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Karen Richardson

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Education: The Constitutionality of Oklahoma's Public School Financing System: Does the State Have a Duty to Provide an Adequate Education for All Schoolchildren?

In the last two decades, educational reform has become an increasingly important issue not only in the political arena, but also in the judiciary. Educators and politicians alike have questioned the effectiveness of existing public school financing systems within the United States. Recognition of the importance of providing adequate educational opportunities for all of the nation's children has produced several challenges to state school financing systems across the United States.

In recent years, Oklahoma has joined a large group of other states whose school financing systems have been legally challenged by disgruntled school districts, educators, and parents.¹ The purpose of this note is to review the existing school funding system in Oklahoma and to analyze the most recent legal challenges to the constitutionality of Oklahoma's financing system. This note first discusses recent developments in school finance litigation in other states. That discussion includes a review of the different ways in which varying state courts and legislatures have responded to the issue of providing adequate or equal educational opportunities for children in public schools.

Second, this note focuses on the present status of Oklahoma's educational system, including recent political and legislative reform. Next, this note reviews school finance litigation in Oklahoma, including a recent action which challenges the constitutional validity of the existing school financing system.² Finally, the note analyzes the major issues which should be addressed by the court in this recently-filed case and the possible judicial and legislative responses to those issues.

I. Developments in School Finance Litigation

Varying degrees of educational reform have occurred in many states over the past several decades. Much of state legislative reform has been instigated as a result of lawsuits filed by parents and educators concerned about the

1. See *Dupree v. Alma School Dist. No. 30*, 279 Ark. 340, 651 S.W.2d 90 (1983); *Serrano v. Priest*, 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971); *Horton v. Meskill*, 172 Conn. 615, 376 A.2d 359 (Conn. 1977); *Rose v. Council for Better Education*, 790 S.W.2d 186 (Ky. 1989); *Helena Elementary School Dist. No. 1 v. State*, 769 P.2d 684 (Mont. 1989); *Robinson v. Cahill*, 62 N.J. 473, 303 A.2d 273, cert. denied, 414 U.S. 976 (1973); *Seattle School Dist. No. 1 v. State*, 90 Wash. 2d 476, 585 P.2d 71 (1979); *Pauley v. Kelly*, 162 W. Va. 672, 255 S.E.2d 859 (1979); *Washakie County School Dist. No. 1 v. Herschler*, 606 P.2d 310 (Wyo.), cert. denied, 449 U.S. 824 (1980).

2. *Fair School Fin. Council v. Oklahoma*, No. CJ-90-7165 (D. Okla. filed Sept. 6, 1990) (*Fair School II*).

financial inequities existing among school districts.³ The controversy and legal debate over educational reform primarily concerns the extent to which local, state, and federal governments are obligated to provide free public educational opportunities to every child in the United States.

The importance of education in our society was recognized by the United States Supreme Court in 1954 in *Brown v. Board of Education*.⁴ In *Brown*, the Court recognized education as perhaps the most crucial function of state and local governments.⁵ The Court reasoned that the enactment of compulsory school attendance laws and the great expenditures for education demonstrate that democratic society places great importance on education.⁶ The Court further stated that a child's future success in life is directly related to that child's educational opportunities, and as a result, education is a right which must be made available to all on equal terms.⁷

The concept of equal educational opportunity, stemming from *Brown*, created much confusion among state and federal courts as to whether the idea of equal opportunity should be applied in the context of school financing.⁸ Courts questioned whether the language in *Brown* could be broadly interpreted to require states to provide for an equal distribution of school funds among all school districts.⁹ In both state and federal cases involving challenges to the constitutionality of school funding systems, one of the basic arguments is that funding disparities between school districts create unequal opportunities for students from land-poor districts.¹⁰

The United States Supreme Court ultimately resolved the issue of whether education is a fundamental right subject to protection under the United States Constitution in *Rodriguez v. San Antonio Independent School District*.¹¹ *Rodriguez* acknowledged the crucial function that education has in today's society. Nevertheless, the Court found that the fact that education is important to society does not necessarily make education a fundamental right.¹² *Rodriguez* stated that the key to resolving whether a fundamental right exists is to determine whether the right is explicitly or implicitly guaranteed by the Constitution.¹³ The Court concluded that education is not a right afforded either explicit or implicit protection under the Constitution.¹⁴

Rodriguez also upheld the validity of the use of local property taxes to finance public schools.¹⁵ The Court found that, in spite of the fiscal ineq-

3. See generally Thompson, *School Finance and the Courts - A Reanalysis of Progress*, 59 Educ. L. Rep. (West) 945 (June 21, 1990).

4. 347 U.S. 483 (1954).

5. *Id.* at 493.

6. *Id.*

7. *Id.*

8. See generally Thompson, *supra* note 3.

9. *Id.*

10. *Id.*

11. 411 U.S. 1 (1973).

12. *Id.* at 30.

13. *Id.* at 33-34.

14. *Id.* at 35.

15. *Id.* at 49.

uities existing between various school districts, the use of local property taxes was a reasonable method of furthering the goal of local control over schools.¹⁶

In upholding the constitutionality of the Texas school financing system, the Court reasoned that a rational relationship existed between the funding scheme and the state's interest in maintaining local control over education.¹⁷ *Rodriguez* held that as long as this rational basis test is met, the existing fiscal disparities between districts would not justify replacing local ad valorem taxation as the primary method of financing education.¹⁸

Rodriguez has had a significant impact on the evolution of school finance litigation in the United States. *Rodriguez* conclusively established that any future legal challenges to state school financing systems could not be predicated on the equal protection clause of the United States Constitution. As a result, subsequent lawsuits have been limited to challenging school funding systems only on the basis of the construction of the various state constitutions.¹⁹

In addition, *Rodriguez* has been helpful in delineating the legal issues and public policy considerations which must be reviewed by the state courts facing constitutional challenges of school funding systems. Among the important issues identified by *Rodriguez* are whether education is a fundamental right and whether maintaining local control over education is a legitimate state purpose justifying the use of local property taxes to finance public education. Those two issues have been consistently addressed by many state courts in subsequent lawsuits²⁰ and are important for an understanding of the current school finance litigation in Oklahoma.

