August 2015

Equal Protection - Property Taxes as a Method of Funding Public Education; San Antonio Independent School District v. Rodriguez

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CONSTITUTIONAL LAW—EQUAL PROTECTION—PROPERTY TAXES AS A METHOD OF FUNDING PUBLIC EDUCATION

San Antonio Independent School District v. Rodriguez, 93 S. Ct. 1278 (1973).

SUIT WAS BROUGHT in U.S. District Court for the Western District of Texas challenging the constitutionality of the Texas school financing system on the theory that it discriminated on a basis of wealth, permitting provision of a higher quality of education to be offered the children in property-rich school districts while residents pay a lower tax rate, thus denying equal protection of the law.[1] The District Court found the laws forming this system unconstitutional on this basis. Appeal brought the case to the Supreme Court in October of 1972, where it was reversed.[2]

The Texas School-Financing System

The Texas Constitution declares a "general diffusion of knowledge" to be essential and makes the "efficient" provision thereof a duty of the State Legislature,[3] giving it power to create school districts authorized to collect *ad valorem* property taxes "for management and control" of schools and erection of buildings.[4] A Permanent School Fund, established in 1854, was endowed with public land to insure the State income for the school system.[5] In 1968 it provided but ninety-eight dollars per pupil across the State through the Available School Fund.[6]

Additional State support for schools comes from the Texas Minimum Foundation School Program, eighty per cent of the money derived from the State's general revenue, twenty per cent from the school districts on a formula basis supposedly allocated on ability to contribute.[7] But dispersal of this fund is contingent on the school district's maintenance of a prescribed minimum salary schedule,[8] and the funds the school receives if it fulfills this condition precedent are awarded on the basis of the experience and scholastic degrees of the staff of the schools within the district. Thus, a poor district with less money to spend on

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[1] Rodriguez v. San Antonio Independent School Dist., 337 F. Supp. 280 (W.D. Tex. 1971).

[2] San Antonio Independent School Dist. v. Rodriguez, 93 S. Ct. 1278 (1973) [hereinafter cited as Rodriguez].

[3] TEX. CONST. art. 7, sec. 1.

[4] TEX. CONST. art. 7, sec. 3.

[5] TEX. CONST. art. 7, sec. 2 and 5.

[6] Rodriguez, 93 S. Ct. 1278, 1285 n. 31.

[7] *Id* at 1284.

[8] TEX. CODE ANN., Education § 16.301(c) (Vernon 1972).

salaries to attract teachers with greater experience and advanced degrees will receive less money from the Minimum Foundation Program than a wealthy district which is able to attract better qualified teachers by offering higher than the minimum salaries.[9]

Local property taxation must pay the remaining cost of educating the children within the district. Funds available from *ad valorem* property taxes are dependent upon the district's value of property per pupil to be educated, leaving the poorest district with the highest equalized tax rate in the area studied for this case also with the least to spend per pupil despite their admirable effort.[10]

The Supreme Court's Rationale

Appellees contended that the Texas system of school financing discriminated on a basis of wealth and that education was a fundamental right.[11] Either thesis, if proved true, would have made the law subject to strict scrutiny by the Court.[12] Calling the lower court's analysis "simplistic," the Court, in approaching the discrimination on the basis of wealth, alleged to offend the equal protection clause of the fourteenth amendment, set forth a dual test for determining if discrimination against a suspect class of poor was present: there must be an identifiable class of poor against whom the discrimination is irrationally directed, and the deprivation suffered because of impecuniosity must be "of significant consequence," not merely relative.[13] Using this test, the Court found no discrimination on the basis of wealth as there was no definable class of "poor" against whom such discrimination was directed. Although the wealthiest district had the highest average family income and the poorest district the lowest, there was no such correlation of family wealth to district wealth between the extremes, and some poor families lived in the most advantaged districts.[14] Having thus eliminated the suspect class possibility, the Court indicated that had there been one, the deprivation suffered

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9 Berke, Carnevale, Morgan and White, *The Texas School Finance Case: A Wrong in Search of a Remedy*, 1 J. OF L. AND EDUCATION 659 (1972).

10 Rodriguez, 93 S. Ct. 1278, 1285.

11 *Id.* at 1282.

