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TABLE OF AUTHORITIES

In the
Supreme Court of the United States

OCTOBER TERM, 1971

NO. 71-1332

SAN ANTONIO INDEPENDENT SCHOOL DISTRICT, ET AL.,

Appellants,

v.

DEMETRIO P. RODRIGUEZ, ET AL.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

BRIEF OF AMICI CURIAE RELATING TO THE PROPERTY TAX SECURITY FOR SCHOOL DISTRICT BONDS AND NOTES

IDENTIFICATION AND PURPOSE OF AMICI CURIAE

Amici curiae are among those lawyers and law firms specializing as "bond counsel" in the drafting of state laws, the preparation of proceedings, and the rendition of approving opinions relating to state and local government debt financing through the issuance of bonds, notes and other instruments of obligation. Such debt financing includes obligations issued by public school districts for capital improvements and other needs. By long-established custom and practice, intended to protect both bond issuers and bond purchasers, approving opinions of bond counsel regarding the validity and enforceability of bonds are required in the public bond market to assure accept-

ance of such bonds by underwriters and investors. Because of their special experience and knowledge in state and local government debt financing, the undersigned present their views to this Court as *amici curiae* on a very narrow aspect of the instant case which is within their special competence. This Brief is filed pursuant to consent of all parties under Rule 42(2) of the Revised Rules of the Supreme Court.

This Brief does not take a position on the merits of the constitutional question presented. Rather, the purposes of this Brief are to focus attention on bond and note financing of school districts in those states operating under systems similar to that employed in Texas[1]; to emphasize that a decision by this Court affirming the decision of the District Court need not and should not affect the ability of local school districts to continue their financing programs pending any restructuring of the systems of school finance by the state legislatures if such a restructuring is required by this Court's decision; to emphasize further that such a decision need not and should not call into question the local property tax as a source of security for outstanding bonds and notes; and, particularly, to support that portion of the "Clarification of Original Opinion" of the District Court in the instant case, *Rodriguez* v. *San Antonio Independent School District*, 337 F. Supp. 280 (W.D. Tex. 1971), (quoted at page 7 herein) by which that Court made it clear that bonds and notes could continue to be issued for at least a period of two years by school districts under existing laws and that the

[1]Only the State of Hawaii does not provide for the levy of property taxes by local school districts. The system of finance in that state is centralized. See Coons, Clune & Sugarman, *Educational Opportunity: A Workable Constitutional Test for State Financing Structures*, 57 CALIF. L. REV. 305, at 312 n. 18 (1969); Shanks, *Educational Financing and Equal Protection: Will the California Supreme Court's Breakthrough Become the Law of the Land?* 1 JOURNAL OF LAW AND EDUCATION 73, at 73 n. 1 (1972). See also Section II herein.

property tax security and source of payment thereof, and for other contractual obligations, was not to be impaired by the implementation of the District Court's order.[2]

Thus, and with complete awareness that the holders of school bonds and notes (hereinafter referred to as "bondholders") and the issuing school districts have a very clear and actual unity of purpose, the objectives of *amici curiae* herein are two-fold—to protect the contractual rights and security of holders of school bonds and notes for the timely payment of principal and interest due on their investments and for the timely funding of notes issued in anticipation of bonds; and to preserve the ability of school districts to continue debt financing for critically-needed capital improvements and other needs under existing laws until and unless a new system of finance is established if any such restructuring should be required by this Court's decision.

While the subject of this Brief would not be a matter for concern unless the decision of the District Court in the instant case were affirmed, the undersigned do not in any way mean to presume that such will be the decision of this Court. Further, the undersigned do not imply that a decision on the merits regarding the constitutional question presented in the instant case could or would affect the outstanding bonds, notes or contractual obligations of school districts or the legal capacity of such school

[2]It will be noted that under Section III of this Brief, analysis of the "fiscal neutrality" concept leads to the conclusion that such concept does not require a state legislature at any time to abandon local property taxes as security for indebtedness, and the decision in the District Court herein is not viewed as being inconsistent with that conclusion since the Court did not purport to state that the debt issuing structure needs to be altered. It should also be noted that many of the considerations discussed in this Brief apply also to contractual obligations (other than bonds and notes) incurred for school purposes prior to an applicable court order and during any permitted transition. The Clarification in the case at bar protects such obligations as well as bonds and notes.

districts to issue bonds or notes or to incur contractual obligations pending any restructuring of the systems of school finance by the state legislatures either as the result of judicial directive or voluntary action.[3] Rather, the objective of this Brief is to emphasize such aspect to assure full cognizance of it and thereby seek to avoid confusion and the unnecessary and unfortunate consequences of confusion. This aspect is more thoroughly discussed in the next section of this Brief.

DISCUSSION

I

The Nature of the Practical Problem and Suggested Solution

The decision, upon motion to dismiss the action, in *Serrano* v. *Priest*, 5 Cal. 3d 584, 96 Cal. Rptr. 601, 487 P.2d 1241 (1971), soon followed by the denial of defendant's motion to dismiss in *Van Dusartz* v. *Hatfield,* 334 F. Supp. 870 (D. Minn. 1971), unfortunately and incorrectly caused major concern throughout the country that litigation of that nature might result in decisions whereunder local property taxes pledged to the payment of school district bonds and notes would be withdrawn as security for even those bonds and notes issued prior to final disposition of such litigation. This concern was typified by the observation that, as a result of those cases, "the school bond market on Wall Street, which last year involved over $3.5-billion in tax-exempt bonds, is currently facing an uncertainty that is slowing or halting bidding in some instances and postponing several scheduled offerings."[4]

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[3]In support of this proposition, see text of the Clarification of Original Opinion rendered by the District Court in the instant case, 337 F. Supp. 280, 286, as set forth on page 7 of this Brief.

[4]Cray, New York Times, Nov. 10, 1971, p. 67.

Similarly, Paul Heffernan, Editor of The Daily Bond Buyer, an authoritative financial journal of national circulation, commented:

> "A consequence is growing unwillingness of investors to buy such bonds and for banks and bond houses to risk their capital underwriting them.
>
> "The word is already going around Wall Street that there will be less widespread competitive bidding for school bonds in the future and fewer investing institutions willing to buy such bonds except after circumspect scrutiny. *The consequence of this would be higher borrowing costs for local government.*
>
> "The big banks are especially sensitive to the issue because of the nature of the business, with its constant exposure to all tiers of community life. For public relations reasons, the deposit institutions are more disposed than other market professionals to walk away from school financing of the disputed kind. The erosion of this underpinning of the underwriting market is already being felt as the big banks become more and more selective in committing their capital." Heffernan, *The Editor's Corner*, The Daily Bond Buyer, Nov. 15, 1971, p. 1 (Emphasis added).