II. State Court Responses to School Financing Challenges

A. Equal Protection Guarantees

One of the first state courts to take the decisive step of requiring a state legislature to enact statutory changes to a school financing system was the California Supreme Court. In *Serrano v. Priest*,²¹ the court found that the funding disparities existing between the California school districts were in violation of the equal protection clause of the California constitution.²² The

16. *Id.*

17. *Id.* at 55.

18. *Id.* at 44-55.

19. See generally Thompson, *supra* note 3.

20. See, e.g., *Edgewood Indep. School Dist. v. Kirby*, 777 S.W.2d 391 (Tex. 1989); *Fair School Fin. Council v. State*, 746 P.2d 1135 (Okla. 1987) (*Fair School I*).

21. *Serrano v. Priest*, 18 Cal. 3d 728, 557 P.2d 929, 135 Cal. Rptr. 345 (1976) (*Serrano II*).

22. *Id.*, 557 P.2d at 958, 135 Cal. Rptr. at 373-74. In *Serrano I*, the California Supreme Court ruled that if the plaintiff's allegations of inequities were true then the California system of school finance violated the equal protection clauses of the California and United States Constitutions. *Serrano v. Priest*, 487 P.2d 1241, 1244, 96 Cal. Rptr. 601 (Cal. 1971) (*Serrano I*). *Serrano I* was decided before *Rodriguez* made it clear that maintaining local control over education was a legitimate state purpose. *Rodriguez* made challenges of violations of the equal protection clause of the United States Constitution very difficult. See *Serrano II*, 557 P.2d at 948, 135 Cal. Rptr. at 364.

court subsequently ordered the state legislature to reduce spending disparities to bring the funding system into compliance with the state constitution.²³ *Serrano* implied that equal opportunity guarantees mandated that education funding not be conditioned on a student's residence, which might or might not be in a highly taxed district where per-pupil spending is much greater than in other districts.²⁴

Based upon the judicial mandate in *Serrano*, the California legislature enacted several significant changes to the school financing system.²⁵ Those legislative enactments were later reviewed by an appellate court and found to be sufficient to bring the school financing system into compliance with the California constitution.²⁶

Serrano represents an important development in school finance litigation for several reasons. Of primary significance is the fact that the *Serrano* court felt compelled to take an active role in improving California's education system. By setting out specific measures and standards for attaining an equitable school financing system,²⁷ the court assumed a quasi-legislative role which arguably encroached upon legislative authority. *Serrano* illustrates that despite the fact that the state legislature has the duty to create a system of school finance, the judiciary has the responsibility to make sure that state school financing systems meet constitutional standards.

Serrano also resulted in a highly centralized state system of schools in California.²⁸ The legislative enactments mandated by *Serrano* required the state to exert more influence over the distribution of funds to California school districts.²⁹ A major criticism of *Serrano* has been that local control over education was destroyed. In light of the fact that maintaining local control over education has been considered one of the the primary objectives of public education systems,³⁰ *Serrano* represents a radical change in school finance litigation.

Another important aspect of *Serrano* is the recognition of the improbability of attaining absolute dollar for dollar equality in the distribution of school funds because of differences in costs and needs among school districts.³¹ Because of *Serrano's* acknowledgment that insignificant fiscal disparities among school districts are justified by legitimate state interests,³² the focus of future challenges to the California school finance system should pass from equitable considerations to whether school districts can provide an adequate level of education for all students.³³

23. *Id.*

24. See generally Thompson, *supra* note 3.

25. See generally Ward, *Remedies in School Finance Equity Litigation*, 36 Educ. L. Rep. (West) 1 (1987).

26. *Serrano v. Priest*, 181 Cal. App. 3d 866, 226 Cal. Rptr. 584, 620 (1986).

27. *Id.*, 226 Cal. Rptr. at 607-13.

28. See generally Ward, *supra* note 25.

29. *Id.*

30. See *Rodriguez v. San Antonio Indep. School Dist.*, 411 U.S. 1 (1973).

31. *Serrano v. Priest*, 181 Cal. App. 3d 866, 226 Cal. Rptr. 584, 616 (1986).

32. *Id.*, 226 Cal. Rptr. at 615.

33. See generally Ward, *supra* note 25.

B. "Efficiency" As A Constitutional Standard

Another approach to addressing the issue of disparities in funding between school districts was taken in *Edgewood Independent School District v. Kirby*.³⁴ *Edgewood* declined to address the plaintiff's allegations that the Texas system of school finance violated the equal protection clause of the Texas constitution.³⁵ Instead, the court found that the school funding system violated a specific clause of the Texas constitution, which requires that the legislature provide an "efficient" system of public schools.³⁶

Edgewood defined, in considerable detail, the term "efficient" as it was used in the Texas constitution.³⁷ The court concluded that the framers of the state constitution, in declaring that the purpose of an efficient system of education was to provide a "general diffusion of knowledge," did not intend for large funding disparities among school districts to be considered "efficient."³⁸

The court's reluctance to base its decision on the Texas constitution's equal protection clause might be explained by the court's recognition that efficiency does not mean *absolute* equality. The court acknowledged that a per capita distribution of funds is not a requirement of the efficiency provision of the state constitution.³⁹ Nevertheless, the court clearly stated that "efficiency" does not allow concentrations of resources in property-rich school districts when other districts cannot even raise sufficient revenues to meet minimal educational standards.⁴⁰

In finding the Texas school financing system unconstitutional, the *Edgewood* court made a specific point of stating that it would not encroach upon the legislature's responsibility of making the finance system meet constitutional standards.⁴¹ The court limited its decision to defining the nature of the constitutional mandate and determining whether that mandate had been met.⁴² Interestingly, the court did require the Texas legislature to act quickly to bring the school financing system up to constitutional standards.⁴³ To date, the legislature has failed to formulate a new method of financing public schools which has been met with judicial approval.⁴⁴

34. 777 S.W.2d 391 (Tex. 1989).

