IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

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

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MOTION FOR LEAVE TO FILE BRIEF FOR HOUSTON I. FLOURNOY, Controller of the State of California AS AMICUS CURIAE

Amicus hereby respectfully moves for leave to file a brief supporting the position of Appellees in the above-entitled case. Counsel for Appellees have consented to the filing of the brief attached hereto. Counsel for Appellants have not consented to its filing.

The interests of *Amicus* and his reasons for requesting leave to file the attached brief are as follows:

Amicus is the Controller of the State of California, and, therefore, is the Chief Fiscal Officer of the State of California. As such *Amicus* has a particular responsibility in any area relating to the fiscal obligations of the State. Since the activities of the *Amicus* as Chief Fiscal Officer may be substantially affected by the decision of this Court in the pending case, it is important to *Amicus* that his views be considered prior to the rendering of any decision.

In addition, *Amicus* has long been concerned with the fundamental fairness of the school financing scheme presently in effect in California and most other states. As early as March 3, 1969, the California Advisory Commission on Tax Reform, of which *Amicus* was Chairman, stated that "every child should receive an adequate educational program at the same property tax effort regardless of what school district the child may live in." Accordingly, in that report, *Amicus* and the Commission advocated a state-wide property tax for schools within California. Advisory Commission on Tax Reform, Tax Reform Report at 22 (1969). Thus, *Amicus* has long believed that the present California system of financing schools through local property taxes necessarily results in an inequality of educational opportunity. As a result of the decision of the California Supreme Court in *Serrano* v. *Priest*, 5 Cal. 3d 584, 487 P. 2d 1241 (1971), *Amicus* has also come to believe that those inequalities, to which *Amicus* has long objected, violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution as well as similar provisions of the California Constitution.

III

Finally, *Amicus* is presently a defendant in the case of *Serrano* v. *Priest*, which is proceeding to trial following the decision of the California Supreme Court, *supra*, which reversed the sustaining of a demurrer in the case. As a result of the posture taken by other California authorities, there are several questions of fact which must be examined in the trial, and the trial therefore promises to be burdensome and expensive to *Amicus*. However, *Amicus* has determined that he cannot in good faith accept the defense urged for him by the Attorney General of the State of California, and has therefore been authorized to retain his own counsel at no expense to the State. Since a decision of this Court affirming the district court for the Western District of Texas would likely render the trial in *Serrano* v. *Priest* unnecessary, *Amicus* has an additional interest in seeking that affirmance.

As a result of the past background of *Amicus* in the area of educational financing, particularly through local property tax schemes, and further as a result of the participation of *Amicus* in the case of *Serrano* v. *Priest*, *supra*, *Amicus* has become thoroughly familiar with the issues presented to the Court by the pending case. *Amicus* believes that Texas and California do not presently provide their children with an equal educational opportunity unrelated to the wealth of the particular school district in which those children happen to reside. The need to end that wealth-oriented discrimination among the children of the State was recognized by the court below, and the court rendered the appropriate decision. Additionally, *Amicus* is convinced that there is no inherent reason why education should be financed through a scheme that relates expenditures to the assessed valuation of land within the school dis-

trict in which the educational facility is located. *Amicus* therefore requests that this Court grant leave to *Amicus* to file the attached brief in support of the decision rendered by the United States District Court for the Western District of Texas so that his views may be considered.

Respectfully submitted,

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INDEX

TABLE OF AUTHORITIES

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BRIEF FOR

HOUSTON I. FLOURNOY, Controller of the State of California

AS AMICUS CURIAE

QUESTION PRESENTED

Whether the Texas scheme for financing public school education primarily through local property taxes violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution by making educational opportunity, as measured by expenditures for education, afforded to the children of that State depend upon the wealth of the particular school district in which such children reside and whether the decision of the United States District Court

for the Western District of Texas to that effect should therefore be affirmed.

PROCEEDINGS BELOW AND STATEMENT OF FACTS

Amicus believes that the proceedings below and pertinent facts have been adequately summarized in other briefs filed by the parties in this case and the various *Amici Curiae*, and *Amicus* will not further burden this Court with a reiteration thereof.

ARGUMENT

The Equal Protection Clause Of The Fourteenth Amendment To The United States Constitution Is Violated By Any Scheme Of Educational Financing Which Makes The Educational Opportunity Afforded By Public Schools To Children Within The State Depend, To Any Substantial Degree, Upon The Particular Wealth Of The School District Within Which Those Children Reside.

Briefly stated, the position of *Amicus* is that equality of educational opportunity is, and has always been recognized as being, among the most fundamental of interests. Accordingly, no state can be permitted to establish or maintain an educational system which provides a better education, as measured by educational expenditures, for the children of parents in more wealthy school districts than for the children of less fortunate parents. Since the Texas educational financing scheme, like the California educational financing scheme, accomplishes that result, it cannot withstand attack. *Tate* v. *Short*, 401 U.S. 395 (1971); *McDonald* v. *Board of Election* 394 U.S. 802 (1969); *Harper* v. *Virginia Board of Elections* 383 U.S. 663 (1966); *Serrano* v. *Priest* 5 Cal 3d 584, 487 P. 2d 1241 (1971).

