased public school enrollments in some districts because of students leaving for private schools.[252] Up until at least the mid-2000s, revenue limits were highly determinative of district revenue, and "categorical revenue is added to that base."[253]

i. The Passage of Proposition 13

California voters passed Proposition 13 in 1978, setting a "one percent limit on the property tax rate and gave to the legislature the authority to allocate the revenue from that rate among local governments."[254] A school district's revenue limit "was the revenue per pupil it received from the property tax and state aid."[255] The revenue limits were gradually raised as the disparity between districts decreased.[256] Notably, governance of school districts remained a local function.[257] Voluntary contributions and local educational foundations became increasingly common for local districts.[258] Essentially though, a

[249] *Id*. at 74.
[250] *Id*. at 75.
[251] *Id*.
[252] *Id*. at 76.
[253] *Id*.
[254] *Id*.
[255] *Id*.
[256] *Id*. at 67
[257] *Id*.
[258] *Id*. at 78.

"district's revenue limit was the revenue per pupil it received from [their allocation of property taxes] and state aid."[259]

Several years after Proposition 13, some localities tried to supplement revenue with parcel taxes, based off of real estate parcels and not the value of the parcel as a whole, by local ballot through the initiative process.[260] This was allowed under Section Four of Proposition 13 as a "special tax" levied subject to the support of two-thirds of local voters.[261]

ii. "Improvements" for Public School Finance: Late 1970s – 1990

After Proposition 13, various attempts were made to encourage a sufficient public school finance system. The following non-exhaustive list details some of these attempts.

> "Assembly Bill 8" (1979) – Provided a method by which property taxes were divided at the state level.
>
> "Senate Bill 813" (1983) – Expanded educational resources, enhanced curriculum standards and requirements, extended school days, and extended the school year.
>
> California State Lottery (1984) – Created by constitutional amendment and provided education a percentage of the proceeds.
>
> "Proposition 98" (1988) and "Proposition 111" (1990) – Guaranteed a minimum level of funding for K-14 education. Proposition 98 provides that in exchange for this minimum level of funding, each public school must prepare and submit for public viewing a School Accountability Report Card (SARC).[262] California Education Code Sections 33126 and 33126.1 set out what information must be submitted with a SARC.[263]

[259] *Id*. at 66.
[260] *Id*. at 80.
[261] *Id*.
[262] California Department of Education website, http://www.cde.ca.gov/TA/ac/sa/questions.asp.
[263] California Education Code Section 33126 & Section 33126.1. Some of the requirements include (33126(b)(1)A-B): pupil achievement by grade level per standardized testing and statewide assessment, progress toward reducing dropout rates, estimated expenditures per student, types of services funded, and progress toward reducing class sizes and teaching loads.

"Proposition 39" (2000) – Lowered the supermajority vote required to a 55% vote for approval of local general obligation bonds (buildings only)??????

iii. *Daniel v. California* (1999)

In 1999, *Daniel v. California*[264] was filed on behalf of African-American and Latino high school students attending public school in Inglewood, California.[265] The students claimed that they were denied equal access to Advanced Placement courses "in violation of the equal protection and education clauses of [the California Constitution.]"[266]

iv. *Williams v. California* (2000)

In 2000, *Williams v. California*[267] resulted in a significant settlement by the parties that provided more money for public education.[268] There, plaintiff school children argued that "a lack of basic materials, unqualified teachers, and unsafe facilities in many of the state's poorest schools" resulted in violations of federal and state equality guarantees.[269] On behalf of the school children, the ACLU argued that numerous schools throughout the state were "so grossly inferior that the conditions simply shock the conscience."[270] The school children alleged and provided evidence of severely understaffed schools, mice-infested classrooms, unsanitary restroom facilities, and an excessive student population