35. *Id.* at 398.

36. *Id.* at 397. TEX. CONST. art. 7, § 1 provides: "A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the legislature of the state to establish and make suitable provision for the support and maintenance of an efficient system of public, free schools."

37. *Edgewood*, 777 S.W.2d at 394-95. The court rejected the state's argument that the term efficient meant "simple and inexpensive," and instead found that legislative intent clearly showed that the term connoted "the use of resources so as to produce results with little waste. . . ." *Id.*

38. *Id.* at 396.

39. *Id.* at 397. The court did refer to the issue of equality when stating that "not only the legislature, but also this court has previously recognized the implicit link that the Texas Constitution establishes between efficiency and equality." *Id.*

40. *Id.*

41. *Id.* at 399.

42. *Id.*

43. *Id.*

44. N.Y. Times, Sept. 26, 1990, at C5, col. 4. Under judicial order, the Texas legislature

In *Rose v. Council for Better Education*,⁴⁵ the Supreme Court of Kentucky similarly followed *Edgewood* in declaring the entire system of common schools in Kentucky to be unconstitutional.⁴⁶ The clause of the Kentucky constitution upon which the *Rose* court based its decision provides: "The General Assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the State."⁴⁷ In defining the term "efficient," the court listed the requirement of establishing uniformity among school districts, the constitutional right of all children to an adequate education, and the necessity of providing equal educational opportunities to all, regardless of place of residence or economic circumstance.⁴⁸ The *Rose* court went one step further than *Edgewood* when it recognized education as a basic, fundamental right in Kentucky.⁴⁹

Edgewood and *Rose* illustrate the tremendous discretion which state courts have in interpreting constitutional provisions. Courts have been forced to reject equal protection challenges in school financing litigation because of the difficulty in achieving absolute funding equality. Nevertheless, many courts faced with evidence of large funding disparities have felt compelled to rely on other constitutional provisions as a basis for enacting meaningful change in public education.⁵⁰

C. Maintenance and Support of a Free Education System

Some jurisdictions have upheld existing state school financing systems against claims of violations of equal protection clauses or education provisions of state constitutions. For example, *Board of Education, Levittown v. Nyquist*⁵¹ held that the system for financing public schools in New York did not violate either the federal or state constitutions' equal protection clauses or the education provision of the state constitution.⁵²

44. N.Y. Times, Sept. 26, 1990, at C5, col. 4. Under judicial order, the Texas legislature enacted changes to the financing system during special sessions in the spring of 1990. Despite those changes, a lower court struck down the legislature's new plan, which added \$528 million to school financing through raised taxes. The lower court ruled that the system was still inadequate to ensure proper funding for property-poor school districts.

45. 790 S.W.2d 186 (Ky. 1989).

46. *Id.* at 215.

47. *Id.* at 190; see KY. CONST. § 183.

48. *Rose*, 790 S.W.2d at 208-15.

49. *Id.* at 206.

50. See *Helena Elementary School Dist. No. 1 v. State*, 769 P.2d 684 (Mont. 1989); *Rose v. Council for Better Educ.*, 790 S.W.2d 186 (Ky. 1989); *Dupree v. Alma School Dist. No. 30*, 279 Ark. 340, 651 S.W.2d 90 (1983); *Washakie County School Dist. No. 1 v. Herschler*, 606 P.2d 310 (Wyo.), *cert. denied*, 449 U.S. 824 (1980); *Pauley v. Kelly*, 162 W. Va. 672, 255 S.E.2d 859 (1979); *Seattle School Dist. No. 1 v. State*, 90 Wash. 2d 476, 585 P.2d 71 (1979); *Horton v. Meskill*, 172 Conn. 615, 376 A.2d 359 (1977); *Robinson v. Cahill*, 62 N.J. 473, 303 A.2d 273, *cert. denied*, 414 U.S. 976 (1973); *Serrano v. Priest*, 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971).

51. 57 N.Y.2d 27, 453 N.Y.S.2d 643, 439 N.E.2d 359 (1982).

52. *Id.*, 439 N.E.2d at 368. In addressing the issue of the violation of the United States Constitution, *Nyquist* followed *Rodriguez*. The *Nyquist* court found that the system of school

Nyquist's analysis and interpretation of the education article of New York's constitution provides helpful insight into the possible judicial interpretation of Oklahoma's constitution because of the substantial similarity between New York's education article and the education provisions of the Oklahoma constitution. New York's education article states: "The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated."⁵³ *Nyquist* pointed out that the language of the education article did not require education to be equal or even substantially equivalent in every district.⁵⁴

In analyzing the term "system" as used in the education article, *Nyquist* reasoned that financial support measures could not be considered a "system" as the term was used by the framers of the New York constitution.⁵⁵ Instead, a "system" refers to school attendance rules, required courses, teacher qualifications, pupil transportation and other matters which make up the education program of the state.⁵⁶

Accordingly, the court held if those standards are maintained and supported then the constitutional mandate under the education article is satisfied.⁵⁷ *Nyquist* concluded that, because the average per-pupil expenditure in New York exceeds all other states but two, a sound, basic education was being provided as required under the education article of the state constitution.⁵⁸

Two important facts should be emphasized about *Nyquist's* decision to uphold New York's system of school finance. First, per-student spending in New York was higher than in most other states. That evidence persuaded the *Nyquist* court that New York's school financing system met constitutional standards. If per-pupil expenditures in New York were lower than in most states, the court might have been compelled to hold differently.

Secondly, the *Nyquist* plaintiffs based their allegations on the fact that New York was not providing an equal distribution of school funds.⁵⁹ As noted earlier, courts are reluctant to require state legislatures to meet the almost impossible standard of absolute equality in school funding.⁶⁰ This reluctance might partially explain *Nyquist's* decision to uphold the validity of New York's system of school finance against the plaintiffs' claims.

finance in New York was reasonably related to a legitimate state purpose of maintaining local control over public education. Accordingly, the court found that the system was not in violation of either the state or federal constitution's equal protection clauses. *Id.*, 439 N.E.2d at 366.

