APPENDIX "A"

INTERDISTRICT INEQUALITIES IN SCHOOL FINANCING: A CRITICAL ANALYSIS OF *SERRANO v. PRIEST* AND ITS PROGENY.

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Rarely has a state supreme court decision received such extensive publicity and public comment as the recent California Supreme Court opinion in *Serrano v. Priest*,[1] concerning the constitutionality of interdistrict disparities in financing California public school districts. Indeed, one might have to go back to the United States Supreme Court reapportionment cases to find a decision of any court that has been as extensively discussed in the press as has *Serrano*. Most significantly, the press comment seems to have been uniformly affirmative. The *Serrano* result has been popularly hailed as rightly egalitarian and a significant, if not the significant, step in the struggle for better education in urban areas.[2] Even those editorial writers who have traditionally been proponents of judicial restraint have refrained from commenting adversely upon the court's decision invalidating California's public school financing system.

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[1] 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971).

[2] *See, e.g.*, N.Y. Times, Sept. 1, 1971, at 17, col. 1; *id.*, Sept. 2, 1971, at 32, col. 1; at 55, cols. 1, 2; *id.*, Sept. 5, 1971, § 4, at 7, col. 1; at 10, col.3.

In part this absence of adverse comment may be attributable to the fact that it was the California Supreme Court and not the United States Supreme Court that decided the case. Yet, the decision's impact is clearly not confined to California. The California school finance system is similar in effect to the systems used in 49 of the 50 states,[3] and the court avowedly rested its decision on federal equal protection grounds.[4]

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[3]Hawaii is the only state without local school district control of education. HAWAII REV. LAWS §§296-2, 298-2 (1968).

[4]The court specifically rejected the argument that the California financing system violated art. IX, §5 of the California Constitution, which provides for "a system of common schools." It then stated: "Having disposed of these preliminary matters, we take up the chief contention underlying plaintiffs' complaint, namely that the California public school financing scheme violates the equal protection clause of the Fourteenth Amendment to the United States Constitution." 5 Cal. 3d at 596, 487 P.2d at 1249, 96 Cal. Rptr. at 609. Despite having thus based its decision on federal constitutional grounds, the court, in a puzzling footnote, *id.* at 596 n.11, 487 P.2d at 1249 n.11, 96 Cal. Rptr. at 609 n.11, then referred to 2 provisions of the California Constitution requiring that "[a]ll laws of a general nature shall have a uniform operation," CAL. CONST. art. I, §11, and prohibiting "special privileges or immunities," *id.* art. I, §21. The court went on to state that:

> We have construed these provisions as "substantially the equivalent" of the equal protection clause of the Fourteenth Amendment to the Federal Constitution. (Dept. of Mental Hygiene v. Kirchner (1965) 62 Cal. 2d 586, 588, 43 Cal. Rptr. 329, 400 P.2d 321.) Consequently, our analysis of plaintiffs' equal protection contention is also applicable to their claim under these state constitutional provisions.

Id.

Following this, there was no further mention of the California Constitution in the opinion and almost all authorities cited concern federal law. The court also devoted considerable effort to avoiding the argument that the federal constitutional issues has been foreclosed by the United States Supreme Court summary affirmances in McInnis v. Shapiro, 293 F. Supp. 327 (N.D. Ill. 1968), *aff'd mem. sub nom.* McInnis v. Ogilvie, 394 U.S. 322 (1969), and Burruss v. Wilkerson, 310 F. Supp. 572 (W.D. Va. 1969), *aff'd mem.*, 397 U.S. 44 (1970). The California Supreme Court, of course, would not be limited by a United States Supreme Court interpretation of the California Constitution.

The footnote quoted above, and the explicit citation to *Kirchner,* however, raise the issue whether, despite its express reliance on the Federal Constitution, the court has not also relied on the California Constitution in a way that precludes United States Supreme Court review.

In *Kirchner,* the Califoria Supreme Court held unconstitutional a state statute relating to liability for the care and maintenance of mentally ill persons in state institutions. 60 Cal. 2d 716, 388 P.2d 720, 36 Cal. Rptr. 488 (1964). The United States Supreme Court granted certiorari but vacated and remanded the case to the California court on the grounds that the California opinoin was unclear as to whether it was based on the federal or state

It has also been expressly followed by a federal district court in Minnesota in denying a motion to dismiss[5] and by a three-judge district court in Texas in holding that state's financing scheme unconstitutional.[6] While it is clear, at least at this time, that the *Serrano* decision itself will not be reviewed by the United States Supreme Court,[7] there are many other interdistrict

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consitutions or both, and that the United States Supreme Court would not have jurisdiction unless the federal Constitution had been the sole basis for the decision, or the state constitution had been interpreted under what the California court deemed the compulsion of the Federal Constitution. 380 U.S. 194 (1965). On remand, the California Supreme Court stated that although CAL. CONST. art I, §§11 & 21 were generally thought to be "substantially the equivalent" of the federal aqual protection clause, the court was "independently constrained" in its result by these sections of the state constitution. The court stated that it had not acted "solely by compulsion of the Fourteenth Amendment, either directly or in construing or applying state law . . . ." 62 Cal. 2d 586, 588, 400 P.2d 321, 322, 43 Cal. Rptr. 329, 330 (1965).

Although the issue is not completely free from doubt, the California Supreme Court in *Serrano* may have written an opinion expressly based on federal law yet at the same time insulated from review by the United States Supreme Court.

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

[6]Rodriguez v. San Antonio Ind. School Dist., 337 F. Supp. 280 (W.D. Tex. 1971). Procedurally, *Rodriguez* has developed further than *Serrano,* as the court there, after a hearing, declared the Texas financing scheme unconstitutional and permanently enjoined the defendants, the State Commissioner of Education, and the members of the State Board of Education, from enforcing it. The court, however, stayed its mandate and retained jurisdiction for 2 years:

> in order to afford the defendants and the Legislature an opportunity to take all steps reasonably feasible to make the school system comply with the applicable law . . . .
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> . . . .
>
> The Court retains jurisdiction of this action to take such further steps as may be necessary to implement both the purpose and spirit of this order, in the event the Legislature fails to act within the time stated . . . .

Id. at 286. For retention of jurisdiction the court cited cases of judicially imposed reapportionment plans.

[7]*See* note 4 *supra.* In addition to the problem of the independent state ground for the *Serrano* decision, it is clear that the Supreme Court cannot review it at this time because it is not a final judgment. *See* 28 U.S.C. §1257 (1970).

inequality cases in the process of litigation,[8] at least one of which will soon present the United States Supreme Court with the *Serrano* problem.[9]

The primary reason for the favorable reception of *Serrano* is probably the growing public eagerness for its result. Unlike many other societal problems in education and other areas, the concept of fiscal equality in education is perceived as unambiguously good. It does not appear to involve the competing views of equality prevalent in desegregation and community control issues. Nor does it represent the significant clash between the values of equality and liberty that the desegregation and community control issues may present. The only visible liberty being curtailed is local economic self-determination, a value currently of low priority in our society when balanced against the promise of improving education for the poor and racial minorities. Fiscal equality also holds out the promise of improving education for the poor and racial minorities, without raising the fears of personal adverse effects on the white middle-class family aroused by other proposed policies, such as desegregation. Fiscal equali-

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[8]Also pending before a 3-judge court is the constitutionality of the Florida school financing system. *See* Askew v. Hargrave, 401 U.S. 476 (1971), *vacating per curiam* Hargrave v. Kirk, 313 F. Supp. 944 (M.D. Fla. 1970). Recent state court decisions that followed *Serrano* are: Hollins v. Shofstall, No. C-253652 (Super. Ct. Maricopa County, Ariz. Jan. 13, 1972); Robinson v. Cahill, 118 N.J. Super. 223, 287 A.2d 187 (1972): Sweetwater County Planning Comm. for the Organization of School Dists. v. Hinkle, 491 P.2d 1234 (Wyo. 1971). In disagreement with *Serrano* is Spano v. Board of Educ., 328 N.Y. S.2d 229 (Sup. Ct. 1972). The issue is now before the court in more than half the states. *See* Wall St. J., Mar. 2, 1972, at 1, col. 6.

[9]It appears that the decision in *Rodriguez* is immediately appealable to the United States Supreme Court. *See* 28 U.S.C. §1253 (1970). If appealed, it would presumably be heard in the October term, 1972.

ty involves the movement of inanimate dollars, not live children.[10]

Finally, fiscal equality corresponds to a basic American belief that more money, or money distributed more wisely, can solve major societal problems such as the current state of public education, and that all society need do is to have the will to so spend or distribute it. In Daniel P. Moynihan's terms, *Serrano* leads one to hope that what may have been considered a "knowledge problem" is indeed a "political" one, or better yet, a judicial one.[11]

Serrano is unquestionably sound as a matter of abstract egalitarian philosophy. Nevertheless, there are many difficulties presented by its legal analysis. Moreover, it is not at all clear that the practical effect of the decision will be to improve the quality of public education generally, or the quality of urban public education in particular.

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[10]The *Serrano* result and metropolitan desegregation, *e.g.*, Bradley v. School Bd., 40 U.S.L.W. 2446 (E.D. Va. Jan. 5, 1972), can be viewed as alternative methods of improving the educational quality of urban minority groups, to the extent that the argument for metropolitan desegregation rests on a desire to give the black urban poor access to the tax base of their more affluent white suburban neighbors. *Compare* Hobson v. Hansen, 327 F. Supp. 844 (D.D.C. 1971), *with* Johnson v. San Francisco Unified School Dist., No. C-70 1331 SAW (N.D. Cal. June 2, 1971). *See also* Spencer v. Kugler, 40 U.S.L.W. 3333 (U.S. Jan. 17, 1972); United States v. Board of School Comm'rs. 332 F. Supp. 655 (S.D. Ind. 1971).

[11]Moynihan, *Can Courts and Money Do It?*, N.Y. Times, Jan. 10, 1972, §E (Annual Education Review), at 1, col. 3; *id.* at 24, col. 1.

I. School District Inequality and the *Serrano* Response

A. *The Court's Response to Interdistrict Financing Differentials*

As is true with every state except Hawaii, over 90% of California's public school funds derive from a combination of school district real property taxes and state aid based largely on sales or income taxation. Historically the state aid, or "subvention," has been superimposed on the basic system of locally raised revenue. Although the state aid component of educational expenditures has been generally increasing as a percentage of the total expenditures, the local component has remained dominant. California is typical in having total educational expenditures consist of 55.7 percent local property taxes and 35.5 percent state aid.[12]

The local component is a product of a locality's tax base (primarily the assessed valuation of real property within its borders) and its tax rate. Tax bases in California, as elsewhere, vary widely throughout the state. Tax rates also vary from district to district.

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[12]In addition, federal funds account for 6.1% and other sources for 2.7%. These figures and others given for California in this Article are taken from the court's opinion in *Serrano*. 5 Cal. 3d at 591 n.2, 487 P.2d at 1246 n.2, 96 Cal. Rptr. at 606 n.2.

In discussig expenditure differentials, the *Serrano* court did not indicate whether or not its figures included federal revenues. Other authorities have excluded federal revenues from these calculations. This author has elsewhere questioned the validity of this exclusion. *See* Goldstein, Book Review, 59 Calif. L. Rev. 302, 303-04 (1971). Nationwide, approximately 52% of all school revenue is collected locally, and from 97-98% of local tax revenue is derived from property taxes. Briley, *Variation between School District Revenue and Financial Ability. in* Status and Impact of Educational Finance Programs 49-50 (R. Johns, K. Alexander & D. Stollar eds. 1971) (National Educational Finance Project vol. 4). In California, all local school revenues are raised by property taxation. *See* Cal. Educ. Code §§20701-06 (1969).

The state component of school expenditures is generally distributed through a flat grant system, a foundation system, or a combination of the two. The flat grant is the earliest and simplest form of subvention, consisting of an absolute number of dollars distributed to each school district on a per-pupil or other-unit standard. Foundation plans are more complicated and have a number of variants. In its simplest form, a foundation plan consists of a state guarantee to a district of a minimum level of available dollars per student, if the district taxes itself at a specified minimum rate. The state aid makes up the difference between local collections at the specified rate and this guaranteed amount. If the actual tax rate is greater than the specified rate, the funds raised by the additional taxes are retained by the locality but do not affect the amount of state aid.

Finally, there are combinations of flat grants and foundation plans. Under one form of combination plan the flat grant is added to whatever foundation aid is due to the district:

> State Aid = [guaranteed amount — local collection at specified rate] + flat grant.

Under the other combination system, the flat grant is added to the local collection in initially calculating the foundation grant:

> State Aid = [guaranteed amount — (local collection at specified rate + flat grant)] + flat grant.

Under this approach, a district that would qualify for a state foundation grant equal to, or in excess of, the flat grant does not in effect receive the flat grant. That grant is superfluous when it serves only to bring a district up to the foundation level, because a district is always guaranteed the foundation level in any case. The full benefit of the flat grant goes only to those districts where the local collection at the specified rate equals or exceeds the foundation guarantee.

The latter combination plan is the system employed in California.[13] The flat grant is $125 per pupil. The foundation minimum, based on a tax rate of 1.0 percent for elementary school districts and 0.8 percent for high school districts,[14] is $355 for each elementary school pupil and $488 for each high school student, subject to specified minor exceptions. An additional state program of "supplemental aid" subsidizes particularly poor school districts that are willing to set local tax rates above a certain statutory level. An elementary school district with an assessed valuation of $12,500 or less per pupil may obtain up to $125 more for each child under this plan. A high school district whose assessed valuation does not exceed $24,500 per pupil can

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[13]As noted, this results in the quirk that the full effects of the flat grant are available only to those districts whose revenue at the prescribed rate exceeds the foundation guarantee. There would seem to be no rational basis for this result. The *Serrano* court, however, did no more than mention this fact and there is no indication that the opinion rested on it.

[14]This is simply a computational tax rate used to measure the relative tax bases of the different districts. It does not necessarily relate to the actual rates levied.

receive a supplement of up to $72 per pupil if it taxes at a sufficiently high rate.[15]

Although the foundation plan does help to equalize available educational funds throughout the state, the relatively low foundation guarantee nevertheless allows significant disparities among school districts. The *Serrano* court cited the following statistics for the 1969-1970 school year for district per-pupil educational expenditures:

	Elementary	*High School*	*Unified*[16]
Low	$ 407	$ 722	$ 612
Median	672	898	766
High	2586	1767	2414

Statistics cited by the court for assessed valuations per pupil also reflected the disparities:

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[15]There are other minor provisions in the state subvention system. Districts that maintain "unnecessary small schools" receive $10 per pupil in their foundation guarantee, a sum intended to reduce class sizes in elementary schools. Unified districts (those which contain both elementary and secondary schools) receive $20 more per pupil in foundation grants. In addition, a special program attempts to provide equalization in districts included in reorganization plans that were rejected by the voters. It gives the poorer districts in the reorganization the effect of the reorganization to the limited extent of levying a tax areawide, of 1.0% in elementary districts and 0.8% in high school districts. The resulting revenue is then distributed among the individual districts according to the ratio of each district's foundation level to the areawide total revenue. Thus, in these rare circumstances of voter-rejected reorganization plans, poorer districts share in the higher tax bases of wealthier districts in their area. The districts are, of course, free to tax themselves above the 1.0% or 0.8% level and retain all additional revenue. 5 Cal. 3d at 593 n.8, 487 P.2d at 1247 n.8, 96 Cal. Rptr. at 607 n.8.

[16]*Id.* at 593 n.9, 487 P.2d at 1247 n.9, 96 Cal. Rptr. at 607 n.9.

	Elementary	*High School*[17]
Low	$ 103	$ 11,959
Median	19,600	41,300
High	952,156	349,093

The complaint in *Serrano* set forth two main causes of action. The first was that of plaintiff school children residing in all school districts except the one that "affords the greatest educational opportunity," who alleged that:

> As a direct result of the financing scheme . . . substantial disparities in the quality and extent of availability of educational opportunities exist and are perpetuated among the several school districts of the State . . . . The educational opportunities made available to children attending public schools in the Districts, including plaintiff children, are substantially inferior to the educational opportunities made available to children attending public schools in many other districts in the State . . . .[18]

The financing scheme was alleged, therefore, to violate the equal protection clause of the fourteenth amendment and various clauses of the California Constitution.

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[17] *Id.* Note that these figures and those in the text accompanying note 16 *supra,* represent the extremes and thus may be skewed, as extremes often are. In this case a major skewing mechanism may be an abnormally low number of public school students in a given district. Even outside the extremes, however, the discrepancies in California are substantial. These assessed valuation per pupil figures also assume uniform assessment practices. This assumption was not discussed by the court. The discrepancies were much less substantial in Texas but the system was invalidated nonetheless. *See* Rodriguez v. San Antonio Ind. School Dist., 337 F. Supp. 280 (W.D. Tex. 1971).

[18] 5 Cal. 3d at 590. 487 P.2d at 1244, 96 Cal. Rptr. at 604.

The second cause of action, brought by the parents of the school children, as taxpayers, incorporated all the allegations of the first claim. It went on to allege that as a direct result of the financing scheme, plaintiffs were required to pay a higher tax rate than taxpayers in many other school districts to obtain for their children the same or lesser educational opportunities.

The complaint sought: (1) a declaration that the system as it existed was unconstitutional; (2) an order directing state administrative officials to reallocate school funds to remedy the system's constitutional infirmities; and (3) retention of jurisdiction by the trial court so that it could restructure the system if the legislature failed to do so within a reasonable time[19] The trial court sustained a general demurrer to the complaint and the action was dismissed. The dismissal of the complaint for failing to set forth a cause of action was appealed to the California Supreme Court.

The California Supreme Court stated the issue in the first line of its opinion:

> We are called upon to determine whether the California public school financing system, with its substantial dependence on local property taxes and resultant wide disparities in school revenue, violates the equal protection clause of the Fourteenth Amendment.[20]

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[19] *Id.* at 591, 487 P.2d at 1245, 96 Cal. Rptr. at 605.

[20] *Id.* at 589, 487 P.2d at 1244, 96 Cal. Rptr. at 604.