[264] Complaint, Daniel v. State, No. BC214156 (L.A. Super. Ct. July 27, 1999), available at http://classes.lls.edu/archive/manheimk/civrts/inglewood.html (last visited April 20, 2015).
[265] Christopher R. Lockard, Note: In the Wake of Williams v. State: The Past, Present, and Future of Education Finance Litigation in California, 57 Hastings L.J. 385, 386 (December 2005).
[266] *Id*.
[267] Filed in San Francisco Superior Court on May 17, 2000, as case No. 312236.
[268] Lockard at 386.
[269] *Id*.
[270] *Id*. at 404.

that resulted in most classrooms not having nearly enough desks or books.[271] The parties settled out of court, allowing for $1 billion in new funding to public schools and guaranteeing millions of dollars to schools ranking in the bottom of statewide categories.[272]

In 2008, the state legislature provided more flexibility to districts in deciding how to use money from 39 categorical programs for "any educational purpose" for the next few years and was extended through Senate Bill 70 in 2011.

B. California: Recent Funding Sources and Progress in Limiting Per-Pupil Revenue Disparity Since *Serrano*

In 2012-13, California's average revenues based on the average dollars per student by district were derived from: 64 percent Revenue Limit, 9 percent Federal Revenue, 20 percent Other State Revenue, and 7 percent Other Local Revenue.[273] In 2010-11, state funding was derived from: 57 percent State Aid, 23 percent Local Property Taxes, 6 percent Other Local Sources, 12 percent Federal Sources, and 2 percent from the State Lottery.[274]

In 2012-13, California districts averaged $8,823 per student in expenditures and $8,794 per student in revenues.[275] As a general comparison to the disparity in *Serrano v. Priest* (1-4-13 ratio of revenue between the districts of Baldwin Park, Los Angeles, and Beverly Hills[276]), the numbers for 2012-13 are:[277]

[271] *Id*. at 405-408. This is only a brief and generalized summary of the conditions at the schools. For example, one school with 1,200 students had one bathroom with four stalls for females.
[272] *Id*. at 412-13.
[273] Ed-Data website: Fiscal, Demographic, and Performance Data on California's K-12 Schools, http://www.ed-data.k12.ca.us.
[274] Public Policy Institute of California: School Finance, Margaret Weston (November 2012) http://www.ppic.org/main/publication_quick.asp?i=1040.
[275] *Supra* note 273.
[276] Rodriguez, 411 U.S. at 595.
[277] *Supra* note 273.

Baldwin Park
Unrestricted resources -- $6,987
Restricted Revenue Limit Resources -- $123
Federal Restricted Resources -- $725
State Restricted Resources -- $1,374
Local resources restricted -- $8
Total -- $9,216

Los Angeles
Unrestricted resources -- $7,676
Restricted Revenue Limit Resources -- $36
Federal Restricted Resources -- $1,135
State Restricted Resources -- $1,729
Local resources restricted -- $40
Total -- $10,616

Beverly Hills

Unrestricted resources -- $12,312
Federal Restricted Resources -- $452
State Restricted Resources -- $833
Local resources restricted -- $684
Total -- $14,281

This is a considerable improvement in limiting the disparity since *Serrano*. However, the amounts are still thousands of dollars per student. The amounts provided above do not reflect how that revenue is used, which is dependent on how each district allocates its budget. For example, there may be considerable differences between how much is spent on supplies, books, teachers, before and after school programs, trade programs, facilities, administration, staff, faculty, and other areas or individuals that may require funding.[278]

[278] *Id*.

C. The Current California System

In 2013, California passed the Local Control Funding Formula (LCFF) to begin in the 2013-14 school year.[279] The LCFF replaced most "previously existing K-12 funding streams, including revenue limits and most state categorical programs" with the creation of "base, supplemental, and concentration grants."[280] The LCFF will gradually be implemented over eight years with local educational agencies (LEAs) receiving a "Transition Entitlement" based on adjustments to their 2012-13 funding levels. LEAs consist of local entities governing education such as county offices, school districts, and charter schools.[281] The California Department of Education website of the LCFF overview delineates the expected components of the LCFF once fully implemented.[282]

D. Effects of the Decisions and Legislation on Californians

Californians have undoubtedly felt the impact of the California Supreme Court's decision in *Serrano* and the response by the California legislature.[283]

Students continue to experience the brunt of the impact. Even with revenue and spending changes, students are not immune or always benefiting from the process.