As a result of fears of this nature, school district bonds and notes sought to be sold in the aftermath of *Serrano* generally sold at a higher rate of interest than comparable municipal securities, thereby producing substantially increased and irretrievable costs to local school districts and their taxpayers in the financing of needed capital improvements.[5]

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[5]There is little question that confusion and uncertainty in the public bond market adversely affects the rate of interest which bonds and notes subject to such concerns will bear. Even if school district bonds and notes sold at a rate of interest only one-tenth of one percent higher than comparable municipal securities, such an apparently small fractional "spread" would produce a significant interest cost differential over the life of such bonds and notes.

These concerns and negative effects, while falsely premised, appeared to be justified, however, by the District Court's initial opinion, on December 23, 1971, in the instant case. The District Court seemingly held that the local school authorities and current purchasers of school bonds would not be able to rely for more than two years on Article 7, Section 3 of the Texas Constitution and certain provisions of the Texas Education Code under which ad valorem property taxes were levied and collected by local school districts for debt service as well as for operating and maintenance expenses. As a consequence, the Attorney General of Texas and Texas bond counsel immediately ceased giving approving opinions on bond and note issues of Texas school districts, and scheduled bond sales were cancelled.[6] This critical problem was promptly brought to the District Court's attention by the Attorney General in the form of a motion for clarification of judgment.

Assuming a $10,000,000 bond issue with level principal payments, maturing over a period of twenty years, with the first principal payment due one and one-half years after the date of such bonds, the interest cost differential resulting from a one-tenth of one percent spread would be $110,000. This same computation applied to the $3.9-billion of school bonds issued between July 1, 1970 and June 30, 1971 (see footnote 9, *infra*) would result in an increased interest cost of $45,922,500.

With respect to the fractional spread caused by confusion and uncertainty surrounding school district bonds and notes, it was reported in The Denver Post, January 24, 1972, p. 22 that some school districts were paying "slightly more interest" as a result of the uncertainty generated by court decisions: "Investment bankers estimate some school districts in other parts of the country must pay up to one tenth of 1 per cent more to investors than they would have before the rulings, in order to overcome underwriters' reticence."

[6]See document 199 of the record on appeal at pages 7-10 of such document.

On January 26, 1972, the District Court clarified its original opinion in order, as it said, "to dispel all possible doubts as to what was intended, prevent disruptions in the operation of the public school system in Texas, and avoid further delay . . ." Most importantly, the "Clarification of Original Opinion" stated, in part:

> "Our holding that the plaintiffs have been denied equal protection of the laws under the Fourteenth Amendment to the United States Constitution by the operation of Article 7, §3 of the Texas Constitution, and the sections of the Texas Education Code relating to the financing of education, including the Minimum Foundation Program, shall have prospective application only, and shall not become effective until after the expiration of two years from December 23, 1971. This order shall in no way affect the validity, incontestibility, obligation to pay, source of payment or enforceability of any presently outstanding bond, note or other security issued, or contractual obligation incurred by a school district in Texas for public school purposes, nor the validity or enforceability of any tax or other source of payment of any such bond, note, security or obligation; nor shall this judgment in any way affect the validity, incontestibility, obligation of payment, source of payment or enforceability of any bond, note or other security to be issued and delivered, or contractual obligation incurred by Texas school districts, for authorized purposes, during the period of two years from December 23, 1971, nor shall the validity or enforceability of any tax or other source of payment for any such bond, note or other security issued and delivered, or any contractual obligation incurred during such two year period be affected hereby; it being the intention of this Court that this judgment should be construed in such a way as to permit an orderly transition during said two year period from an unconstitutional to a constitutional system of school financing." 337 F. Supp. 280, 286.

Following the announcement of such Clarification, the regular program of debt financing by Texas school districts was resumed, but only after they had lost the benefit of a month of most favorable bond market conditions which have not again been equalled to date.[7]

More fortunately, the New Jersey Superior Court was fully aware of this problem of confusion when it decided *Robinson* v. *Cahill,* 118 N.J. Super. 223, 287 A.2d 187 (1972). The Judgment therein, dated February 4, 1972, is set forth in Appendix A. In the carefully developed paragraph 7 of that Judgment, the Court ordered:

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[7]The bond indices as published in The Daily Bond Buyer provide a relevant summary of market conditions prior to, during, and after this month of cancelled or delayed sales:

Date	*20-Bond Index*	*11-Bond Index*
December 9, 1971	5.23%	5.01%
December 16, 1971	5.21%	4.99%
December 23, 1971*	5.13%	4.92%
December 30, 1971	5.02%	4.82%
January 6, 1972	5.03%	4.82%
January 13, 1972	4.99%	4.78%
January 20, 1972**	5.17%	4.97%
January 27, 1972	5.29%	5.09%
February 3, 1972	5.35%	5.14%

*The indices reported on the day of the original decision of the District Court in the instant case.

**Last indices reported before the Clarification of Original Opinion by the District Court.

The low reading for 1971 was recorded on October 21, 1971 (4.97 and 4.75), and during the month (December 23 to January 26) in which no Texas school bonds were sold, the market conditions on January 13 approached that yearly low. The indices have not since reached the low recorded on January 13, 1972.

> "7. Notwithstanding any of the foregoing terms or provisions hereof, nothing herein shall be deemed to limit, impair or affect any bonds heretofore or hereafter issued or authorized for public school purposes, or any notes or other obligations at any time authorized or issued in anticipation of such bonds, or any taxes levied or required to be levied with respect to any such bonds, notes or other obligations (all herein called 'obligations') or the expenditure or other application of proceeds of any such taxes or obligations; and for so long as any of such obligations shall remain unpaid as to any principal or interest, nothing herein contained or done pursuant hereto shall be applied or construed to affect the validity or binding effect of such obligations, the creation or legal existence of the issuer thereof, or shall, in the event any of such obligations shall not be paid as to principal or interest when due, invalidate, modify or otherwise affect the meaning or legal effect of any laws or statutes of this State in effect at time of issuance of such obligations relating to the assessment, levy or collection hereafter and the application of property taxes to pay such principal or interest or judgments therefor or relating to the enforcement and payment of any such obligations or judgments and interest thereon; . . ."

Thus, in the cases decided after hearings on the merits, the courts have carefully protected the continuing local property tax security not only for outstanding bonds and notes, but also for bonds and notes to be issued after the decisions;[8] and this basic security is preserved for so long as such bonds or notes are to be outstanding, so that purchasers of such obligations may know with precision and with certainty what they are purchasing and be able to evaluate the relative quality and proper price of such issues. Such a "savings" approach by the courts helps assure that school districts can continue their bond and note

[8]See also the case of *Hollins* v. *Shofstall*, No. C-253652 (Super. Ct. Ariz., June 1, 1972, as supplemented on June 6, 1972) referred to in footnote 23, *infra*.

financing programs or carry them on without suffering inflated interest rates, at a cost to the taxpayers, to cover unknown risks. The significance of such assurances is readily apparent when it is noted that over $3.9-billions of school bonds were issued in a twelve-month period in 1970-1971 and that the aggregate capital requirements of all local school districts in the nation for 1975 have been estimated at $5.6-billion.[9]