53. N.Y. CONST. art. XI, § 1, *quoted in Nyquist*, 439 N.E.2d at 368. OKLA. CONST. art. XIII, § I provides that "[t]he Legislature shall establish and maintain a system of free public school wherein all the children of the State may be educated."

54. *Nyquist*, 439 N.E.2d at 368.

55. *Id.*

56. *Id.*, 439 N.E.2d at 369.

57. *Id.*

58. *Id.*

59. *Id.*, 439 N.E.2d at 361.

60. *See supra* notes 1, 39.

The California, Texas, Kentucky, and New York cases discussed above illustrate the different approaches being taken by many of the states in the nation. In each of the four cases, the courts relied strongly on their own interpretations of the somewhat ambiguous language of the applicable state constitutional provisions.

III. *The Current Status of Oklahoma's Educational System*

In recent years, many of Oklahoma's residents, educators, and politicians have become increasingly concerned over the quality of public education provided to Oklahoma's schoolchildren. This concern is reflected not only in the political arena, but also in the Oklahoma judiciary.

Several lawsuits relating to the issue of the effectiveness of the school finance system have been brought by school districts and parents who are concerned with the large fiscal inequities which exist between the school districts. *Fair School Finance Council v. Oklahoma (Fair School II)*⁶¹ represents a recent attempt by educators to force the state to lessen the fiscal disparities between the school districts and to provide adequate educational opportunities for Oklahoma's schoolchildren.

A. *The Structure of the Oklahoma School Financing System*

Public education in Oklahoma is financed by a combination of local, state, and federal resources. The primary portion of funding stems from levies on real and personal properties within the school districts.⁶² Under the Oklahoma constitution, revenues from ad valorem⁶³ taxation must be apportioned among school districts based upon the legal average daily attendance for the preceding school year.⁶⁴ The school districts are also allowed to levy ad valorem taxes. The Oklahoma constitution provides that any school district, upon certification of need by the Board of Education, can levy an additional tax of fifteen mills on all taxable property.⁶⁵

Because the system of local financing is based upon ad valorem taxes, the amount of revenues available for funding education varies greatly between school districts. Districts located in high property value areas have arguably greater financial resources and greater per capita spending per pupil than those schools in property-poor districts.⁶⁶

The state is another primary source of funding for public education in Oklahoma.⁶⁷ Oklahoma gives portions of the revenues generated from gross production taxes, motor vehicle license and registration fees, and rural

61. No. CJ-90-7165 (D. Okla. filed Sept. 6, 1990).

62. *Fair School Fin. Council v. State*, 746 P.2d 1135, 1138 (Okla. 1987) (*Fair School I*).

63. An ad valorem tax is a tax imposed on the value of property.

64. OKLA. CONST. art. 10, § 9(b).

65. *Fair School I*, 746 P.2d at 1138; see OKLA. CONST. art. 10, § 9(c). The term "mill" means one-tenth of one cent. Many states use a mill rate to compute property taxes.

66. Plaintiff's Petition at 11, *Fair School Fin. Council of Oklahoma*, No. CJ-90-7165 (D. Okla. filed Sept. 6, 1990) (*Fair School II*).

67. *Fair School I*, 746 P.2d at 1140.

electric cooperative taxes to school districts.⁶⁸ Two state programs, Foundation Program Aid and Incentive Aid, also dedicate funds to enable each school district to provide a basic education for the children of the district.⁶⁹ There are, however, limits to the amounts each school district may receive from these programs.⁷⁰ While the allocation of resources from the programs could be used to close the funding gap between property-rich and property-poor districts, limitations placed upon the minimum and maximum amounts of funding which each district can receive reduce the effectiveness of these programs.⁷¹

The federal government is the third source of revenue for financing Oklahoma public schools.⁷² However, federal monies are often restricted to specific uses and classes of people.⁷³ For that reason, federal funds are not very useful in reducing fiscal disparities among districts.⁷⁴

B. The Effectiveness of the Oklahoma School System

Recent United States Department of Education statistics ranked Oklahoma below a majority of the fifty states in average per-pupil expenditures, estimated average teacher salaries, advanced placement programs, and average ACT⁷⁵ achievement test scores.⁷⁶ Concern over the condition of the education system prompted members of the Oklahoma legislature to introduce House Bill 1017 into legislation.⁷⁷ As enacted, the new education legislation set new curriculum standards, limited class sizes, set new teacher salary requirements and performance standards, and potentially equalized funding among Oklahoma's 595 public school districts by distributing additional tax revenues to school districts.⁷⁸

To pay for the reforms, the new legislation provides for increases in corporate income taxes, state sales and use tax rates, personal income taxes,

68. Plaintiff's Petition at 6, *Fair School II* (No. CJ-90-7165).

69. *Fair School I*, 746 P.2d at 1140.

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. ACT stands for the American College Testing program, which gives college entrance exams to high school students.

76. Plaintiff's Petition at 8, *Fair School II* (No. CJ-90-7165). The United States Department of Education statistics ranked Oklahoma forty-fourth among the fifty states and the District of Columbia in average per-pupil expenditure in 1988. Oklahoma ranked below every state bordering Oklahoma except Arkansas. The estimated average teacher salary for 1989 in Oklahoma ranked forty-ninth in the nation. Oklahoma also ranked below every bordering state and the majority of other states in the percentage of schools offering advanced placement programs to students. In average ACT achievement test scores for 1989, Oklahoma ranked twenty-fourth out of twenty-eight states.

