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ABSTRACT

This paper reviews the major federal and state court cases dealing with fiscal equalization in state school support programs and discusses in some depth the conflicting rulings of various state courts in this area. Particular emphasis is placed on the New Jersey Supreme Court's decision in Robinson v. Cahill and on the implications of the "thorough and efficient" concept cited by the court in the case. Federal cases reviewed include McInnis v. Shapiro, Burruss v. Wilkerson, and Rodriquez v. San Antonio Independent School District. State cases discussed include Serrano v. Priest (California), Van Dusartz v. Hatfield (Minnesota), Milliken v. Green (Michigan), Thompson v. Engleking (Idaho), Shofstall v. Hollins (Arizona), Northshore School District No. 417 v. Kinnear (Washington), and Robinson v. Cahill (New Jersey). (JG)

# THE CONCEPT OF "THOROUGH AND EFFICIENT": A PROBLEM OF DEFINITION

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Until the late 1960's, litigation concerned with the financing of elementary and secondary education largely dealt with aggrieved taxpayers challenging the right of the state to collect and redistribute tax revenues to other school districts in the state. However, commencing with the McInnis v. Shapiro case[1] in 1968, including the highly publicized Serrano v. Priest decision[2] and the landmark Rodriguez v. San Antonio Independent School District case[3] in 1971, there has been a continuous series of court cases challenging public school support programs in the United States.

There was considerable variation in the manner in which the cases were prepared and presented to the courts, but all the cases had the common element of the plaintiffs' contending that they were denied equal protection under the state and/or federal constitution. A few cases found their way to the United States Supreme Court, while others were decided at the state level. While the U.S. Supreme Court ruled against those persons challenging the constitutionality of individual

[1] 293 F. Supp. 327 (1968).
[2] 5 Cal. 3d 584, 96 Cal. Rptr 601, 487 P. 2d 1241 (1971).
[3] 337 F. Supp. 280, 411 U.S. 24, 93 S. Ct. 1291, 36 L. Ed. 2d 37 (1973)

state school financing programs, there have been conflicting rulings in the state courts. Particularly troublesome is the use of the term "thorough and efficient" utilized by the New Jersey Supreme Court in Robinson v. Cahill.[4] The purpose of this paper is to briefly review the major federal and state cases dealing with fiscal equalization in state school support programs and to discuss in depth the conflicting rulings in the state courts with particular attention given to the terms created by use of the "thorough and efficient" concept in Robinson v. Cahill.

## Review of the Federal Cases

The first of the fiscal equalization cases to reach the U.S. Supreme Court, McInnis v. Shapiro, was initiated in Illinois in which the plaintiffs sought a reduction of expenditure variation between local school districts. Also the plaintiffs indicated that the variation of educational needs mandated consideration in the allocation of state revenues if equal protection under the Fourteenth Amendment would be satisfied. Alexander[5] observed that "The two standards are mutually irreconcilable since educational needs may demand a much higher expenditure for certain children than for others." The U. S. District Court for the Northern District of Illinois experienced difficulty with what they viewed as a nebulous concept and indicated that there were no "discoverable and manageable standards" on which to determine whether the requirements of the Fourteenth

[4] 62 N.J. 473, 303 A. 2d 273, 339 A. 2d 193, 67 N.J. 35, 335 A. 2d 6 (1975).

[5] Alexander, S. Kern, "Judicial Standard of Equality: A Definitional Problem," Chapter 2 in Critical Issues in Educational Finance. Virginia Institute for Educational Finance, Harrisonburg, Va.: 1975, pp. 19-20. See also Reynolds v. Sims, 377 U.S. 533.

Amendment were satisfied.[6] The U.S. Supreme Court affirmed without discussion the lower court's decision and in so doing delayed the definitive ruling in Rodriguez v. San Antonio for over three years.

A similar case, Burruss v. Wilkerson,[7] actually filed earlier than McInnis v. Shapiro, charged that the Virginia state school support program violated the Fourteenth Amendment since state aid was not allocated to local school districts on the basis of educational needs. In addition, the plaintiff questioned the measure (i.e., equalized property valuation per ADA) the state used in evaluating the tax-paying ability of the local school districts. In ruling that the system of financing public schools in Virginia was constitutional, the federal district court said:

> " . . . the courts have neither the knowledge, nor the means, nor the power to tailor the public moneys to fit the varying needs of these students throughout the state. We can only see to it that the outlays on one group are not invidiously greater or less than that of another. No such arbitrariness is manifest here."[8]

As with the McInnis v. Shapiro case, the U.S. Supreme Court preferred to merely affirm the lower court's ruling and set the stage for the landmark Rodriguez v. San Antonio decision.