Quite obviously, a state legislature's response to such court orders, or actions upon its own initiative, may be to alter the method of school debt financing for the future. But the necessary and sensible effect of the court orders referred to above is to permit continued debt financing on a known basis until any such legislative change takes place, so that the bonds and notes issued prior to such change will continue to have their original security throughout their lives, and only those issued after a legislative change will be on a new foundation, if that is what

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[9]According to the figures in the *U.S. Bureau of the Census, Governmental Finances in 1969-70* (Series GF-70, No. 5), at 28 (1971), the total principal amount of outstanding long term debt issued for public elementary and secondary school purposes was more than $31.5-billion as of June 30, 1970. In fiscal year 1970-1971, over $3.9-billion in principal amount of bonds for public school purposes were sold across the nation, of which $330 million were issued by the states, $240 million by counties, $400 million by municipalities, $2.35-billion by school districts, and $580 million by public school housing authorities. *U.S. Department of Health, Education, and Welfare, Bond Sales for Public School Purposes 1970-1971* (DHEW Publication No. (OE) (72-63), at 11-12 (1972)). The projection of capital requirements for 1975 was made by Dr. Elsie Walters, Director, State-Local Research, Tax Foundation, Inc., in an address given on May 4, 1972 entitled "Perspectives on State and Local Finance to 1980." Dr. Walters prepared the table set forth in Appendix B and distributed such Table to persons in attendance at the Tax Foundation Seminar held in Chicago, Illinois, on May 4-5, 1972 relating to the subject of "The Business Role in State-Local Finance," which Table shows total expenditures for local schools, expenditures for current operations and expenditures for capital outlay.

is called for or determined by the legislature. In the meantime, the legislature will have had the opportunity to construct in a careful and thorough manner a new form of security, if necessary or desirable, for subsequent bond and note issues, and the purchasers of those issues will know precisely what they are bargaining for when submitting their bids.

While clearly recognizing that the matter discussed herein would be rendered moot by a decision for the appellants, it is strongly urged that *if* the District Court's decision is affirmed, this Court take a position as to bonds and notes comparable to the protective orders adopted by the District Court in the instant case and by the New Jersey Superior Court in *Robinson,* so that necessary bond and note financing for the school districts across the nation will not be dislocated or placed in doubt pending the making of any changes necessitated by the decision.

Such protective orders, as the one issued by the District Court in the instant case, are premised not only upon valid and practical considerations, but also upon sound legal reasons which are further discussed in the following sections of this Brief.

II

School Bonds and Notes in Texas and Many Other States Have Been Issued and Are Issuable Solely or Primarily on the Security of Local Property Taxes

Under present law in Texas, and the existing laws in most states having a similar system of school finance, the salability of school bonds and notes is based on the fact that they are secured by ad valorem property taxes which are levied by local school districts, collected and deposited in the district's treasury, and applied by such districts to the payment of principal and interest on such obligations. Consequently, *amici curiae* believe that this property tax security must be preserved for the life of any bonds or

notes which have been or are to be issued prior to any change in the method of securing the payment of school district bonds and notes, for absent such preservation there would be no reliable or sound way to evaluate the quality of such bonds or notes at the time of sale and accordingly they would become unmarketable or marketable only at premium interest rates.

The nature of existing laws for school debt financing in Texas and many other states is briefly described below in order to place the discussion in context. The Texas Legislature is authorized by Article 7, Section 3 of the Texas Constitution to create school districts with the power to levy and collect ad valorem property taxes. The Texas Legislature has established local school districts and has authorized them to issue bonds for certain capital improvements (TEXAS EDUC. CODE § 20.01) provided the voters of the district first authorize the issuance of the bonds and the levy of property taxes pledged to the payment of principal and interest on such bonds (TEXAS EDUC. CODE § 20.04). The Attorney General of Texas must approve the validity of such bonds before they can be issued (TEXAS EDUC. CODE § 20.06). The *sole* security provided for payment of the bonds is the local property tax.

While there are variations among the states, in most other states the method of school debt financing is substantially the same as in Texas. In essence, school districts, or the governmental entities having control of local schools,[10] are permitted to issue bonds for capital improvements and to levy and collect special or general property

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[10]In certain states, such as those in the New England area – particularly Connecticut, Maine, Massachusetts and Rhode Island – the schools are generally operated by cities and towns and these governmental entities have authority to levy local property taxes sufficient to meet debt service requirements of bonds issued by such entities where other revenue sources do not provide sufficient moneys for that purpose.

taxes within the district, to pay debt service thereon. Frequently, the questions of bond authorization and property tax authorization are submitted to the voters of the district for approval.[11] If the voters approve the issuance of bonds, school districts may then proceed with their issuance and in some states may issue notes for an interim period in anticipation of the issuance of such bonds. Further, and fundamental to the issuance of such obligations, a common requirement is that provision must be made for the levy of a property tax sufficient to meet debt service. Even where the bonds are deemed to be secured by the general revenue resources of the school district, the local property tax generally is regarded as the basis for evaluating the quality of the bonds. In addition to these forms of capital improvement financing, certain states also permit school districts to issue notes or other obligations in anticipation of current revenues or in anticipation of certain tax levies, and significantly, these obligations are also usually secured by local property taxes.

The principal points in the foregoing description of present school debt financing laws in most states are that the primary, and frequently the only, security as well as often the only source for payment of debt service presently provided for under such laws, is the ad valorem tax levied on property located within the district issuing

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[11]See *U.S. Department of Health, Education, and Welfare, Bond Sales for Public School Purposes 1970-71* (DHEW Publication No. (OE) (72-63) (1972)) where it was reported:

> "State requirements differed concerning voter approval of school bond issues. Three States – Alabama, Hawaii, and Indiana – did not require voter approval. In 15 other states, voter approval was required of some but not of all school systems, depending on the classification or charter of the system. In the remaining 32 states, voter approval was required before any general obligation bonds could be issued for public school purposes. Of these 32 states, 13 required that the voters approve the bond issues by some specific figure in excess of 50 percent . . ." Pages 3-4.

the bonds or notes, that the laws relating to the levy of taxes sufficient to meet debt service requirements are a part of the contract between the issuing school district and the bondholders,[12] and that such district is therefore obligated under such contract to levy taxes in sufficient amount to make timely payments during the life of such bonds or notes. Such school obligations are salable to the public because of the reliance placed upon this status of debt financing laws and upon the collectability and enforceability of such local property taxes.[13] Quite obviously, these present laws are the only authority under which school districts can continue their necessary debt financing programs, and all that bond purchasers can rely upon. Both school districts and bond purchasers must have the assurance that such laws will continue to be applicable to any debt securities which are issued prior to a change in school finance structures, whether undertaken by legislatures voluntarily or pursuant to court orders.

III

The Concept of "Fiscal Neutrality" Advanced by the District Court Does Not Preclude Continued Use of Local Property Taxes as Security for Debt Service on School Bonds and Notes

Without considering the merits of the equal protection conclusions expressed in *Serrano, Van Dusartz* and *Robinson* and by the District Court in the instant case, or endorsing those conclusions, it should be emphasized that those courts did *not* decide that equal protection guarantees require that local property taxes for school purposes

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[12]See *Von Hoffman* v. *Quincy*, 71 U.S. 535, 552, 554-55 (1886).