[279] California Department of Education website, http://www.cde.ca.gov/fg/aa/lc/
[280] California Department of Education website, Local Control Funding Formula Overview, http://www.cde.ca.gov/fg/aa/lc/lcffoverview.asp
[281] California Department of Education website, http://www.cde.ca.gov/fg/aa/lc/
[282] California Department of Education website, Local Control Funding Formula Overview, http://www.cde.ca.gov/fg/aa/lc/lcffoverview.asp
[283] Williams S. Koski, Teacher Collective Bargaining, Teacher Quality, and the Teacher Quality Gap: Toward a Policy Analytic Framework, 6 Harvard Law & Policy Review 67, 77-81 (2012) (part of a symposium Education: Equality of Opportunity). In addressing an analytic framework for teacher employment laws and policies – an indispensable and invaluable portion of the equation for a successful educational system – Professor Koski names several of the interests he believes are at stake in this process: children, the state, school districts, administrators, and teachers and their collective organizations.

Many parents are aware of the impact their place of residence has on the quality of education their children receive. This is apparent by the trend of some families moving children to private schools if they can afford to do so. Also, it is not uncommon for local real estate agents to be well aware of trends in the quality of education in school districts because their clients, those seeking housing, are often concerned with public schools for their current or future children or for an indication of the quality of the community.

District employees are also impacted by changes in public school finance. This often varies by district depending on the financial stability of the district and the quality of any public union, which may have district employee membership.

Generally, people from poorer socio-economic backgrounds and racial and ethnic minorities remain the most disadvantaged. Also, residing within a large district has sometimes been disadvantageous because funding often does not meet the requirements for a larger district with more students.

V.

WHY THE SUPREME COURT OF THE UNITED STATES WOULD LIKELY REAFFIRM *RODRIGUEZ* WERE IT TO REVISIT THE ISSUE OF INEQUALITY IN PUBLIC SCHOOL FUNDING

The Supreme Court of the United States issued the *Rodriguez* opinion in 1973. The composition of the Court has undergone significant change over that span of over 40 years. No justice from *Rodriguez* remains on the Court. *Rodriguez* "[effectively foreclosed

educational finance reform] in the federal courts."[284] However, if the Court ever revisits the issue, the changed composition would likely have some influence over the outcome.

A. The Court's Composition

Rodriguez was a 5-4 decision.[285] The majority opinion was delivered by Justice Powell and joined by Chief Justice Burger, Justice Stewart, Justice Blackmun, and Justice Rehnquist. Justice Stewart also filed a concurring opinion.

Majority – *Rodriguez*

Justice Powell → Justice Kennedy

Chief Justice Burger → Chief Justice Rehnquist → Chief Justice Roberts

Justice Stewart → Justice O'Connor → Justice Alito

Justice Rehnquist → Justice Scalia

Justice Blackmun → Justice Breyer

Several dissenting opinions were filed. Justice Brennan filed one. Justice White, joined by Justice Douglas and Justice Brennan, filed a second. Justice Marshall, joined by Justice Douglas, filed a third.

Dissent – *Rodriguez*

Justice Brennan → Justice Souter → Justice Sotomayor

Justice White → Justice Ginsburg

Justice Marshall → Justice Thomas

Justice Douglas → Justice Stevens → Justice Kagan

[284] Henry M. Levin & William S. Koski, Twenty-five Years After Rodriguez: What Have We Learned? 102 Teachers College Record 480-513, 506-07 (June 2000).
[285] 411 U.S. 1.

i. Wealth as a Suspect Classification

The Supreme Court of the United States has rarely found wealth as a suspect classification warranting strict judicial scrutiny. In *Harper v. Virginia State Board of Elections*,[286] the Supreme Court found poll taxes unconstitutional under the Equal Protection Clause. The decision was limited to the context of wealth as a standard for participation in elections.

