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### SCHOOL-FINANCE REFORM IN MICHIGAN: WILL JUDICIAL INTERVENTION BE NEXT?

#### THE ISSUE IN A NUTSHELL

Beginning with the general election in November of 1972 and ending with a special statewide election in November of 1989, seven proposals to amend the 1963 state constitution in respect to school finance have been placed on the statewide ballot. Voters defeated them all, in some instance by substantial margins.

The 1963 state Constitution requires the Legislature to maintain and support a system of free public elementary and secondary schools as defined by law. The precise nature of this responsibility and the extent to which it has been fulfilled remain a source of considerable controversy. A central element of the controversy has been the disparities in per pupil expenditures among high- and low-value school districts in the state. It can be expected that these disparities will increase because the growth in the local property tax, which is the primary revenue source for most local schools, does not occur at a uniform rate across school district boundaries.

The suggestion has been made that should the Legislature fail to address the matter of disparities in per pupil expenditures, the matter might ultimately be settled by the courts. Judicial intervention requires a violation of law, however. While the existing rage of disparities in per pupil expenditures may constitute unwise public policy, it is not clear that they are constitutionally impermissible. This **Council Comments** examines issues relevant to the constitutionality of the existing disparities in per pupil expenditures.

#### I. Elementary and Secondary School Finance Under the Federal Constitution

##### A. The Rodriguez Case

The United States Supreme Court has held that disparities in per pupil expenditures among local school districts do not offend the Equal Protection Clause of the Fourteenth Amendment and that education is not a fundamental right under the United States Constitution. **San Antonio Independent School District v Rodriguez**, (411 US 1; 1973). The **Rodriguez** case was a class action brought on behalf of students in a property-poor school district in San Antonio, Texas, and on behalf of all other similarly-situated students throughout the state. Plaintiffs alleged that the Texas school-finance system, due to the per pupil disparities it created, denied them the equal protection of the laws afforded under the federal Constitution. The U.S. Supreme Court, however, found no constitutional violation.

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## 1. The Equal Protection Question

A plaintiff alleging a violation of the Equal Protection Clause must show that state action establishes various classifications and that the individuals or groups comprising plaintiff's class are the objects of invidious discrimination. Courts consider certain classifications to be inherently "suspect" and therefore subject them to the most exacting scrutiny, generally referred to as "strict scrutiny." An example of a suspect classification is one based upon race. A suspect classification will be upheld only if a state can prove that the classification is necessary to achieve a compelling governmental purpose. In contrast, where a non-suspect classification is involved, a state need only prove that the classification is rationally related to the achievement of some legitimate governmental purpose. An example of a non-suspect classification is the exercise of legislative Judgment in the field of taxation.

In **Rodriguez**, the U.S. Supreme Court reasoned that in other instances in which school-finance systems had been invalidated, courts had assumed the existence of a suspect classification by concluding that the school-finance systems discriminated on the basis of wealth because some economically-poorer students received less expensive education, than other, more affluent students. The **Rodriguez** Court declined to adopt this assumption. Furthermore, the Court reasoned that there was no reliable evidence showing that the most economically-poor students were necessarily concentrated in the most property-poor school districts.

The Court then distinguished **Rodriguez** from prior equal protection cases where wealth, or its absence, was a consideration by noting that

[t]he individuals, or groups of individuals, who constituted the class discriminated against in our prior cases shared two distinguishing characteristics: because of their impecuniness they were completely unable to pay for some desired benefit, and as a consequences they sustained an absolute deprivation of a meaningful opportunity to enjoy that benefit. (411 US at 20).

In contrast, what was being argued by plaintiffs in **Rodriguez** was not that

[t]he children in districts having relatively low assessable property values are receiving **no** public education; rather it is that they are receiving a **poorer quality** education than that available to children in districts having more assessable wealth. Apart from the unsettled and disputed question whether the quality of education may be determined by the amount of money expended for its a sufficient answer to appellees' argument is that, at least where wealth is involved, the Equal Protection Clause does not require absolute equality or precisely equal advantages. (411 US at 23-24; emphasis supplied).