[13]Because this form of security has been the foundation of debt financing for school improvements for a substantial period of time and has been widely accepted and successful, it has provided a known measurement of quality and price in purchasing school bonds and notes and caused purchasers thereof to rely on the con-

must be abandoned. Rather, those courts took the position that existing systems of providing school funds which result in substantial disparities in moneys available per pupil, by reason of heavy reliance upon local property taxes and by reason of substantial disparities in per pupil school district wealth measured by taxable property, do not meet constitutional tests of equal protection of the laws required by the Fourteenth Amendment to the United States Constitution (and in *Serrano* and *Robinson* as required by state constitutional provisions). Those cases do not purport to say precisely how the public schools should be financed. To the contrary, they say that, regardless of the system used, the result should be to avoid the effect of substantial inequality of moneys available for education resulting from substantial inequality of taxable property among districts. It is in this sense that the cases call for "fiscal neutrality." The courts have left it to the state legislatures to develop techniques of financing consistent with that concept.

Consideration of possible corrective measures necessarily commences with existing sources of school funds. School funds in Texas and most other states are derived from three principal sources: local property taxes, some form of state assistance such as the Texas Minimum Foundation School Program Act (TEXAS EDUC. CODE §§ 16.01, et seq.), and federal aid programs.[14] In view of the basic

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tinuation of such security throughout the life of such bonds and notes. Another significant factor relating to the marketability of school bonds and notes secured by property taxes in many or most states is the elasticity of such tax, where such tax is unlimited in rate or amount, to provide the funds necessary to meet debt service requirements by application of whatever rate might be required during the life of the obligations.

[14]In a table, captioned "*A Statistical Primer on Public Elementary and Secondary Education in the United States,* published in the New York Times, January 10, 1972, Section E, p. 2, as part of the newspaper's "Annual Education Review", it was noted that

inter-relationship of these three sources, it is obvious that disparities in revenues resulting from dependence on local property taxes could be reduced or eliminated by increased and properly allocated state support or federal assistance, or both. While the result of efforts at further balancing might be to reduce local property taxes, the abandonment of such taxes is not *required* by any conclusions regarding the Equal Protection Clause drawn by the District Court in *Rodriguez* or by the courts in *Serrano, Van Dusartz* and *Robinson,* even if this Court were to accept the rationale of the District Court in place of *McInnis* v. *Shapiro,* 293 F. Supp. 327 (N.D. Ill. 1968), *aff'd mem. sub nom., McInnis* v. *Ogilvie,* 394 U.S. 322 (1969).[15]

Both the courts and the commentators agree on this basic proposition and the theme of those decisions is one of permitting the state legislatures great flexibility in establishing systems of school finance consistent with the concept of "fiscal neutrality." Illustrative of the judicial approach is the following statement of Judge Miles Lord in the *Van Dusartz* case, wherein the *Serrano* rationale was adopted:

> ". . . the fiscal neutrality principle not only removes discrimination by wealth but also allows *free*

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expenditures for public schools in 1971 across the nation were estimated to be $44,424,000,000. According to an article in the same edition, Howe, *Wanted: A System of Finance,* Section E, p. 2, about 55% of revenues received by public schools on a national basis came from local sources, about 39% from the state, and about 6% from the Federal Government.

[15]Numerous commissions and study groups have made proposals for school finance reform and increased support or assistance in one form or another. Among alternative proposals generally considered, is an increase in state or federal assistance with a reduction in local property taxes. See generally, *The President's Commission on School Finance, Schools, People & Money, The Need for Educational Reform,* (Final Report, March 3, 1972); *National Educational Finance Project, Future Directions for School Financing* (1971); *Hearings Before the Select Committee on Equal Educa-*

play to local effort and choice and openly permits the State to adopt one of many optional school funding systems which do not violate the equal protection clause." 334 F. Supp. 870, 876-877 (Emphasis added).

The *Van Dusartz* court further said:

"This Court in no way suggests to the Minnesota Legislature that it adopt any one particular financing system. Rather, this memorandum only recognizes a constitutional standard through which the Legislature may direct and measure its efforts. . . ." *Id.* at 877 n. 14.

Likewise, the District Court in the case at bar stated:

"In the instant case plaintiffs have not advocated that educational expenditures be equal for each child. Rather, they have recommended the application of the principle of 'fiscal neutrality.' . . . [T]he state may adopt the financial scheme desired so long as the variations in wealth among the governmentally chosen units do not affect spending for the education of any child." 337 F. Supp. 280, 283-284.

In the *Robinson* case, the court said:

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tional Opportunity of the United States Senate, 92nd Cong., 1st Sess. Proposals for increased support or assistance in one form or another are actively being considered by many state legislatures and by the federal government. The President of the United States has requested the Advisory Commission on Intergovernmental Relations to review the question of additional federal assistance derived from revenues generated by a value-added tax and the resulting effect on the local property tax structure to qualify for such federal assistance. Previously the ACIR had submitted a report entitled *State Aid to Local Government* (1969) in which the responsibility of the state for financing schools had been discussed. Total abandonment of local property taxes for school purposes would require raising significant revenues from other sources. For instance, in 1969, the local school districts provided from the local property tax an estimated $15.8-billions in revenues for educational purposes out of a total expenditure of $39.5-billion expended for public elementary and secondary education. *Hearings Before the Select Committee on Equal Educational Opportunity of the United States Senate,* 92nd Cong., 1st Sess., Pt. 16 D-3, at 8354b to 8361 (specifically Tables 1 and 12). See also footnote 14, *supra.*

> "Nothing herein shall be construed as requiring the Legislature to adopt a specific system of financing or taxation. The Legislature may approach the goal required by the Education Clause by any methods reasonably calculated to accomplish that purpose consistent with the equal protection requirements of law." 287 A.2d 187, 217.

The commentators in this area echo the judicial approach and emphasize the very narrow thrust of the decisions. Typical are the views attributable to Professor John E. Coons, regarding the misunderstandings flowing from the *Serrano* decision:

> "Press interpretations, says Coons, were 'ghastly' for the most part. After its fundamental finding, the court did not prescribe what the state must do about it; options are infinite. The decision did not require that an equal amount of money be spent on each student, nor say each district must have the same quality educational program, *nor find the property tax unconstitutional,* nor prevent expenditures for district cost differences or special educational needs." (Emphasis added).[16]

The same points of flexibility and essential viability of the local property taxes are made in a recent article, Shanks, *Educational Financing and Equal Protection: Will the California Supreme Court's Breakthrough Become the Law of the Land?*, 1 JOURNAL OF LAW & EDUCATION 73 (1972), where the author noted:

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[16]See the article in the *California Monthly* which was reprinted in *The Transcript,* (Vol. 6, No. 3, Dec. 1971), a publication circulated to members of the Boalt Hall Alumni Association by the University of California, Berkeley. Professor Coons, together with William H. Clune, III and Stephen D. Sugarman, authored an article in 57 CALIF. L. REV. 305 (1969) entitled *Educational Opportunity: A Workable Constitutional Test for State Financing Structures* and a book entitled PRIVATE WEALTH AND PUBLIC EDUCATION (Harvard Press, 1970), which set forth the theory on which the holding of the Supreme Court of California in *Serrano* was predicated.