77. Daily Oklahoman, Sept. 7, 1990, at A1, col. 5. House Bill 1017 went into effect in 1991.

78. See 70 OKLA. STAT. § 18-114.1 to -114.7 (Supp. 1992) (salary); *id.* § 18-113.1 to -113.3 (class size); *id.* §§ 18-200 to -201, 18-300, 18-400 (additional funding); *id.* § 6-101.21 to -101.29 (performance standards); *id.* § 11-103.4 to -103.10 (curriculum).

and other revenue raising measures.⁷⁹ Nevertheless, critics of the education law argue that the additional revenues provided for in the legislation are not adequate to allow school districts to satisfy the education legislation's other requirements of increased teacher salaries and new class size limitations.⁸⁰

IV. School Finance Litigation in Oklahoma

Two Oklahoma cases deal with the validity of the school financing system under the state constitution. *Fair School Finance Council v. State (Fair School I)*⁸¹ addressed the issue of whether the school financing system satisfied the constitutional mandates of the equal protection clauses of the federal and state constitution.⁸² *Fair School Finance Council v. Oklahoma (Fair School II)*⁸³ challenges the constitutionality of the financing system on grounds other than equal protection.

A. *Fair School I*

In 1980, an Oklahoma non-profit corporation consisting of the boards of education of thirty-eight school districts brought an action against the state of Oklahoma and other state officials, alleging that Oklahoma's system of financing public schools violated the equal protection clause of both the federal and state constitutions.⁸⁴ Following *Rodriguez*, the Oklahoma Supreme Court concluded that the equal protection clause of the federal Constitution does not require Oklahoma's school financing system to guarantee equal expenditures per child.⁸⁵ However, the court found that the *Rodriguez* test for determining whether education is a fundamental right is inappropriate when determining whether education is a fundamental right under Oklahoma's constitution.⁸⁶

Under the restricted authority and delegated powers of the United States Constitution, Congress may only do what the federal Constitution has granted it the power to do.⁸⁷ Conversely, in Oklahoma, the state's authority is not strictly limited to what is explicitly or implicitly provided for in the state constitution.⁸⁸ Accordingly, the mere fact that education is specifically mentioned and provided for in the Oklahoma constitution does not necessarily mean that education is a fundamental right.⁸⁹

79. Daily Oklahoman, Sept. 7, 1990, at A1, col. 5.

80. *Fair School Fin. Council v. Oklahoma*, No. CJ-90-7165 (D. Okla. filed Sept. 6, 1990) (*Fair School II*).

81. 746 P.2d 1135 (Okla. 1987).

82. *Id.* at 1141.

83. No. CJ-90-7165 (D. Okla. filed Sept. 6, 1990) (*Fair School II*).

84. *Fair School I*, 746 P.2d at 1138.

85. *Id.* at 1147.

86. *Id.* at 1148-49. *See supra* notes 13-14.

87. *Fair School I*, 746 P.2d at 1149.

88. *Id.*

89. *Id.*; *see* OKLA. CONST. art. 1, §§ 5, 13.

Based upon a review of the Oklahoma constitution, *Fair School I* ultimately rejected the idea that equal educational opportunity, in the sense of equal expenditures per pupil, is guaranteed by express terms of the Oklahoma constitution.⁹⁰ However, the court left some leeway for future challenges against the Oklahoma finance system when it stated that the constitution does guarantee “a basic, adequate education according to the standards that may be established by the State Board of Education.”⁹¹

Fair School I emphasized the limited nature of the judiciary’s role in strictly scrutinizing or modifying the state’s school financing system, noting that Oklahoma’s constitution places very few restrictions on the legislature’s power to provide a school system for the state.⁹² When the constitutionality of a legislative act is in question, all reasonable doubt will be resolved in favor of finding the act valid.⁹³ Only if the legislature acted arbitrarily and capriciously will the act be declared unconstitutional.⁹⁴ In following the arbitrary and capricious standard, the court determined that the Oklahoma school finance system is constitutionally valid under the equal protection clause of the state constitution.⁹⁵

B. *Fair School II*

The plaintiff in *Fair School II* seeks a declaratory judgment and injunctive relief against the continued operation of the statutory scheme that provides the financing for Oklahoma’s public schools.⁹⁶ The plaintiff asserts that, under the existing statutory scheme of financing public schools in Oklahoma, children are being denied their constitutional right to a free, adequate education.⁹⁷

The basis for the plaintiff’s allegation is found in the provisions of the Oklahoma constitution which require the Oklahoma legislature to establish a system of free public education available to all the children of the state.⁹⁸ The plaintiff also relies on the statement made by the court in *Fair School I* which hinted that the school financing scheme might be found constitutionally invalid if any child in Oklahoma is deprived of an “adequate” education.⁹⁹ In support of its claim that the educational system in Oklahoma is inadequate, the plaintiff cites the lack of adequate funding of school districts.¹⁰⁰

90. *Fair School I*, 746 P.2d at 1149.

91. *Id.* This statement by the court paved the way for *Fair School II*.

92. *Fair School I*, 746 P.2d at 1150.

93. *Id.*

94. *Id.*

95. *Id.*

96. Plaintiff’s Petition at 12, *Fair School II* (No. CJ-90-7165).

97. *Id.* at 10.

98. OKLA. CONST. art. 1, § 5; *id.* art. 13, § 1.

99. *Fair School I*, 746 P.2d at 1149.

100. Plaintiff’s Petition at 8, *Fair School II* (No. CJ-90-7165). According to the plaintiff’s petition, the Oklahoma school districts are already levying the maximum amounts of local ad valorem taxes that are constitutionally permissible. The state and federal funding has not fully

V. *The Issues in Fair School II*

There are three major questions which should be addressed by the court in *Fair School II*. The first question involves the interpretation of the term "adequate" as used by Justice Opala in the *Fair School I* opinion. The second question is whether maintaining local control over education should remain a primary objective of Oklahoma's public school system. The final question raised by *Fair School II* is whether the court can and should encroach upon the authority of the legislative branch by mandating that the legislature change Oklahoma's scheme of school finance.

The answer to the above three questions should provide the *Fair School II* court with the basis for its decision as to whether the Oklahoma constitution requires Oklahoma to provide school children with an adequate education. The answer to those three issues will also determine whether, if required, such a constitutional mandate is presently being met by Oklahoma's existing system of school finance.