The court immediately went on to hold:

> We have determined that this funding scheme invidiously discriminates against the poor because it makes the quality of a child's education a function of the wealth of his parents and neighbors. Recognizing as we must that the right to an education in our public schools is a fundamental interest which cannot be conditioned on wealth, we can discern no compelling state purpose necessitating the present method of financing. We have concluded, therefore, that such a system cannot withstand constitutional challenge and must fall before the equal protection clause.[21]

In so holding, the California court employed the "new equal protection" analysis. Under this doctrine, certain types of legislative classification require a higher level of state justification to pass judicial scrutiny than is required under the traditional "rational basis" equal protection test. This doctrine holds that if a suspect classification is employed, and the classification pertains to a fundamental interest,[22] then the

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[21] *Id.*

[22] It is unclear whether the court regarded the fundamental interest and suspect classification tests as operating in conjunction with each other as stated in the text or as operating independently. *Compare id.* at 612, 487 P.2d at 1261, 96 Cal. Rptr. at 621, *with* 5 Cal. 3d at 604, 487 P.2d at 1257, 96 Cal. Rptr. at 615. To the extent the court suggested that either test, operating independently, would trigger the "special scrutiny" review of state action, it appears to be an inaccurate view of the present state of the law as applied to state actions other than racial classifications.

The invariable formulation of the doctrine as applied to wealth classifications requires both wealth classification and impairment of a fundamental interest in some varying combination. *See* Bullock v. Carter, 40 U.S.L.W. 4211, 4214 (U.S. Feb. 24, 1972); Dandridge v. Williams, 397 U.S. 471, 519-30 (1970) (Marshall, J., dissenting). But *see* Shapiro v. Thompson, 394 U.S. 618, 658 (Harlan, J., dissenting.) *See* generally J. Coons, W. Clune & S. Sugarman, Private Wealth and Public Education 339-446 (1970) [hereinafter cited as Private Wealth and Public Education].

classification violates the equal protection clause unless it is necessitated by a compelling state purpose. A fuller discussion of the *Serrano* court's use of this doctrine follows.

B. *The Choice of a Standard of Equality: Response to Activist Legal Scholarship*

The most striking element in the California Supreme Court's holding was its reliance on the relationship between the *wealth* of a school district and its educational expenditures. By "wealth" the court meant taxable wealth (property tax basis[23]) per pupil or other unit. Yet, as stated above, the local component of school financing is a product of taxable wealth and tax rate. A district's expenditures may be low because it is low in taxable wealth or because it chooses to tax itself at a low rate, or both. Why, then, did the court focus on wealth differences as the constitutional vice, rather than on disparities in expenditures, regardless of cause?

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[23] *Serrano* and its progeny have been predicated on the assumption of the exclusive use of the real estate property tax for local education financing. As stated in note 12 *supra*, however, nationwide property taxes constitute 97-98% of local taxes for education and thus are *almost* the exclusive but are not the exclusive means of local financing. Indeed, by 1968-1969, 22 states and the District of Columbia authorized the use of local nonproperty taxes by local school districts. ALTERNATIVE PROGRAMS FOR FINANCING EDUCATION 186 (1971) (National Educational Finance Project vol. 5). While this still amounted to less than 3% of local education taxes nationwide, in a given state the amount could be sufficiently significant that the *Serrano* analysis premised on exclusive real estate taxation would be inapplicable. For example, in Pennsylvania local nonproperty taxes in 1968-1969 produced a mean revenue per pupil of $101.30 in central city districts. *Id.* 187.

Local nonproperty taxes include occupational, utility, and other excise taxes, as well as local sales and income taxes. Tax bases for such taxes would be much more difficult to calculate than is a given locality's real property tax base.

To understand this, one must know something about the legal literature that predated *Serrano*. The literature in this field, particularly the book *Private Wealth and Public Education*,[24] exemplifies a current wave of consciously activist scholarship, written with an avowed bias, and aimed at producing specific legal results. This new breed of writers, not content with pure scholarship, actively engages in the litigation process to accomplish their aims.[25] This activist legal scholarship—of a very high caliber—produced the legal formulations manifested in *Serrano*.[26]

Serrano apparently adopted as the constitutional rule what was denominated as Proposition 1 in *Private Wealth and Public Education*:[27] "The quality of public education may not be a function of wealth other than the wealth of the state as a whole."[28] Proposition 1

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[24]*Supra* note 22.

[25]Coons and Sugarman, for example, filed amicus briefs in *Serrano* and *Rodriguez*.

[26]Although the court acknowledged its reliance on Coons, Clune & Sugarman by citations throughout the opinion, it cited a law review article, Coons, Clune & Sugarman, *Educational Opportunity: A Workable Constitutional Test for State Financial Structures*, 57 CALIF. L. REV. 305 (1969), rather than the more comprehensive analysis in PRIVATE WEALTH AND PUBLIC EDUCATION, *supra* note 22. The reason for this is not clear. This may reflect only the opinion writer's relative access to the two works. It may also reflect the court's sensitivity to the reader's relative access to the two works. Finally, it might be suggested that it represents a possible reflection of the difference in esteem, in California, between the California Law Review and the Harvard University Press.

[27]The following discussion of Proposition 1 and district power equalizing is based upon, and some parts are taken entirely from, an earlier analysis of *Private Wealth and Public Education* by this author. Goldstein, Book Review, 59 CALIF. L. REV. 302, 304-10 (1971).

[28]PRIVATE WEALTH AND PUBLIC EDUCATION, *supra* note 22, at 2 (emphasis omitted). Proposition 1 is, however, never directly quoted by the *Serrano* Court. The federal court in Van Dusartz, 334 F. Supp. 870 (D. Minn. 1971), which expressly relied on *Serrano*, did quote Proposition 1 and explicitly accepted it as the constitutional standard. *Id.* at 872 & n.1. Somewhat less

itself was a response to prior debate about interdistrict disparities in educational offerings. Recently there has been increased concern with inequalities in government services, especially as they affect the poor. In particular, society has become increasingly concerned with the deplorable condition of urban public education. It has been argued that a major cause of this condition is the relative lack of resources available to urban school districts as compared to their more affluent suburban neighbors. Moreover, there has been increased recognition that plans for improving urban education through such alternatives as integration, decentralization and community control, or compensatory education are, in the final result, highly dependent on the availability of greater resources for urban school districts.

Although the exact relationship between financially poor school districts and poor people, particularly the urban poor, is unclear,[29] the existence of large wealth discrepancies among school districts is undeniable. The disparity in the quality of education, as conventionally measured, between urban and suburban school districts

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clearly the 3-judge court in *Rodriguez* seemed to adopt Proposition 1 as the constitutional rule.

One caveat must be stated regarding the *Serrano* court's acceptance of Proposition 1 as the constitutional test. As will be discussed at length, text accompanying notes 30-44 *infra,* Proposition 1 and *Serrano* do not require equality of expenditures. Neither, however, is Proposition 1 satisfied by equality of expenditures. If equal expenditures were achieved by differential rates applied to differential tax bases, that is, lower tax base districts achieving the same revenue level by employing higher rates, Proposition 1 would not be satisfied. At this point Proposition 1 leaves education as its concern and becomes completely taxpayer oriented. Despite the taxpayer orientation in *Serrano, see* text accompanying notes 86-91 *infra,* it is unlikely that the *Serrano* court would go this far. Throughout the opinion, the court emphasized differential educational expenditures.

[29] *See* notes 65-75 *infra* & accompanying text.

is also apparent. Thus the existing system of educational financing has been increasingly condemned as intolerable. However, there has existed substantial disagreement on methods of relief. Opponents of judicial intervention have argued against court action to invalidate the current system: first, for lack of a workable judicial standard; secondly, because an equality concept might result in a downward leveling of expenditures when the real need is to improve low quality; thirdly, because judicial relief would result in centralization of educational financing; and fourthly, because an equality requirement that prevented local school expenditures above the state norm would be either unworkable or would result in substantial middle class exodus from the public schools.[30]

Proposition 1 was an avowed attempt to respond to these criticisms. By adopting it, the California Supreme Court has apparently limited its decision to wealth-derived educational differentials and has not required equal expenditures statewide. On this basis of decision, there are a number of alternative school financing systems that would meet the court's constitutional standard. Among these is abolition of local school districts and their replacement with a completely statewide system. Short of that, centralized state financing

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[30] *See* Kurland, *Equal Educational Opportunity: The Limits of Constitutional Jurisprudence Undefined,* 35 U.CHI. L. REV. 583 (1968). For the views of the proponents of judicial intervention, see A WISE, RICH SCHOOLS, POOR SCHOOLS: THE PROMISE OF EQUAL EDUCATIONAL OPPORTUNITY 143-59 (1968); Horowitz & Neitring, *Equal Protection Aspects of Inequalities in Public Education and Public Assistance Programs From Place to Place Within a State,* 15 U.C.L.A. REV. 787 (1968); Kirp, *The Poor, the Schools, and Equal Protection,* 38 HARV. EDUC. REV. 635 (1968).

that raises and distributes all funds could be coupled with local district administration of the schools. Centralized financing, however, is not required under the *Serrano* rule invalidating only wealth-derived differentials. A general school redistricting that equalized wealth among school districts would satisfy the decision and at the same time allow the present system of financing and administration to continue. Finally, there is the innovative suggestion proposed in *Private Wealth and Public Education*—district power equalizing—a system that allows differential expenditures among school districts, while removing the effect of differential tax bases on these expenditures.

Under district power equalizing, existing school districts would have funds available for education based on their tax rate regardless of their tax base. A school district would be free to choose any tax rate it desired and its available funds—defined as "x dollars per educational unit"—would be established by the state for any given tax rate. In a simplified model, a district power equalizing scheme might appear as follows:

Tax Rate	*Available Funds*
1 %	$ 400 per educational task unit
1½	600
2	800
2½	1000
3	1200

A district with a low tax base whose chosen tax rate produced less revenue than the state prescribed amount

would receive state funds to make up the difference. A district that produced more revenue than the state prescribed amount at its chosen rate would be required to pay the excess to the state.

The scheme of power equalizing as a means to satisfy the requirements of Proposition 1 has been attacked on equalitarian grounds. It requires merely that district wealth disparities be eliminated as a factor in financing education, thus still permitting districts to spend more by taxing more. What is in fact required, it is argued, is statewide equality of learning opportunity to the extent achievable by statewide financing.[31] The *Serrano* decision is subject to the same attack insofar as the court adopts an equal wealth formula, rather than an equal expenditure formula.

It is not indisputably clear, however, that the court has rejected the equalization of expenditures formula. Although the language quoted above, and other statements in the opinion seem to accept the equal wealth standard, it might well be argued that the court decided only the facts before it—that the existing financing scheme was unconstitutional—and did not go so far as to endorse an equal wealth standard or reject the argument that an equalization of expenditures standard is constitutionally required. Indeed, in response to an argument that autonomous local decisionmaking was so important a value that it

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[31] *See, e.g.*, Silard & White, *Intrastate Inequalities in Public Education: The Case for Judicial Relief Under the Equal Protection Clause*, 1970 WIS. L. REV. 7, 26-28, 30.

justified the existing system, the court stated: "We need not decide whether such decentralized financial decision-making is a compelling state interest, since under the present financing system, such fiscal free will is a cruel illusion for the poor school districts."[32] Other evidence of the court's possible acceptance of the equal expenditure formula as being constitutionally required is its specific recognition that many of the values of local choice could still be preserved under a spending equalization formula that centralized financing but localized administration of schools.

The court's possible failure to rule out a constitutional command of expenditure equalization may also be explained by the fact that tax base, not tax rate, is the main determinant of local educational expenditures. Available statistics, in California and elsewhere, indicate that districts with smaller tax bases, such as Baldwin Park, tax themselves at higher rates than do richer districts, such as Beverly Hills, even though their total yield is not as great.[33] Therefore, the *Serrano* court may have assumed that Proposition 1, which removes the wealth factor, would produce generally equal offerings among school districts, and thus left until another day the issue of what happens if it does not.

These reasons, however, are not sufficient to explain the very strong equal wealth emphasis in the

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[32] 5 Cal. 3d at 611, 487 P.2d at 1260, 96 Cal. Rptr. at 620.

[33] *Id.*; PRIVATE WEALTH AND PUBLIC EDUCATION, *supra* note 22, at 127-50. *See also* ALTERNATIVE PROGRAMS FOR FINANCING EDUCATION 81-101 (1971) (National Educational Finance Project vol. 5).

Serrano opinion. The most logical reading of the decision is that the court did adopt the formula of equal wealth rather than the equal expenditures formula as its constitutional command. The probable explanation for this is twofold. First, an expenditure equalization standard would cause problems with compensatory education and other programs that would devote extra funds for the education of disadvantaged students. The propopents of equal expenditures are also in favor of this degree of inequality and struggle valiantly to make these concepts consistent. Perhaps their struggles are successful. It is much easier, however, to avoid the inconsistency by not adopting an equal expenditure test in the first place.

The second basic argument in favor of an equal wealth standard is that it permits a local school district to choose how much it wishes to spend on the education of its children. The desirability of retaining this local choice responds to basic federalist, pluralist values of diversity and local decisionmaking—a concept termed "subsidiarity" in *Private Wealth and Public Education.*[34] In *Serrano* the state argued that the existing school financing system was constitutionally valid because it incorporated just these values.[35]

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[34]PRIVATE WEALTH AND PUBLIC EDUCATION, *supra* note 22, at 14-15. Subsidiarity is "the principle that government should ordinarily leave decisionmaking and administration to the smallest unit of society competent to handle them." *Id.* 14. *See also* Goldstein, Book Review, 59 CALIF. L. REV. 302, 306 (1971).

[35]The court quoted the state's argument that:

> "[I]f one district raises a lesser amount per pupil than another district, this is a matter of choice and preference of the individual district and reflects the individual desire for lower taxes rather than an expanded educational program, or may reflect a greater interest within

The court's response, while rejecting the state's argument, shows sensitivity to the idea of local choice:

> [S]o long as the assessed valuation within a district's boundaries is a major determinant of how much it can spend for its schools, only a district with a large tax base 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.[36]

The *Serrano* court did recognize that local choice in nonfiscal educational matters might still be retained under centralized financing; yet this limited degree of choice is not sufficient. As a purely theoretical issue it is difficult to determine the value of retaining local control over educational spending, particularly when weighed against the possibility of continuing expenditure inequalities, which the retention of local choice produces. But this issue is not merely a matter of political theory. Rather, adoption of the equal wealth standard in *Serrano* is an implicit recognition of the fact that, in light of our history and traditions, judicial or legislative decrees cannot be used to prevent localilies from trying to get better education for their children by raising more funds locally.

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that district in such other services that are supported by local property taxes as, for example, police and fire protection or hospital services."
5 Cal. 3d at 611, 487 P.2d at 1260, 96 Cal. Rptr. at 620.

[36] *Id.*

A pre-*Serrano* law review article[37] by Silard and White, which dismissed district power equalizing in one paragraph as not producing equality of educational offerings, ended discussion of its equalization solution, centralized financing, by adding: "The [centralized financing] mechanism might also be formulated in such a way as to *retain a local option to surtax for additional education.*"[38] This "local option" is obviously a device to allow localities to spend more on education than the centrally determined norm, and thus produce inequalities in offering. Despite their very strong commitment to egalitarian principles, proponents of judicial action in this field obviously cannot resist the notion that local districts should retain the option to spend more on education. It is this fact, deeply embedded in our public consciousness, that primarily explains why the *Serrano* court did not and would not require spending equality.[39]

The existence of this public sense raises a further question about the limits of *Serrano*. Is the Silard and White system—centralized financing with a local option surtax—consistent with the California court's constitutional standard? While the spending equalization standard is not required under *Serrano,* it remains to be seen what minimal remedies are consistent with the

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[37]Silard & White, *supra* note 31.

[38]*Id.* 29 (emphasis added).

[39]This public feeling was clearly expressed in the response to the *Serrano* decision in a New York Times editorial. After hailing the case on egalitarian grounds, the editorial abruptly concluded with the assertion that the ideal solution for school financing lies in centralized state financing "without discouraging additional investments by education minded communities in the betterment of their schools." N.Y. Times, Sept. 2, 1971, at 32, col. 1.

standard actually adopted by the court, and thereby determine the limits of its holding. Any appearance of consistency between *Serrano* and the surtax proposal is nothing more than a semantic illusion, unless the surtax were based on power equalization or another scheme that removed differential tax bases as an element in a district's ability to surtax itself. Otherwise the surtax has the same constitutional defect as that condemned in *Serrano* because the quality of a child's education remains dependent on the district's wealth. In fact, the surtax system is the present system in California—it is the foundation plan. The justifications for the surtax are the reasons given above for preferring district power equalizing over expenditure equalization—subsidiarity and the deeply embedded feeling that one cannot preclude a locality from taxing itself more heavily, if it so chooses, to get better education for its children. But, if one accepts the *Serrano* equal protection reasoning, these concepts and this felt need are only sufficient to justify the surtax if the surtax is necessitated by a compelling state purpose. It is not clear that these factors even provide a sufficiently compelling purpose to justify district power equalizing. Even if they do, however, they would not justify a non-power equalized surtax. Such a surtax is not necessary, because its objective of allowing local choice can be achieved by power equalizing. Thus, because it has the *Serrano*-determined constitutional vice of differential expenditures related to differential tax bases that power equalizing does not have, it must be invalid under *Serrano*.

The proposal of a centralized financing system with a local surtax option also suggests that the evils of school finance might be remedied merely by increasing the minimum spent per child. Following this line, a system that increased the California foundation plan, say from $500 to $1000, might be said to accomplish the goal of providing to each student, regardless of the district in which he resides, an adequate level of educational expenditure. Such a constitutional standard would be based not on equal protection but on a constitutional right to an affirmative minimum provision of services similar to that suggested by Professor Frank Michelman and discussed later in a footnote to this Article.[40] One of the most fundamental objections to this concept of minimum provision of services is the inability of courts to determine at what point the minimum of a given service has been reached. In the hypothetical above, $1000 was used, but why should the minimum not be $1200? Indeed, why is the current minimum of approximately $500 unacceptable? Apparently the California legislature believed it to be sufficient.

One might simply argue that a minimum of $500 is unreasonable, a determination that a court could make without having to determine exactly what the minimum should be. Such an approach, however, ignores the need for judicial standards as illustrated by recent Supreme Court history. As happened in reapportionment be-

[40] *See* note 84 *infra;* Michelman, *Forward: On Protecting the Poor Through the Fourteenth Amendment, The Supreme Court, 1968 Term,* 83 HARV. L. REV. 7 (1969).

tween the *Baker v. Carr*[41] "rationality" test and the *Reynolds v. Sims*[42] "one man-one vote" test, once a court defines a principle it is difficult to stop short of setting a minimum standard.[43]

Lastly, one may argue that, under a system with a sufficiently large state minimum, the surtax is merely a minor deviation that will be permitted under *Serrano* in the same manner that the United States Supreme Court has allowed a degree of deviation from mathematical precision under its one man-one vote rule. The two situations are not comparable, however. The surtax, unlike the unavoidable, inconsequential deviations of voting district mathematics, is a policy decision to allow some school districts to make their schools unequal to schools in other districts. The more apt reapportionment analogy is deviation for policy preferences, such as protecting rural areas. Such policy preferences have been rejected by the Supreme Court in the reapportionment cases.[44] Of course, in school financial equalization there will be deviations from

[41]369 U.S. 186 (1962).