It is unlikely a majority of the Court would find wealth as a suspect classification in the case of public school finance. Chief Justice Roberts, Justice Scalia, Justice Thomas, Justice Alito, and Justice Kennedy would likely not find wealth as a suspect classification.

In addition, it is possible that Justice Breyer, Justice Sotomayor, Justice Kagan, or Justice Ginsburg might not find wealth as a suspect classification.

It is very possible that the Supreme Court of the United States' current composition would rule against finding wealth as a proper suspect classification for education finance by a margin of 9-0.

ii. Education as a Fundamental Right

Justice Thomas and Justice Scalia would likely not find a fundamental right to education. Although many state high courts have found education as a fundamental right using language from their respective state constitutions, the United States Constitution has not changed. Education is not expressly mentioned in the Constitution. Furthermore, Justice Thomas and Justice Scalia would likely not find a fundamental right to education attaches to other fundamental rights or provisions expressly stated in the Constitution.

[286] 383 U.S. 663 (1966).

Chief Justice Roberts and Justice Alito would likely agree with Justice Thomas and Justice Scalia on the same or similar grounds.

Justice Breyer, Justice Sotomayor, Justice Kagan, and Justice Ginsburg would likely not find a fundamental right to education, but it is possible that one or more could find such a right.

Justice Kennedy could potentially be the determining vote if the Supreme Court of the United States revisits the issue of education finance and the above separation occurs in the voting. Justice Kennedy would likely not find a fundamental right to education.

VI.

CALIFORNIA'S PUBLIC VIEWPOINTS AND POLICY CHALLENGES IN THE WAKE OF *SERRANO*

Brunner and Sonstelie expressed what they perceive as people's views of the changes in education finance depending on political views and beliefs regarding the allocation of governmental powers.[287]

People preferring decentralized government likely attribute the decline of "school resources and student achievement" to *Serrano* and subsequent legislation.[288] For these individuals, shifts to private schools, voluntary contributions, and parcel taxes are all evidence that people prefer and believe in more local control of school finance.[289] Furthermore, any attempt to shift public school governance to the state level will further disconnect local concerns about public education, causing further damage to the system.[290]

[287] Brunner & Sonstelie at 88.
[288] *Id*.
[289] *Id*.
[290] *Id*. at 90.

Fiscal conservatives believe that local property was subsidizing education, but this has ended with the passage of Proposition 13 and families have chosen to spend less on education.[291] Disappointing test and assessment results are more a result of inefficient allocation than of under-allocation.[292]

Supporters of centralized government see the system since *Serrano* as a work in progress.[293] More resources are directed to serving low-income students, private school enrollment is on par with the rest of the country, and any extra local financing efforts are insignificant and uncommon.[294]

Furthermore, the disconnect between finance and governance is holding the system back and more time is necessary before making any determination about the system's potential for long-term stability and success, and this may take a long time to achieve support from local voters who in all likelihood distrust state government and do not want to close their district offices and eliminate their school boards.[295]

In addition, individual districts participating in collective bargaining with their employees may cause funds to be used in ways that do not maximize their potential in helping students.[296] The use of categorical programs and other funding mechanisms to aid disadvantaged students still passes through the districts, and the districts may not use the money efficiently for students.[297]

[291] *Id*. at 88.
[292] *Id*.
[293] *Id*.
[294] *Id*. at 89.
[295] *Id*.
[296] *Id*.
[297] *Id*.

A. Policy and Complications

Serrano found a fundamental right to education within the California Constitution for California public school students. However, it is increasingly apparent that education is a right enforced differently than others. For example, legislative attempts are made sometimes to alter voting procedures, but the process itself is very objective. If you are a legally qualified voter, you register and you may vote.