In 1971, the United States District Court for the Western District of Texas handed down the Rodriguez v. San Antonio Independent School District decision in which they accepted the plaintiff's

[6] McInnis v. Shapiro, op. cit., p. 335.
[7] 310 F. Supp. 572, 397 U.S. 44, 90 S. Ct. 812 (1970)
[8] Ibid., p. 574.

position that the state must exercise "fiscal neutrality"[9] in financing public schools. Briefly stated, the concept of fiscal neutrality requires that the quality of public education cannot be a function of the wealth of the local school district but has to be a function of the state as a whole. The court also accepted the plaintiff's contention that education was of fundamental interest to the state and was entitled to examination by the courts on the basis of "strict scrutiny". However, when the case was appealed to the United States Supreme Court in 1973, the highest court overturned the lower court's ruling which resulted in a shattering defeat for those advocating the egalitarian position. Specifically, the Supreme Court held that education is not a fundamental right guaranteed by the United States Constitution, stating that the right to education was not explicitly or implicitly guaranteed by the Constitution. Since the Texas system did not violate either of these criteria (i.e., suspect class or fundamental right), Texas was not obliged to show a compelling state interest for the school finance system.

In conclusion, Federal litigation in regard to fiscal equalization has revolved around the standard of constitutional equality and equal protection under the Fourteenth Amendment appears to be the common denominator for all the cases. Although equal educational opportunity is a socially worthy concept, it has been very difficult for the courts

[9] Adopted first in the Serrano v. Priest decision.

to identify an operational definition as illustrated by the following confusing and sometimes conflicting court decisions and contentions of plaintiffs: (1) "equality can be obtained by allowing local school districts the authority to tax themselves at sufficiently high levels to overcome wealth differences with other school districts". (Hargrave v. Kirk).[10], (2) "equality can be attained by allocating resources on the basis of educational need." (McInnis v. Shapiro).[11], (3) "equality may be accomplished by giving each student the same amount of money, one dollar - one scholar." (McInnis v. Shapiro).[12], (4) "the state could allow unlimited local taxation but revenues earned in excess of a certain amount per pupil would be captured by the state." (McInnis v. Shapiro).[13], (5)equality requires that the state measure local school district wealth more accurately than by property valuations possibly a combination of personal income and property. (paraphased), (Burruss v. Wilkerson).[14], (6) "equality assumes that poor children in all school districts are discriminated against, that all children regardless of wealth residing in school districts which fall below some predetermined wealth standard are discriminated against." (Rodriguez v. San Antonio).[15]

The difficulty of providing an operational definition to the rather vague term of equality of educational opportunity has not been restricted to the federal courts. In fact, many state constitutions can be considered more expansive than the federal constitution. Con-

[10] 313 F. Supp. 944, vacated, 401 U.S. 479 (1971).
[11] McInnis v. Shapiro, op. cit., p. 328-330.
[12] Ibid., p. 330-331.
[13] Ibid., p. 332-333.
[14] Burruss v. Wilkerson, op. cit., p. 572-574.
[15] Rodriguez v. San Antonio, 411 U.S. 1, 93 S. Ct. 1278.

sequently, when the concept of equality of educational opportunity is coupled with even more nebulous terms such as "primary obligation of the state",[16] "general and uniform",[17] and "thorough and efficient",[18] it is not unlikely that there are seemingly conflicting decisions occurring in the state courts.

## Review of the State Cases

The first of the state fiscal equalization cases to gain national attention was the Serrano v. Priest decision in which the California Supreme Court ruled that the method of funding public elementary and secondary education was unconstitutional. In this extremely controversial case, the court held that both the Fourteenth Amendment and the state equal protection clause were violated because the state school finance system made the quality of education a function of the local school district's taxable wealth.