[42]377 U.S. 533 (1964).

[43]Professor Michelman recognized this when he hypothesized the application of his minimum protection theory to education. After suggesting that each child was constitutionally entitled to a minimum provision of education, he concluded that minimum provision would mean equalization. He based this conclusion on the fact that education is valued because of its relevance to competitive activities; thus the minimum required for *A* must be determined in relation to what his competitor, or future competitor, *B*, is receiving. While there is merit in this position, Professor Michelman overstates it when he thereby equates the minimum with no substantial inequality. The fact that he does so, however, is indicative of the standardless nature of the minimum provision theory. Professor Michelman thus is driven to equalization in order to provide a standard. Michelman, *supra* note 40, at 47-59.

[44]*See* Reynolds v. Sims, 377 U.S. 533, 562-68 (1964). *But see* Abate v. Mundt, 403 U.S. 182 (1971).

mathematical certainties as a result of such things as differential labor costs and economies of scale. Such deviations occur because of a practical inability to achieve perfect equality. The surtax is not such a deviation. It represents a conscious decision to create inequality.

II. District Wealth Discrimination: A Suspect Classification?

While the California Supreme Court's reliance on an equal wealth formula thereby precludes resort to remedies such as the surtax system, and limits the holding so that it does not require expenditure equalization, the court's adoption of equal wealth has significance beyond its force as a limitation. Wealth discrimination was, in fact, the affirmative basis used to invalidate an almost universal school financing system. The *Serrano* court cited "wealth discrimination" as one of the "suspect classifications" that, in conjunction with a fundamental interest, triggered the "new equal protection."[45]

The *Serrano* court held that "this funding scheme invidiously discriminates against the poor because it makes the quality of a child's education a function of the wealth of his parents and neighbors,"[46] that is, the wealth of his school district. The factual data relied on by the court in reaching this result, however, consisted of disparities in tax bases and school expendi-

[45] 5 Cal. 3d at 597, 487 P.2d at 1250, 96 Cal. Rptr. at 610.
[46] *Id.* at 590, 487 P.2d at 1244, 96 Cal. Rptr. at 604.

tures among school districts. Therefore, two basic questions must be answered before this holding is related to the data:

1. What is the relationship between school expenditures and the "quality" of a child's education?

2. What is the relationship between poor districts —districts with low taxable wealth—and poor people?

A. *The Relationship of Expenditures to Educational Quality*

The problem of relating levels of educational expenditures to quality of education is a persistent and annoying one. For one thing, there is no consensus on what the desired educational outputs are, or how educational quality should be measured. Secondly, there is very little empirical data to support a finding of an affirmative relationship between expenditure levels and measurable educational outputs.

The Coleman Report,[47] the leading study attempting to correlate selected educational outputs with various inputs, founds little relationship between expenditure levels and the educational outputs it measured, when other variables were held constant.[48] While the Coleman Report's methodology has been attacked persuasively,[49] affirmative data that dispute its conclusion

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[47]Office of Education, U.S. Dep't of Health, Education & Welfare, Equality of Educational Opportunity (1966).

[48]*See id.* 20-21, 312-16.

[49]*See* Bowles & Levin, *The Determinants of Scholastic Achievement—An Appraisal of Some Recent Evidence,* 3 J. Human Resources 3 (1968).

remain minimal.[50] The Coleman Report and other studies are concerned with spending differentials only within the relatively narrow range of current school expenditures. The lack of correlation between expenditure levels and educational outputs in this range does not preclude the possibility of some absolute minimum of expenditures being necessary to achieve measurable educational outputs. Further, this absence of correlation between expenditures and outputs is more understandable when it is recognized that approximately two-thirds of a typical school district's revenues are spent for teacher salaries.[51] Differences in teacher salaries are often a function not of teaching quality, but of such indirectly related factors as longevity and educational degrees. Differences in salary scales among districts may be the result of such factors as differential general wage scales and the bargaining power of teacher unions. The *Serrano* court discussed the problem of relating expenditures to quality in a footnote and admitted that "there is considerable controversy among educators over the relative impact of educa-

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[50]Some support for a correlation between expenditure level and quality of education is found in J. GUTHRIE, G. KLEINDORFER, H. LEVIN & R. STOUT, SCHOOLS AND INEQUALITY (1971). This support, however, is hardly sufficient to support a judicial finding of correlation. Moreover, a recently published reexamination of the Coleman data by a score of eminent social scientists in a faculty seminar at Harvard University has confirmed the findings of the original report, while avoiding some of the original report's methodological problems. Indeed, this reexamination indicates that the influence of school expenditures on student achievement is even weaker than was indicated by the original Coleman Report. *See* Mosteller & Moynihan, *A. Pathbreaking Report,* in ON EQUALITY OF EDUCATIONAL OPPORTUNITY 36-45 (F. Mosteller & D. Moynihan eds. 1972): Jencks, *The Coleman Report and the Conventional Wisdom,* in *id.* 69-115; Smith, Equality of Educational Opportunity: *The Basic Findings Reconsidered,* in *id.* 230-42.

[51]Schoettle, *The Equal Protection Clause in Public Education,* 71 COLUM. L. REV. 1355, 1359 (1971).

tional spending and environmental influences on school achievement . . . ."[52]

The court avoided the problem in two ways. One was to cite other cases that have rejected the argument that there is no proof that different levels of expenditure affect the quality of education.[53] Except for the latest decision in *Hobson v. Hansen*,[54] discussed below, these cases have not given a rationale for this rejection.

Secondly, the court relied on the procedural posture of the case. Since the complaint was dismissed on demurrer, the court countered the defendant's contention that different levels of educational expenditures do not affect the quality of education with the statement that "plaintiffs' complaint specifically alleges the contrary, and for purposes of testing the sufficiency of a complaint against a general demurrer, we must take its allegations to be true."[55] It is not clear that this approach was consistent with the court's earlier statement that the California procedure is to "treat the

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[52]5 Cal. 3d at 601 n. 16, 487 P. 2nd at 1253 n. 16, 96 Cal. Rptr. at 613 n. 16.

[53]*Id.* The court cited McInnis v. Shapiro, 293 F. Supp. 327 (N.D. Ill. 1968), *aff'd mem. sub nom.* McInnis v. Ogilvie, 394 U.S. 322 (1969), in which a 3-judge federal court stated, without a supporting citation, in the course of rejecting a constitutional attack on interdistrict differentials in school financing, "[p]resumably, students receiving a $1000 education are better educated that [*sic*] those acquiring a $600 schooling." 293 F. Supp. at 331.

In another case cited in *Serrano*, Hargrave v. Kirk, 313 F. Supp. 944 (M.D. Fla. 1970), *vacated on other grounds per curiam sub nom.* Askew v. Hargrave, 401 U.S. 476 (1971), the district court stated: "[I]t may be that in the abstract 'the difference in dollars available does not necessarily produce a difference in the quality of education.' But this abstract statement must give way to proof to the contrary in this case." 313 F. Supp. at 947. No proof on this issue, however, was ever stated by the court in *Hargrave* and the opinion goes on not to discuss this, but to discuss the inability of school districts to raise school revenues under the Florida system.

[54]327 F. Supp. 844 (D.D.C. 1971).

[55]5 Cal. 3d at 601 n. 16, 487 P. 2d at 1253 n. 16, 96 Cal. Rptr. at 613

demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law.'"[56] The court did not explain why, for example, the possibility of a causal relationship between expenditures and educational quality would not be considered a contention of fact. More significantly, the reliance on this procedural posture, if this is what the court did, means that the issue still remains open for proof—proof that does not appear to be available.

The authors of *Private Wealth and Public Education,* in enunciating the equal wealth standard, try to finesse the problem by stating the issue as equality of resources available to the student rather than as equality of educational offerings. What is available, they then contend, are the goods and services purchased by school districts, and there is no reason to assume that the money spent for these goods and services is not the appropriate measure of their value.[57]

The problems may also be avoided in terms of burden of proof. When *A* shows that the state is spending more money on *B* than on him, the state must respond by demonstrating either that this fact is irrelevant because *A* is not really receiving less than *B,* or that even if *A* is receiving less, the differential is still constitutionally permissible. Available data are insufficient to support a state's assertion that expenditures are irrelevant to educational equality and thus the issue shifts to

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[56]*Id.* at 591, 487 P.2d at 1245, 96 Cal. Rptr. at 605.

[57]PRIVATE WEALTH AND PUBLIC EDUCATION, *supra* note 22, at 25-27.

a determination of the constitutionality of differential treatment. This burden of proof approach to the issue was apparently the one taken by Judge Wright in the latest decision of *Hobson v. Hansen,*[58] although there were also elements of estoppel involved in the *Hobson* court's reliance on the school administration's own assertions of a correlation beteen educational resources and quality of education.[59]

While the burden of proof argument has appeal as an expedient solution it is not a completely satisfying basis for judicial invalidation of a longstanding method of public school financing. From this perspective, arguments for judicial action must be discounted somewhat by uncertainty about the present system's detrimental effect on the quality of education, and also therefore, by doubts of improving education by such invalidation.[60]

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[58]327 F. Supp. 844, 854-55. The court in *Hobson* was not concerned with a correlation between gross expenditures and quality of education, but rather with the specific differences in expenditures on teacher salaries, rated on a per pupil basis, between essentially "white" and "black" schools within the District of Columbia. The quality-expenditure issue in terms of teacher salaries per pupil was posed as the correlation or lack thereof between quality instruction and higher salaries. Phrasing the issue as "teacher salary per pupil" also raised the issue of the relationship between educational quality and class size or student-teacher ratio.

[59]*Id.* at 855.

[60]Professor Moynihan has suggested that:

> [t]he only certain result that will come from [a rise in educational expenditures, which he states *Serrano* will produce] is that a particular cadre of middle-class persons in the possession of certain licenses—that is to say teachers—will receive more public money in the future than they do now.

Moynihan, *Can Courts and Money Do It?*, N.Y. Times, Jan. 10, 1972, §E (Annual Education Review) at 24, col. 1. Note that by ordering equalization of teacher salaries per pupil between "white" and "black" schools, Judge Wright in Hobson v. Hansen, 327 F. Supp. 844 (D.D.C. 1971), allowed the school district the choice of transferring higher paid teachers from "white" schools to "black" schools or reducing the student-teacher ratio in the "black" schools. Although the evidence of correlation between class size and pupil

B. *The Relationship of Poor Districts to Poor People*

The second question raised by the wealth analysis underlying the *Serrano* holding centers on the supposed relationship between a school district's wealth, as measured by its real estate tax base, and the personal wealth of its people. For its wealth classification argument the court relied on United State Supreme Court "de facto wealth classification" cases in which states have been restricted in imprisoning indigents for failure to pay fines,[61] have been required to provide indigent criminal defendants with such things as transcripts[62] and attorneys for appeal,[63] and have been precluded from requiring the payment of a poll tax as a precondition to voting.[64] All of these cases, however, involved "wealth classifications" that operated against individuals, whereas *Serrano* involved school districts. The issue in *Serrano* would therefore be simpler if the wealth of school districts coincided with the wealth of its people, thus making poor districts aggregates of poor individuals.

Available statistics, however, do not indicate this hypothesized relationship between poor districts and

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performance does not seem significantly greater than that between average teacher salary and pupil performance, one's subjective sense is that the class size is the more significant factor to education. Both the intradistrict and racial aspects of *Hobson* also strengthened the case for judicial intervention.

[61]Williams v. Illinois, 399 U.S. 235 (1970); Tate v. Short, 401 U.S. 395 (1971).

[62]Griffin v. Illinois, 351 U.S. 12 (1956).

[63]Douglas v. California, 372 U.S. 353 (1963).

[64]Harper v. State Bd. of Elections, 383 U.S. 663 (1966).

poor people. One recent study of 223 school districts in eight states indicates that there is no substantial pattern of differences in real estate tax basis per pupil among seven categories of school districts: major urban core cities, minor urban core cities, independent cities, established suburbs, developing suburbs, small cities, and small towns.[65] It is true that the three-judge federal district court which invalidated the Texas school financing system in *Rodriguez v. San Antonio Independent School District* found that "those districts most rich in property also have the highest median family income and the lowest percentage of minority pupils, while the poor property districts are poor in income . . . ."[66] The basis for this finding was an affidavit submitted by plaintiffs and cited by the court. As a basis for the court's conclusion, this was a questionable source; a careful reading of the data contained in the affidavit creates grave doubts about the validity of its conclusions.[67]

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[65]*See* ALTERNATIVE PROGRAMS FOR FINANCING EDUCATION 83-89 (1971) (National Educational Finance Project vol. 5).

[66]337 F. Supp. at 282 (W.D. Tex. 1971).

[67]The *Rodriguez* court cited the affidavit as showing a median family income of $5900 in the 10 districts with the highest tax base per pupil and $3325 in the 4 districts with the lowest tax base per pupil. *Id.* at 282 n.3. The following are the study's figures:

Market Value of Taxable Property Per Pupil	Median Family Income From 1960	Per Cent Minority Pupils	State & Local Revenues Per Pupil
Above $100,000 (10 Districts)	$5900	8%	$815
$100,000-$50,000 (26 Districts)	4425	32	544
$50,000-$30,000 (30 Districts)	4900	23	483
$30,000-$10,000 (40 Districts)	5050	31	462
Below $10,000 (4 Districts)	3325	79	305

In the amicus brief filed in *Serrano* by the Harvard Centers for Educational Policy Research and for Law and Education, an attempt was made to avoid the absence of statistics correlating poor people and poor school districts, by defining the injured class as those poor people who also live in poor school districts.[68] Although the amicus brief never explains the basis for this definition of the injured class, it may be argued that the people in this narrow group are singularly disadvantaged because they have neither the advantage of a high tax base as do the poor in rich districts, nor the mobility[69] and private school alternatives of the more wealthy residents of poor school districts. The flaw in this approach is that defining the injured class in these terms considerably weakens the wealth classification argument. The system no longer can be said to discriminate against the poor but only against a certain segment of the poor. In fact, when the school finance system is viewed from this perspective, the chief beneficiaries of the system when the class is so defined

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Affidavit of Joel S. Berke at 6 (footnotes omitted).

The 5 category breakdown of school districts seems to be arbitrary, and it is only this breakdown which appears to produce the correlation of poor school districts and poor people. Even on this breakdown, however, the correlation is doubtful. Note the very small number of districts in the top and bottom categories. Even more significant is the apparent inverse relationship between property value and median income in the three middle districts, where 96 of the 110 districts fall. While the family income differences among the 3 groups of districts are small, they may be even more significant if categories are weighted by the number of districts in each. At the very least, the study does not support the affirmative correlation of poor school districts and poor people stated by the court and the affiant; this is, however, the study the court relied upon, and it is apparently the only study which purports to show such correlation.

[68]Brief for the Center for Educational Policy Research and the Center for Law and Education as Amici Curiae at 3 n.1.

[69]*Id.* 6 n.5.

would be those poor families who live in rich districts. Not only do they have a resource advantage over those who live in poor districts, but also, they get more school for fewer tax dollars than do their more wealthy neighbors in the rich districts. The relative advantage of the poor in rich districts is further increased by the very factors that arguably are the unique disadvantage of the poor in poor districts—their lack of mobility and private school alternatives. As with the wealthy in poor districts, the wealthy in rich districts are not as dependent on their district's public schools as their less affluent neighbors and thus not as benefited by living in a rich district under the present system.

Finally, to focus on aiding the poor who live in poor districts would probably require greater relief than that offered by *Serrano* and the subsequent cases. Under this analysis, the poor in districts that undervalue education under such equal wealth alternatives as district power equalizing would be just as disadvantaged as the poor who live in poor districts today. Their immobility and lack of private school alternatives would still uniquely disadvantage them as compared to the wealthy inhabitants of the same districts, and the poor in districts with greater school expenditures. A focus on the poor in poor districts would, therefore, require equalization of expenditures to avoid the hypothesized legal wrong.

Another complication in applying a district wealth classification theory is that any correlation that does exist between poor school districts and poor people

may vary from state to state. Also, it is quite possible that there is a greater correlation between the rural poor and poor school districts than there is between the urban poor and poor school districts. If this correlation is necessary to the legal analysis, the legitimacy of the *Serrano* result might very well vary from state to state. A decision by the United States Supreme Court, however, attempting to differentiate among the states, would be entirely inappropriate. It would be most unwise to have basically similar state systems held invalid or valid depending on where the state's poor lived, or more accurately, depending on judges' views of the difficult statistical analysis demonstrating a correlation between poor people and poor school districts.

A related failure to demonstrate a relationship between blacks or other racial minorities and poor districts is particularly disappointing to proponents of judicial action for whom the presence of such correlation would have significant legal effects.[70] One report notes that in California, over half the minority pupils reside in districts with above average assessed wealth per pupil.[71]

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[70] *See, e.g.,* Hawkins v. Town of Shaw, 437 F.2d 1286 (5th Cir. 1971), in which statistical evidence of discriminatory distribution of municipal services along racial grounds triggered a "compelling state interest" test.

[71] PRIVATE WEALTH AND PUBLIC EDUCATION, *supra* note 22, at 356-57 n.47. The complaint in *Serrano* alleged that "[a] disproportionate number of school children who are black children, children with Spanish surnames, children belonging to other minority groups reside in school districts in which a relatively inferior educational opportunity is provided." 5 Cal. 3d at 590 n.1, 487 P.2d at 1245 n.1, 96 Cal. Rptr. at 605 n.1. Other than quoting this allegation as part of the complaint, however, the California court did not rely on it.

The affidavit relied on by the court in *Rodriguez,* 337 F. Supp. at 282

The absence of a correlation between poor or racial minorities and poor districts may be attributable to, among other factors, the failure of the property tax as a measure of a man's actual wealth. Most significantly, however, the reason for the absence of correlation is the location of industrial and commercial property, the presence of which increases a district's wealth by increasing its tax base, without a necessary increase in school population.