Education is a much more subjective right to enforce. Most children are not financially equipped to independently provide for their own education. In spite of minor attempts to increase local school finances, taxes are the only way to ensure some enforcement of a right to an education.

Another unanswered question is exactly how to interpret the California Supreme Court's *Serrano* holding. What kind of education does a child have a right to enforce if a child has a fundamental right to education? Arguments regarding a child's enforceable right to education are commonly preceded by adjectives like adequate, sufficient, similar, or equal. "The fundamental conceptual difference" between two of these concepts – equality and sufficiency – is that "equality is necessarily comparative or relational while sufficiency is not."[298] The term "adequate" has become a common replacement for the term "equal" in education finance litigation and reform.[299] This approach appears to be aimed at achieving ends rather than focusing on means, including finances and other resources. Koski and Reich argue that the adequacy framework actually "gives state sanction to a system that permits objectionable inequalities," that focus too much on outcomes and does

[298] William S. Koski & Rob Reich, When "Adequate" Isn't: The Retreat from Equality in Educational Law and Policy and Why it Matters, 56 Emory Law Journal 545, 590 (2006).
[299] *Id*. at 549.

not give proper consideration to the opportunities available for underprivileged children compared to their wealthier peers.[300] They argue that any actual shifts away from "equality" and toward an "adequacy" approach are diminishing underprivileged children's education while simultaneously producing growth for their wealthier peers.[301]

In addition, it is unclear if one approach to public school finance reform is preferred over, or more efficient than, others. As proposed by numerous authors and lawsuits, state constitutional challenges are a common way to pursue change.[302] Legislative proposals and reforms tend to garner attention on the matter as well. Immediate or necessary change may be better addressed through lawsuits to rectify particularly terrible situations.[303] Long-term public school finance education reform is likely better addressed through the legislative process.[304] The possibility also exists of mounting education finance litigation serving as a catalyst for long-term reform through the legislative process. It is

[300] *Id*. at 550.
[301] *Id*. at 618.
[302] Lockard, *supra* note 265. *See also* Jeannie Oakes & Martin Lipton, "Schools that Shock the Conscience": Williams v. California and the Struggle for Education on Equal Terms Fifty Years After Brown, in Symposium, Rekindling the Spirit of Brown v. Board of Education, 6 Afr.-Am. L. & Pol'y Rep. 152; 11 Asian L.J. 234 (May 2004); 15 Berkeley La Raza L.J. 25; 19 Berkeley Women's L.J. 353; Calif. L. Rev. (2004); Elizabeth Cairns, From the Proxy to the Principal: Disappointments in California's Education Finance Policy and the Benefits of a Human Rights Approach, 48 Santa Clara L. Rev. 709 (2008); Complaint, Daniel v. State, No. BC214156 (L.A. Super. Ct. July 27, 1999), available at http://classes.lls.edu/archive/manheimk/civrts/inglewood.html (last visited April 20, 2015); Williams v. California, Filed in San Francisco Superior Court on May 17, 2000, as case No. 312236.
[303] *See* Williams v. State, mice in classrooms.
[304] The Supreme Court of the United States and others have repeatedly stated that legislative bodies are in a much better position to make policy decisions, especially for unique issues such as education.

apparent that the success of California schools is rather dependent on reforming educational funding systems, whether they are motivated by litigation or otherwise.[305]

Who decides what and how much is taxed, who does the taxing, and who is taxed are functions of societal norms and ideologies. California's tax system arguably plays a significant role in public school finance. The system is considered very progressive, which is very beneficial in a thriving economy because it draws in significant revenue. However, when the economy underperforms, revenue significantly drops. Although various "rainy day funds" have been established in times of economic prosperity, they have not sufficiently covered the revenue necessary for programs, including education, in economic downturns and recoveries. This is one area where immense research and planning is necessary to implement a program that will ensure sufficient operation of programs during downturns and recoveries.