> "We have determined that this funding scheme invidiously discriminates against the poor because it makes the quality of a child's education a function of the wealth of his parents and neighbors. Recognizing as we must that the right to an education in our public schools is a fundamental interest which cannot be conditional on wealth, we can discern no compelling state purpose necessitating the present method of financing. We have concluded, therefore, that such a system cannot withstand constitutional challenge and must fall before the equal protection clause."[19]

After making the above ruling, the California Supreme Court remanded the case to the trial court with specific instructions. The

[16] Thomas v. Stewart, Docket No. 8275, (Polk County Superior Court)

[17] Northshore School District No. 417 v. Kinnear, 84 Wash. 2d 685, 530 P. 2d 178 (1974).

[18] Robinson v. Cahill, 303 A. 2d. 273, op. cit., p. 274.

[19] Serrano v. Priest, 487 P. 2d 1241, op. cit., p. 1244.

trial court ruled in favor of the plaintiff and identified what it viewed as the objectionable feature of the state school finance program. Presently, the trial court's ruling is being appealed to the California Supreme Court by defendants in wealthy school districts. Interestingly, two of the original defendants, Superintendent of Public Instruction, Wilson Riles, and State Treasurer, Jessie Unruh, have filed briefs which support the original ruling.

Immediately following the Serrano decision, a United States District court in Minnesota handed down a smiliar decision in Van Dusartz v. Hatfield,[20] in 1971. The court agreed with the plaintiff's contention that the wealthier school districts in Minnesota not only had greater revenues per child but enjoyed a lower tax rate and found, "The level of spending for publicly financial education in Minnesota is profoundly affected by the wealth of each school district." Further, the court observed, ". . . a system of public school financing which makes spending per pupil a function of the school district's wealth violates the equal protection guarantee of the Fourteenth Amendment."[21]

In 1972, the Michigan Supreme Court first made a ruling similar to Serrano and Van Dusartz in the Milliken v. Green decision.[22] However, after first ruling that the Michigan system of financing public elementary schools was violative of the equal protection clause of the states' constitution, the court experienced a change of judges, and the decision was vacated. In the new decision, the court ruled that

[20] 334 F. Supp. 870 (1971).

[21] Ibid., p. 877.

[22] 389 Mich. 1, 203 N.W. 2d 457, vacated, 390 Mich. 389, 212 N.W. 2d, 711 (1973).

the evidence did not prove that equal protection of the children in low wealth districts had been violated:

> Without disagreeing with either theory of defining educational opportunity - inputs or outputs - we cannot accept without criticism either of the further-narrowed definitions offered by the parties. The reduction of the sum total output to the accomplishment of the pupils on a few achievement tests would be grossly unjust to both the educators and the pupils, for education must extend far beyond the limits of verbal facility or mathematical proficiency. With respect to the input received by a school, the level of taxable resources within a district in only one of the myriad inputs into an educational system.[23]

Shortly after the Rodriguez v. San Antonio decision in 1973, a trial court in Idaho ruled that neither the equal protection clause of the state constitution nor the Fourteenth Amendment had been violated in Thompson v. Engleking.[24] However, the court did support the plaintiffs position that the state school financial system was unconstitutional in that it "does not provide for a uniform system of public schools as required by the state constitution."

Article 9, Section 1, of the Idaho Constitution states:

> The stability of a republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the legislature of Idaho, to establish and maintain a general, uniform, and thorough system of public, free common schools.[25]

The trial court interpreted the above to mean that the state had to provide an equal educational opportunity to all children attending public schools. Therefore, the trial court concluded that any system

[23] Ibid., 212 N.W. 2d 711, p. 716.
[24] 96 Idaho 793, 537 P. 2d 635 (1975).
[25] Ibid., 537 P. 2d 635, p. 635.

that permits disparity of per pupil expenditures by local school districts violates the constitutional mandate for complete equal educational opportunity.

In 1975, the Idaho Supreme Court reversed the lower court's decision and held that the Idaho Constitution did not require equal educational opportunity for all students attending public elementary and secondary schools. Further, the court indicated that there was no evidence to support the contention that the quality of educational opportunity is dependent on educational expenditures or that the equal educational opportunity is dependent upon the amount and value of the taxable property within the school district in which the pupil resides. Consequently, it was the opinion of the court that the lower court had erred in its interpretation of the Idaho Constitution and said:

> The record does not demonstrate a failure by the legislature to comply with its mandate to establish a system of basic, thorough, and uniform education; nor does that record demonstrate an inadequacy of funding to maintain that system of education.[26]

Also in 1973, following the Rodriguez v. San Antonio decision, the Shofstall v. Hollins[27] case was decided by the Supreme Court of Arizona. Similar to the Thompson v. Engleking case, the court found that the Arizona school finance system did not violate the State Constitution's "equal protection" clause nor the "general and uniform" provision. The court modestly interpreted the "general

[26] Ibid., p. 653.