A. *Adequate Education*

The plaintiff in *Fair School II* alleges that the existing school financing system is not providing the children of Oklahoma with an adequate education as required by the education articles of the state constitution.¹⁰¹ However, the drafters of Oklahoma's constitution did not use the term "adequate" in those constitutional provisions. The education articles simply provide for the establishment and maintenance of a system of public schools in which all of the children of the state may be educated.¹⁰² The need to define the term "adequate" for purposes of the *Fair School II* litigation stems from Justice Opala's use of that term in *Fair School I*.¹⁰³

Although *Fair School I* implied in dicta that an adequate education might be a requirement under the state constitution, the education articles of Oklahoma's constitution provide little guidance as to the specific obligations of the legislature in establishing a system of public schools. When analyzing the language in a similar provision of the New York constitution, *Board of Education, Levittown v. Nyquist* found that the term "system" did not

compensated for inadequate local resources. Federal funds are limited to specific uses, and state funds are ineffective because of various statutory limitations. Although House Bill 1017 attempts to reform many problem areas within the education system, the plaintiff alleges that the measures to fund the reforms do not sufficiently meet the increased financial burden created by the education bill. House Bill 1017 reduces teacher-pupil ratios, raises minimum teacher salaries, and sets new accreditation standards. See *supra* note 78.

101. Plaintiff's Petition at 12, *Fair School II* (No. CJ-90-7165).

102. OKLA. CONST. art. 1, § 5; *id.* art. 13, § 1.

103. See *supra* note 99. *Fair School I* stated that the statutory scheme of financing schools could be constitutionally invalid if the system completely denied children an education or did not provide an "adequate" education. The court pointed out that the plaintiffs in *Fair School I* did not allege a complete denial of education nor an inadequate one. In fact, the plaintiffs admitted that "no children were in imminent danger of receiving a wholly inadequate education." *Fair School I*, 746 P.2d at 1151.

refer to school financing but instead referred to standards such as required courses, teacher qualifications, school attendance rules, pupil transportation, and other matters.¹⁰⁴

However, the *Nyquist* reasoning is flawed. A school funding plan is a necessary element in maintaining educational standards. If sufficient funding is unavailable to school districts, they will be unable to provide, among other things, qualified teachers, adequate transportation, computers, and adequate class space. For that reason, *Fair School II* should not adopt a *Nyquist*-type analysis of Oklahoma's education provisions. Because of the ambiguity of the education articles of the constitution, "adequacy" is an appropriate standard for measuring the constitutionality of Oklahoma's system of public schools.

The question still exists as to the appropriate test to be used for determining whether an adequate education is being provided to all school children in Oklahoma. Some courts have found that the test for the adequacy of an education system is whether it provides children with basic minimal skills to allow them to become useful citizens¹⁰⁵ or to permit the enjoyment of free speech and participation in the political process.¹⁰⁶

However, such a minimal standard of education would be extremely detrimental to Oklahoma. The future of a state depends upon the knowledge and skill of its citizens. The primary goal of educators, politicians, and courts should be to provide children with the education and skills necessary to allow them to compete and survive in an emerging global economy and in an increasingly complex political and social climate. Oklahoma needs citizens who have adequate communication and business skills to enable them to foster industrial, business, and political development in Oklahoma. Providing Oklahoma's children with an education which simply allows a person to enjoy freedom of speech or to become a useful citizen would not even come close to accomplishing that goal.

The appropriate test of an adequate education which should be adopted by *Fair School II* was outlined in *Rose v. Council for Better Education*.¹⁰⁷ First, an adequate education should provide children with sufficient communication skills and knowledge of political, economic, and social systems to enable them to be active participants in the political and social development of the state. In addition, children should be provided with the knowledge and skills necessary to enable them to pursue life work intelligently. Finally, public education should provide sufficient levels of academic or vocational skills to enable public school students to compete favorably

104. Board of Educ., *Levittown v. Nyquist*, 57 N.Y.2d 27, 453 N.Y.S.2d 643, 439 N.E.2d 359, 368-69 (1982).

105. *Fair School I*, 746 P.2d at 1149; see *Millers v. Childers*, 107 Okla. 57, 238 P. 204, 206 (1924).

106. *Rodriguez v. San Antonio Indep. School Dist.*, 411 U.S. 1, 38 (1973).

107. 790 S.W.2d 186 (Ky. 1989). The court reasoned that the use of the term "efficient" in the Kentucky constitution signified that Kentucky had an obligation to provide sufficient school funding to give the children of Kentucky an adequate education. See *supra* note 48.

with their counterparts in surrounding states, academically and in the job market.¹⁰⁸

The most important of the above-mentioned criteria is the ability of students to compete against their peers in the job market and in academics. The reason for its significance is that such a standard would be the best indicator that uniformity of opportunity of education is being provided. Uniformity of opportunity has been recognized by the Oklahoma judiciary as a primary goal of an education system.¹⁰⁹

If *Fair School II* adopts the above-described test for adequacy, the next step is to determine whether Oklahoma's existing system of school finance is presently allowing the state to provide an adequate education to all of Oklahoma's schoolchildren. The statistics presented by the plaintiff in *Fair School II* illustrate that Oklahoma ranked far below most states in per-pupil expenditures, teacher salaries, advanced placement programs, and scholastic achievement tests.¹¹⁰

Each one of the statistics cited in the *Fair School II* petition indicates that the Oklahoma system of public schools is not presently providing an adequate education to the state's schoolchildren. By ranking below a majority of other states in per-pupil expenditure, many districts in Oklahoma do and will lack the necessary resources to provide children with sufficient classroom space, textbooks, teachers, counselors, computers, and curricula to meet the requirements of basic education on a level equal with that of other states.¹¹¹ By not paying competitive teacher salaries, Oklahoma school

108. *Id.* at 212. According to *Rose*, an adequate education is one which has the ability to provide children with the following seven capacities: 1) sufficient communication skills to enable a student to function in a complex civilization; 2) sufficient knowledge of political, economic, and social systems to allow a student to make informed choices; 3) sufficient understanding of governmental processes to enable a student to understand issues that affect his or her community; 4) self-knowledge and knowledge of his or her mental and physical well-being; 5) an exposure to the arts to enable a student to appreciate his or her cultural or historical heritage; 6) sufficient training in academic or vocational fields to allow a student to pursue life work intelligently; and 7) sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market. *Id.*

109. *Fair School I*, 746 P.2d at 1149; see *School Dist. No. 25 v. Hodge*, 199 Okla. 81, 183 P.2d 575 (1947).