Another possibility that may in some form come to fruition is the re-organization or reallocation of public school education governance. With money being collected and distributed at the state level, individual districts are provided a sum of money with some constraints, but have immense flexibility in choosing how to use their funding as long as they come up with a plausible justification for the spending.

B. Hypotheses and Conclusions Based on the Researched Information

As observed by many over the past few decades, disparities in public school finance and education remain. The finance disparity has decreased in California, but legislation and other factors have slowed financing growth in general. Although money plays an

[305] William S. Koski, Can We Sue Our Way Out of This Mess? Silicon Valley Education Foundation's Thoughts on Public Education blog (September 28, 2010).

immutable role in the equation, local education governance, allocation of resources, and personnel decisions have all come to the forefront as absolutely critical considerations.

It is a difficult, and maybe impossible, proposition to achieve equality, quality, sufficiency, or adequacy in education throughout different schools. The Court in *Brown v. Board of Education* declared that separating children among schools on the basis of race created inherently unequal schools.[306]

It can also be argued that any separation of children among schools is inherently unequal. Providing even close to identical resources, personnel, remedial-standard-advanced placement coursework opportunities, trade training opportunities, extracurricular activities, before and after school programs, and special education is idealistic and likely unfeasible. Even if the numbers could be equal, it is very difficult to quantify or achieve equality in how these are delivered as a part of a child's right.

Other solutions are necessary to achieve a public school system that allows every child the meaningful decision of whether to utilize opportunities available at their school with the knowledge that they would find those opportunities at other schools. The following are suggestions that could be researched and given trial runs in a small area in order to determine their potential short- and long-term feasibility:

> Providing qualifying students with opportunity to travel to other school or district to participate in program/class.
>
> Work more with community colleges and colleges to provide higher learning opportunities for public school children.
>
> Re-evaluating where costly programs should be located every 3-5 years.
>
> Centralizing some of the governance functions

[306] 347 U.S. 483 (1954).

Improving and reforming relationships between teachers' unions and governing bodies of education.[307]

Incentives for local communities to support schools

- Lower crime
- More attractive to business, improve economy
- Contributions at district level – voting of school boards and community members on the spending of funds.
    - Limiting this spending to direct benefits for students and not for creating jobs, beautifying school, etc.

Borrowing ideas from other states or foreign countries.

A right to a "substantially equal" education would provide equal opportunities to the fullest extent possible and provide real alternatives to achieve those opportunities. Determination of whether education is "substantially equal" among schools or districts must be a holistic determination. Too much reliance or expectation on any program or group of individuals (e.g., students, teachers, administrators) will create an inefficient system.

The system could be judged by a multitude of considerations. Some include:

The satisfaction of students, parents, employees, and the community.[308]

Results with standardized testing/assessments, extracurricular/trade activities, and within the community.

Interest/desire to live in a particular area.

Interest/desire to work in a particular district or school.

[307] *See Generally* Williams S. Koski, Teacher Collective Bargaining, Teacher Quality, and the Teacher Quality Gap: Toward a Policy Analytic Framework, 6 Harvard Law & Policy Review 67, 87-90 (2012) (part of a symposium Education: Equality of Opportunity). Professor Koski three approaches for the future of teacher employment laws and collective bargaining: radical reform with unknown and unintended consequences, modest reform to encourage experimentation, and litigation and the constitutional backstop. Professor Koski argues that a modest approach to policy making that considers who resolves each individual issue and how it should be addressed to lessen alleviate the burden of competing interests.

[308] Williams S. Koski, Teacher Collective Bargaining, Teacher Quality, and the Teacher Quality Gap: Toward a Policy Analytic Framework, 6 Harvard Law & Policy Review 67 (2012) (part of a symposium Education: Equality of Opportunity). "Public schools that serve low-performing and disadvantaged children…are staffed by the least experienced teachers, the lowest paid teachers, and the teachers who are most likely to move to different schools or be laid off during lean economic times."

Limited consideration of impartial ranking systems.