[27] 110 Ariz. 88, 515 P. 2d 590 (1973).

and uniform" provision to mean that the state would provide a minimum school year, certify school personnel, and establish requirements for courses. The Arizona court cited Rodriguez v. San Antonio and indicated that there was not a constitutional question unless there was absolute denial. The court elected not to enter into the "thicket" of fiscal equalization, educational needs, or fiscal neutrality. Instead, it was the opinion of the court that the state only had to provide for the rudiments of a system of free general education.

The next major state fiscal equalization case, Northshore School District No. 417 v. Kinnear[28] occurred in the State of Washington in 1974, in which the petitioner profferred the following four contentions of unconstitutionality: (1) That children are denied equal protection of the laws in violation of the Fourteenth Amendment and state constitution due to a disparity of taxable resources per pupil., (2) That taxpayers in poorer districts are denied equal protection because they pay a higher tax rate than taxpayers in wealthier districts to raise the same amount of revenues per pupil, (3) That the state has failed to adhere to the provision of the Washington constitution which reads:

> It is the paramount duty of the state to make ample provision for the education of all children . . .[29]

and (4) That the state has failed to provide a general and uniform system of public schools as mandated by the state constitution.

The court rejected the first claim because the statistical evidence showed that the assessed valuation had little, if anything, to do with

[28] Op. cit., 530 P. 2d 178 (1974)

[29] Ibid., p. 184.

the quality of education. The court also indicated that there was no evidence to support the claim that one district or another provided superior or inferior educational opportunities.

In reply to the second contention that the plaintiffs were denied equal protection, the court said:

> That it takes more millage to raise the same amount of dollars on low valued property than it does on high valued property is no more than a meaningless truism and can be answered with another truism that the lower the value of one's property the lower one's taxes, neither truism having anthing to do with the equal protection clause of both constitutions so long as everybody in taxing scheme pays the same rate. Difference in assessed valuation per pupil among the various districts do not to a constitutional degree substantially effect the amounts of revenue per pupil available nor the amount expended per pupil: nor the cost per pupil in providing about the same quality of education throughout the state.[30]

The court noted that even if the state were converted into a single district, affording equal educational opportunities would be virtually impossible because expenditures per child would vary due to the infinite variations in geography, climate, terrain, social and economic conditions, transportation, special services, and local choices of extra curriculum and other services.

The plaintiff's third contention that the state failed to make ample provision for the education of all children as provided by the state constitution was also rejected. "Although education is impor-

[30] Ibid., p. 191.

tant to the people of the state, this duty is not the be-all and end-all, the alpha and omega of state goverment. This duty rests with the legislature and state superintendent and must be the duty of making ample provision for the education of all children and is required to do so without discrimination as to race, sex, or national origin. Constitutionality speaking, that duty or function is the same as any other major duty or function of state government."[31]

In reply to the fourth contention that the state must provide a system that is general and uniform the court said:

> A general and uniform system, that is, a system which within, reasonable constitutional limits of equality, makes ample provision for the education of all children, cannot be based upon exact equality of funding per child because it takes more money in some districts per child to provide about the same level of educational opportunity than it does others.[32]

The Washington Supreme Court indicated that a general and uniform system is a system that provides every child with free access to certain minimum and reasonably standardized educational programs. The court amplified the term "minimum program" by suggesting that public education should include instructional facilities with educational opportunities to at least the twelfth grade, including a provision which enables the child to transfer between districts without loss of standing.

The case central to the purpose of this paper, Robinson v. Cahill, was first decided by the Superior Court of New Jersey Law Division in 1972. The facts presented by the plaintiffs showed that sixty-seven

[31] Ibid., p. 198.
[32] Ibid., p. 202.

percent of public school expenditures came from the local tax base which produced great per pupil expenditure variation among school districts. In agreement with the plaintiffs, the court found the system discriminated against pupils in poor districts, and it also discriminated against taxpayers by imposing an unequal burden for public education. Therefore, in the opinion of the court, the system violated the requirements for equal protection under the laws contained in both the state and federal constitutions. Most important, the court ruled that the state constitution was being violated since the state had failed to provide a "thorough and efficient system of public education."