". . . . But, in any event, the signal point to keep in mind for this purpose [concern about local control of schools] is that 100 per cent state financing of public education is not required by the decision.

"Whether state educational financing systems may still rely on local property taxes, and, if so, whether at varying tax rates, locally determined, requires a somewhat fuller discussion of the Court's reasoning.

"The evil which the Court found in the present system is that to some extent the number of dollars available per pupil in any given school district depends on the wealth—as measured by the assessed valuation per pupil—within the district. The Court condemned the *relation* between *educational offering* (at least as measured in economic terms) and *wealth* (as measured in assessed valuation per pupil). That is all the Court condemned. Compliance with the Court's decision requires only that there be a divorce in this relationship of wealth with educational offering. The Court did not say *how* the divorce shall take place, or what systems of educational financing will meet this test of 'nonrelatedness of wealth and educational offering.'

"*There are many ways of breaking this relationship which do not require abandonment of local taxes —even property taxes—as a source of support for local school systems. . . .*" *Id.* at 76-77 (Emphasis added).

In further evidence of such views, it was observed, in a Note, *Serrano v. Priest in Iowa: Financing Public Education Under the Fourteenth Amendment*, 57 IOWA L. REV. 378, 406 (1971), that "there are myriad alternative methods for financing public education which would avoid the infirmities of unequal educational opportunities and tax inequity found by the *Serrano* court to exist in California"; and, by way of emphasis, the author went on to discuss briefly a number of such permissible financing methods, some of which, significantly, would retain the local property tax as one of the sources of school revenue.

The fact that the local property tax would still be a viable method of raising revenues for school purposes under the *Serrano-Rodriguez* principle has been recognized by the following commentators:

(1) The enthusiastic acceptance of the *Serrano* decision was due largely to the mistaken belief that it would force a repeal of the school property tax and thereby grant the homeowner substantial relief. *The fact is that the local school property tax could continue* under *Serrano* almost as it has, if the state supplemented its yield to uniform level." Freeman, *Should States Finance the Schools,* Wall Street Journal, March 31, 1972, p. 4 (Emphasis added).[17]

(2) ". . . . The very variety of potential, workable solutions, each with its distinct political and social impact, argues for allowing the state legislature to retain the major responsibility for creating any new system. Judicial stipulation of one solution from among what seem to be a number of constitutionally acceptable alternatives would be unnecessarily insensitive to intragovernmental comity. . . ." Recent Cases, 85 HARV. L. REV. 1049, 1057 (1972).

* * *

". . . . Local discretion over educational spending levels could be allowed so long as it were neutral with respect to local wealth. This would be the case if the sacrifice needed to obtain equivalent levels of funding were approximately equal for each school district — that is, if each school district faced equivalent fiscal pressures in its budgetary decision making. . . ." *Id.* at 1058.

(3) ". . . . How can local spending options (unsupervised by the state as to motive and purpose) be retained under *Serrano*? The practical responses lie essentially in larger equalizing aid to districts and/or

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[17]Dr. Roger Freeman has served in the administrations of Presidents Eisenhower and Nixon and is currently a senior fellow at the Hoover Institution on War, Revolution and Peace, Stanford University.

> smaller differences in their taxable wealth per pupil. Under present systems, meager doses of such equalizing state aid are used to implement an implicit legislative policy that spending may not be *entirely* a function of wealth. Aid for education is dispensed inversely to wealth and (occasionally) positively to tax effort. Under *Serrano* these subventions to the poor districts could be increased to the point at which each district is in effect equally wealthy for purposes of public education; or the district tax bases could be altered to that same end; or both." Coons, Clune & Sugarman, *A First Appraisal of Serrano*, 2 YALE REVIEW OF LAW & SOCIAL ACTION 111, 115 (1971) (Emphasis added).

Thus, whatever the state legislatures or the federal government may do, with or without judicial compulsion, to provide additional moneys for public school education, particularly in areas of low property valuation per pupil, it is apparent that there *need be no* abandonment of local effort through property taxes as an intrinsic part of a total school financing program.

Moreover, it cannot be emphasized too strongly that the allocation of funds to debt service from local property taxes levied for school purposes tends to be a minor part of total school expenditures.[18] Thus, if any restructuring is to be done, even though involving some reduction of local property taxes or perhaps providing for actual payment of debt service from additional sources, the objective

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[18]An examination of the *Hearings Before the Select Committee on Equal Educational Opportunity of the United States Senate*, 92nd Cong. 1st Sess., pt. 16D-3, pp. 8354b-8412 which sets forth the "Report of the Commissioner's Ad Hoc Group on School Finance", and specifically a comparison of Table 1 at page 8355 and Table 3 at page 8356 shows that *total* estimated public school expenditures in 1969 to 1970 were $39,494,111,000 and total estimated *current* expenditures for such period were $32,280,936,000. This difference of $7,213,175,000 or 18% of the total school expenditures was not broken down but clearly included moneys for debt service and, presumably, for direct outlays of capital expenditures.

can be achieved without abandoning local property taxes as the ultimate security, if needed, for payment of such debt service; and there is nothing in the cases from *Serrano* through *Robinson* that would *require* a different result under the Equal Protection Clause. As directed by the District Court and the court in *Robinson*, the local property tax is to remain as the ultimate security for outstanding bonds and notes and interim-issued bonds and notes. The flexibility inherent in the concept of fiscal neutrality is evidenced by those portions of the courts' orders. Logically, and in line with this principle, the property tax as security for bonds and notes issued *even after* any restructuring of the financing system does not have to be foregone. It may well be that other sources of revenue may be made available for actual payment of debt service, but the ultimate security for school debt could continue to be local property taxes to be levied if and to the extent needed to meet debt service.

In summation, the decisions adopting the "fiscal neutrality" concept, including the District Court decision herein, do not and need not affect either outstanding bonds and notes or the ability to issue additional bonds and notes under existing laws, including bonds to fund outstanding notes. The portions of the Clarification of Original Opinion by the District Court in the instant case and the judgment in the *Robinson* case, by which local property tax levies were preserved as security for debt service for the life of

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According to *U.S. Bureau of the Census, Governmental Finances in 1969-1970* (Series GF-70, No. 5), at 43 (1971), the expenditure for capital outlay for local schools was $4,648,100,000. In connection with the percentage of school expenditures used for debt service, Paul Heffernan has observed: "Because of common debt and tax limit requirements, school bond debt service costs generally run around 10% of school district operating budgets. For debt service to exceed 15% of school financing costs would be exceptional." Heffernan, *The Editor's Corner*, The Daily Bond Buyer, January 4, 1972 at 21.

the bonds and notes issued under existing laws, are logically consistent with the determinations made on the merits in those cases.