These facts raise a basic question of the effect of *Serrano* and its progeny. While the case has been hailed on theoretical egalitarian grounds, many of its proponents are more concerned with the practical problem of getting more money for urban education. While some major cities with high concentrations of poor people are financially poor school districts, others, such as New York, San Francisco, and Philadelphia, have relatively high tax bases as compared to their respective state averages.[72] They also spend more per pupil than their respective state averages. Therefore, if current expenditures for education were equalized on a statewide basis, major cities in many areas would have

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n.3 (*see* note 67 *supra*), however, did state that, of the districts sampled in Texas, the richest districts had 8% minority pupils while the poorest districts had 79% minority pupils. Again, however, the validity of this conclusion based on the study's figures is doubtful. The "correlation" only exists for the 10 richest and 4 poorest districts. This pattern disappears in the middle groups which include 96 of the 110 districts. Whatever correlation there is between the percentage of minority people and the tax base wealth of a school district in Texas may reflect the rural nature of Texas minority life or some other state peculiarity.

[72]Another reason, in addition to the presence of industrial and commercial property, for the absence of correlation between major cities and poor districts may be the relatively large number of students in urban areas attending nonpublic schools.

less money to spend than they have now.[73] The same would be true if wealth were equalized with tax rates remaining the same.

It is possible that equal wealth systems may, by their nature, result not just in equalization of current expenditures but also in over-all increased spending for education. It may be that under a scheme of centralized financing it would be politically easier for state legislatures to raise taxes, and thereby increase total school expenditures, than it would be for local school board members. The latter are more visible to the taxpayer and may, indeed, have to get voter approval for tax increases or bond issues. Under district power equalizing Professor Brest suggests that, because it is politically impossible for legislators to vote to take locally collected taxes away from a district, tax rate and expenditure levels would have to be equalized at the highest figures previously available—that is, what the wealthiest district produced from its tax rate.[74] The consequence of this would be enormous increases for

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[73]An equalization principle that operated beyond the sphere of property tax base wealth could work against the cities in another area. Local nonproperty taxes, though limited in significance to a few states, *see* note 23 *supra*, may also disproportionately favor urban centers. In a study of Alabama, Kentucky, Louisiana, Maryland, New York, Pennsylvania, and Tennessee for 1968-1969, school districts were classified into central city, suburban, independent city, and rural districts. It was found that in 5 of the 7 states (Kentucky, Louisiana, Maryland, Pennsylvania, and Tennesseee) the rural districts received the least amount of revenue per pupil from such local nonproperty taxes; in 4 of the 7 states (Kentucky, New York, Pennsylvania, and Tennessee) the central city districts received the most revenue per pupil. The average ranking for the 7 states showed that the central city school districts on the average received the most revenue per pupil from local nonproperty taxes, followed in order by suburban, independent city, and rural districts. ALTERNATIVE PROGRAMS FOR FINANCING EDUCATION 186-87 (1971) (National Educational Finance Project vol. 5).

[74]Brest, Book Review, 23 STAN. L. REV. 591, 596 (1971).

education. So enormous, in fact, that Professor Brest uses it to demonstrate the improbabilty of any state ever adopting district power equalizing.

Despite these hopes for a greater investment in education, the history of state legislative treatment of urban education, the serious economic difficulties currently facing state government, and the domination of state governments by rural and suburban interests make it difficult to realistically predict that *Serrano* will result in greater total expenditures for education. And if total expenditures do not increase, then the cities, in their relatively wealthy status stand to gain little from the *Serrano* decision.[75]

C. *"Wealth Classifications" as Applied to School Districts*

In addressing the problem of correlating poor people and poor school districts in its legal analysis, the California Supreme Court first relied on the procedural posture of the case and noted again that the complaint alleged a correlation between poor people and poor districts.[76] The court did not quote the complaint nor state the basis, if any, given for the allegation. The

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[75]It may aid rural education which would help the rural poor. It may also be argued that, when relieved of the obligation of financing education, by the adoption of a centralized financing scheme for education, urban areas will be more able to raise greater revenues for their other needs. This assumes either that the state financing scheme will not take the same revenue that the urban areas now take for education, or that taxpayers will be more responsive to local taxation for other needs if their education taxation goes to the state. Such assumptions appear unrealistic; present indications are that statewide financing for education will continue to be based on the same real property tax as that on which local taxation presently is based.

[76]5 Cal. 3d at 600-01, 487 P.2d at 1252, 96 Cal. Rptr. at 612.

court did not rest on this procedural argument, however, but went on to state:

> More basically, however, we reject defendants' underlying thesis that classification by wealth is constitutional so long as the wealth is that of the district, not the individual. We think that discrimination on the basis of district wealth is equally invalid. The commercial and industrial property which augments a district's tax base is distributed unevenly throughout the state. To allot more educational dollars to the children of one district than to those of another merely because of the fortuitous presence of such property is to make the quality of a child's education dependent upon the location of private commercial and industrial establishments. Surely, this is to rely on the most irrelevant of factors as the basis for educational financing.[77]

There are, however, serious problems with this application of the wealth discrimination cases to government entities, as distinguished from individuals. Since district wealth is measured by the real estate tax base, and the development of a district's real estate is a variable factor, the possibility of voluntary "poverty" is more acute for government entities. Throughout the opinion, the court assumed that a district's wealth was a "fortuitous" given, beyond a district's control, and not subject to voluntary choice.

While this may generally be correct, it is increasingly true in our environmentally conscious age that

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[77] *Id.* at 601, 487 P.2d at 1252-53, 96 Cal. Rptr. at 612-13 (footnote omitted).

a rural or suburban district might voluntarily exclude industrial or commercial development that would increase its wealth by increasing its tax base, without a corresponding increase in its school population.[78] Under centralized school financing this district would not be deprived of school revenues, because revenue would be independent of local decisions affecting the tax base. Under an equal wealth alternative, such as district power equalizing, a decision to exclude new development would likewise not affect revenues, which would be based on a district's choice of tax rate, not wealth. Yet this choice would be logically indistinguishable from the choice of tax rates, with its corresponding benefit or detriment to the district's school revenues, permitted, and indeed encouraged by district power equalizing.[79]

Perhaps it is desirable that districts be able to choose to remain at a low level of wealth without adversely affecting school revenue. This would have the beneficial effect of freeing a locality from the obligations of economic development, thus benefiting the area ecologically. On the other hand, it may be unfair to treat bucolic areas that choose not to expand rapidly

[78]School districts, as special function governmental units, rarely are delegated powers broader than those necessary to administer the school and raise funds by taxation and bond issues. General function units, such as municipalities and townships, are usually the smallest entitles delegated the power over development suggested in the text. Yet, to the extent that general function units coincide with school districts, or to the extent that the smaller units have significant political power within the general unit, one may accurately speak of school district political choices.

[79]Some practical differences, of course, are that a tax rate choice can be redetermind on a periodic basis, is unambiguous, and is clearly visible; whereas wealth choices have more enduring consequences, may be ambiguous as to their basis, and of low visibility.

the same as highly developed areas that have attendant congestion, pollution, and other problems that create a heavier tax burden for the urban dweller. Additionally, widespread decisions not to allow local development could seriously undermine a program of decentralization of industry and commerce. These economic and social effects of *Serrano* obviously need more exploration than the courts and commentators thus far have offered.

The wealth classification precedents employed by the *Serrano* court present another problem. The principle contained in this group of United States Supreme Court precedents is ambiguous. In the criminal procedure cases the Supreme Court required the free provision of transcripts[80] and attorneys[81] on the basis of the indigency of the accused[82] On the other hand, the Court struck down the use of the poll tax as a precondition to voting in all cases, without regard to financial ability to pay the tax.[83] The United States Supreme

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[80]Griffin v. Illinois, 351 U.S. 12 (1956).

[81]Douglas v. California, 372 U.S. 353 (1963).

[82]*See also* Williams v. Illinois, 399 U.S. 235 (1970); Tate v. Short, 401 U.S. 395 (1971), relieving only indigents of the penalty of imprisonment because of their inability to pay fines; Boddie v. Connecticut, 401 U.S. 371 (1971), relieving only indigents of the obligation to pay court fees and costs incidental to a divorce proceeding.

[83]Harper v. State Bd. of Elections, 383 U.S. 663 (1966); *see* Lindsey v. Normet, 40 U.S.L.W. 4184 (U.S. Feb. 23, 1972), in which the Court held unconstitutional an Oregon statute that required a tenant appealing an eviction judgment to post a bond for twice the rental value of the premises from the commencement of the action in which the judgment was rendered until the final judgment on appeal. In so holding, the Court invalidated the high bond requirement for all tenant-defendants, regardless of their ability to pay the bond.

See also Bullock v. Carter, 40 U.S.L.W. 4211 (U.S. Feb. 24, 1972), concerning the validity of high filing fees for entry into Texas nominating primaries. The decision is ambiguous as to whether the Court held the system unconstitutional as applied to all candidates, including those who could raise

Court has subsequently cited these cases indistinguishably as "de facto wealth classifications," without apparent recognition of the difference between saying that no one can be made to pay for a given service, and saying that one who cannot afford to pay for a given service cannot for that reason alone be deprived of it.[84]

The former formula of requiring no payment from anyone has the advantage of encouraging all—rich, poor, and in-between—to avail themselves of the service. This is the aim, for example, of free public education and, perhaps, the reason for voiding the poll

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the high fees, or only held that those who, because of their indigency, could not raise the high fees had to be relieved from doing so. The Court did stress the issue of the "inability" (without defining the term) of some candidates to pay the fee and thus indicated that it could be constitutionally permissible for Texas to maintain its general fee system and except only those with this "inability."

[84]Professor Frank Michelman, in his article, *supra* note 40, cited by the *Serrano* court, has argued persuasively that these cases are better understood as substantive due process "minimum protection" cases rather than as equal protection cases. The distinction between "minimum protection" and "equal protection" is set forth by Michelman as "vindication of a state's duty to protect against certain hazards which are endemic to an unequal society, rather than vindication of a duty to avoid complicity in unequal treatment," *Id.* 9 (emphasis omitted). Minimum protection thus means state fulfillment of those just wants (or fundamental rights) that our society cannot constitutionally accept as being subject to normal market risks of nonsatisfaction. This changes the focus of inquiry from "wealth classification" to the determination of what are just wants and what is meant by their nonsatisfaction.

Justice Harlan adopted the Michelman approach in his concurring opinion in Williams v. Illinois, 399 U.S. 235, 259 (1970), and employed it for the Court in Boddie v. Connecticut, 401 U.S. 371 (1971) over the objection of Justice Douglas. Justice Harlan's attempt to shift the Court to the Michelman due process approach has apparently been unsuccessful. *See* Bullock v. Carter, 40 U.S.L.W. 4211 (U.S. Feb. 24, 1972).

In discussing the minimum protection thesis, Professor Michelman notes the difference in treatment discussed in the text between the poll tax and criminal procedure cases. H does not, however, appear to offer a rationale for this difference. Michelman, *supra* note 40, at 24-26. He suggests that under his minimum protection theory, the state's obligation is normally satisfied "by free provision to those and only to those who cannot satisfy their just wants out of their own means." *Id.* 26. Nor would his theory require a graduated schedule of payments above the indigency threshold. Justice Harlan in his concurring opinion in *Williams v. Illinois* pointed out that logical consequence of the Court's equal protection theory would require a graduated schedule of payments for those above the indigency level. 399 U.S. at 261.

tax as a prerequisite for voting. On the other hand, an exemption from payment only for the poor results in a greater redistribution of wealth than does a no-payment principle.

To view the problem only in terms of those who can pay all or those who can pay nothing is also to oversimplify. One basic prerequisite is a determination of what level of sacrifice is required before one can say that a given individual or group is "unable" to pay for a service. Again, the leading cases have not dealt with this pervasive problem. Perhaps the level of sacrifice required of an individual can also be related (inversely) to the degree that society desires that everyone avail himself of the service; that is, the more society wants the service used, the less sacrifice is required for it.[85] Even this formula may need reevaluation to the extent that sacrifice is also considered to be a significant measure of the value of a service to an individual and recognition of that value by the individual increases the societal result desired.

The ambiguous result presented by the individual wealth discrimination cases is compounded when applied, as in *Serrano,* to an aggregation of individuals —a school district. In this setting, level of sacrifice may become useless as a guideline for determining when to apply the no-payment principle. Governmental

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[85] Under Professor Michelman's theory, Michelman, *supra* note 40, absent the "remote" possibility that one might deliberately waive his claim to the satisfaction of a just want, a person is always entitled to satisfaction of his just wants regardless of the sacrifice he is or is not willing to make to attain such satisfaction. *Id.* 14. He does not, however, satisfactorily explain why this is so.

units may have a greater array of demands on resources than do individuals; districts may be able to reallocate priorities in a way that individuals cannot. Arguably, street cleaning or hospital construction can always be cut back to pay for education. More significantly, a poor district's ability to raise its taxes or create revenue through borrowing may be so much greater than the ability of a poor person to raise revenue that the issue of level of sacrifice becomes meaningless.

The California Supreme Sourt recognized the difficulty of deriving from the wealth classification precedents a rule that, as applied to districts, would define the limits of sacrifice—determine which districts could not, and therefore need not, pay. One response by the court was to assert that "as a statistical matter, the poorer districts are financially unable to raise their taxes high enough to match the educational offerings of wealthier districts."[86] The authority given for this statement was an unquoted reference to a Legislative Analyst study. The court, rightly, was unwilling to rest on that.[87] Rather, it relied primarily on the proposition

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[86]5 Cal. 3d 599-600, 487 P.2d at 1251, 96 Cal. Rptr. at 611.

[87]Under the California financing system there is no limit on the rate at which, with voter approval, a district can choose to tax itself. Thus, there is no legal limit on a district's ability to raise its revenue. This may be contrasted with the situation in Florida which was presented to a 3-judge court in Hargrave v. Kirk, 313 F. Supp. 944 (M.D. Fla. 1970), *vacated on other grounds per curiam sub nom.* Askew v. Hargrave, 401 U.S. 476 (1971). Florida, in its "Millage Rollback Act," provided that, in order to qualify for state subvention, a school district could not tax itself at a rate greater than 10 mills. The district court accepted the argument that this limit was invalid because it put a limit on tax rates (or penalized districts for high rates), thus precluding school districts with lower tax bases from producing the same revenue as those with higher bases. The district court invalidated this limit on the grounds that there was no rational basis for it. In this the court was

that even if poorer districts could achieve expenditure parity by higher tax rates, "the richer district is favored when it can provide the same educational quality for its children with less tax effort."[88]

This statement suggests, that as applied to districts, the evil to be cured is not merely absolute deprivation, but relative disadvantage in ability to pay. This theory goes well beyond the de facto wealth cases that relieved only indigents of the obligation to pay for certain services.[89] Obviously, within the nonindigent category, the wealthier can purchase the service with less effort than the less wealthy. But the precedents do not require free provision of services to all or graded fees based on the ability to pay of those above the indigent cutoff line.

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patently in error. The state does have a rational purpose in preserving its own sources of revenue and protecting the taxpayers from overtaxation by their local school districts.

The court did accurately recognize, however, that the limit meant that districts with lower tax bases could not, even by taxing themselves more, equalize school expenditures with wealthier tax base districts. Yet, there is a paradoxical effect here. Florida argued in the United States Supreme Court that the limit was intended to be, and was, equalizing in a way that benefited poorer school districts. It had this effect, because for each percentage increase in tax rate, the wealthier district could produce more dollars per pupil than the poor one. To illustrate this, consider the hypothetical case of 2 school districts, *A* with $100,000 assessed valuation per pupil and *B* with $50,000 assessed valuation per pupil. If a 1.0% limit were put on both *A* and *B*, *A* could produce $1000 per pupil and *B*, $500, a difference of $500. By contrast, if there were no limit, and both *A* and *B* taxed at 1.5%, *A* would have $1500 and *B*, $750, a difference of $750, and so on. Thus, while holding *A* down, the limit also holds down the possible dollar divergence between *A* and *B*.

The Supreme Court vacated and remanded the case, on the question of whether the district court should have refused to exercise jurisdiction under the abstention doctrine.

[88]5 Cal. 3d at 599, 487 P.2d at 1251, 96 Cal. Rptr. at 611.

[89]It would also go beyond the court's apparent limitation of Proposition 1 to cases in which there are expenditure differentials, and underlines the taxpayer orientation of Proposition 1. *See* note 28 *supra*.

When applied to school districts, a constitutional standard of graded ability to pay becomes an even greater innovation than if it were applied to individuals. When dealing with school districts we are dealing with *taxation*. Let us assume, for example, equal spending per pupil among school districts. Each school district raises its required revenue by dividing its expenditure total by the number of its inhabitants (or the number of its families). It then assesses each inhabitant (or family) a per capita share of the total revenues required and levies a tax accordingly. If the state is redistricted so that aggregate individual wealth of each district is the same, the system clearly would not violate the *Serrano* holding because no school district, *qua* district, would have to make a greater effort than any other to raise the required revenues. Nevertheless, is this the relevant issue?

Burdens of taxation fall not on school districts, but on taxpayers. Even though districts are equalized in wealth consistent with *Serrano,* individuals or families are not. It would make no difference to the poor taxpayer who had difficulty meeting his tax burden, that there were an equal number of poor people with the same difficulty in other school districts. If the school districts in the example did v a r y in the aggregate wealth of their residents this system might violate *Serrano;* one could say that it was easier for the school district with greater aggregate wealth to raise its revenue than for the poorer one to do so. This approach still misses the point. The real problem is the individ-

ual taxpayer's difficulty in paying his tax bill. If *Serrano* labels relative deprivation among districts unconstitutional, then does its logic not require elimination of disproportionate sacrifice among those who pay the tax? Does the former proposition even make any sense without the latter?

If there is a constitutional vice created by the differential ability of taxpayers to meet their obligations, does this then mean that proportional, or even progressive, taxation is constitutionally compelled? It is doubtful that the *Serrano* court meant to suggest this outcome.[90] Nevertheless, without such a conclusion it is difficult to understand why it is unconstitutional to have a system whereby one district can more easily raise revenue than another. It is indeed probable under present financing systems, including that of California, that the average resident of a rich district pays higher taxes, in terms of gross dollars, for his schools than does the average resident of a poor district, despite the fact that the resident of the rich district is taxed at a lower rate.[91] This may be the result of the

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[90]The complaint contained counts by both students and parent taxpayers. The court's entire analysis was directed to the student plaintiff count, however. In addressing itself, at the end of the opinion to the dismissal of the taxpayer count, the court did not discuss the independent claims of the taxpayers, *qua* taxpayers, that, being in a poor district, they were required to pay taxes at a higher rate to secure the same or less educational expenditures. It reversed the dismissal of the taxpayer count solely on the basis that the taxpayer plaintiffs had incorporated the unequal education allegations of the student plaintiffs into their count, and that, under California law, they had standing to assert the students' educational interests. 5 Cal. 3d at 618, 487 P.2d at 1265, 96 Cal. Rptr. at 625.