110. See *supra* note 75.

111. See generally Van Fleet & Boardman, *The Relationship Between Revenue Allocations and Educational Need as Reflected by Achievement Test Scores*, in STATUS AND IMPACT OF EDUCATIONAL FINANCE PROGRAMS 293, 303-09 (National Education Finance Project 1971). Studies have indicated the correlation between total revenue allocations per pupil and higher achievement levels. It is thus reasonable to assume that more financial expenditure produces greater educational achievement. One study showed that schools with low expenditures are limited in many aspects. Those schools have a narrow range of subjects taught, inadequate instructional equipment, insufficient supplies, poor facilities, and unsatisfactory working conditions for students and teachers. See Robinson & Protheroe, *Cost of Education: An Investment in America's Future*, in ERS REPORT at 34 (Educational Research Service 1987).

However, there are a number of additional factors which contribute to the quality of education, including socioeconomic status and the cultural level of the students' parents. The problematic aspects of accurately determining what would produce optimal educational achieve-

districts will be unable to hire the most qualified teachers to educate the state's children. Most significantly, the scholastic achievement test scores persuasively illustrate that Oklahoma's schoolchildren are and will be at a competitive disadvantage in academics and in the job market.¹¹²

The statistics clearly show that, in failing to lessen the disparities in school funding and to increase per-pupil spending in Oklahoma, the state is depriving children of the skills necessary to function in today's society. Education is a vital part of Oklahoma's future development and should be recognized as such by the state legislature and the judiciary. Accordingly, the court in *Fair School II* must find that providing an adequate education is a state constitutional requirement. Furthermore, the court must find that the existing statutory scheme in Oklahoma does not presently provide an adequate education to all children of the state.

B. *Maintaining Local Control over Education*

Before demanding that the Oklahoma legislature come up with a new method of financing public schools, *Fair School II* must first decide if legislative changes to the school financing system will undermine a legitimate state purpose of maintaining local control over education. The concern is that, in order to rectify the funding disparities caused by the existing system of local ad valorem taxation, the state must take a more active role in maintaining Oklahoma's school system. Giving the state more responsibility in funding education necessarily affects the fundamental principle of maintaining local control over education.¹¹³

Undeniably, maintaining local control over education is a primary objective of the Oklahoma system of public schools.¹¹⁴ Since the enactment of the first system of public schools, the initiative for the maintenance of schools has been vested in local citizens because they are the ones most directly affected by the education system.¹¹⁵ Maintaining local control over education has long been recognized as a legitimate state purpose which is rationally related to the method of financing schools through the use of local property taxes.¹¹⁶

ment has created some skepticism over the need for higher educational expenditures in order to achieve better educational opportunities for children.

112. Scholastic Aptitude Test scores such as the ACT have frequently been used to measure the effectiveness of public schools. However, there is an argument that for achievement test scores to be an adequate measure of the success of education and of the effects of increased per-pupil expenditures, it is necessary that the test scores used reflect the achievements of *all* students and not just those planning to go to college. See Robinson & Protheroe, *supra* note 111.

113. *Rodriguez v. San Antonio Indep. School Dist.*, 411 U.S. 1, 55 (1973).

114. *Fair School I*, 746 P.2d at 1146. *Fair School I* acknowledged that encouraging local participation and control over education is a primary objective underlying the Oklahoma school financing system. The court pointed out that an article of the School Code expressly mentions the goal of strengthening and encouraging local responsibility for public education. *Id.*; see 70 OKLA. STAT. § 18-101(2).

115. *Rodriguez*, 411 U.S. at 55.

116. See *supra* note 17.

However, the persons who created the public school system in Oklahoma probably never contemplated the gross disparities which currently exist among the school districts. How can the principle of maintaining local control over education remain a legitimate public purpose when a large portion of the children of the state are being deprived of an adequate education?

A new method of financing public schools would not necessarily take away the local districts' power to make decisions as to how to spend school funds received. For instance, the Oklahoma legislature might decide to implement a state funding pool in response to a judicial mandate. The plan could authorize individual districts to collect an additional amount over the districts' property valuations and to use that enrichment money as they choose.¹¹⁷ This option to supplement state funding might have the effect of silencing the critics of education reform who worry that an attempt to equalize the distribution of funds would hurt those districts which currently provide good educational opportunities for their students.

After balancing the need to maintain local control with the need to adequately educate the state's children, *Fair School II* should conclude that the state's objective of maintaining local control over education is not being furthered by the state's school finance scheme. The benefits of permitting local districts to have total control over educational standards such as school curricula and teacher qualifications are unquestionable. However, those benefits are meaningless if local districts do not have enough funding to provide children with an adequate education.

The primary objective of the public school system must be in educating the state's children, not simply allowing local districts the power of decision making. Society has rapidly changed since the time of the enactment of Oklahoma's first public school system. The structure of the school system should be revised to reflect those changes.

Education has become more complex with increases in the student population and greater needs for qualified teachers and equipment in an age of computer technology. In order to allow Oklahoma children to compete in the national and international sphere, education must receive greater funding than that currently provided to local districts.

If the only way to improve Oklahoma's education system is by allowing the state to take a more active role in financing public schools, then *Fair School II* needs to take the decisive step of bringing about changes in the state school financing scheme. The *Serrano*, *Edgewood*, and *Rose* decisions should persuade the *Fair School II* court that the principle of maintaining local control over education is not an insurmountable obstacle to enacting meaningful change in public education.

In fact, by creating an improved system of public schools, the state will actually allow local school districts to have more control instead of less.¹¹⁸

117. A state funding pool with an enrichment program is the new method of school finance which has been proposed by the Texas legislators in response to the *Edgewood* decision.