IV

Property Taxes Levied and Collected by Local School Districts Could Not Be Eliminated as a Source of Security for Outstanding Bonds or Notes Because the Obligation of Such Contracts is Protected Against Impairment by Article I, Section 10, United States Constitution

School bonds and notes are contracts which, as previously discussed in this Brief, are by their terms secured by local property taxes. The inevitable result is that a school district in issuing bonds or notes obligates itself by contract made under state law with the holder of such obligations to provide for the levy and collection of local property taxes to the extent necessary to pay principal and interest, and, where notes have been issued in anticipation of the issuance of bonds, there is an additional contractual obligation to fund such notes at their maturity. All of these obligations are protected by Article I, Section 10, of the United States Constitution which provides that "no State shall . . . pass any . . . law impairing the obligation of contracts."

Such constitutional protection is applicable if this Court affirms the decision of the District Court and thereby directs the state legislature to act but leaves the legislature considerable flexibility in developing a different system of school finance consistent with equal protection requirements. As noted in the previous discussion, the decision of the District Court, like those in similar cases, and the concept of "fiscal neutrality", do *not* require the abandonment of the local property tax. Rather, a broad choice is left to the state legislatures. In such circumstances, certainly the constitutional guarantee against impairment of

the obligation of contracts by legislative action must be adhered to by the legislature. Thus, if this Court finds that existing systems of financing public education are violative of the Equal Protection Clause but such decision can be rendered and implemented without impairing the contractual obligations of school districts to bondholders by judicial decree, as shown above, it logically follows that the legislatures must act in such manner as to satisfy both the Equal Protection Clause and the Impairment of Contract Clause. This is merely applying two provisions of the Constitution in such manner as to give effect to both.[19]

On numerous occasions extending back for decades, this Court has addressed itself to, and has taken a protective stance toward, the rights of bondholders under the "impairment of contract" clause in holding that legislative or constitutional changes restricting or eliminating the tax security for bonds issued under prior laws impair the obligation of contract between the issuing subdivision and the bondholder.[20]

In this regard, and as representative of the principle discussed above, this Court held in *Von Hoffman* v. *Quincy*, 71 U.S. 535 (1866):

> ". . . Nothing can be more material to the obligation than the means of enforcement. Without the remedy the contract may, indeed, in the sense of the law, be said not to exist, and its obligation to fall within the class of those moral and social duties which depend for their fulfillment wholly upon the will of the indi-

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[19]See, *e.g.*, *Wright* v. *United States*, 302 U.S. 583, 596 (1938); *Williams* v. *United States*, 289 U.S. 553, 572-73 (1933); *Old Wayne Mutual Life Association of Indianapolis* v. *McDonough*, 204 U.S. 8, 15 (1907).

[20]See, *e.g.*, *Wolff* v. *New Orleans*, 103 U.S. 358 (1880); *Ralls County Court* v. *United States*, 105 U.S. 733, 735-38 (1881); *Mobile* v. *Watson*, 116 U.S. 289, 305 (1886); *Scotland County Court* v. *United States ex rel. Hill*, 140 U.S. 41, 45 (1891); *W. B. Worthen Co.* v. *Kavanaugh*, 295 U.S. 56, 59-60 (1935).

vidual. The ideas of validity and remedy are inseparable, and both are parts of the obligation, which is guaranteed by the Constitution against invasion. The obligation of a contract 'is the law which binds the parties to perform their agreement.' The prohibition has no reference to the degree of impairment. The largest and least are alike forbidden. . . . *Id.* at 552.

* * *

"It is well settled that a State may disable itself by contract from exercising its taxing power in particular cases. It is equally clear that where a State has authorized a municipal corporation to contract and to exercise the power of local taxation to the extent necessary to meet its engagements, the power thus given cannot be withdrawn until the contract is satisfied. The State and the corporation, in such cases, are equally bound. The power given becomes a trust which the donor cannot annul, and which the donee is bound to execute; and neither the State nor the corporation can any more impair the obligation of the contract in this way than in any other.

"The laws requiring taxes to the requisite amount to be collected, in force when the bonds were issued, are still in force for all the purposes of this case. The act of 1863 is, so far as it affects these bonds, a nullity. It is the duty of the city to impose and collect the taxes in all respects as if that act had not been passed. A different result would leave nothing of the contract, but an abstract right — of no practical value — and render the protection of the Constitution a shadow and a delusion."[21] *Id.* at 554-555.

Thus, it is clear that any state legislative change that might be made in the system of public school financing, either in accordance with a judicial command for "fiscal neutrality" as ordered by the District Court in the instant

[21]In the *Von Hoffman* case, bonds had been issued under statutes authorizing the levy of a sufficient special tax to pay debt service. Subsequently, the Illinois legislature enacted a statute restricting the amount of taxes which could be levied by the City.

case or by voluntary action, could not constitutionally impair the local property tax *security* for school bonds or notes issued prior to any such change in the state constitution or laws. Even if state legislatures provided for actual payment of debt service from other sources of revenues, the ultimate remedy and security of the bondholder to have local property taxes levied, if necessary, must be left intact.

Thus, it may be seen that the protective order of the District Court is logically and legally sound for the additional reason that it avoids impairment of the obligation of contracts.

V

Even if Ultimate Judicial Determination Required Abandonment of Local Property Taxes for School Purposes, Any Such Determination Could and Should be Given Prospective Effect Only so as Not to Interfere with Local Property Taxes for Debt Service on Bonds or Notes Issued Before An Orderly Change in the Financing System Occurs

As previously discussed, there is nothing in the decision of the District Court or in the other decided cases requiring or even indicating any necessity under the Equal Protection Clause for interfering with the security afforded by the local property taxing power for payment of debt service on bonds or notes;[22] and any attempted interference

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[22]In this regard, it should be noted that the Wyoming Supreme Court in the case of *Sweetwater County Planning Committee* v. *Hinkle,* 491 P.2d 1234 (1971), after stating that new legislation was needed in the area of school financing, observed: "We have been speaking only about the operation and maintenance of public schools and not about the financing of capital improvements. Such financing will in the future have to be done by each school district separately unless and until otherwise authorized. *No invidious discrimination will be involved if bonds are voted by any school district for capital improvements, and if special levies are made within the district to retire such bonds.*" 491 P.2d at 1238 (Emphasis added).

by a legislature in its response to such a decision would run counter to a constitutional prohibition against impairment of contracts. However, even if it were determined that, in some way (not now apparent), the existing security of property taxes for debt service violates the Equal Protection Clause, applicable judicial concepts would preclude the crises, confusion and inequity that would otherwise result from giving immediate effect to such a determination. Rather, under established principles, such a determination would be applied prospectively only, giving due time for orderly transition to a new system. Such an orderly transition would also permit school districts to continue their programs of debt financing without damaging interruptions.