Since the Court found no suspect classification, it examined the Texas school-finance system under the less exacting rational basis analysis. The Court held that the Texas school-finance system was rationally related to the state's interest in providing all students with an adequate education. In so concluding, the Court recognized that

[t]he very complexity of the problems of managing a statewide public school system suggests that 'there will be more than one constitutionally permissible method of solving them,' and that within the limits of rationality, 'the legislature's

efforts to tackle the problems' should be entitled to respect. (411 US at 42, quoting from **Jefferson, et al v Hackney, Commissioner of Public Welfare, et al**, (406 US 535, 546-547; 1972)).

## 2. Fundamental Rights Question

The Court also rejected plaintiffs' argument that education was a fundamental right under the U.S. Constitution. While education was undeniably important, from the perspective of the Court it was not among the rights afforded explicit protection under the federal Constitution. Nor was it within the province of the Court "to create substantive rights in the name of guaranteeing equal protection of the laws." (411 US at 33).

### B. Adequate and Independent State Grounds

The holding in **Rodriguez** significantly undercut the landmark case of **Serrano v Priest**, (5 Cal3d 584; 1971), in which the California Supreme Court struck down that state's school-finance system on the grounds that it violated both the California and federal Constitutions. **Rodriguez** made it clear that a plaintiff challenging disparities in per pupil expenditures would have to allege a violation of state law since such disparities did not violate the federal Constitution.

The holding in **Rodriguez** did not, however, preclude a state court from invalidating a school-finance system on adequate and independent state grounds, as the California Supreme Court subsequently did in **Serrano II**, (18 Cal3d 728; 1976). During 1989, state supreme courts in Kentucky and Texas invalidated their respective state school-finance systems as violative of state constitutional provisions. However, since state constitutional provisions relative to elementary and secondary education vary from state to state, the court decisions in other states, while persuasive, are not dispositive of the situation in Michigan.

## II. Elementary and Secondary School Finance Under the Michigan Constitution

### A. Relevant Provisions

The two provisions of the 1963 Michigan Constitution of most relevance in respect to whether disparities in per pupil expenditures are permissible are Section 2 of Article 8 and Section 2 of Article 1. The former provision, which with minor stylistic variation has been a part of all four Michigan Constitutions, requires the Legislature "to maintain and support a system of free public elementary and secondary schools as defined by law." (Section 1 of Article 8, which provides that "[r]eligion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged," appears to be but a memorialization to the importance of education; in any event it has not been seriously suggested that the present financing system actually "discourages" the means of education.)

Section 2 of Article 1 is analogous to the federal Equal Protection Clause and there is ample state court precedent holding that the state provision protects the same rights protected by the federal provision. Thus, until Michigan courts decide otherwise, the holding in **Rodriguez** accurately states the status of the matter under the equal protection language of the Michigan Constitution

as well: namely, that disparities in per pupil expenditures do not violate the equal protection of the laws and that education is not a fundamental right.

### **B. Prior Court Decisions**

Two of the most significant court decisions in respect to whether disparities in per pupil expenditures violate the state Constitution are **Governor v State Treasurer**, (389 Mich 1; 1972) and **East Jackson Public Schools v State of Michigan**, (133 Mich App 132; 1984).

In late December 1972, the state Supreme Court in **Governor v State Treasurer**, declared the former deductible-millage school-aid formula in violation of the state Constitution. The following month, the Court ordered a rehearing of the matter. Then two events occurred: first, the U.S. Supreme Court decided the **Rodriguez** case and second, the state Legislature enacted a new school-aid formula. Several months after these two events, the state Supreme Court in a one-sentence order vacated its decision in **Governor v State Treasurer**. While the majority did not indicate the basis underlying its order, two justices concluded that the same result must obtain under the equal protection provision of the state Constitution as was reached in **Rodriguez**. It would therefore appear that **Governor v State Treasurer** is of little precedential value.