[91]In addition, taxpayers might very well be paying for the education of their children in the prices they pay for their homes, as well as in their tax payments. To the extent that the quality of education in a given district is disproportionately high in relation to real estate taxes paid by the home owners of the district, this fact should be reflected in the price of the district's homes.

higher assessed valuation and, perhaps, larger average property holdings of the individual taxpayers in the rich district. A correlation may even exist between the amount of tax dollars paid by the average resident of a district and the educational expenditures of that district. If this is so, the difficulty is not with disproportionate payments but with inequitable taxation, not only in the hypotheticals above, but also in the existing financing schemes. The logic of *Serrano,* which invalidated these existing financing schemes, may therefore require the wealthy taxpayer to bear a greater burden than just having to pay more tax dollars than the poor. Instead it may demand at least a proportional tax system, and possibly one that is progressive.

The difficulties of relating the wealth of individuals to the wealth of districts, of applying wealth classification precedents to districts, and of finding a logical stopping place for the equality concepts involved, are not the only problems with the wealth classification analysis of *Serrano v. Priest.* In fact, the entire foundation of the court's constitutional argument may well have been destroyed by a United States Supreme Court decision which the *Serrano* court disturbingly ignored. In *James v. Valtierra*[92] the Supreme Court implied that even the existence of "invidious classifications on the basis of wealth" are insufficient to trigger the compelling interest standard of the new equal protection.

In *Valtierra,* the Supreme Court upheld a California constitutional provision that no low-rent housing

[92]402 U.S. 137 (1971.)

project could be constructed by a state public body unless the project had been approved by a majority of those voting at a local election. Refusing to apply strict scrutiny, the Court upheld the mandatory referendum on the ground that it was rationally related to the legitimate purpose of achieving popular participation in expenditure decisions. Justice Marshall, in a vigorous dissent, noted that the mandatory referendum provision discriminated solely against the poor. "Publically assisted housing developments designed to accommodate the aged, veterans, . . . or any class of citizens other than the poor, need not be approved by prior referenda."[93] Nevertheless, the Court ignored *Douglas, Harper,* and other cases that had deemed wealth classifications or discriminations against the poor as inherently suspect.[94] The *Valtierra* decision casts an unavoidable shadow over the first half of the constitutional analysis employed in *Serrano v. Priest.*

III. Education: A Fundamental Interest?

A. *Relationship Between Fundamentality and Impairment of an Interest*

The inherently suspect wealth classification argument is only one-half of the California Supreme Court's constitutional attack on school financing. The court also relied on its conclusion that education is one of those fundamental interests that, when conditioned on wealth classifications, will trigger special scrutiny

[93] *Id.* at 144 (footnote omitted).
[94] *See* notes 61-64 *supra.*

requiring a compelling state interest. The court concluded that education is a fundamental interest based on its importance, and its similarity to interests previously held to be fundamental. The court's analysis proceeded on the unstated assumption that having already found a suspect trait—wealth classification—if it is determined that education is fundamental, then the system of education financing here involved must meet a compelling interest test to survive constitutional scrutiny. This analysis was developed, however, without any attempt by the court to correlate the various reasons for determining education to be fundamental with the constitutional vice here perceived, unequal educational expenditures based on differential tax bases among school districts.

The *Serrano* court seems not to have perceived this as an issue at all. It was not an issue in the criminal process and voting cases decided by the United States Supreme Court and discussed above,[95] because those were cases of total deprivation of the service involved. When the effect of state action is total deprivation of the service to the individual, whatever fundamental aspects of the service exist are necessarily eliminated.[96] On the other hand, where a service is only impaired

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[95]*See* notes 80-84 *supra* & accompanying text.

[96]It may be possible for a service to be held fundamental based solely on general societal benefit or externalities unrelated to any particular individual enjoying it. Because society's interest would be in the level of the service enjoyed by people in the aggregate, arguably this interest would not be impaired by inequality among society's components. If this were so, a total deprivation limited to a number of individuals might not impair the bases of fundamentality. This would seem, however, to be a very rare situation of fundamentality, and has not yet arisen in any litigation.

rather than total withheld, it would seem necessary to determine whether or not the impairment does affect the basis of the fundamentality of the service.

As an illustration, assume that a state decided to provide all students with free education only through eighth grade, and thereafter to charge fees so that only those who could afford to pay could attend. In analyzing this hypothetical in terms of the fundamentality of education, one might conclude that all the attributes of education that make it fundamental are satisfied by attendance only until eighth grade. If that were so, the fundamentality of education would be irrelevant to the constitutionality of any state decision on post-eighth grade education. In the context of *Serrano,* such an analysis would require determination of the relationship between the various grounds for the court's conclusion that education is fundamental, and the inequalities of interdistrict expenditures based on differences in taxable wealth among districts.

B. *Is Education a Fundamental Interest?*

In its analysis of education's fundamentality, the California Supreme Court first recognized that there was no direct authority for the proposition that education is such a fundamental interest.[97] The court then went on to make three basic arguments for the fundamentality of education, based on:

1. the importance of education to the individual and society;

[97] 5 Cal. 3d at 604, 487 P.2d at 1255, 96 Cal. Rptr. at 615.

2. a comparison of education with the rights of criminal defendants and voting rights that have been held to be fundamental; and

3. the distinguishing of education from other governmental functions that might arguably be as fundamental as education.

1. The "Importance of Education" Argument

The court first argued for the fundamentality of education because it is "a major determinant of an individual's chances for economic and social success in our competitive society; . . . [and] a unique influence on a child's development as a citizen and his participation in political and community life."[98] In support of these statements the court did not cite any social science data but rather relied on language in prior cases, principally the well-known statements in *Brown v. Board of Education*[99] concerning the importance of education in today's world.

As stated above, however, the court did not relate these attributes of education to the effect of interdistrict disparities in expenditures. Its only reference to the issue was an assertion that, while California precedents "involved [only] actual exclusion from the public schools, surely the right to an education today means more than access to a classroom."[100] For com-

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[98] *Id.* at 605, 487 P.2d at 1255-56, 96 Cal. Rptr. at 615-16.

[99] 347 U.S. 483, 493 (1954).

[100] 5 Cal. 3d at 607, 487 P. 2d at 1257, 96 Cal. Rptr. at 617 (footnote omitted).

parison the court quoted language in *Reynolds v. Sims,*[101] where the Supreme Court asserted that the right to vote is impaired not only by bars to voting but by dilution of power by malapportionment. *Sims,* however, is not relevant to the issue posed. The real issue in the voting case concerned individual political power, an interest clearly and directly impaired by the evil to be remedied—malapportionment. There is no a priori clear connection between those characteristics of education quoted above by the court to establish its fundamentality, and financing differentials; nor do existing data show such a connection.

In terms of an individual's social and economic success, there are data, although hardly incontrovertible, correlating length of school attendance and economic attainment.[102] However, such data do not correlate economic or social attainment with differential expenditures and, as indicated above, the whole issue of correlating economic inputs and educational outputs is, at best, unclear. As to responsible citizenship there again are no empirical data to show a correlation with differential expenditures. One's a priori judgment here might be that there is no such correlation.

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[101]377 U.S. 533, 562-63 (1964).

[102]*See* EDUCATIONAL INVESTMENT IN AN URBAN SOCIETY (M. Levin & A. Shank eds. 1970), which contains summaries and analyses of a number of studies.

2. Education Compared to Previously Recognized Fundamental Rights

The second part of the court's argument that education is fundamental was a comparison of education with those rights the United States Supreme Court already has held to be fundamental: various rights of criminal defendants and voting. The court recognized the uniqueness of an individual's interest in liberty which operates in the criminal procedure area, but suggested that education might well be as important because it has "far greater social significance than [such procedural protections as] a free transcript or a court-appointed lawyer."[103] Except for an aside that education may reduce the crime rate, however, the *Serrano* court did not really try to equate education with the rights of criminal defendants. Nor should it. The protection of the procedural rights of criminal defendants is not solely recognition of a unique right to liberty but a recognition of the need for protection against the ultimate state attempt to curtail that liberty. The individual, in classic terms, is defending himself against the state. This protection of citizen from government is the essence of the constitutional restraints contained in the Bill of Rights and the fourteenth amendment. Unlike the state's function of giving children an education, in the criminal process cases the state fulfills its function by taking something—the liberty of the criminal. Thus these cases do not support

[103] 5 Cal. 3d at 607, 487 P.2d at 1258, 96 Cal. Rptr. at 618.

the proposition that there are fundamental affirmative rights to the provision of government services.

The right to vote is an affirmative right ensured by the state; it is, however, the ultimate political right in a democratic society in a way that makes it sui generis. Voting ensures the right to all other rights—including education—to the extent achievable through the political process. Public education, though certainly relevant to political access, is not intrinsic to democracy. Finally, the most obviously distinctive fact about both criminal procedural safeguards and voting is that they find expression in the structure of the Federal Constitution in a way that education does not.[104]

3. Education Compared to Other Government Functions

In addition to extolling education and comparing it with acknowledged fundamental rights, the court in *Serrano* felt compelled to distinguish education from other services and interests. This ability to find education unique is central to its fundamentality. If everything is fundamental, nothing is. Moreover, the uniqueness of education is an essential limitation on the holding in the case. The court was most anxious to refute the argument that if differences in spending on education attributable to wealth differentials among geographical areas are unconstitutional, then so are similar differentials in other governmental services.

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[104]*See* Brest, *supra* note 74, at 606.

In attempting to distinguish education from other governmental services the court relied on five factors:[105]

1. Education is necessary to preserve an individual's opportunity, despite a disadvantaged background, to compete successfully in the economic market place, thus maintaining the existence of "free enterprise democracy."

2. Education is "universally relevant." Every person benefits from education though not everyone finds it necessary to use other governmental services like the police or fire department.

3. Public education occupies much of an individual's youth—between ten and thirteen years. Few government services have such "sustained, intensive contact" with the individual.

4. No other government service molds the personality of society's youth as does education.

5. Education is compulsory.

Again, there is the difficulty of relating these distinguishing features of education to spending differentials. The unproven relationship of educational spending to social and economic success has already been discussed.[106] The universality and prolonged nature of education were used expressly to distinguish it from police and fire services. The universality of *public*

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[105]5 Cal. 3d at 609-10, 487 P.2d at 1258-59, 96 Cal. Rptr. at 618-19.

[106]*See* text accompanying notes 98-102 *supra*.

education is overstated, however. Although there are economic limitations on its use, the alternative of private education is available. More significantly, police and fire protection are also universal and sustained. Their protective attributes do not consist solely of responding to cries of distress, but consist also of the security present on a daily, continuous basis in an individual's surroundings. Thus, they cannot be said to be less universal or of a shorter duration than education.

Reasons four and five do distinguish education, at least in degree, from police and fire. This fact does not satify the question of what relationship these factors have to differential expenditures. The major thrust of the argument that education molds personalities and that it does so with the force of governmental compulsion behind it, would appear to be directed not against financing differentials, but against the danger to a free society in having the government effectively control and monopolize this crucial mind forming process. As such it would argue much more for the easier availability of diverse educational experiences, for example, through a tuition voucher system, than for equality of expenditures.[107]

The compulsory nature of education merits further discussion.[108] It was argued that education is funda-

[107]It may be argued that the personality molding function of education is peripherally related to first amendment rights. The difficulties of relating this factor to a need for equal expenditures would still apply to the argument, however.

[108]In assessing the applicability of *Serrano* on a nationwide basis, it should be noted that education is not universally compulsory in this country. Mississippi

mental to the individual because by making it compulsory the state has designated its importance. On analysis, however, this does not seem convincing. The reasons for making education compulsory are two: (1) people might not otherwise avail themselves of this service; and (2) the value of freedom of choice is less applicable here because the choice of school attendance would not be the child's, but his parents'. This latter, parens patriae reason presumes that the state is no worse a decisionmaker for a child than are his parents, and that a state choice of compulsory schooling provides a foundation for later choice by the child.

The first reason, that education is compulsory because otherwise people would not avail themselves of the service, does not primarily demonstrate a judgment of importance to the individual. Indeed, the need to make education compulsory to be certain that all will avail themselves of it might indicate its relative unimportance to the individual; an opposite determination that there is no need to make a service compulsory could reflect the belief that all individuals, recognizing the importance of the service, would use it.

The "importance" reflected in the societal decision to make education compulsory does not represent the value choice of the individual, but rather, of society. It may be that the court was here finding the individ-

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and South Carolina do not have compulsory school attendance laws and Virginia has a local option system. Moreover, compulsory school attendance is generally limited to those between the ages of 7 to 16, whereas one is entitled to attend school generally from ages 6 to 21. *See* Goldstein, *The Scope and Sources of School Board Authority to Regulate Student Conduct and Status: A Nonconstitutional Analysis*, 117 U. PA. L. REV. 373, 393-94 n.74 (1969).

ual's interest in education to be fundamental because the external benefits of education are valuable to *society*. The flaw in that approach is that society has already decided what benefits it wants from education by legislative determination; it does not need judicial intervention.

Nor does the second reason for making education compulsory—the parens patriae reasoning—necessarily indicate a judgment of education's unique importance to the individual. Rather, it relates to the peculiar situation of the child, an individual for whom someone else, parent or state, must make a choice.[109]

While the reasons for making education compulsory do not therefore argue that education is fundamental, there remains the significance of compulsory attendance itself.

Initially, it should be remembered that enrollment in public school is not required. The option of private schooling is constitutionally protected.[110] On the other hand, private school is a viable option only for those who can easily afford it, or who feel strong social, political, or religious needs that persuade them to make the sacrifice necessary to pay for private schooling. The *Serrano* court stated that the freedom to attend private schools "is seldom available to the indigent. In this context, it has been suggested that 'a child of the

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[109]The validity of these rationales for compulsory school laws has been challenged in the recent decision of State v. Yoder, 49 Wis. 2d 430, 182 N.W.2d 539, *cert. granted*, 402 U.S. 994 (1971).

[110]*See* Pierce v. Society of Sisters, 268 U.S. 510 (1925).

poor assigned willynilly to an inferior state school takes on the complexion of a prisoner, complete with a minimum sentence of 12 years.' "[111] While this statement embodies some underlying truths, it falls short of persuasiveness when applied to interdistrict differentials in expenditures.

As discussed above, the correlation between expenditure levels and quality of education is unclear,[112] and there is no demonstrated correlation between "a child of the poor" and school districts with low real property tax bases.[113] Moreover, the argument that compelled attendance requires equal expenditures seems to be premised on a type of "right to treatment"—the notion that restriction of freedom for a specified purpose obligates the state to satisfy that purpose.[114] Yet this right would only require a minimum level of treatment to justify curtailing a child's liberty, or more realistically, his parents' liberty. Such a minimum right to treatment may not be in question at all under the California foundation plan guarantee and, if it is, it is subject to the problems discussed above of court determination of the minimum level of a foundation guarantee system. A child compelled to go to a poor school (rather than not compelled to go to school at all) is not hurt by that compulsion vis-a-vis another

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[111] 5 Cal. 3d at 610, 487 P.2d at 1259, 96 Cal. Rptr. at 619 (quoting from Coons, Clune & Sugarman, *Educational Opportunity: A Workable Constitutional Test for State Financial Structures*, 57 CALIF. L. REV. 305, 388 (1969)).

[112] *See* text accompanying notes 47-52 *supra*.

[113] *See* notes 65-67 *supra* & accompanying text.

[114] *See, e.g.*, Wyatt v. Stickney, 325 F. Supp. 781 (M.D. Ala. 1971); *Symposium—The Right to Treatment*, 57 GEO. L.J. 673 (1969).

child compelled to go to a better school. He is only hurt by that compulsion if that poor school is worse than no school.

In discussing the uniqueness of education, the *Serrano* court, while trying to distinguish education from police and fire protection, did not even consider a comparison between education and provision of the essentials of life, such as food, clothing, and shelter. Such a comparison would seem imperative, for in *Dandridge v. Williams*[115] the United States Supreme Court upheld welfare grant restrictions on a traditional rational basis test, not the compelling interest test employed by the Supreme Court in protecting fundamental interests. This was done despite prior dictum that subsistence was a fundamental interest.[116]

The *Dandridge* opinion does not expressly deny that subsistence is a fundamental interest. Rather, it states that welfare legislation, when not involved with a constitutionally protected freedom such as interstate travel, is not subject to a compelling interest test because it is "a state regulation in the social and economic field . . . ."[117] Whether welfare regulation is not subject to a compelling interest test because it does not involve a fundamental interest or because it does involve economic and social regulation, the result in *Dandridge* creates difficulties for applying a compel-

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[115]397 U.S. 471 (1970).

[116]*See* Goldberg v. Kelly, 397 U.S. 254, 264-65 (1969); Shapiro v. Thompson, 394 U.S. 618 (1969).

[117]397 U.S. at 484; *accord,* Richardson v. Belcher, 404 U.S. 78 (1971).

ling interest test in *Serrano*. It is hard to argue that an affirmative right to education is more important than an affirmative right to subsistence. Education also shares the status of welfare as being primarily an economic and social regulation despite its avowed mind-forming purpose. Most of the reasons given by the *Serrano* court for the fundamentality of education relate to economic or social factors. Moreover, as noted by Professor Brest, "it is not obvious that educational finance systems embody economic judgments that are any less complex, intuitive, and ultimately nonjusticiable than those inherent in welfare legislation."[118]

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[118]Brest, *supra* note 74, at 615. The recent Supreme Court decision in Palmer v. Thompson, 403 U.S. 217 (1971), in which the Court upheld the right of a city to close its municipal swimming pools rather than operate them on an integrated basis, is also relevant to the issue of the fundamentality of education. In so holding, the Court distinguished prior cases refusing to permit a school district to close its schools in order to avoid a desegregation order. The Califor Supreme Court quoted a statement of the majority opinion in *Palmer* distinguishing swimming pools from schools: "Of course that case [a school closing case] did not involve swimming pools but rather public schools, an enterprise we have described as 'perhaps the most important function of state and local governments.' Brown v. Board of Education, *supra* at 493." 5 Cal. 3d at 609 n.26, 487 P.2d at 1258-59 n 26, 96 Cal. Rptr. at 618-19 n.26.