The school segregation remedial decision, *Brown* v. *Board of Education*, 347 U.S. 483 (1954), particularly the supplemental opinion regarding the manner of relief as reported at 349 U.S. 294 (1955), and the legislative reapportionment decision, *Reynolds v. Sims*, 377 U.S. 533, 585-586 (1964), are relevant and convincing precedent for the prospective operation of such a determination. Those cases exemplify the established principle that a finding of existing unconstitutionality where entire systems of conduct must be changed does not require the undoing of what has been done nor immediate corrective action, but that equitable principles should be applied in allowing the necessary time for correction of particularly complex problems, especially where the subject is primarily one for legislative consideration and determination.

This is particularly true in the instant case which, if the District Court's decision is affirmed, would require major legislative policy decisions both within and without the constitutional arena. In *Brown* this Court directed the lower courts to require "a prompt and reasonable compliance" with the earlier ruling of unconstitutionality but

stated further that additional time might be necessary due to administrative problems and revision of local laws. Thus, if this Court in the instant case were to affirm the decision of the District Court, reasonable time must be afforded the legislatures to enact a new system and, during such an interim period, the existing system must be permitted to operate in order for public education and educational capital improvements to be continued.[23]

The applicability of these equitable principles to school financing matters was recognized in the modification of the judgment in the *Serrano* case, where the California Court said:

> "As in the cases of school desegregation (see Brown v. Board of Education (1955) 349 U.S. 294, 75 S. Ct. 753, 99 L.Ed 1083) and legislative reapportionment (see Silver v. Brown (1965) 63 Cal. 2d 270, 281, 46 Cal. Rptr. 308, 405 P.2d 132), a determination that an existing plan of governmental operation denies equal protection does not necessarily require invalidation of past acts undertaken pursuant to that plan or

[23]With respect to the matter of providing a period of time for a legislature to restructure the existing system of finance after the date of any decision affirming or adopting the *Serrano-Rodriguez* rationale, the lower courts should be given discretion to fix a reasonable period of time in light of the particular circumstances in the state involved. The District Court in the instant case, based upon the situation in Texas, prescribed a two-year period during which the legislature was to restructure the system of school finance in Texas. If this Court affirms the District Court decision, such time period should not be viewed as a universally applicable period. Rather, it would seem that such period will depend on the circumstances in each state and should be left to the reasonable discretion of lower courts, which, in fact, may review and revise their order in this respect as the circumstances warrant. In the *Robinson* case, the New Jersey Superior Court simply declared that the property tax security for obligations "heretofore or hereafter issued" under existing laws would continue. A similar protective order was entered on June 6, 1972 in *Hollins* v. *Shofstall*, No. C-253652 (Super. Ct. Ariz., June 1, 1972). As stated in Section III of this Brief, in any event, such orders should not be deemed to affect the security for debt obligations under the "fiscal neutrality" concept.

> an immediate implementation of a constitutionally valid substitute. *Obviously, any judgment invalidating the existing system of public school financing should make clear that the existing system is to remain operable until an appropriate new system, which is not violative of equal protection of the laws, can be put into effect.*" 96 Cal. Rptr. 601, 626, 487 P.2d 1241, 1266 (Emphasis added).

Even in situations where, unlike the instant case, the constitutional infirmities sought to be corrected by the courts could be accomplished by a simple clear-cut judicial act, *e.g.*, prohibiting any imposition of discriminatory voter qualification requirements, this Court has held that its decision should have prospective effect only so that political subdivisions issuing voted obligations would not suffer disruption and hardship in their financing activities and bondholders who had purchased bonds on good faith assumptions would not suffer substantial inequitable results. *Cipriano* v. *City of Houma*, 395 U.S. 701, 706 (1969); *City of Phoenix* v. *Kolodziejski*, 399 U.S. 204, 213-215 (1970).[24]

Thus, it is plain that even if the Texas school finance system were determined to be unconstitutional, and even if, contrary to the views expressed elsewhere in this Brief, the infirmity were deemed to extend to property taxes pledged as security for the payment of debt service on school bonds and notes, it is manifest that the equitable principles discussed above would be applicable to give

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[24]Courts, in deciding if a judicial determination should be applied prospectively only, have considered various factors such as whether a new principle of law is being established, the purpose to be served by the new principle, the reliance placed on the prior rule or system of law, and whether injustice, hardship or an undue burden on the administration of the law can be avoided. See, *e.g.*, *Chevron Oil Co.* v. *Huson*, 404 U.S. 97, 92 Sup. Ct. 349, 355, 30 L. Ed. 2d 296, 306 (1971); *Williams* v. *United States*, 401 U.S. 646, 652 (1971), 662-665 (Brennan, J. concurring); *Gosa* v. *Mayden*, 450 F.2d 753 (5th Cir. 1971). If the decision of the District Court is affirmed, there could be no question, in view of the historical and almost universal practice of the states, that a new principle of law

such decision only prospective effect so as not to interfere with local property taxes for debt service on bonds and notes issued before an orderly change in the financing system occurs, and thereby avoid disruption and unfairness.

CONCLUSION

Amici curiae repeat that it is not the purpose of this Brief to suggest a conclusion as to the merits of the instant case, and they do not presume that the case will be decided in a fashion that calls for attention to the subject of this Brief. Rather, the undersigned merely submit that, *if* this Court affirms the decision of the District Court and determines that constitutional concepts require some re-ordering of the system of public school finance such a determination need not and should not in any way affect the local property tax security for any school bonds or notes issued prior to any such alteration in that system of financing and need not, under the concept of fiscal neutrality, lead to the abandonment of the local property tax as security for future school debt financing. Thus, if the District Court's decision is affirmed, we respectfully submit that the protective order of the District Court with respect to the local property tax security for school bonds and notes should be

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would thereby be established. Nor is there any doubt, particularly with respect to school bonds and notes, as to the historical, justifiable and indeed, necessary reliance placed on the existing system of local property tax security for such debt obligations. As discussed above, continuation of the local property tax security for debt service, whether or not actually paid from other sources, would not affect at all or to any significant extent the restructuring of the system of school finance to avoid disparities in educational offering resulting from differences in school district wealth. Furthermore, any minor inequalities in interest rates borne by bonds and notes as a result of wealth disparities could be overcome, if necessary, without abandoning the local property tax security. And, clearly, the only way to avoid undue burden and chaos in the administration of state school laws is for a court to apply the principle of prospective effect.

expressly approved by this Court in order to avoid any confusion and allay fears which would otherwise redound to the detriment of local school districts, taxpayers and bondholders.

Respectfully submitted,

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APPENDIX A

Mortimer G. Newman, Jr.
Clerk

KENNETH ROBINSON, an infant by his parent and Guardian ad Litem, ERNESTINE ROBINSON and ERNESTINE ROBINSON, individually; PAUL JORDAN, ARTHUR DWYER, FRANK H. BLATZ, and WILLIAM S. HART, individually and as Mayors respectively of Jersey City, Paterson, Plainfield and East Orange; the Cities of Jersey City, Paterson, Plainfield and East Orange; the Boards of Education of the School Districts of Jersey City, Paterson, Plainfield and East Orange; The Board of School Estimate of Jersey City; and RICHARD F. MCCARTHY; all individually and as representatives of a class or classes,

Plaintiffs,

vs.