- Alec (27th in Education, C Education Policy Grade)
  - Criteria
    - State academic standards
      - Private school choice programs
      - Charter schools
      - Teacher quality
      - Online learning
      - Home school regulation burdens
- US News and World Report
  - CA most gold medal schools of any state?
- NEA
- Global report card
- NCES

Graduates and Graduation

- Graduation rates
- Continuing education
- Pursuing trade school/program

Incentives for well-qualified teachers/administrators[309]

- Loosely tied to results incentives
- Somehow provide incentive for people to work in underperforming districts. If benefits/salary/incentives are equal across the board, less people will be willing to go to underperforming districts.

CONCLUSION

"[The Supreme Court of the United States] recognized long ago that mere access to the courthouse doors does not by itself assure a proper functioning of the adversary process."

~ Justice Thurgood Marshall, *Ake v. Oklahoma*, 470 U.S. 68, 78 (1985)

The excerpt above comes from a case in which the Supreme Court held a state pursuing criminal charges against an indigent defendant must take steps to protect that

[309] William S. Koski, After Schools Chief Race Drama, Time to Get Back to Work on Education, San Francisco Chronicle (November 7, 2014). "Reform of our schools, ranging from improvement of teacher quality to closing the achievement gap to increasing knowledge of science, technology, engineering and mathematics, will require collaboration and compromise…We need to strengthen the teaching profession by making it more difficult to become a teacher (thereby making the profession more competitive and higher performing), and then provide the resources to fairly pay and improve the working conditions for teachers, particularly those in the toughest assignments."[309]

defendant's rights when it is demonstrated that it is necessary to address a significant factor at trial, such as providing a psychiatrist to help prepare an insanity defense.[310]

One of many differences between the rights of indigent criminal defendants and those of public school children is the Supreme Court of the United States has found rights explicitly and implicitly for the former throughout the history of the United States since the ratification and implementation of the United States Constitution and Bill of Rights.

The Supreme Court of the United States is unlikely to be willing to find a fundamental right to education or wealth as a suspect classification as it pertains to public school finance under the equal protection clause of the 14th Amendment or any other provision. Barring constitutional amendment, plaintiffs are unlikely to succeed on an education finance claim under the United States Constitution.

"Equal" – not "adequate," "sufficient," or "similar," – should be the adjective used in education finance reform. Modifying this adjective with "substantially" would address the concern over whether actual equality in education is even possible. A definition of "substantially equal" should include language stating that among other clarifications, a "substantially equal" education is one that provides opportunities that a reasonable person would expect to pursue if they were to choose to pursue and achieve a particular outcome, meaningfully exercise their rights and freedoms, make informed decisions, and any other imaginable benefit to having a society where education begins for children on level ground.

State courts have overwhelmingly found protections for children in the context of public school finance within state equal protection clauses or other state constitutional provisions.

[310] 470 U.S. 68 (1985).

Education finance reform has not easily or effectively occurred. Litigation costs time and money. There is no "pause button" for schoolchildren on their education while the terms of their K-12 education are litigated or legislated and implemented over time. As Justice Marshall observed in his dissent in *Rodriguez*, such a system inevitably has irreversible consequences for the progress of children's education. If litigation or implementing legislation begins when a child is in kindergarten and is not completed until that child reaches an additional level, they do not get to go back and repeat that time.

Efforts by states and localities to reform education are usually motivated by at least some noble intentions on behalf of public school children. However, there must be a more efficient allocation of time, money, and resources that society can afford.

As articulated by every court referred to in this paper, it is to our benefit as a society that public schoolchildren are prepared accordingly to serve as the future of the United States rather than "necessary" casualties of education finance reform.

The alternative to continue beating the already beaten path is Congressional intervention in the form of a constitutional amendment providing a right to public school education, statutory reform, or other solution at the federal level. In determining how to handle such significant change and alleviate the concern and criticism over potential catastrophe, we now have a forty-year experimental sample size since *Rodriguez* from fifty states and the District of Columbia to learn from in promulgating monumental reform.