That quotation was taken out of context by the California court, and when the entire case is reviewed, it is clear that the majority opinion and a number of other opinions in the case purposefully refused to draw a distinction between schools and swimming pools that would give greater constitutional protection to the former. The quotation cited above was from a footnote in the *Palmer* opinion in which Justice Black, writing for the Court, sought to distinguish a prior summary affirmance of a lower court decision invalidating Louisiana statutes empowering the governor to close any school ordered to integrate, or to close all schools in the state if one were integrated. The first difficulty with the quotation is that the sentence following it in the *Palmer* footnote stated: *"More important,* the laws struck down in *Bush* were part of an elaborate package of legislation through which Louisiana sought to maintain public education on a segregated basis, not to end public education." 403 U.S. at 221 (emphasis added).

Moreover, the principal school closing case discussed in *Palmer* was Griffin v. County School Bd., 377 U.S. 218 (1964), an opinion by Mr. Justice Black that invalidated school closings in one Virginia district to avoid desegregation while other schools in the state remained open. In distinguishing *Griffin,* Justice Black did not even mention a special status for schools. but rather relied exclusively on other differences between that case and *Palmer,* principally the fact that *Griffin* did not involve a complete shutdown.

In a concurrence, Mr. Justice Blackmum did indicate that he saw a dif-

IV. The *Serrano* Response: An Uncertain Portent for Education and Equal Protection

Serrano's "fundamental interest" analysis of education is doubtful both logically and in terms of Supreme Court authority. Yet one cannot deny education's importance or avoid the conclusion that society must carefully scrutinize its distribution. The moral case is strong for a doctrine of equal educational opportunity that would limit differential treatment of educational entitlement. The questions that arise in adopting *Serrano* and a federal constitutional standard as the remedy for this moral need are not answered solely according to one's view of the importance of education. There remains for studied consideration the wisdom of yielding this role to the courts, and of attempting to cure societal problems with broad constitutional precepts.

The California Supreme Court, finding an inherently suspect wealth classification as well as a fundamental interest in the school financing system, required

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ference between schools and swimming pools. He stated as one of the 3 factors that influenced him in reaching the conclusion that swimming pools could be closed: "The pools are not part of the city's educational system. They are a general municipal service of the nice-to-have but not essential variety, and they are a service, perhaps a luxury, not enjoyed by many communities." 403 U.S. at 229. While this statement distinguishes schools from swimming pools, it does not distinguish education from police, fire, welfare, or other common municipal services.

Moreover, in their respective dissents in *Palmer*, both Justice Douglas and Justice Marshall rejected any special status for schools that distinguishes them from swimming pools. Justice Douglas stated: "I conclude that though a State may discontinue any of its municipal services—such as schools, parks, pools, athletic fields, and the like—it may not do so for the purpose of perpetuating or installing *apartheid* or because it finds life in a multi-racial community difficult or unpleasant." *Id.* at 239. Justice Marshall also equated schools with swimming pools or golf courses in conceding that a state could close them if it had a proper basis to do so.

that the system's inequities be justified by a compelling state interest. The court was clearly correct in finding that the system, when compared with its equal wealth alternatives, could not withstand this stricter equal protection test. The question remains, however, whether an equal wealth alternative like district power equalizing that still permits geographic disparities can itself survive a compelling interest test. For the reasons stated above concerning the pervasive societal sense that one cannot prevent people from trying to obtain a better education for their children, it is probable that district power equalizing could withstand strict scrutiny. This conclusion, however, is far from certain.[119]

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[119]The equal wealth formulation, which permits district power equalizing, is easiest understood as a constitutional attempt to equalize educational expenditures, with some inequality permitted as an accommodation to other interests. This is the equal protection formulation discussed in the text above, and used by the *Serrano, Van Dusartz* and *Rodriguez* courts.

One could argue for the equal wealth standard independently of equalization of expenditures, however. Such an argument would have to support a constitutional norm that each student, or each taxpayer, is entitled to live in a district that has an equal resource base for education. Such a norm is difficult to construct and neither the California Supreme Court nor the authors of *Private Wealth and Public Education* in their development of Proposition 1 have even attempted to state or support it. A recent article by professor Ferdinand P. Schoettle, *The Equal Protection Clause in Public Education,* 71 COLUM. L. REV. 1355, 1402-12 (1971), does make just such an argument. He states that lower tax base districts require greater taxpayer sacrifice than wealthier districts to raise educational revenue. Since the acceptability to voters of tax proposals "varies inversely with the burden," *id.* 1407, "voters in low tax base districts who seek to increase educational appropriations are forced to assume a proportionally heavier burden of electoral persuasion than those who wish to achieve an identical goal in the more affluent districts." *Id.* This electoral burden, which varies from district to district, bears no reasonable relationship to a legitimate state policy and thus denies equal protection under a Baker v. Carr, 369 U.S. 186 (1962) voting rights rationale. Professor Schoettle concedes that this approach leaves the field of education completely and would apply to all decisions of monetary issues faced by local governing bodies. He also concedes that his constitutional argument does not depend on poverty as a classification, but applies to all relative taxpayer disadvantage. He concludes that his analysis would not compel absolute equalization or elimination of local tax bases but only reduction of the gross wealth disparities to the point where they no longer affect the electoral persuasiveness

On the other hand, it is doubtful that the *Serrano* holding requires this stricter equal protection test to justify an equal wealth system like district power equalizing. *Serrano* employed the compelling interest test because it found a combination of a wealth classification and a fundamental interest.[120] District power equalizing satisfies the former test since the revenue it produces is based, not on district wealth, but on district tax effort. District power equalizing, then, would not have to meet a compelling interest test, and could be upheld on only the rational basis analysis.

This conclusion, however, points up the fundamental theoretical problem in the *Serrano* approach. Viewed from the perspective of the child and his family's interest in equal education, the current system and district power equalizing suffer the same inade-

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of adherents to the same goal among different districts.

While provocative, the Schoettle thesis is ultimately unconvincing. It has all the difficulties of the lack of a manageable judicial standard that *Serrano* and Proposition 1 rightly try to avoid. These same difficulties of measuring subtleties of differential political power are what compelled the United States Supreme Court to reject an argument similar to Professor Schoettle's in Whitcomb v. Chavis, 403 U.S. 124 (1971), concerning at-large elections, even in a racial context. Moreover, his theory would logically invalidate any number of things that affect electoral power unequally including multimember districts, single-party districts, and the seniority and committee systems in legislatures. Finally, all the electoral cases that Professor Schoettle cites involve inequalities among electors in the same political entity, that is, electors competing for statewide decisionmaking influence. Thus in *Baker v. Carr*, the constitutional vice was unequal weighing, by district, of voters in relation to their ability to influence the state legislature. Professor Schoettle's *Serrano* analysis, however, expressly eschews such a rationale as being foreclosed by James v. Valtierra, 402 U.S. 137 (1971). His rationale, rather, is that electors of a poor district have less internal district power than do those of wealthy districts. He thus posits lack of pure horizontal equality of voters in different areas, with no racial or poverty components and regardless of the issues involved, as a basis for invalidating the universal American system of local government financing. This lack of horizontal equality is said to make the system "irrational." Yet a system that provides that local resources should be available to local government to finance its needs is clearly not irrational.

[120]*See* note 22 *supra*.

quacies. Neither is a wealth classification; they are both residence classifications in their actual effects. To the extent that expenditures are related to educational quality, the child receives a poorer education whether he lives in a poor district or simply one that undervalues education.

Since the court's equal wealth standard allows for these continued educational disparities, the essential concern of *Serrano* is not the school child but the taxpayer. The California court has spawned a new, but perhaps logically inevitable corollary to Proposition 1: The *economic burden* of public education may not be a function of wealth other than the wealth of the state as a whole. As such the principle of *Serrano* cannot realistically be limited to education, but applies to all burdens of taxation.

APPENDIX "B"

AMENDED IN ASSEMBLY JUNE 22, 1972

AMENDED IN ASSEMBLY JUNE 16, 1972

AMENDED IN ASSEMBLY MAY 24, 1972

AMENDED IN ASSEMBLY MAY 3, 1972

CALIFORNIA LEGISLATURE—1972 REGULAR SESSION

ASSEMBLY BILL No. 1283

Introduced by the Assembly Committee on Education (Leroy F. Greene (Chairman), Chacon (Vice Chairman), Arnett, Cline, Cory, Dent, Dunlap, Fong, Bill Greene, Keysor, Lewis, Maddy, McAlister, Ryan, and Vasconcellos) and Murphy

(Assigned to Arnett)

March 15, 1972

REFERRED TO COMMITTEE ON EDUCATION

An act to amend Sections 6741, 17300, 17303.5, 17414, 17417, 17503, 17603.5, 17651, 17654.5, 17655.5, 17664, 17665, 18102.8, 18102.9, 18102.10, 18355, 18358, 18401, 20404, and 20806 of, to add Sections 13520.3, 17301, 17301.1, 17301.2, 17301.3, 17653, 17662, 17662.3, 17662.5, 18102, and 20751 to, to add Chapter 6.10 (commencing with Section 6499.230) to Division 6 of, to add Chapter 1.7 (commencing with Section 17270) to, and Article 3 (commencing with Section 17701) to Chapter 3 of, Division 14 of, to repeal Sections 1835, 5661, 6854, 6855, 6913.1, 13704, 14657, 14758, 17301, 17656, 17660, 17662, 17665.5, 18102, 18102.2, 18102.4, 18102.6, 20751, 20800, 20801.5, 20802.8, 20807, 20808, 20808.5, and 20816 of, to repeal Article 2.1 (commencing with Section 17671), Article 2.5 (commencing with Section 17680), Article 3 (commencing

with Section 17701), Article 4 (commencing with Section 17751), Article 5 (commencing with Section 17801), Article 7 (commencing with Section 17901), Article 7.1 (commencing with Section 17920), Article 7.2 (commencing with Section 17940), and Article 8 (commencing with Section 17951) of Chapter 3 of Division 14 of, to amend the heading of Article 2 (commencing with Section 17651) of Chapter 3 of Division 14 of, the Education Code, relating to the financial support of public education, making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1283, as amended, Arnett (Ed.). School finance.

Provides for revised system of allocation of state support for public elementary and high schools, such system being based upon a specified percentage of the current expense of education, as defined.

Provides for computation of maximum expenditures by such school districts.

Specifies system whereby school districts set local tax rates, but prescribed amount of proceeds thereof revert to School District Wealth Equalization Fund, for redistribution to school districts based upon district's ratio of assessed valuation to a.d.a. to statewide average ratio of assessed valuation to a.d.a.

Deletes existing provisions re computation, allocation, and apportionment of amounts denoted as "basic state aid," "equalization aid," and "supplemental support" for elementary school, high school, and community college levels.

Eliminates use of computational tax rates as a factor in computing state and local shares of foundation program support.

Eliminates unification and class size reduction bonuses in apportionment of state school funds.

Eliminates areawide school support programs for areas included in defeated unification proposals.

Revises method of computing the amount of allowances for physically handicapped, mentally retarded, and educationally handicapped pupils. Revises allowances for special

transportation programs.

Makes numerous related changes.

Vote—Majority; Appropriation—Yes; Fiscal Committee—Yes.

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature in this act to provide for the financial support of public education in the following manner:

(a) A funding mechanism which (1) minimizes the wealth disparities that presently exist between school districts and (2) enables every child in the state to receive an equal education opportunity.

(b) An adequate level of financial support for the education of every child through a combination of a reasonable level of state assistance and local effort.

(c) An orderly transition from the present system to a new system of school finance.

(d) A system whereby at least ~~55~~ *50* percent of the educational support is provided from the General Fund in the State Treasury.

(e) A reasonable level of annual increases from the state to meet the pressures of inflation without the necessity of annual legislative action.

(f) The continuation of local control of educational programs and the level of local property tax rates.

(g) A mechanism of expenditure controls to replace the present ineffective method of property tax limitations.

(h) ~~A system for the~~ *The* elimination of most of the presently authorized school district permissive override taxes.

(i) A system for minimum reliance on the property tax for the support of public education.

SEC. 2. Section 1835 of the Education Code is repealed.

SEC. 3. Section 5661 of the Education Code is repealed.

SEC. 3.5. Chapter 6.10 (commencing with Section

6499.230) is added to Division 6 of the Education Code, to read:

CHAPTER 6.10. EDUCATIONALLY DISADVANTAGED YOUTH PROGRAMS

6499.230. It is the intent of the Legislature to provide quality educational opportunities for all children in the California public schools. The Legislature recognizes that because of differences in family income, differing language barriers, and pupil transiency, differing levels of financial aid are necessary to provide quality education for all students.

6499.231. From the funds appropriated by the Legislature for the purposes of this chapter, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall administer this chapter and make apportionments to school districts to meet the total approved expense of the school districts incurred in establishing education programs for pupils who qualify economically and educationally in preschool, kindergarten, or any of grades 1 through 12, inclusive. Nothing in this chapter shall in any way preclude the use of federal funds for educationally disadvantaged youth.

6499.232. Maximum apportionments allowable to school districts shall be determined by the following factors:

(a) An index of "potential impact of bilingual-bicultural pupils" determined by dividing the percent of pupils in the district with Spanish and Oriental surnames, as determined by the annual ethnic survey conducted by the Department of Education, by the statewide average percentage of such pupils for unified, elementary, or secondary districts, as appropriate.

(b) A ratio of the district's "index of family poverty," defined as the district's Elementary and Secondary Education Act, Title I entitlement, divided by its average daily attendance in grades 1 through 12, or any thereof maintained, divided in turn by the state average index of family poverty for unified, elementary, or secondary

districts, as appropriate.

(c) A ratio of the district's "index of pupil transiency," as computed from the relationship between the district's average daily attendance and its total annual enrollment, divided by the state average index of pupil transiency for unified, elementary, or secondary districts, as appropriate.

The district's total maximum apportionment under this chapter shall be determined by computing the product of (1) one-third the sum of the above three factors, (2) the number of pupils receiving aid for dependent children support, and (3) a constant amount of three hundred dollars ($300), or such amount as the Superintendent of Public Instruction may determine so that the sum of all allocations will not exceed the funds appropriated by the Legislature for the purposes of this chapter.

6499.233. For the fiscal year 1972–1973, the superintendent shall allocate to local districts an amount equal to not less than 40 percent of the total amount computed under Section 6499.232. For the fiscal year 1973–1974, the superintendent shall allocate not less than 40 percent of the total amount so computed and not more than 90 percent of the amount computed. For the 1974–1975 fiscal year and thereafter, the superintendent shall allocate to each district not less than 40 percent nor more than 100 percent of the amount so computed.

6499.234. In approving programs under this chapter, the State Board of Education shall give due consideration to the effectiveness of the program and shall not continue in operation any program that, upon evaluation, has been shown to be of low effectiveness and which has only limited possibility of improved effectiveness.

For the fiscal year 1973–1974 and for each year thereafter, districts which demonstrate a high degree of program effectiveness shall receive amounts up to their entitlement limits. Districts which demonstrate low levels of program effectiveness shall continue to receive their initial apportionments but the Superintendent of Public Instruction may reduce the additional computed apportionments due such districts, if he determines that

such programs have limited possibilities of improved achievement.

6499.235. The Superintendent of Public Instruction shall apportion the funds available for programs in accord with procedures specified in this chapter and policies which may be adopted by the State Board of Education. Funds shall be allocated to each district within its entitlement based upon a plan submitted by the district to the Superintendent of Public Instruction, and approved by the State Board of Education. The plan shall include (1) an explicit statement of what the district seeks to accomplish, (2) a description of the program and activities designed to achieve these purposes, and (3) a planned program of annual evaluation, including a statement of the criteria to be used to measure the effectiveness of the program.

6499.236. The State Board of Education shall adopt regulations setting forth the standards and criteria to be used in the administration, monitoring, evaluation, and dissemination of programs submitted for consideration under this chapter; 1 percent of the total appropriation for the purposes of this chapter shall be retained by the Department of Education for these purposes. Funds appropriated for the purposes of this chapter not allocated as previously specified shall be allocated by the State Board of Education to promote the intent of this chapter to provide education programs to as many eligible pupils as possible and to stimulate the development, implementation, and evaluation of innovative programs.

6499.237. The Superintendent of Public Instruction shall submit annually to the Governor and to each house of the Legislature a report evaluating the programs established pursuant to this chapter, together with his recommendations concerning whether the same should be continued in operation.

6499.238. There is hereby appropriated from the General Fund in the State Treasury to the State School Fund for the fiscal year 1972–1973 an amount equal to twenty-one dollars and fifty cents ($21.50) multiplied by

the total statewide average daily attendance of the preceding fiscal year in kindergarten and grades 1 to 12, inclusive, to be used for the purposes of Chapter 6.10 (commencing with Section 6499.230) of Division 6 of the Education Code. For the fiscal year 1973–1974 the amount per such unit of average daily attendance shall be forty-three dollars ($43); and for the fiscal year 1974–1975 and thereafter, it shall be fifty-three dollars and seventy-five cents ($53.75).

SEC. 4. Section 6741 of the Education Code is amended to read:

6741. A student shall be deemed to be a resident of the high school district in which he lived at the time of his admission to the program and the excess cost for a school year of educating such student shall be paid by the high school district of which he is a resident to the county superintendent who is providing education for the students. The excess cost shall be determined by dividing the total current expense of education as defined in *subdivision (b) of* Section 17503 and also excluding expense of boarding and lodging during such school year by the total number of units of average daily attendance in such school or classes during such school year, less state and federal apportionments on account of such average daily attendance.

Average daily attendance of students shall be computed, for purposes of this article, by dividing the number of days such student attended the schools or classes by the number of days that the schools or classes were taught, except that with respect to a student attending such schools or classes for more than 175 days in a school year, the average daily attendance shall be computed by using the divisor of 175.

For purposes of computing average daily attendance 180 minutes of class attendance shall be deemed to constitute a schoolday, and no more than 15 hours of class time per week shall be considered.

Not later than July 15th of each year, the superintendent of schools of the county providing education for students shall forward his claim for the

excess expense reimbursement to the high school district of residence of each student during the preceding school year, and the governing board of such high school district shall upon receipt thereof pay such claims.

SEC. 5. Section 6854 of the Education Code is repealed.

SEC. 6. Section 6855 of the Education Code is repealed.

SEC. 7. Section 6913.1 of the Education Code is repealed.

SEC. 8. Section 13520.3 is added to the Education Code, to read:

13520.3. When a school district operates on a year-around schedule pursuant to Chapter 7 (commencing with Section 32100) of Division 22, the salaries of employees who are employed for the extended school year may be adjusted in accordance with the ratio of the extension of the school year in months bears to the length of the school year in months prior to the commencement of year-around operation. No classroom teacher may be required to participate in a year-around program without his consent.