WILLIAM T. CAHILL, Governor of the State of New Jersey; JOSEPH M. MCCRANE, JR., Treasurer of the State of New Jersey; GEORGE F. KUGLER, Attorney General of the State of New Jersey; RAYMOND H. BATEMAN, President of the New Jersey Senate and the New Jersey Senate; WILLIAM K. DICKEY, Speaker of the General Assembly of the State of New Jersey and the General Assembly of the State of New Jersey; the State of New Jersey; CARL L. MARBURGER, Commissioner of Education and the Department of Education; the State Board of Education; all in their official and individual capacities.

Defendants.

SUPERIOR COURT OF NEW JERSEY LAW DIVISION-HUDSON COUNTY DOCKET NO. L-18704-69

Civil Action
JUDGMENT

This matter having been opened to the court by Ruvoldt and Ruvoldt, Harold J. Ruvoldt, Jr. appearing, attorneys for the plaintiffs, and George F. Kugler, Jr., Attorney General of New Jersey, Stephen G. Weiss, Special Counsel, appearing, attorney for defendants, and said attorneys for plaintiffs and defendants having made separate motions for summary judgment and having stipulated to the inclusion in the record of various affidavits submitted on said motions and other data, and the court having heard testimony in trial between November 1 and November 9, 1971, inclusive; and the court having considered arguments and briefs submitted on behalf of the parties as well as *amicus curiae* briefs submitted by various attorneys; and the court having made findings of fact and conclusions of law in a written opinion dated January 19, 1972; for good cause shown,

IT IS on this 4th day of February, 1972,

ORDERED, ADJUDGED and DECLARED that:

1. The present statutory scheme of financing public elementary and secondary schools affords unequal and, in some cases, inadequate educational opportunities to pupils in various school districts of the State;

2. The present system of financing public elementary and secondary schools does not provide a thorough and efficient system of education in New Jersey at the present time as required by the New Jersey Constitution (Article VIII, Sec. IV, Par. 1), although the Bateman Act (L. 1970, c. 234) may do so if fully funded and implemented, without satisfying constitutional requirements for equality referred to below;

3. The present system of financing such public schools discriminates against pupils in districts with low real property wealth and against taxpayers upon whom unequal tax burdens are imposed for a common State pur-

pose in violation of the equality provision of the New Jersey Constitution (Article I, Par. 1) and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution;

4. The State is required to finance a thorough and efficient system of public elementary and secondary education out of State revenues raised in conformity with the requirements of the State and Federal Constitutions as interpreted by the Court in its written opinion; but nothing contained in this judgment or in said opinion shall be construed as requiring the legislature to adopt a specific system of financing or taxation, nor as precluding the taxation of real property for school purposes;

5. This judgment declaring the present financing system unconstitutional shall operate prospectively only and shall not prevent the continued operation of the school laws and tax laws now in existence or any and all actions taken thereunder; and said laws shall continue in effect unless and until specific operations under them are enjoined by the court;

6. No such operations shall be enjoined prior to January 1, 1974, except that, if a nondiscriminatory system of taxation is not enacted by January 1, 1973, then from and after that date no State moneys shall be distributed to any school district pursuant to the "minimum support aid" provisions (N.J.S.A. 18A:58-2 and 5a) and the save harmless provision (N.J.S.A. 18A:58-18.1; L. 1970, c. 234, sec. 15, as amended) of the Bateman Act; and, in that event, the funds that are thereby set free shall be redistributed by appropriate State officials in a manner that will effectuate as far as possible the principles expressed in the written opinion of the court, more specifically, by raising the guaranteed valuations to the highest level that a proportionate distribution of funds will permit, utilizing the remaining provisions of the Bateman Act; provided,

however, that no such distribution of minimum aid and save harmless funds shall be made without further order of this court, and, in any event, the Commissioner of the State Department of Education, State of New Jersey, on or before November 15, 1972, shall formulate and submit to this court for approval a plan for the effectuation of this provision prior to putting it into effect; and provided, further, that the State Board of Education and/or the Commissioner of the Department of Education, State of New Jersey, may propose an alternate plan or plans for the use or distribution of said minimum support aid and save harmless funds to effectuate the principles expressed in the written opinion of this court in the event this injunction shall become operative, said plan or plans to be submitted on or before November 15, 1972;

7. Notwithstanding any of the foregoing terms or provisions hereof, nothing herein shall be deemed to limit, impair or affect any bonds heretofore or hereafter issued or authorized for public school purposes, or any notes or other obligations at any time authorized or issued in anticipation of such bonds, or any taxes levied or required to be levied with respect to any such bonds, notes or other obligations (all herein called "obligations"), or the expenditure or other application of proceeds of any such taxes or obligations; and for so long as any of such obligations shall remain unpaid as to any principal or interest, nothing herein contained or done pursuant hereto shall be applied or construed to affect the validity or binding effect of such obligations, the creation or legal existence of the issuer thereof, or shall, in the event any of such obligations shall not be paid as to principal or interest when due, invalidate, modify or otherwise affect the meaning or legal effect of any laws or statutes of this State in effect at time of issuance of such obligations relating to the assessment, levy or collection hereafter and the application of property taxes to pay such principal or

interest or judgments therefor or relating to the enforcement and payment of any such obligations or judgments and interest thereon;

8. Defendants' motion to change the dates fixed in paragraph 6, above, to a period of 2 years after final disposition by the Supreme Court of New Jersey of the appeal to be filed by defendants, or not earlier than January 1, 1974, is hereby denied.

9. The court hereby retains jurisdiction for such modification or further order as may be required.

/s/ T. I. Botter

Theodore I. Botter, J.S.C.

I hereby certify that the foregoing is a true copy of the original on file in my office.

/s/ Mortimer G. Newman, Jr.
Clerk

APPENDIX B

Expenditures For Local Public Schools by Object
Actual and Projected, Selected Fiscal Years 1955-1980

Fiscal Year	Total local schools	Current operations		Capital outlay
		Total current	Average per pupil	
	Amount (millions)			
Actual:				
1955	$10,129	$ 7,390	$ 274	$2,739
1960	15,166	12,263	378	2,903
1965	21,966	18,679	484	3,287
1970	37,461	32,803	776	4,658
Projected:				
1975	55,466	49,862	1,176	5,604
1980	78,875	71,993	1,706	6,882
	Percentage change over selected intervals			
1955-60	+ 49.7	+ 65.9	+ 37.8	+ 6.0
1960-65	+ 44.8	+ 52.3	+ 28.0	+13.2
1965-70	+ 70.5	+ 75.6	+ 55.3	+41.6
1970-75	+ 48.1	+ 52.0	+ 51.5	+20.3
1975-80	+ 42.2	+ 44.4	+ 45.1	+22.8
1960-70	+147.0	+167.5	+105.3	+60.5
1970-80	+110.6	+119.5	+119.8	+47.7

Source: Basic data from U. S. Department of Commerce, Bureau of the Census. Computations and projections by Tax Foundation, Inc.