12 Under strict scrutiny the state law is not entitled to the presumption of constitutionality, but rather the state carries the burden of justification, and must show a compelling interest, and that the law is necessary to further that interest. Rodriguez, 93 S. Ct. 1278, 1288. The strict scrutiny standard of review must be used when the law apparently offends the equal protection clause of the fourteenth amendment by discrimination based on a suspect classification such as wealth, Bullock v. Carter, 405 U.S. 134 (1972); or when dealing with a fundamental constitutional right, such as free speech, Police Dept. of Chicago v. Mosley, 408 U.S. 92 (1972), interstate migration, Shapiro v. Thompson, 394 U.S. 618 (1969), or racial discrimination, Brown v. Bd. of Ed. of Topeka, 347 U.S. 483 (1954).

13 Rodriguez, 93 S. Ct. 1278, 1289.

14 *Id.* at 1293.

was not significant. Some education was assured to all; the "poor," had they been a suspect class, had not been denied access to education, though it might not be an education equal to that provided others.[15] The equal protection clause had not been offended on either ground.[16]

Turning to the fundamental right alternative, while noting the obvious importance of education in the U.S., the Court rejected it as a fundamental right, for the Constitution does not set it forth as such.[17] Since neither criteria for requiring strict judicial scrutiny was met, the Court granted the traditional presumption of constitutionality to the Texas law, requiring but a rational relationship between the State's legitimate purpose and the means employed to pursue it.[18] Using this test, they found the system constitutional, as they felt it assures a basic education to all Texas school children while permitting and encouraging local participation and control, a legitimate State objective.[19]

Three separate minority opinions were written by the dissenting justices. Justice Brennan dissented on the ground that education was surely a fundamental right.[20] Justice White, with Justices Douglas and Brennan concurring, thought local control and decision making were but an illusion in the poor districts who were so limited in available funds as to be left with no money for options, rendering the law without rational connection of pursuit and objective.[21] Justice Marshall wrote, and Justice Douglas concurred with his dissent, objecting to the narrow test used for determining whether the law offended the equal protection clause of the fourteenth amendment. He found a disadvantaged class easily definable as those living in the poor school districts, and argued that the concept of necessarily absolute deprivation was contrary to previous Supreme Court decisions. "The equal protection clause is not addressed to the minimal sufficiency but rather to the unjustifiable inequalities of state action."[22] Similarly, he protested against the strictly constitutionally defined fundamental rights criteria, citing a trend by the Court in recent cases to consider interests closely related to constitutionally defined rights as subject to scrutiny proportional to their importance to those rights. "Only if we closely protect the related interests from discrimination do we ultimately ensure the integrity of the constitutional guarantee itself."[23]

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15 *Id.* at 1291.
16 *Id.* at 1292.
17 *Id.* at 1295.
18 *Id.* at 1300.
19 *Id.* at 1308.
20 *Id.* at 1311.
21 *Id.* at 1312.
22 *Id.* at 1325.
23 *Id.* at 1333.

Impact of This Decision

Prior to this case a number of state courts and lower federal courts had come to the opposite result in similar cases. In 1971, the California Supreme Court heard the case of *Serrano v. Priest.*[24] The original action was brought in the Superior Court, Los Angeles County, asking declaratory judgment; defendants filed a general demurrer, admitting all material facts well pleaded.[25] Among these factual assumptions was the allegation that the California school financing system discriminated on the basis of wealth, not only of the school districts, but also of the families therein.[26] The bona fide "suspect classification" thus created required strict judicial scrutiny of the case, the State being forced to show a compelling state interest and that the law was necessary to further that interest,[27] which it failed to do.

Van Dusartz v. Hatfield,[28] a Minnesota case, came to the same conclusion on a similar procedural basis; a motion to dismiss for failure to state a claim upon which relief could be granted, which was treated as a motion for summary judgment, with plaintiff's allegations of discrimination on a basis of wealth taken as true.[29] The Federal District Court relied heavily on the *Serrano* decision as well, in finding the Minnesota school financing system unconstitutional.