SEC. 9. Section 13704 of the Education Code is repealed.

SEC. 10. Section 14657 of the Education Code is repealed.

SEC. 11. Section 14758 of the Education Code is repealed.

SEC. 12. Chapter 1.7 (commencing with Section 17270) is added to Division 14 of the Education Code, to read:

CHAPTER 1.7. ADJUSTMENTS TO USABLE ASSESSED VALUATION

17270. The Legislature hereby declares that its intent in enacting this chapter is to provide a reasonable and equitable method for ascertaining the value of property located within school districts for use in connection with the administration of state laws providing for the

allocation of state funds to such districts for school purposes on the basis of value and provide for more equal educational opportunity for students residing in districts of varying wealth per unit of average daily attendance and to improve the equity among taxpayers residing in or owning property in districts of varying wealth.

The Legislature hereby further declares that in enacting this chapter it has no intention to affect in any way, whether directly or indirectly, any determination of the assessed value of property for tax purposes.

17271. Each school district shall report to the Superintendent of Public Instruction:

(a) The total assessed valuation of the district; and

(b) The amount equal to:

(1) Ten percent of the total assessed valuation in the 1972–1973 fiscal year.

(2) Twenty percent of the total assessed valuation in the 1973–1974 fiscal year.

(3) Thirty percent of the total assessed valuation in the 1974–1975 fiscal year.

(4) Forty percent of the total assessed valuation in the 1975–1976 fiscal year.

(5) Fifty percent of the total assessed valuation in the 1976–1977 fiscal year and following.

17272. The Superintendent of Public Instruction shall compute the total amounts reported to him pursuant to subdivision (b) of Section 17271 for each type of district. He shall make a separate computation for elementary school districts, high school districts, and unified school districts. He shall divide the total for each type of district by the statewide average daily attendance for the preceding fiscal year for each type of district. The amount computed pursuant to this section is the assessed valuation redistribution amount per unit of average daily attendance for each type of district.

17273. The Superintendent of Public Instruction shall compute for each school district the amount derived by multiplying the assessed valuation redistribution amount per unit of average daily attendance by the average daily attendance of the district for the preceding fiscal year.

The amount computed pursuant to this section is the redistribution amount.

17273.5. The "district assessed valuation" for each district is the total assessed valuation minus the amount reported for it pursuant to subdivision (b) of Section 17271 plus the redistribution amount for the type of district computed pursuant to Section 17273.

17274. (a) Each school district shall compute the amount which the revenue derived from the levy and collection of school district taxes would have been if it had been collected and been based upon an adjusted assessed valuation computed pursuant to Section 17273.5

For the purpose of this ~~subdivision~~ *chapter*, the school district tax shall not include any tax levied and collected pursuant to Sections 15517, 15518, 16633, 16635, 16645.9, 19443, 19572, 19619, 19687, 19695, or 22101.

(b) Each district shall compute the total amount of revenue derived from the levy of school district taxes on property lying within the district.

(c) If the amount computed pursuant to subdivision (a) is less than the amount computed pursuant to subdivision (b), the difference shall be transmitted to the School District Wealth Equalization Fund.

(d) If the amount computed pursuant to subdivision (a) is more than the amount computed pursuant to subdivision (b), the Superintendent of Public Instruction shall allow to the district an amount equal to such difference from the School District Wealth Equalization Fund.

SEC. 13. Section 17300 of the Education Code is amended to read:

17300. It is the intent of the Legislature that the administration of the laws governing the financial support of the public school system in this state be conducted within the purview of the following principles and policies:

The system of public school support should be designed to strengthen and encourage local responsibility for control of public education. Local school districts should be so organized that they can facilitate the provision of

full educational opportunities for all who attend the public schools. Local control is best accomplished by the development of strong, vigorous, and properly organized local school administrative units. It is the state's responsibility to create or facilitate the creation of local school districts of sufficient size to properly discharge local responsibilities and to spend the tax dollar effectively.

Effective local control requires that all local administrative units contribute to the support of school budgets in proportion to their respective abilities, and that all have such flexibility in their taxing programs as will readily permit of progress in the improvement of the educational program. Effective local control requires a local taxing power, and a local tax base which is not unduly restricted or overburdened.

The system of public school support should assure that state, local, and other funds are adequate for the support of a realistic educational program. It is unrealistic and unfair to the less wealthy districts to provide for only a part of the financing necessary for an adequate educational program.

The system of public school support should permit and encourage local school districts to provide and support improved district organization and educational programs. The system of public school support should prohibit the introduction of undesirable organization and educational practices, and should discourage any such practices now in effect. Improvement of programs in particular districts is in the interests of the state as a whole as well as of the people in individual districts, since the excellence of the programs in some districts will tend to bring about program improvement in other districts.

The system of public school support should make provision for the apportionment of state funds to local school districts on a strictly objective basis that can be computed as well by the local districts as by the state. The principle of local responsibility requires that the granting of discretionary powers to state officials over the distribution of state aid and the granting to these officials

of the power to impose undue restriction on the use of funds and the conduct of educational programs at the local level be avoided.

The system of public school support should effect a partnership between the state, the county, and the local district, with each participating equitably in accordance with its relative ability. The respective abilities should be combined to provide a financial plan between the state and the local agencies for public school support. Toward this support program, each county and district, through a uniform method should contribute in accordance with its true financial ability.

The system of public school support should provide for essential educational opportunities for all who attend the public schools. Provision should be made for adequate financing of all educational services.

The broader based taxing power of the state should be utilized to raise the level of financial support in the properly organized but financially weak districts of the state, thus contributing greatly to the equalization of educational opportunity for the students residing therein. It should also be used to provide a minimum amount of guaranteed support to all districts, for such state assistance serves to develop among all districts a sense of responsibility to the entire system of public education in the state. State assistance to all districts also would create a tax leeway for the exercise of local initiative.

The Legislature further declares that in order to reduce the burden of inequitable property taxation it is in the best interest of the state to provide, from other than ad valorem property taxes, a predominate portion of the statewide cost of education in the elementary and secondary schools of the state. The Legislature further declares that the funds to be provided are required in order to reduce the disproportionate demand upon property taxpayers for support of educational services and programs, equalize wide variations in the ability of local communities to support such services and programs, and to assist school districts in meeting increased

demands due to concentrations of educationally disadvantaged pupils.

In recognition of these disparities it is the intent of the Legislature to apportion funds for school purposes in such a manner as to provide adequate educational programs for all students regardless of where they reside or the wealth of their parents and neighbors.

In implementing its intent the Legislature declares that, although the present system of funding does not meet desirable criteria, sudden changes of great magnitude in the system of public school finance would disrupt the educational system of many districts and thereby damage the whole public school system of the state, the educational welfare of all students, and the economy of the state; therefore, rapid change is undesirable and unacceptable.

Accordingly, the Legislature declares its intent to improve with all reasonable and deliberate speed, financial support of education in districts which have less than the statewide average assessed valuation per unit of average daily attendance as rapidly as those districts can efficiently utilize additional support, and at the same time allow districts with more than the statewide assessed valuation per unit of average daily attendance sufficient time to readjust their programs to new methods of financing to avoid precipitous disruption of present programs.

It is further the intent of the Legislature to study the possibility of adopting an apportionment system based upon weighted units of average daily attendance.

SEC. 14. Section 17301 of the Education Code is repealed.

SEC. 15. Section 17301 is added to the Education Code, to read:

17301. The State Controller shall during each fiscal year transfer from the General Fund of the state to the State School Fund such sums as are necessary for the state to provide a specified percentage of the current expense of education, as defined by subdivision ~~(b)~~ *(c)* of Section 17503, for each pupil in average daily attendance during

the preceding fiscal year credited to all kindergarten, elementary and high schools in the state and to the county school tuition funds, as certified by the Superintendent of Public Instruction. For the 1972–1973 and 1973–1974 fiscal years the percentage shall be 45 percent, and for the 1974–1975 fiscal year, and each fiscal year thereafter, the percentage shall be 50 percent. ~~The~~ *In the 1972–1973 fiscal year and each fiscal year thereafter, the* amounts so transferred shall be increased by an amount which shall reflect the application of an adjustment index developed cooperatively by the Superintendent of Public Instruction, the Legislative Analyst, and the Director of Finance. This adjustment index shall reflect the expected change in the cost of a basic educational program, plus any additional costs mandated by the Legislature, for the fiscal year under consideration. The Controller shall adjust such transfers to reflect increases or decreases as estimated by the Superintendent of Public Instruction for the current year in the statewide units of average daily attendance in the kindergartens, elementary, and high schools of the state.

The Controller shall also transfer two hundred ninety-eight dollars and thirty-eight cents ($298.38) from the General Fund to the State School Fund per pupil in average daily attendance credited to the community colleges of the state during the preceding fiscal year.

SEC. 16. Section 17301.1 is added to the Education Code, to read:

17301.1. The State Controller shall also transfer an amount equal to the percentage specified in Section 17301 for any new or expanded program ~~authorized or~~ required by law which was not ~~authorized or~~ required in the preceding fiscal year.

SEC. 17. Section 17301.2 is added to the Education Code, to read:

17301.2. The State Controller shall also transfer an amount from the General Fund to the School Disrict Wealth Equalization Fund equal to any deficit created in that fund.

SEC. 17.5. Section 17301.3 is added to the Education

Code, to read:

17301.3. The State Controller shall also transfer an amount from the General Fund to the State School Fund equal to thirty-eight dollars ($38) multiplied by the average daily attendance credited to all kindergarten, elementary, high school, community college, and adult schools and to county school tuition funds during the preceding fiscal year *for expenditure pursuant to Section 17303.5*.

SEC. 18. Section 17303.5 of the Education Code is amended to read:

17303.5. The amount transferred pursuant to Sections 17301 and 17301.3 shall be expended, in part, in accordance with the following schedule:

(a) Twenty-one dollars and fifty cents ($21.50) multiplied by the total average daily attendance credited during the preceding school year to elementary school districts which during the preceding school year had less than 901 units of average daily attendance, to high school districts which during the preceding school year had less than 301 units of average daily attendance, and to unified districts which during the preceding school year had less than 1,501 units of average daily attendance, but not to exceed an amount equal to seventy cents ($0.70) multiplied by the average daily attendance credited during the preceding fiscal year to all kindergarten, elementary, high school, community college and adult schools in the state and to county school tuition funds, for allowance to county school service funds pursuant to subdivision (a) of Section 18352.

(b) Four dollars and forty cents ($4.40) multiplied by the total average daily attendance credited to all kindergarten, elementary, high school, community college and adult schools in the state and to county school tuition funds during the preceding school year for the purposes of Article 10 (commencing with Section 18051) of Chapter 3 of this division.

(c) Nineteen dollars and fifty-two cents ($19.52) multiplied by the total average daily attendance credited to all kindergarten, elementary, high school, community

college and adult schools in the state and to county school tuition funds during the preceding school year, for the purposes of Sections 18060 and 18062, and Article 11 (commencing with Section 18101) of Chapter 3 of this division.

(d) Three dollars and six cents ($3.06) multiplied by the total average daily attendance credited to all kindergarten, elementary, high school, community college and adult schools in the state and to county school tuition funds during the preceding school year for allowances to county school service funds pursuant to subdivision (b) of Section 18352.

(e) One dollar and sixty-seven cents ($1.67) multiplied by the average daily attendance during the preceding fiscal year credited to all kindergarten, elementary, high school, community college and adult schools in the state and to county school tuition funds for allowances to school districts for the purposes of Section 6426.

(f) Eight dollars and sixty-five cents ($8.65) multiplied by the average daily attendance during the preceding school year credited to all kindergarten, elementary, high school, community college and adult schools in the state and to county school tuition funds for purposes of Chapter 7.1 (commencing with Section 6750) of Division 6.

SEC. 19. Section 17414 of the Education Code is amended to read:

17414. If during any fiscal year there is apportioned to a school district or to any fund from the State School Fund at least one hundred dollars ($100) more or at least one hundred dollars ($100) less than the amount to which the district or fund was entitled, the Superintendent of Public Instruction, in accordance with regulations that he is herewith authorized to adopt not later than the third succeeding fiscal year shall withhold from, or add to, the apportionment made during such fiscal year, the amount of such excess or deficiency, as the case may be. Notwithstanding, any other provision of this code to the contrary, excesses withheld or deficiencies added by the

Superintendent of Public Instruction under this section shall be added to or allowed from any portion of the State School Fund.

SEC. 20. Section 17417 of the Education Code is amended to read:

17417. Wherever the attendance of pupils is not included in the computation of the average daily attendance of a school district for any fiscal year because the certification document of the person employed by the district to instruct such pupils was not in force during the period of such attendance, the governing board of the district may, upon payment of the salary of such person pursuant to Section 13515, or similar provisions of law, report such attendance to the Superintendent of Public Instruction during the fiscal year in which such salary is paid. Such report shall be made in such form as shall be prescribed and furnished by the Superintendent of Public Instruction. Thereafter the Superintendent of Public Instruction shall add to the apportionment from the State School Fund to the district during the next succeeding fiscal year or years, as determined by him but not exceeding three, the additional amount to which the district would have been entitled in the fiscal year next succeeding that in which such attendance was not included in the computation of the average daily attendance of the district if such amount is at least one hundred dollars ($100) or more.

Any such additional amount shall be apportioned from the State School Fund before any other apportionment from such fund is made and shall be allowed from any portion of such fund.

SEC. 21. Section 17503 of the Education Code is amended to read:

17503. For purposes of this section:

(a) "Salaries of classroom teachers" and "teacher" shall have the same meanings as prescribed by Section 17200 of this code provided, however, that the cost of all health and welfare benefits provided to the teachers by the school district shall be included within the meaning of salaries of classroom teachers.

(b) "Current expense of education" means the gross total expended (not reduced by estimated income or estimated federal and state apportionments) for the purposes classified in the final budget of a school district (except one which, during the preceding fiscal year, had less than 101 units of average daily attendance) submitted to and approved by the county superintendent of schools pursuant to Section 20607 of this code for administration, instruction (including salaries and other expense), health services, operation of plant, maintenance of plant, and fixed charges. "Current expense of education" shall not include those purposes classified as transportation of pupils, food service, community service, capital outlay, state school building loan repayment; and shall not include the amount expended pursuant to any lease agreement for plant and equipment or the amount expended from funds received from the federal government pursuant to the "Economic Opportunity Act of 1964" or any extension of such act of Congress.

(c) For the purposes of Sections 17301, 17654.5, 17655.5, 17662, 17664, 17665, and Article 3 (commencing with Section 17701) of this chapter, the current expense of education shall include only state funds apportioned as basic aid, equalizaton aid, supplemental support and additional equalization aid; local funds derived pursuant to subdivision (a) of Section 17274; miscellaneous funds, as defined in Section 17606; and any federal funds allocated as general aid, such as funds allocated pursuant to Public Law 81-874.

For 1973–1974 and each fiscal year thereafter, state basic aid, equalization aid, supplemental support, and additional equalization aid shall mean state funds allocated pursuant to Sections 17654.5, 17655.5, 17662, 17664, and 17665.

The statewide average current expense of education per unit of average daily attendance shall mean the sum of the funds specified by this subdivision received by all districts in the state of the particular type (elementary, high school, or unified) divided by the ~~foundation~~

~~program~~ average daily attendance reported by those same districts.

There shall be expended during each fiscal year for payment of salaries of classroom teachers:

(a) By an elementary school district, sixty percent (60%) of the district's current expense of education.

(b) By a high school district, fifty percent (50%) of the district's current expense of education.

(c) By a community college district, fifty percent (50%) of the district's current expense of education.

(d) By a unified school district, fifty-five percent (55%) of the district's current expense of education.

If the Superintendent of Public Instruction determines that a school district has not expended the applicable percentage of current expense of education for the payment of salaries of classroom teachers during the preceding fiscal year, he shall, in apportionments made to the school district from the State School Fund after April 15 of the current fiscal year, designate an amount of such apportionment or apportionments equal to the apparent deficiency in district expenditures. Any amount so designated by the Superintendent of Public Instruction shall be deposited in the county treasury to the credit of the school district, but shall be unavailable for expenditure by the district pending the determination to be made by the Superintendent of Public Instruction on any application for exemption which may be submitted to the Superintendent of Public Instruction. In the event it appears to the governing board of a school district that the application of the preceding paragraphs of this section during a fiscal year results in serious hardship to the district, or in the payment of salaries of classroom teachers in excess of the salaries of classroom teachers paid by other districts of comparable type and functioning under comparable conditions, the board may, with the written approval of the county superintendent of schools having jurisdiction over the district apply to the Superintendent of Public Instruction in writing not later than September 15th of the succeeding fiscal year for exemption from the

requirements of the preceding paragraphs of this section for the fiscal year on account of which the application is made. Upon receipt of such application, duly approved, the Superintendent of Public Instruction shall grant the district exemption for any amount that is less than one thousand dollars ($1,000), and if the amount is one thousand dollars ($1,000), or greater may grant the district exemption, to the extent deemed necessary by him, from such requirements for the fiscal year on account of which the application is made. If such exemption is granted the designated moneys shall be immediately available for expenditure by the school district governing board. If no application for exemption is made or exemption is denied, the Superintendent of Public Instruction shall order the designated amount or amount not exempted to be added to the amounts to be expended for salaries of classroom teachers during the next fiscal year.

The Superintendent of Public Instruction shall enforce the requirements prescribed by this section, and may adopt necessary rules and regulations to that end. He may require the submission to him, during the school year, by school district governing boards and county superintendents of schools, of such reports and information as may be necessary to carry out the provisions of this section.

Any reference in this code to "current expense of education as defined in Section 17503" enacted prior to the enactment of Chapter 1.7 (commencing with Section 17270) of this division shall mean current expense of education as defined in subdivision (b) of Section 17503.

SEC. 22. Section 17603.5 of the Education Code is amended to read:

17603.5. The amounts computed as allowable to any ~~school~~ *community college* district for state aid shall be reduced by fifty percent (50%) of miscellaneous funds, as defined in Section 17606. In no event shall the reduction exceed the total amount allowable as state aid to the school district ~~for the fiscal year. For such purposes, miscellaneous funds, as defined in Section 17606, received~~

~~by a unified school district, shall be allocated to the kindergarten and elementary, high school and community college grades, respectively, on the basis of the proportion of the district's total average daily attendance in each such grade level, and the provisions of Section 17601 shall be applicable.~~ *for the fiscal year.*

Should the amount of miscellaneous funds, as defined in Section 17606, actually received by a ~~school~~ *community college* district for any fiscal year be more or less than that reported to the Superintendent of Public Instruction, the Superintendent of Public Instruction shall during the fiscal year next succeeding withhold from or add to the apportionment made to the district from the State School Fund the amount of the excess or deficiency in the apportionment of state aid from the State School Fund for the preceding year, if the amount of the excess or deficiency in such apportionment was one hundred dollars ($100) or more.

