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ABSTRACT

This report reviews the effects of recent court cases that struck down existing methods of school finance and presents a detailed discussion of the case Demetrio P. Rodriquez et al vs San Antonio Independent School District et al. The report gives the factual background of the case, states the issue, presents the court's decision, and sets forth the rationale behind the decision. The report notes that the Texas Legislature is currently being called upon to establish a school financing situation in keeping with the equal protection provisions of United States and of Texas Constitutions. (JF)

TO; . Div. of P, R, & T Relations, AASA

Atlantic City Convention Hall

Room 8 of Holiday Inn

(Attn.: Howard Carroll)

Submitted just prior to presentation
Sunday afternoon, 2/13/72
Atlantic Room of the
Marlboro-Blenheim

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The Assault Upon State School Finance Systems (Program Title)
"Shades of Davey Crockett"
or (Segment Rubric)
"The Third Domino to Fall"

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Obiter Dicta

All of us have mouthed at some time the famous Texan battle cry; Remember the Alamo!, and some of us know that in the ultimate massacre at the Alamo, in 1836, one of the dead heroes was Davey Crockett.

The present pertinence of Davey Crockett and the Alamo is that, in some school finance circles, the ubiquitous property tax has been occasionally and loosely described as "the good, old (fashioned) property tax" which description is perhaps still good (partially because people are used to it, at least) and old (fashioned) because it admittedly was fit and proper when land was a major measure of a man's means, whether or not he had any jingle (cash income) in his jeans. The era of equity of the property tax was about the time when Davey Crockett was making his reputation.

And then, only 1200 hours ago, on the day before the night before Christmas (23 December 1971) a federal court bade fair to make famous the Alamo Heights Independent School District in suburban San Antonio and its posh per-pupil property tax valuation. Alamo Heights is to Rodriquez as Beverly Hills is to Serrano and as every enclave of affluence is to every pocket of poverty in the school machinery of every state represented in this room--except Hawaii.

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In the on-edge-domino game which is being examined here this afternoon, there are some three dozen Serrano-type suits in the works and about a half dozen of these have been decided pending several kinds of appeal or implementation.

The third domino to fall, after Serrano in California (30 August 1971) and Van Dusartz in Minnesota (12 October 1971) was DEMETRIO P. RODRIQUEZ, et al v. SAN ANTONIO INDEPENDENT SCHOOL DISTRICT, et al, Civil Action No. 68-175-SA, in the United States District Court, Western District of Texas, San Antonio Division. A three-judge panel ruled PER CURIAM. Direct appeal to the United States Supreme Court from such a panel, I gather, is quite possible, and a PER CURIAM OPINION of such a court indicates that the judges are of one mind and their holding is so clear that they do not deem it necessary to elaborate it by an extended discussion.

The Facts

There follow several of the essential facts of the case:

> Plaintiffs bring this action on behalf of Mexican American school children and their parents who live in the Edgewood Independent School District, and on behalf of all other children throughout Texas who live in school districts with low property valuations.

Edgewood and six other school districts lie wholly or partly within the city of San Antonio, Texas. Five additional districts are located within rural Bexar County. All of these districts and their counterparts throughout the State are dependent upon federal, state, and local sources of financing. Since the federal government contributes only about ten percent of the overall public school expenditures, most revenue is derived from two state programs -- the Available School Fund and the Minimum Foundation Program. In accordance with the Texas Constitution, the $296 million in the Available School Fund for the 1970-1971 school year was allocated on a per capita basis determined by the average daily attendance within a district for the prior school year.

Costing in excess of one billion dollars for the 1970-1971 school year, the Minimum Foundation Program provides grants for the costs of salaries, school maintenance and transportation. Eighty percent of the cost of this program is financed from general State revenue with the remainder apportioned to the school districts in "the Local Fund Assignment." TEX. EDUC. CODE ANN. arts. 16.71-16.73 (1969).

To provide their share of the Minimum Foundation Program, to satisfy bonded indebtedness for capital expenditures, and to finance all expenditures above the state minimum, local school districts are empowered within statutory or constitutional limits to levy and collect ad valorem property taxes. TEX. CONST. art 7, sections 3, 3a; TEX. EDUC. Code Ann. art. 20.01, et seq. Since additional tax levies must be approved by a majority of the property-tax-paying voters within the individual district, these statutory and constitutional provisions require as a practical matter that all tax revenues be expended solely within the district in which they are collected.

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At Issue

Chief point of law upon which the court was called to rule was: Does the current method of state financing of public elementary and secondary education in Texas deprive children, who live in school districts with low property valuations, of equal protection of the laws under the Fourteenth Amendment to the United States Constitution?