Subsequent to the lower court's decision in Robinson v. Cahill, the U. S. Supreme Court handed down the landmark decision of Rodriguez v. San Antonio. As might be expected, the Rodriguez decision was taken into consideration by the New Jersey Supreme Court when the Robinson v. Cahill decision was appealed. The New Jersey Supreme Court stated that the state constitution's equal protection clause may be more expansive than the Fourteenth Amendment of the federal constitution; nevertheless, it refused to apply the equal protection clause in holding the New Jersey system of financing unconstitutional and preferred to support the lower court's ruling that the New Jersey school finance system did not meet the constitutional mandate for "thorough and efficient". The New Jersey Supreme Court in speaking to the issue of equal protection said " . . . we have not found helpful the concept of a "fundamental" right. No one has successfully defined the term for this purpose."[33] In retrospect, it is somewhat

[33]Robinson v. Cahill, 303 A. 2d 273, op. cit., p. 282.

ironic that the New Jersey Supreme Court had a definitional problem with "fundamental" right since it utilized the equally nebulous term of "thorough and efficient" in holding the method of financing schools in New Jersey unconstitutional.

## Thorough and Efficient: In-Depth Analysis of the Robinson v. Cahill Decision

Despite the most honorable and worthy intentions of the New Jersey Supreme Court in the Robinson v. Cahill decision, the court has experienced a great deal of difficulty in providing the legislature with an operational definition of "thorough and efficient" or appropriate guidelines for implementation of a public school finance program which will meet the court's interpretation of this elusive concept. In the original decision handed down April 3, 1973, the court shifted the burden to the legislature to define and develop a school finance program that would satisfy the constitutional requirement of "thorough and efficient". The following statement best summarizes the original intent of the court:

> The mandate that there be maintained and supported "a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen" can have no other impact. Whether the State acts directly or imposes the role upon local government, the end product must be what the Constitution commands. A system of instruction in any district of the State which is not thorough and efficient falls short of the constitutional command. Whatever the reason for the violation, the obligation is the State's to rectify it. If local government fails, the State government must compel it to act, and if the local government cannot carry the burden, the State must itself meet its continuing obligation.[34]

[34] Ibid., p. 294.

After hearing argument, the court gave the legislature until December 31, 1974, to act in an appropriate manner to remedy the unconstitutional aspects of the present New Jersey system of public school finance. After much judicial maneuvering, the New Jersey Supreme Court, in an order of January 23, 1975, said "No . . . legislation was enacted by December 31, 1974, although efforts to that end continued through said date. The matter now returns to the court for the ordering of the appropriate remedies to effectuate the court's original decision."[35]

Simultaneously, the court scheduled a hearing for all parties on March 18, 1975, for the purpose of granting relief. The first question to be considered was the determination of the definition of a "thorough and efficient system of free public schools" and translating the definition into fiscal terms. The responses of the plaintiffs, defendants, and amici curiae at the hearing showed the complexity and diversity of thinking when attempting to define "thorough and efficient" or equal educational opportunity.

The New Jersey Attorney General proposed that the court adopt "process standards" to be formulated by the State Department of Education. Each local district would determine its educational needs and translate the needs into educational objectives or standards. Such an assessment would take into consideration each child to insure that the educational needs and standards were correlative with the basic skills of computation and communication. The Attorney General's proposal, referred to as "process standards" was criticized on the basis that it provided no state-wide standards of educational quality. Also, it was argued that the court's decision of equal educational opportunity

[35] Robinson v. Cahill, 335 A. 2d 6, op. cit., p. 6.

required application to the entire state and the proposed system of "process standards" did not meet that test.

However, the Governor endorsed the proposed "process standards" system and suggested that all six areas of the existing state aid program be enjoined and that all funds be distributed through a district power equalizing formula referred to as the Bateman formula. The Bateman formula was critized because low wealth districts would receive financial windfalls while other districts would lose considerable state aid. Numerous remedies and combinations of remedies were suggested.