The Michigan Supreme Court in *Milliken v. Green* held that the State failed to meet the "rationality" test, as an equalization plan failed to equalize educational opportunity,[30] the Michigan Constitution making education a responsibility of the State.[31] In a New Jersey case, the New Jersey Superior Court noted that the New Jersey Constitution required the Legislature to provide for maintenance and support of a "thorough and efficient" system of free education.[32] Therefore, the Court found that the financing system discriminated against pupils and school districts with low taxable property value by imposing unequal burdens for a common State purpose.[33] Whether the U.S. Supreme Court would have come to these same conclusions is doubtful.[34]

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

[25] Daar v. Yellow Cab Co., 67 Cal. 2d 695, 433 P.2d 732, 63 Cal. Rptr. 724 (1967).

[26] Serrano v. Priest, 5 Cal. 3d 584, 601, 487 P.2d 1241, 1252, 96 Cal. Rptr. 601, 612 (1971).

[27] Harper v. Virginia St. Bd. of Elections, 383 U.S. 663 (1966).

[28] Van Dusartz v. Hatfield, 334 F. Supp. 870 (D. Minn. 1971).

[29] Fed. R. Civ. P. 12 (b)(6).

[30] Milliken v. Green, 389 Mich. 1, 203 N.W.2d 457 (1972).

[31] MICH. CONST. art. 8, sec. 2, reading in part "The legislature shall maintain and support a system of free public school . . . education . . . ."

[32] N.J. CONST. art. 8, sec. 4.

[33] Robinson v. Cahill, 118 N.J. Super. 223, 287 A.2d 187 (1972).

[34] Rodriguez, 93 S. Ct. 1278, 1289.

Equal Protection of the Law

"The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives injury."[35]

From first reading of this case to last, one is left with the feeling there is injury here which has not been remedied by this decision. Wherein lies the flaw? There are two facts the significance of which the Supreme Court neglected to recognize. The Texas Minimum Foundation grants are contingent on a district's maintenance of a prescribed minimum salary schedule;[36] without this money, the Available School Fund would produce but ninety-eight dollars per child in a school district.[37] When spending within the State varies from about $300 to $800 per pupil,[38] less than $100 is guaranteed by the State. If the people in the property-poor districts refuse to tax themselves at a rate greater than the richest pay, for which they could not be condemned, they would have very little indeed to spend on education, losing their Minimum Fund Program when unable to meet the minimum salary condition precedent. Edgewood, the poor district whose statistics were used in this case, had but twenty-six dollars per pupil left when its allocation was paid to the Minimum Foundation Fund in 1968, despite maintaining the area's highest tax rate.[39] Surely no one would seriously suggest any minimum basic education could be provided with $124 per pupil. So while methodically pursuing local participation and control, and a decent minimum teacher salary scale, the Texas school-financing plan neglects to make adequate provision for securing a basic education for the children of Texas, thereby failing to meet even the Court's rational pursuit of legitimate state objective test. Locally controlled schools and well-paid teachers are but means to the objective; when they become inconsistent with it, they must be subordinated to it, not vice versa.

The Court indicates the proper remedy is in the legislatures of the various states.[40] Indeed, this is where change must be made, prodded either by constituency pressure or the courts. But, as Justice Marshall's dissent reasoned,[41] when the existing system of school finance discriminates beneficially to some, is neutral to most, and seriously

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35 Marbury v. Madison, 5 U.S. (1 Cranch) 137, 163, 2 L. ED. 60, 69 (1803).

36 TEX. CODE ANN., Education § 16.301(c) (Vernon 1972), reading "Payment of at least the minimum salary schedule provided herein shall be condition precedent: (1) to school's participation in the Foundation School Fund; and (2) to its name being placed or continued upon the official list of affiliated or accredited schools."

37 Rodriguez, 93 S. Ct. 1278, 1285 n. 31.

38 *Id.* at 1287.

39 *Id.* at 1285.

40 *Id.* at 1310.

41 *Id.* at 1347.

injures but a few, what pressure can be mustered to overcome obvious legislative inertia?[42] School districts do not necessarily conform to legislative districts,[43] further lessening the possibility of electing a representative to champion the cause.

The Supreme Court of the United States has, in this case, held that a state may pass laws which treat its citizens grossly unequally so long as the state is pursuing a legitimate objective, though the inequity in no way furthers that objective, and the victims of it are so because of circumstances over which they may have no control, and from which they have little or no chance of escape.[44] The Court has foreclosed this equal protection clause pursuit of redress for those people injured by such state laws.