Holding of the Court

YES. This court concludes, as a matter of law, 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, section 3 of the Texas Constitution and the sections of the Education Code relating to the financing of education, including the Minimum Foundation Program.

Rationale in Part

To arrive at the above conclusion the court reasoned, in part, as follows:

> Within this ad valorem taxation system lies the defect which plaintiffs challenge. This system assumes that the value of property within the various districts will be sufficiently equal to sustain comparable expenditures from one district to another. It makes education a function of the local property tax base. The adverse effects of this erroneous assumption have been vividly demonstrated at trial through the testimony and exhibits adduced by plaintiffs.
>
> Data for 1967-1968 show that the seven San Antonio school districts follow the statewide pattern. Market value of property per student varied from a low of $5,429 in Edgewood, to a high of $45,095 in Alamo Heights. Accordingly, taxes as a percent of the property's market value were the highest in Edgewood and the lowest in Alamo Heights. Despite its high rates, Edgewood produced a meager twenty-one dollars per pupil from local ad valorem taxes, while the lower rate of Alamo Heights provided $307 per pupil.

Nor does State financial assistance serve to equalize these great disparities. Funds provided from the combined local-state system of financing in 1967-1968 ranged from $231 per pupil in Edgewood to $543 per pupil in Alamo Heights. There was expert testimony to the effect that the current system tends to subsidize the rich at the expense of the poor, rather than the other way around. Any mild equalizing effects that state aid may have done, do not benefit the poorest districts.

For poor school districts educational financing in Texas is, thus, a tax more, spend less system. The constitutional and statutory framework employed by the State in providing education draws distinction between groups of citizens depending upon the wealth of the district in which they live. Defendants urge this Court to find that there is a reasonable or rational relationship between these distinctions or classifications and a legitimate state purpose.... More than mere rationality is required, however, to maintain a state classification which affects a "fundamental interest," or which is based upon wealth. Here both factors are involved.

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." Briefly summarized this standard requires that the quality of public education may not be a function of wealth, other than the wealth of the state as a whole. ...this proposal does not involve the Court in the intricacies of affirmatively requiring that expenditures be made in a certain manner or amount. On the contrary, the 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.

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The Upshot

Having held the trial of this cause in abeyance for over two years pending appropriate legislation expected from the 62nd Legislature recently adjourned without such action, the court said formally on 23 December 1971:

> Now it is incumbent upon the defendants and the Texas Legislature to determine what new form of financing should be utilized to support public education. The selection may be made from a wide variety of financing plans so long as the program adopted does not make the quality of public education a function of wealth other than the wealth of the state as a whole.
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> Accordingly, IT IS ORDERED that:
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> (1) The defendants and each of them be preliminarily and permanently restrained and enjoined from giving any force and effect to said Article 7, section 3 of the Texas Constitution, and the sections of the Texas Education Code relating to the financing of education, including the Minimum Foundation School Program Act (Ch. 16), and that defendants, the Commissioner of Education and the members of the State Board of Education, and each of them, be ordered to reallocate the funds available for financing support of the school system, including, without limitation, funds derived from taxation of real property by school districts, and to otherwise restructure the financial system in such a manner as not to violate the equal protection provisions of both the United States and Texas Constitutions;
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> (2) The mandate in this cause shall be stayed, and this Court shall retain jurisdiction in this action for a period of two years in order to afford defendants and the Legislature an opportunity to take all steps reasonably feasible to make the school system comply with the applicable law; and without limiting the generality of the foregoing, to reallocate the school funds, and to otherwise otherwise restructure the taxing and financing system so that the educational opportunities afforded the children attending Edgewood Independent School District, and the other children of the State of

> Texas, are not made a function of wealth, other than the wealth of the State as a whole, as required by the equal protection clause of the Fourteenth Amendment to the United States Constitution. In the event the legislature fails to act within the time stated, the Court is authorized to and will take such further steps as may be necessary to implement both the purpose and the spirit of this order.

Late word from Texas is to the effect that the court has recently modified its opinion, as did the court in Serrano after a few weeks, to specifically allow interim financing in the face of imminent outbreak of property-tax evasion on the grounds that Article 7, Section 3 of the Texas Constitution and the school-finance sections of the Texas Education Code had been rendered inoperative by the earlier (23 December 1971) decision. It is also reported that the Attorney General will appeal the case to the U. S. Supreme Court.

More Dicta

"Remember the Alamo! (Alamo Heights Independent School District) may become a modern Texas battle cry, too, and the furor over the "good, old property tax," may prompt Texas school-finance folk to follow Davey Crockett's favorite saying, as he proved himself a wise and skillful politician, "Be sure you are right, then go ahead."