Although in agreement with the Governor, the plaintiffs appeared to focus on substantive educational issues relating to "thorough and efficient" to the exclusion of fiscal definitions. For example, the plaintiffs suggested that "thorough and efficient" was a very fluid concept and, " . . . . only definable in the context of a given controversy at a given time."[36] The plaintiffs further contended the "outcome" and "process" goals from the work of State Board of Education should be adopted and then these goals would convert to fiscal terms through "controlled experimentation".[37]

Other arguments centered around output measure of the educational process. Representatives of the American Civil Liberties Union (ACLU) and the National Association for the Advancement of Colored People (NAACP) suggested equal educational opportunity could be defined and the "thorough and efficient" requirement staisfied by utilizing a state-wide assess-

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[36] Brief for Plaintiffs-Respondents on Remedies at 7-9, Robinson v. Cahill.

[37] Ibid.
See also Journal of Law and Education v.s., No. 1, Jan. 1976 "Developments in Education, Litigation: Equal Protection" Robert E. Lindquist and Authur E. Wise.

ment program coupled with the use of competency based education.

The brief filed by New Jersey Education Reform Project stated that the state's role must be defined in terms of the child mastering the basic skills of reading, math, and writing. The concept of "thorough and efficient" would be satisfied through acquisition of the basic skills. In addition, the project suggested that the state's educational obligation" . . . must be sufficiently comprehensive to prepare a child for citizenship and successful competition in the labor market."[38] This statement is almost identical to the statement from the 1973 Supreme Court decision and did little to clarify the definition of "thorough and efficient".

After hearing arguments it would appear that the Supreme Court of New Jersey had made very little progress on its journey down the misty judicial road of school finance to a poorly delinated destination of defining "thorough and efficient." In addition to the court's rather vague interpretation of "thorough and efficient" it had the equally vague and conflicting opinions of the plaintiff, defendants, and amici curiae.

In attempting to gain insight to the court's interpretation of this evasive concept, perhaps we could gain some understanding from examination of the following statements made by the court:
(1) "Thorough and efficient means more than adequate or minimal."[39] Certainly, this statement must be considered in direct opposition to

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[38] Amicus Brief (Docket No. 8618) filed February 24, 1975, p. 27.
[39] Robinson v. Cahill, 287 A. 2d 187, op. cit., p. 187.

the argument made by the New Jersey Educational Reform Project which focused its proposed system on the requisition of basic skills. (2) " . . . clear that there is a significant connection between the sums expended and the quality of the educational opportunity."[40] Obviously, the court has accepted the principal that expenditures per pupil is a valid indicator of educational quality. (3) " . . . we should not be understood to mean that the State may not recognize differences in area costs, or a need for additional dollar input to equip classes of disadvantaged children for the educational opportunity."[41] Apparently, the court is willing to accept the variation in expenditures per pupil providing the State can substantiate the educational need. (4) "Tax levied to raise revenues . . . should be applied uniformly to all members of the same class of taxpayers."[42] It would appear that the court would be in favor of the original Hargrave v. Kirk[43] decision which would prohibit local school districts from exceeding a statutory tax limit. (5) "It is clear that some kind of uniform, state-wide tax can be adopted by the State to finance "thorough" without relying on a real property tax."[44] Certainly, the court is in favor of the implementation of some form of non-property tax, probably a personal income tax, to provide the necessary revenues to fund a massive increase in state aid to education. (6) "If the Bateman Act was fully funded, it would meet the test of thorough."[45] This statement needs no amplification since the court has accepted a fully funded Bateman formula as a system which would satisfy its interpretation of "thorough and efficient."

[40] Robinson v. Cahill, 303 A. 2d 273, op. cit., p. 277.
[41] Ibid., p. 297-98.
[42] Ibid., p. 276.
[43] 313 F. Supp. 944, vacated, 401 U.S. 479 (1971).
[44] Robinson v. Cahill, 287 A. 2d 187, op. cit., p. 215.
[45] Ibid., p. 211.

On May 23, 1975, the court handed down its opinion[46] based on the March 18, 1975 hearing and the previous rulings. In this opinion, the court proposed a provisional remedy until the state could come into complete compliance with the "thorough and efficient" mandate. Specifically, the court required that two of the six categories of state aid (i.e., minimum support and save harmless funds) be redistributed under the Bateman formula while the other four categories (i.e., building aid, foundation program, atypical pupil aid, transportation aid, and the state pension fund contribution) be distributed in accordance with the existing system. The minimum support and save harmless categories comprised sixty-four percent of total state aid, excluding the pension fund for 1974-75. The court warned that the above provisional plan should not be miscontrued that the State was meeting its constitutional mandate to the children of the state.

