1989

Edgewood Independent School District v. Kirby: An Education in School Finance Reform

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IN EDGEWOOD INDEPENDENT SCHOOL DISTRICT v. Kirby, the Supreme Court of Texas ruled that Texas' school financing system violated the state constitutional requirement that an "efficient" system of public education be created to provide for the "general diffusion of knowledge." This opinion is the latest in a string of state supreme court cases overturning traditional school financing systems.

This decision is worthy of comment because it is an opinion representative of the recent spate of state supreme court opinions declaring traditional school financing systems unconstitutional under the various state constitutions. The opinion is illustrative of the statistical evidence used by the various courts, the normative standards adopted by the courts to judge the evidence, and the courts' approaches to interpreting state constitutional mandates concerning the establishment of educational systems. In short, the Texas opinion can serve as an appropriate model for other

1. 777 S.W.2d 391 (Tex. 1989).
2. Id. at 394 (quoting TEX. CONST. art. VII, § 1).
4. The Texas Constitution provides: "A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools." TEX. CONST. art. VII, § 1. Interestingly enough, many state constitutional provisions establishing public education systems share similar language. See, e.g., ARK. CONST. art. XIV, § 1 ("general, suitable and efficient system"); ILL. CONST. art. X, § 1 ("efficient system"); KY. CONST. § 183 ("efficient system"); MD. CONST. art. VIII, § 1 ("thorough and efficient system"); N.J. CONST. art. VIII, § 4 11 ("thorough and efficient system"); OHIO CONST. art. VI, § 2 ("thorough and efficient system"); PA. CONST. art. III, § 14 ("thorough and efficient system"); and W. VA. CONST. art. XII, § 1 ("thorough and efficient system"). This allows one state's supreme court's opinion to be used as persuasive authority by other state supreme courts examining their own constitutional mandates.
state supreme courts examining their school financing systems as well as a guide to those who are considering challenging their state’s traditional school financing systems.  

I. History

Texas financed the education of its three million public school students with revenues supplied by the state, the local school district, and the federal government. The state contributed approximately 42 percent of total school revenues, which it derived “from a variety of sources including the sales tax and various severance and excise taxes.” The local school district, which derived its “revenues from local ad valorem property taxes,” provided approximately 50 percent of total school revenues. The balance of revenues came from other sources, including federal funding.

This funding system created “glaring disparities” between the various school districts because taxable property wealth varied significantly from district to district. The wealthiest district, for instance, had over $14 million of property-wealth per student, while the poorest district had around $20,000. This disparity rep-

5. Ohio Supreme Court Justice Andrew Douglas recently suggested that the Ohio Supreme Court may be willing to re-examine the constitutionality of Ohio’s public school financing system. The Youngstown Vindicator, Feb. 24, 1990, at 17, col. 2. If the Ohio Supreme Court were to do so, the Edgewood decision would serve as an ideal model for the court to refer to. The Ohio State Constitution contains the “efficiency” requirement found in the Texas state constitution. OHIO CONST. art. VI, § 2.

The Ohio School financing system, like the Texas system, derives approximately one-half of its funding from real property taxes. The Ohio system is as marked with disparities in spending and tax burdens as the Texas system. Justice Douglas noted that there are school districts in the state of Ohio “that cannot afford to install indoor toilets or have running water in the buildings, while other districts have $1 million sports fields and Olympic size swimming pools.” The Youngstown Vindicator, Feb. 24, 1990, at 17, col. 2. He also noted that state efforts to address the inequities of the existing school financing system have failed. Id.

The available statistics indicate that Justice Douglas’ observations were correct. School districts in Ohio have property valuations per pupil ranging from $14,500 to over $500,000; voted millage ranging from 20 to over 100 mills; and per student expenditures ranging from $2,450 to over $11,000. Phillis, Ohio School Study, Buckeye Farm News, March 1990, at 12. This evidence is strikingly similar to the evidence the Texas Supreme Court used in overturning its school financing system. Edgewood, 777 S.W.2d at 392-93.