In **East Jackson Public Schools**, plaintiffs were twenty school districts, along with one student from each district, who sought a declaratory judgment that the state school-finance system violated the above-referenced state constitutional provisions providing for the equal protection of the laws and requiring the Legislature to maintain and support a system of free public elementary and secondary schools. Plaintiffs also contended that the interaction of the two constitutional provisions created a right of equality of educational financial support.

The Court of Appeals found it significant that plaintiffs made no allegations that

any pupil has been or will be deprived of an opportunity for a free public education, or of an adequate opportunity for education. There is no allegation that any pupil or class of pupils is excluded from the educational system. There is no allegation that any school district fails to provide its students with an adequate education measured by any standard. (133 Mich App at 136).

It would appear that the reasoning employed by the Court in **East Jackson Public Schools** was similar to that followed by the U.S. Supreme Court in **Rodriguez**: that the object of the school-finance system in question was to provide all students with a minimum and adequate education and not the most expensive education. The Court summarized the position of plaintiffs as being that the present “or any other legislatively devised system for financing public education is constitutionally infirm unless it produces an equality of funding per student in each and every school district in the state.” (133 Mich App at 136). The Court rejected the argument that Section 2 of Article 8 of the state Constitution imposed upon the Legislature a requirement of equal financial support of local schools. The Court also rejected the argument that education was a fundamental right under the state Constitution.

The **East Jackson Public Schools** case is particularly significant due to the unequivocal fashion with which the Court addressed the matter of whether a local school district possesses standing to prosecute such a suit against the state. The Court of Appeals noted that this was not a case in which a school district was suing the state to enforce or protect a specific right. To the contrary,

[I]n the instant case, however, plaintiff districts do not seek to enforce rights conferred upon them but to overturn the legislative scheme of financing and thus to compel the Legislature to enact a different system that would conform to plaintiffs' theories of equality.

They have no power to do so. School districts and other municipal corporations are creations of the state. Except as provided by the state, they have no existence, no functions, no rights and no powers. They are given no powers nor can any be implied, to defy their creator over the terms of their existence. They surely have no power to bring suits of such nature on behalf of residents within their boundaries, or to expend public funds to finance such litigation oft or on behalf of, private citizens. (133 Mich App at 139).

Nothing in the **East Jackson Public Schools** opinion suggests that residents of a school district would lack standing to bring an action in their own behalf, although they would still face the formidable obstacle of overcoming the legal precedents analyzed above. Plaintiffs appealed the decision in **East Jackson Public Schools** to the state Supreme Court, but that Court denied leave. (419 Mich at 943).

### C. Conclusions

The magnitude of disparities in per pupil expenditures among high- and low-valuation school districts resulting from the present school-finance system continues to generate considerable controversy. A salient argument may indeed be made that it is unwise public policy to base the funding of so important a function as elementary and secondary education upon the fortuity of taxable property within randomly-drawn school district boundaries. However, public policy is not unconstitutional merely because it be improvident or because a better policy might be devised. Judicial intervention requires a violation of law. Should no violation be found, then per pupil disparities constitute a matter of policy rather than law and the responsibility for the resolution of the matter must rest with the Legislature and not the courts.

#### WHAT IS MEANT BY PER PUPIL DISPARITIES

During the 1988-89 school year, per pupil revenue disparities among Michigan's 524 kindergarten-twelfth grade school districts ranged from \$8,014 to \$2,248, a difference of \$5,766. However, some portion of this disparity resulted from differences in local millage rates. Such disparity as results from differences in locally-voted millage reveals no deficiency in the present school-finance system, but rather reflects local voter preferences regarding education.

For example, although the top twenty school districts in terms of revenue per pupil levied a weighted average of 30.80 mills in 1988-89, the bottom twenty levied a weighted average of only 25.16 mills. (The bottom of this range was not comprised exclusively of property-poor districts – which is the general misconception – but also of out-of-formula districts levying very little millage.)

Similarly, some in-formula districts comprising the bottom twenty levied below the statewide weighted average for all districts of 33.34 mills. Had those districts levied 33.34 mills, the school aid formula would have produced a per pupil guarantee of \$2,941, \$693 per pupil more than actually received by the lowest in-formula school district.