## Concluding Remarks

During the last eight years since the McInnis v. Shapiro case, there has been a monumental amount of litigation concerned with the financing of public elementary and secondary education. In 1973, the United States Supreme Court provided a definitive ruling in the Rodriguez v. San Antonio Independent School District answering the charge of failure of the Texas school financial program to provide equal protection under the Fourteenth Amendment of the United States Constitution. However, there have been seemingly conflicting rulings in the state courts. On one side there are three cases (i.e., Serrano v. Priest, Van Dusartz v. Hatfield, and Robinson v. Cahill) that support the plaintiffs' charge that their individual state school finance systems are in violation of

[46] Robinson v. Cahill, 339 A. 2d 193, op. cit., p. 196-220.

their individual state constitutions. On the other side, and more important due to their recentness, there are cases (i.e., Shofstall v. Hollins, Northshore School District No. 417 v. Kinnear, and Thompson v. Engleking) where the courts have rejected similar charges.

As suggested in Horton v. Meskill, it is extremely difficult to analyze state school fiscal equalization decisions and accurately predict how another state court will rule in a seemingly similar situation:

> Because educational finance systems vary from state to state, and because the provisions of state constitutions vary from state to state, decisions in other states raising the issue under a state constitution are of little value as precedents.[47]

There is a no more dramatic illustration of this point than in Thompson v. Engleking where the court said, "Robinson v. Cahill is such a case reaching a conclusion contrary to what we hold is a proper disposition of this appeal."

However, it is possible to detect trends that the courts are likely to take, and there are at least three state decisions pending that should prove helpful. A Connecticut case cited above, Horton v. Meskill, handed down by the Superior Court of Hartford County in 1974, agreed with the plaintiff's contention that education is a fundamental interest to the State, and that the legislative scheme for financing education dependent on local property valuation violates the State Constitution. The State appealed the decision to the Connecticut Supreme Court. In Georgia, the plaintiffs in Thomas v. Stewart[48] have charged that the state financial system has failed to comply with the State Constitution which imposed a "primary obligation" on the state to provide an adequate education for

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[47] 31 Conn. Sup. 377, 332 A. 2d 813 (1974).

[48] Docket No. 8275, (Polk County Superior Court).

all citizens. Finally, in West Virginia, a case, Pauley v. Kelly,[49] has been filed in the Circuit Court in Kanawha County in which the plaintiff contends that the statutory school finance system has failed to provide a "thorough and efficient" education as mandated by the West Virginia Constitution. The State has filed a notice to dismiss, which is pending. This case is particularly interesting due to the identical wording of the West Virginia and New Jersey Constitutions.

When the above cases are adjudicated, they will provide the student of educational finance with additional information in order to more accurately predict the future of fiscal equalization litigation in the state courts. However, in the opinion of the writers, the weight of the federal cases, coupled with recent state decisions rejecting attacks on state school finance systems, will inhibit most state courts from entering the confusing and perplexing world of fiscal equalization of educational opportunity.

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[49](Circuit Court of Kanawha County).

## CASES


Burruss v. Wilkerson, 310 F. Supp. 572, 397 U. S. 44, 90 S. Ct. 812 (1970).

Hargrave v. Kirk, 313 F. Supp. 944, vacated, 401 U. S. 479 (1971).

Horton v. Meskill, 31 Conn. Sup. 377, 332 A. 2d 813 (1974).

Milliken v. Green 212 N.W. 2d 711.

McInnis v. Shapiro, 293 F. Supp. 327 (1968).

Northshore School District No. 417 v. Kinnear, 84 Wash. 2d 685, 530 P. 2d 178 (1974).

Pauley v. Kelly, (Circuit Court for Kanawha County, West Virginia).

Robinson v. Cahill, 62 N.J. 473, 303 A 2d 273, 339 A. 2d 193, 67 N.J. 35, 335 A. 2d 6 (1975).

Rodriguez v. San Antonio Independent School District, 337 F. Supp. 280, 411 U. S. 24, 93 S. Ct. 1278, 36 L. Ed. 2d 37 (1973).

Serrano v. Priest, 5 Cal. 3d 584, 96 Cal. Rptr. 601, 487 P. 2d 1421 (1971).

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