Equality of educational opportunity is a *sine qua non* of successfully operational representative democ-

racy. It was in recognition of that importance that Thomas Jefferson wrote in 1796:

> "I think by far the most important bill in our whole code, is that for the diffusion of knowledge among the people. No other sure foundation can be devised, for the preservation of freedom and happiness."

T. Jefferson, 5 The Writings of Thomas Jefferson 396 (A. Lipscomb ed. 1905). Similar views were held by a substantial number of our country's founders. *See generally*, A. Hansen, Liberalism and Education in the Eighteenth Century (1926). At the time of the Revolution, most American schools were completely under local control, as a result of historical development in a frontier society. Nonetheless, of the sixteen state constitutions framed before the year 1800, six of them (in Pennsylvania, North Carolina, Vermont, Massachusetts, New Hampshire and Delaware) specifically asserted the state's responsibility for, and authority over, education. Similarly, the educational provisions of the Northwest Ordinance of 1787 reaffirmed the fundamental importance of education to a free society: "schools and the means of education shall forever be encouraged." Ordinance of 1787, Art. 3, § 14, 1 Stat. 51. In the words of Justice Holmes, education is "one of the first objects of public care." *Interstate Consol. St. Ry.* v. *Massachusetts*, 207 U.S. 79, 87 (1907). Thus, it has long been established that education is of substantial and fundamental importance to us as a people.

Moreover, educational opportunity is an ingredient of equality among citizens that can only be safeguarded by governmental action and is not likely to exist, as a practical matter, unless affirmative state action is taken. The Preamble to our country's Constitution recites that

all men are created equal, but without substantial equality of educational opportunity, the equality of men is doomed to end with their creation.

To permit the quality of a child's educational opportunity to be a direct result of the location of the house in which his parents reside is substantially to reduce the likelihood that he will be able to compete effectively with those of his peers whose parents live in a more favorable location. If that inequality were the result of free choice, there could be no constitutional objection to it. But it is not. It is, rather, a consequence of the combination of the wealth of the district in which the child's parents reside and the state-established financing scheme which limits educational expenditures by the ability of the school district to raise funds from within its boundaries. Indeed, in California [see *Serrano* v. *Priest*, 5 Cal. 3d 584, 487 P. 2d 1241 (1971); California Advisory Commission on Tax Reform, Tax Reform Report, 22-24 (1969)] it is clear that children whose parents have chosen to burden themselves more heavily, in terms of the tax rate imposed, than parents in other school districts often generate *less* money to spend, simply because of the extreme disparities in assessed property values among the school districts. Substantially similar disparities exist in Texas, as found by the Court below in the case at bar. In these circumstances, it cannot reasonably be contended that states whose school financing scheme parallels that of Texas or California are doing anything short of denying an equal opportunity to some children within their jurisdiction.

The principle which must be upheld by this Court is that of fiscal neutrality in educational financing. Appel-

lees in the present case are doing no more than asserting their right to be relieved from a financing system which, as found by the Court below, functions to impose higher taxes in poor districts while providing better education in wealthy districts. With the increased concentration of wealth in certain geographic areas, the property tax based school financing system has become as discriminatory as the wealth-based system that it historically replaced.

As Controller of the State of California, *Amicus* has been involved in the functioning of an educational financing system similar to the structure here under attack. *Amicus* believes that there is no substantial state interest in, or justification for, maintaining such a sysem. It has been asserted that the present scheme retains local control within school districts. But to allow that unsupported assertion to control the decision in this case would be to allow the State to shirk *its* responsibilities to its children. Moreover, even if the vague notion of "local control" were viewed as a compelling state interest, the present system of school financing in Texas and California does not in fact further that alleged interest. Less wealthy districts, under the present scheme, can do no more than support a minimal educational system, and have no meaningful control over their educational budget. Conversely, adopting a state-wide financing scheme, in which all of the state's resources are used to support all of the state's children, does not imply that the state which is concerned with local control must usurp the local power to make decisions as to expenditures.

Indeed, not only would upholding the decision below not interfere with any substantial state interest; it

would advance a meaningful state interest. In 1968, Governor Ronald Reagan of California established an Advisory Commission on Tax Reform, and named *Amicus* to serve as chairman of that Commission. After approximately one year of study the Commission concluded that "[t]he present inequitable distribution of property tax resources among the various school districts is the direct responsibility of the state." Advisory Commission on Tax Reform, Tax Reform Report, 7 (1969). Accordingly, the Commission recommended to the Governor that a statewide property tax be established to support education. Affirmance by this Court of the decision below would be likely to facilitate that result, thereby furthering an expressed state interest while making meaningful the promise long held out to our children of a true equality of educational opportunity.

CONCLUSION

There is no actual state interest served by the particular school financing scheme presently in effect in Texas, which is in substance similar to the California scheme. Given that lack of any substantial interest, *Amicus* believes that the decision below to the effect that the present scheme violates equal protection requirements, must be upheld. Education is certainly a fundamental interest, and historically been recognized as such. Since equal educational opportunity cannot exist with substantially unequal expenditure levels, it is clear that children in poor districts are placed on a substantially less advantageous footing than children in relatively wealthy districts. Since school districts, and the financing scheme in general, are created and maintained by the state, it follows that the state is involved in discriminating on the basis of wealth in the educa-

tional opportunities made available to its children. No such practice is constitutionally permissible, and the decision below must therefore be affirmed.

Respectfully submitted,

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