SEC. 23. The heading of Article 2 (commencing with Section 17651) of Chapter 3 of Division 14 of the Education Code is amended to read:

Article 2. Computation of Foundation Programs and School Support for School Districts

SEC. 24. Section 17651 of the Education Code is amended to read:

17651. The Superintendent of Public Instruction shall compute for each school district the amount of school support therefor, in the manner prescribed by this article.

SEC. 25. Section 17653 is added to the Education Code, to read:

17653. No aid in excess of one hundred twenty dollars ($120) per unit of average daily attendance shall be allowed unless there shall have been levied pursuant to this code, for a district during the fiscal year, a tax, exclusive of taxes levied under Sections 1822.2, 1825, 16633, 16635, 16645.9, 19443, 19619, 20801, and 22101, of not less than one dollar ($1) if an elementary district, eighty

cents ($0.80) if a high school district, *one dollar and eighty cents ($1.80) if a unified school district,* and twenty-five cents ($0.25) if a community college district.

SEC. 26. Section 17654.5 of the Education Code is amended to read:

17654.5. For each elementary school district which maintains only one school with an average daily attendance of less than 101, he shall make one of the following computations, whichever provides the lesser amount:

(1) For each small school which has an average daily attendance during the fiscal year of less than 26, exclusive of pupils attending the seventh and eighth grades of a junior high school, and for which school at least one teacher was hired full time, he shall compute for the the product of 25 multiplied by the appropriate percentage specified in Section 17301 multiplied by the relative support factor specified in Section 17662.5 multiplied by the statewide average current expense of education for elementary districts as determined pursuant to subdivision (c) of Section 17503.

(2) For each small school which has an average daily attendance during the fiscal year of 26 or more and less than 51, exclusive of pupils attending the seventh and eighth grades of a junior high school, and for which school at least two teachers were hired full time for more than one-half of the days schools were maintained, he shall compute for the district the product of 50 multiplied by the appropriate percentage specified in Section 17301 multiplied by the relative support factor specified in Section 17662.5 multiplied by the statewide average current expense of education for elementary districts as determined pursuant to subdivision (c) of Section 17503.

(3) For each small school which has an average daily attendance during the fiscal year of 51 or more but less than 76, exclusive of pupils attending the seventh and eighth grades of a junior high school, and for which school three teachers were hired full time for more than one-half of the days schools were maintained, he shall compute for the district the product of 75 multiplied by

the relative support percentage specified in Section 17301 multiplied by the appropriate factor specified in Section 17662.5 multiplied by the statewide average current expense of education for elementary districts as determined pursuant to subdivision (c) of Section 17503.

(4) For each small school which has an average daily attendance during the fiscal year of 76 or more and less than 101, exclusive of pupils attending the seventh and eighth grades of a junior high school, and for which school four teachers were hired full time for more than one-half of the days schools were maintained, he shall compute for the district the product of 100 multiplied by the appropriate percentage specified in Section 17301 multiplied by the ~~appropriate~~ *relative support* factor specified in Section ~~17662~~ *17662.5 multiplied by the statewide average current expense of education for elementary districts as determined pursuant to subdivision (c) of Section 17503*.

SEC. 27. Section 17655.5 of the Education Code is amended to read:

17655.5. (a) For each district on account of each necessary small school (giving regard to the number of teachers actually employed or average daily attendance), he shall make one of the following computations, whichever provides the lesser amount:

(1) For each necessary small school which has an average daily attendance during the fiscal year of less than 26, exclusive of pupils attending the seventh and eighth grades of a junior high school, and for which school at least one teacher was hired full time, he shall compute for the district the product of 25 multiplied by the appropriate percentage specified in Section 17301 multiplied by the ~~appropriate~~ *relative support* factor specified in Section ~~17662~~ *17662.5 multiplied by the statewide average current expense of education for elementary districts as determined pursuant to subdivision (c) of Section 17503*.

(2) For each necessary small school which has an *average* daily attendance during the fiscal year of 26 or more and less than 51, exclusive of pupils attending the

seventh and eighth grades of a junior high school, and for which school at least two teachers were hired full time for more than one-half of the days schools were maintained, he shall compute for the district the product of 50 multiplied by the appropriate percentage specified in Section 17301 multiplied by the ~~appropriate~~ *relative support* factor specified in Section ~~17662~~ *17662.5 multiplied by the statewide average current expense of education for elementary districts as determined pursuant to subdivision (c) of Section 17503*.

(3) For each necessary small school which has an average daily attendance during the fiscal year of 51 or more but less than 76, exclusive of pupils attending the seventh and eighth grades of a junior high school, and for which school three teachers were hired full time for more than one-half of the days schools were maintained, he shall compute for the district the product of 75 multiplied by the appropriate percentage specified in Section 17301 multiplied by the ~~appropriate~~ *relative support* factor specified in Section ~~17662~~ *17662.5 multiplied by the statewide average current expense of education for elementary districts as determined pursuant to subdivision (c) of Section 17503*.

(4) For each necessary small school which has an average daily attendance during the fiscal year of 76 or more and less than 101, exclusive of pupils attending the seventh and eighth grades of a junior high school, and for which school four teachers were hired full time for more than one-half of the days schools were maintained, he shall compute for the district the product of 100 multiplied by the appropriate percentage specified in Section 17301 multiplied by the ~~appropriate~~ *relative support* factor specified in Section ~~17662~~ *17662.5 multiplied by the statewide average current expense of education for elementary districts as determined pursuant to subdivision (c) of Section 17503*.

(b) For each elementary district which exclusive of pupils attending the seventh and eighth grades of a junior high school has an average daily attendance of 101 or more during the fiscal year, he shall compute the

allowance in accordance with subdivision (b) of Section 17662, plus any amount pursuant to Sections 17654.5 and 17655.5.

SEC. 28. Section 17656 of the Education Code is repealed.

SEC. 29. Section 17660 of the Education Code is repealed.

SEC. 30. Section 17662 of the Education Code is repealed.

SEC. 31. Section 17662 is added to the Education Code, to read:

17662. (a) The Superintendent of Public Instruction shall allow to each school district on account of the average daily attendance credited to the district in the appropriate grade levels an amount computed in accordance with subdivision (b) of this section plus any amount pursuant to the provisions of Sections 17654.5, 17655.5, and 17664.

No apportionment may be less than one hundred twenty dollars ($120) per unit of average daily attendance.

(b) The apportionment to a school district ~~equals~~ *shall be* the product of *(1)* the number of units of average daily attendance of the district ~~and~~, *(2)* the appropriate percentage specified in Section 17301 ~~and~~, *(3)* the statewide average current expense of education for the type of district (elementary, high school, or unified) as defined in subdivision (c) of Section 17503 and *(4)* the relative support factor of the district, as determined pursuant to Section 17662.5.

SEC. 32. Section 17662.3 is added to the Education Code, to read:

17662.3. The relative wealth index of a school district is the quotient of the assessed valuation per unit of average daily attendance of the district, as adjusted pursuant to Chapter 1.7 of Division 14 (commencing with Section 17270), divided by the statewide assessed valuation per unit of average daily attendance for the particular type of school district.

SEC. 33. Section 17662.5 is added to the Education

Code, to read:

17662.5. The relative support factor of a school district is computed in the following manner:

(a) For districts with a relative wealth index of 0.5 or less, the relative support factor is 0.991 plus one-half multiplied by the quantity 1.5 minus twice the relative wealth index.

(b) For districts with a relative wealth index greater than 0.5 but equal to or less than 1.5, the relative support factor is 0.991 plus one-half multiplied by the quantity one minus the relative wealth index.

(c) For districts with a relative wealth index greater than 1.5, the relative support factor is the reciprocal of 0.9 divided by the relative wealth index.

SEC. 34. Section 17664 of the Education Code is amended to read:

17664. For each district on account of each necessary small high school the Superintendent of Public Instruction shall make one of the following computations selected with regard only to the number of certificated employees employed or average daily attendance, whichever provides the lesser amount:

Average daily attendance	Minimum number of certificated employees	Amount to be allowed
1– 20	3	$8,500
21– 40	4	16,980
41– 60	5	25,470
61– 75	6	31,830
76– 90	7	38,190
91–105	8	44,560
106–120	9	50,920
121–135	10	52,280
136–150	11	63,650
151–180	12	76,370
181–220	13	93,340
221–260	14	110,310
261–300	15	127,300

For each district which has an average daily attendance of less than 21 and for which fewer than three certificated employees were employed, he shall _____ ($_____) allow four thousand dollars ($4,000) for each of the teachers employed in the school.

For the purposes of this section a "certificated employee" is an equivalent full-time position of an individual holding a credential authorizing service, and performing service in grades 9 through 12 in any secondary school. Any fraction of an equivalent full-time position shall be deemed to be a full-time position.

The allowance established by this section for high schools with an average daily attendance of less than 301 shall not apply to any high school established after July 1, 1961 unless the establishment of such schools has been approved by the Superintendent of Public Instruction.

SEC. 35. Section 17665 of the Education Code is amended to read:

17665. For each high school district which has an average daily attendance of 301 or more during the fiscal year, he shall compute the allowance in accordance with subdivision (b) of Section 17662 plus any amount pursuant to Section 17664.

SEC. 36. Section 17665.5 of the Education Code is repealed.

SEC. 37. Article 2.1 (commencing with Section 17671) of Chapter 3 of Division 14 of the Education Code is repealed.

SEC. 38. Article 2.5 (commencing with Section 17680) of Chapter 3 of Division 14 of the Education Code is repealed.

SEC. 39. Article 3 (commencing with Section 17701) of Chapter 3 of Division 14 of the Education Code is repealed.

SEC. 40. Article 3 (commencing with Section 17701) is added to Chapter 3 of Division 14 of the Education Code, to read:

Article 3. Adjustments to Expenditures

17701. ~~In~~ *Adjustments to expenditures pursuant to this article shall commence in the 1972–1973 fiscal year as adjustments to the 1971–1972 current expense of education as defined in subdivision (c) of Section 17503. In the 1973–1974 fiscal year, and each fiscal year thereafter, similar adjustments to expenditures shall be made annually.*

In computing the transfer to the State School Fund pursuant to Section 17301 and the apportionments to districts pursuant to Section 17662, the Superintendent of Public Instruction shall annually adjust the amounts by a factor which is a function of the adjustment in the adjustment index developed pursuant to Section 17301 as prescribed by this article.

For the purposes of this article, reference to expenditures per unit of average daily attendance shall have the same meaning as "current expense of education" as used in subdivision ~~(b)~~ *(c)* of Section 17503.

17702. For the purposes of this article the following definitions shall apply:

(a) "Relative expenditure index" is the quotient of the district's expenditure per unit of average daily attendance divided by the statewide average current expense of education per unit of average daily attendance for the particular type of district (elementary, high school, or unified).

(b) "Relative salary index" is the quotient of the district's average salary for certificated or classified employees by the statewide average salary for certificated or classified employees.

Separate computations are to be made for each category of employees.

(c) The "reasonable expenditure increment factor" for a district which has a relative expenditure index greater than one is the quotient of the change in the adjustment index developed pursuant to Section 17301 divided by the square of the relative expenditure index.

The "reasonable expenditure increment factor" for a

district which has a relative expenditure index equal to or less than one is the product of the adjustment index developed pursuant to Section 17301 multiplied by the quantity three minus twice the relative expenditure index.

17703. Annual salary increases for the employees of a district which has relative salary index greater than one may not exceed the amount determined by the application of a factor which is the quotient of a salary index developed by the Superintendent of Public Instruction, the Legislative Analyst, and the Department of Finance divided by the square of the relative salary index.

17704. Annual salary increases for the employees of a district which has a relative salary index equal to or less than one may not exceed the amount determined by the application of a factor which is the product of the index developed by the Superintendent of Public Instruction, the Legislative Analyst, and the Department of Finance multiplied by the quantity three minus twice the relative salary index.

17705. With respect to increases in salaries of certificated employees the Superintendent of Public Instruction shall disregard any increases granted on account of additional academic training or promotion to a different job category.

17706. The expenditures per unit of average daily attendance in any school district may not increase by a factor greater than the reasonable expenditure increment factor unless such expenditures have been approved by the electorate pursuant to Section 20803. In the event a district exceeds such expenditure guidelines the Superintendent of Public Instruction shall disregard such excess expenditures when computing the average current expense of education pursuant to subdivision (c) of Section 17503.

17707. In the event a district exceeds the increases authorized by Sections 17703, 17704, and 17705 regarding salary increases the Superintendent of Public Instruction shall withhold from apportionments any amount in

excess of such computations. When computing the statewide average current expense of education *pursuant to subdivision (c) of Section 17503* he shall also omit any amounts attributable to excessive increases in salaries.

17708. Apportionments from the State School Fund shall be adjusted to reflect the application of the reasonable expenditure index to the apportionment for each school district.

SEC. 41. Article 4 (commencing with Section 17751) of Chapter 3 of Division 14 of the Education Code is repealed.

SEC. 42. Article 5 (commencing with Section 17801) of Chapter 3 of Division 14 of the Education Code is repealed.

SEC. 43. Article 7 (commencing with Section 17901) of Chapter 3 of Division 14 of the Education Code is repealed.

SEC. 44. Article 7.1 (commencing with Section 17920 of Chapter 3 of Division 14 of the Education Code is repealed.

SEC. 44.5. Article 7.2 (commencing with Section 17940) of Chapter 3 of Division 14 of the Education Code is repealed.

SEC. 45. Article 8 (commencing with Section 17951) of Chapter 3 of Division 14 of the Education Code is repealed.

SEC. 46. Section 18102 of the Education Code is repealed.

SEC. 47. Section 18102 is added to the Education Code, to read:

18102. The Superintendent of Public Instruction shall allow to each school district and county superintendent of schools for each particular category of minors in a special education program during the current fiscal year an amount computed as follows:

(a) He shall divide the average daily attendance in each particular category of minors in a special education program by the maximum class size established by law for special day classes for each particular category of minor in a special education program, and increasing the

quotient to the next highest integer where a fractional amount is produced.

(b) He shall then determine for each particular category the product of the amount computed under subdivision (a) multiplied by the maximum class size established by law for special day classes for the particular category.

(c) He shall then multiply the amount computed under subdivision (b) by the following amount for the particular grade level and category:

Category	Elementary school grades (K–8)	High school grades (9–12)
Physically handicapped		
Class-size maximum of 3	$5,400	——
Class-size maximum of 5	——	$2,965
Class-size maximum of 6	2,520	——
Class-size maximum of 8	1,800	1,670
Class-size maximum of 10	1,370	1,240
Class-size maximum of 12	1,080	950
Class-size maximum of 16	——	590
Class-size maximum of 20	——	375
Mentally retarded (as defined in Section 6902)		
Class-size maximum of 15	570	440
Class-size maximum of 18	420	285
Mentally retarded (as defined in Section 6903)	920	785
Educationally handicapped	1,000	870

SEC. 48. Section 18102.2 of the Education Code is repealed.

SEC. 49. Section 18102.4 of the Education Code is repealed.

SEC. 50. Section 18102.6 of the Education Code is repealed.

SEC. 51. Section 18102.8 of the Education Code is amended to read:

18102.8. The governing board of a school district with an average daily attendance of less than 2,000 pupils

during the current fiscal year, or a county superintendent of schools, may apply to the Superintendent of Public Instruction whenever sparsity of population or transportation distances make it impossible to maintain classes of the maximum size as prescribed by this code or by the State Board of Education. If the Superintendent of Public Instruction, upon review, finds that it is impossible to maintain classes of the maximum size as prescribed by this code or by the State Board of Education, he may add to the amounts allowed under Section 18102 an amount sufficient to provide for the needed classes, but not more per special class than the applicable amounts computed in that section.

SEC. 52. Section 18102.9 of the Education Code is amended to read:

18102.9. (1) In addition to the allowances provided under Section 18102, the Superintendent of Public Instruction shall allow to school districts and county superintendents of schools for each unit of average daily attendance for an amount as follows:

(a) For instruction of educationally handicapped minors in learning disability groups, ~~two thousand four hundred eighty dollars ($2,480)~~ *one thousand eight hundred eighty dollars ($1,880)*.

(b) For instruction of educationally handicapped minors in homes or in hospitals, one thousand three hundred dollars ($1,300).

(c) For instruction of physically handicapped minors in remedial physical education, ~~nine hundred fifty dollars ($950)~~ *seven hundred seventy-five dollars ($775)*.

(d) For remedial instruction of physically handicapped minors in other than physical education, ~~two thousand seven hundred forty dollars ($2,740).~~ *two thousand dollars ($2,000).*

(e) For instruction of blind pupils when a reader has actually been provided to assist the pupil with his studies, or for individual instruction in mobility provided blind pupils under regulations prescribed by the State Board of Education, or when braille books are purchased, ink print materials are transcribed into braille, or sound recordings

and other special supplies and equipment are purchased for blind pupils, or for individual supplemental instruction in vocational arts, business arts, or homemaking for blind pupils, nine hundred ten dollars ($910).

Braille books purchased, braille materials transcribed from ink print, sound recordings purchased or made, and special supplies and equipment purchased for blind pupils for which state or federal funds were allowed are property of the state and shall be available for use by blind pupils throughout the state as the State Board of Education shall provide.

(f) For other individual instruction of physically handicapped minors, one thousand three hundred dollars ($1,300).

(g) For the instruction of physically handicapped minors in regular day classes, ~~one thousand one hundred dollars ($1,100)~~ *one thousand eighteen dollars ($1,018)*.

(2) (a) The allowances provided under Section 18102 may be increased proportionately on account of special day classes convened, or other instruction provided a pupil, for days in a school year which are in excess of the number of days in the school year on which the regular day schools of a district are convened.

(b) The Superintendent of Public Instruction shall compute for each applicant school district and county superintendent of schools in providing in such year a program of specialized consultation to teachers, counselors and supervisors for educationally handicapped minors, an amount equal to the product of ten dollars ($10) and the average daily attendance of pupils enrolled in special day classes, learning disability groups, and home and hospital instruction for educationally handicapped minors.

SEC. 53. Section 18102.10 of the Education Code is amended to read:

18102.10. For each special class or program for which a state allowance is provided under this article or under Section 18060 or 18062, each school district and each county superintendent of schools maintaining such