118. *Edgewood Indep. School Dist. v. Kirby*, 777 S.W.2d 391, 398 (Tex. 1989).

The increased economic alternatives created by a more efficient system of schools would allow a local community to exercise the control of making choices it might not have had while under the financial constraints of the existing system of school finance.¹¹⁹

C. Judicial Authority

The third major question which will need to be addressed in *Fair School II* involves the defendants' claim that, because the judiciary has limited powers, the court cannot grant the relief requested by the plaintiff. The defendants allege that the court cannot mandate the Oklahoma legislature to enact specific legislation or to increase taxes.¹²⁰

The Oklahoma judiciary has already recognized the broad authority of the state legislature to formulate a system and method for financing public schools.¹²¹ However, the judiciary has the equally important responsibility of monitoring legislative actions to make sure legislative acts are in compliance with constitutional standards. That judicial responsibility must include ordering the legislature to increase taxes or to enact legislation if such action is needed to comply with the state's laws.

Federal case law has recently made it clear that federal courts have the judicial authority to order local governments to levy their own taxes.¹²² As long as there is a basis in the United States Constitution for not observing a state statutory limitation, federal courts may require local governments to levy taxes in excess of the amount set by state statutes.¹²³

By analogy, state courts have a similar authority to force local governments to levy taxes or to enact legislation as long as there is a constitutional basis for the court order. Accordingly, the court in *Fair School II* should have the judicial authority to order the Oklahoma legislature to amend the statutory scheme of the school funding system.

Several state courts have been willing to take an aggressive stance in ordering the legislature to enact changes to school financing systems.¹²⁴ Although some of those courts have declared themselves reluctant to encroach upon legislative authority, the courts have nevertheless felt compelled by school funding inequities to mandate legislative action. The common thread between those cases is that the courts have found some constitutional

119. *Id.*

120. See Defendants' Answer to Plaintiff's Petition. The defendants in *Fair School II* have not discussed the issue of the alleged "inadequacy" of the existing education system. Nor have they addressed the issue of the state purpose of maintaining local control. They did, however, raise several affirmative defenses. Along with the procedural defenses of lack of standing, res judicata and collateral estoppel, the defendants' primary affirmative defense is questioning the judicial authority of the court to require legislative action. *Id.*

121. See *supra* note 92.

122. *Missouri v. Jenkins*, 110 S. Ct. 1651, 1666 (1990). *Jenkins* involved school desegregation. The Court discussed in detail the scope of federal judicial power as relating to setting aside state-imposed limitations on taxing authority.

123. *Id.*

124. See *Edgewood Indep. School Dist. v. Kirby*, 777 S.W.2d 391 (Tex. 1989); *Serrano v. Priest*, 18 Cal. 3d 728, 557 P.2d 929, 931, 135 Cal. Rptr. 345, 357 (1976).

basis, depending on the courts' own broad interpretations of the states' constitutions, for mandating the legislative changes.

In *Fair School II*, a judicial order requiring the legislature to formulate a new statutory scheme of school finance would be the most effective and expedient method of ensuring a meaningful improvement in Oklahoma public schools. The *Fair School II* court should allow the legislature to decide which changes need to be made. However, the court needs to closely review the legislature's actions to ensure that the new statutory scheme provides Oklahoma's children with an adequate education.

Despite the clear advantages of the judiciary taking an active role in creating a system of public schools which would provide children with an adequate education, the court, in *Fair School II*, might find that the Oklahoma legislature has acted within its discretion. The court will probably find for the defendants in *Fair School II* for the following reasons. First, there is some uncertainty about whether or not *Fair School II* will conclude that the existing system of school finance does not provide children in Oklahoma with an adequate education. The court could conclude that because Oklahoma's public schools are able to provide students with the minimal skills necessary to become useful citizens, the constitutional mandate of the education articles is satisfied.

The second reason why the court will likely find for the defendants is the court's statement in *Fair School I* that the court was reluctant to encroach upon legislative authority. *Fair School I* made it clear that unless the legislature acted arbitrarily and capriciously, all reasonable doubt would be resolved in favor of finding the financing system constitutional.¹²⁵ Because the Oklahoma constitution is somewhat ambiguous as to what is required by the legislature in creating a system of public schools, the court will have difficulty finding that the legislature acted arbitrarily and capriciously.

The third reason the plaintiff in *Fair School II* may not prevail in the present lawsuit is that the legislature has recently passed House Bill 1017.¹²⁶ The new legislation, which provides for additional funding as well as structural changes to the school system, could have significant impact on the existing system of public schools. The court might decide that because the legislature has taken action on its own, it would be better to determine the effect of the new legislation before overburdening the state with a judicial requirement of additional funding.

Conclusion

Every state has its own constitutional provisions which allow for the establishment of a public education system. The language of those provisions has been the frequent subject of challenges to the constitutionality of school financing statutes.

125. See *supra* notes 94-95.

126. See *supra* note 77.

In Oklahoma, the equal distribution of school funding is not a requirement of the state constitution. However, providing an adequate education for all children should be within the mandate of the Oklahoma constitution. Oklahoma's present statutory scheme of school finance has created funding disparities among school districts. Because of the insufficiency of funds in many school districts, the skills being provided by public schools in Oklahoma fail to allow some children to compete favorably with their peers either academically or in the job market. Therefore, not all of the children in the state are being provided an adequate education.

The current school funding system in Oklahoma has the actual effect of minimizing local control over education. Consequently, the present method of financing public schools can no longer be said to be rationally related to the state's objective of maintaining local control over education. The extreme disparities in the distribution of funds among school districts are adequate justification for finding that the Oklahoma school financing system no longer serves a legitimate public purpose. For this reason, *Fair School II* should find Oklahoma's statutory financing scheme unconstitutional and mandate legislative action to achieve a more equitable system.

Oklahoma courts have been previously unwilling to take on a quasi-legislative role by requiring legislatures to enact or revise legislation. However, the results of the existing funding disparities among school districts are so egregious that the judiciary should feel compelled to take an aggressive stance in mandating legislative change.

Karen Richardson