> The powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten, the constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing if these limits may, at any time, be passed by those intended to be restrained?[45]

For Future Reference

Can a state, then, set up a system of free, public school education with compulsory attendance, prescribe, as the sole means of support above a questionable minimum, that the schools are to be funded by the exclusive means of *ad valorem* property taxes at the will of the voters within the school district, then draw up the separate school districts with total disregard (or worse yet, deliberate gerrymandering[46]) of the amount of property wealth within them available for such support? Perhaps not.

There is a facet of this problem which the Court chose to ignore in *Rodriguez*. It was briefly alluded to by District Judge Miles W. Lord in *Van Dusartz v. Hatfield*. In a footnote of that decision he states "[P]upil Plaintiffs . . . ask no more than equal capacity for local voters to raise school money in tax referenda, thus making the democratic process all the more effective."[47]

Justice Stewart, in his concurring opinion in *Rodriguez*, points out that the equal protection clause gives no substantive constitutional

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[42] The Rodriguez case was postponed two years in the District Court in the hope the Texas Legislature would act. Rodriguez, 93 S. Ct. 1278, 1316 n. 2.

[43] TEX. CONST. art. 7, sec. 3.

[44] Rodriguez, 93 S. Ct. 1278, 1343.

[45] Marbury v. Madison, 5 U.S. (1 Cranch) 137, 176, 2 L. ED. 60, 73 (1803).

[46] Anyone who doubts that this could happen should read the tale of Winfield Township, New Jersey, where the property owners pay the total value of their homes every seven years in taxes to support their schools alone. Robinson v. Cahill, 118 N.J. Super. 223, 240, 241 n. 12, 287 A.2d 187, 196 & n. 12 (1972).

[47] Van Dusartz v. Hatfield, 334 F. Supp. 871, 875 n. 9 (D. Minn. 1971).

rights, with a single exception recently established by the Court: there is recognized, under this clause, a right to have one's vote, once granted by the state, weigh equally with all others for which the franchise has been similarly granted.[48]

Texas gives local control to the school districts, allowing them supposed options of taxing themselves for the quality of education desired by a majority of the voters within a district,[49] but the offer is not available to all on an equal basis at the ballot box, and no one makes a pretense that it is.[50] The underlying flaw in supporting local schools by an ad valorem property tax when the per pupil valuation of taxable property within the various school districts is grossly unequal is that a vote for a mill of tax for schools in a property-poor area does not buy the same quantum of education as a vote for a mill of tax in a property-rich area.[51] As surely as malapportionment of the constituency to the number of representatives elected abridges the right to vote within legislative districts,[52] uneven apportionment of the taxable property wealth as to support required by schools abridges the votes of voters in school districts. Equal options are not available in response to equal votes, resulting in subtle but concrete debasement of the right to vote itself. Voters in the property-poor districts are effectively disenfranchised. As was stated in *Reynolds v. Sims:*

> And the right of sufferage can be denied by debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of franchise.[53]
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> . . . .
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> The resulting discrimination against those individual voters living in disfavored areas is easily demonstrated mathematically. Their right to vote is simply not the same right to vote as those living in a favored part of the state. . . . One must be aware that the Constitution forbids "sophisticated as well as simple minded modes of discrimination."[54]

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48 Rodriguez, 93 S. Ct. 1278, 1310 n. 2.

49 *Id.* at 1305.

50 "[I]t is no doubt true that reliance on local property taxation for school revenues provides less freedom of choice with respect to expenditures for some districts than for others, . . ." Rodriguez, 93 S. Ct. 1278, 1305.

51 "Texas virtually concedes that its . . . dual system of financing education could not withstand the strict judicial scrutiny that this Court has found appropriate in reviewing legislative judgments that interfere with fundamental constitutional rights." Rodriguez, 93 S. Ct. 1278, 1287.

52 "[E]ffecting a gross disproportion of representation to voting population . . . disfavors the voters in the counties in which they reside, placing them in a position of constitutionally unjustifiable inequity *vis-a-vis* voters in irrationally favored counties." Baker v. Carr, 369 U.S. 186, 207 (1962).

53 Reynolds v. Sims, 377 U.S. 533, 555 (1964).

54 *Id.* at 563.