7. Id.

8. Id. at 392. This breakdown of funding sources is fairly typical of traditional school funding systems. See, e.g., DuPree v. Alma School Dist. No. 30, 279 Ark. 340, 343, 651 S.W.2d 90, 91 (the state provided 51.6 percent of educational funding, the local school district 38.1 percent, and federal sources, 10.3 percent).

9. Edgewood, 777 S.W.2d at 392.
represented a 700 to 1 wealth differential. Additionally, the 300,000 students in the poorest school districts had less than three percent of the state's property wealth to support their educational efforts, while the 300,000 students in the richest school districts had over twenty-five percent of the state's property-wealth at their disposal.

Texas recognized the inequities of the school financing system and attempted to lessen them by directing state aid to the poorer school districts through a program that gave property-poor districts more state aid than property-rich districts. Yet, in spite of these efforts, the property-poor school districts remained underfunded compared to the property-rich districts.

Evidence of the continued disparity in school funding, despite state efforts to alleviate the imbalances, was found in per-student spending rates in the various districts. Spending per student varied from a low of just $2,112 to a high of $19,333. "[A]n average of $2,000 more per year [was] spent on each of the 150,000 students in the wealthiest school districts than [was] spent on the 150,000 students in the poorest districts."

Finally, the property-rich districts were able to "tax low and spend high while the property-poor districts [were forced to] tax high merely to spend low." In 1985-86, "local [property] tax rates ranged from $.09 to $1.55 per $100 valuation." The 100 poorest districts taxed at an average rate of 74.5 cents and spent only $2,978 per student while the 100 wealthiest districts taxed at an average rate of 47 cents and spent an average of $7,233 per

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10. Id. The "glaring disparities" of this school financing system are not unique to Texas. Other states employing traditional school financing systems have found similar disparities to exist. See, e.g., DuPree, 279 Ark. at 344, 651 S.W.2d at 92 (per pupil expenditures in 1978-79 ranged from a low of $873 to a high of $2,378; the court attributed this "great disparity" to substantial variations in taxable property wealth among districts); Helena Elem. School Dist. No. 1 v. State, 769 P.2d 684, 686 (Mont. 1989) (evidence "established disparities of spending per pupil as high as 8 to 1 in comparisons between similarly-sized school districts").

11. Edgewood, 777 S.W.2d at 392.

12. Id.

13. Id. at 392-93. Many states have attempted to lessen the inequities inherent in traditional school financing systems but, like Texas, have failed to succeed. See, e.g., Helena Elem. School Dist., 769 P.2d at 690 (Montana's "failure to adequately fund" the program which provided county and state equalization revenues to school districts forced school districts into "an excessive reliance on permissive and voted levies.").

14. Edgewood, 777 S.W.2d at 393.

15. Id.
Thus, the property-poor school districts were trapped in an unending cycle of poverty. Because of their inadequate tax base, property-poor districts generally had high tax rates and inferior academic programs. The property-poor school districts found it difficult to improve their tax bases because the location of new industry and development, boons to the tax base, depend in large part on tax rates and the quality of local schools.

As a result of the foregoing characteristics of the Texas school financing system, Edgewood Independent School District, sixty-seven other school districts, and numerous school children and parents filed suit seeking a declaration that the school financing system violated the Texas Constitution. The trial court ruled that the school financing system was contrary to the Texas Constitution’s equal rights guarantee of article I, section 3, the due course of law guarantee of article I, section 19, and the efficiency mandate of article VII, section 1.

The court of appeals reversed the decision of the trial court and declared the school financing system to be constitutional. The Texas Supreme Court reversed the judgment of the court of appeals and, with modification, affirmed the judgment of the trial court.

II. THE Edgewood Opinion

Writing for a unanimous court, Justice Mauzy’s opinion ruled that the Texas school financing system was unconstitutional. The court began its opinion by reciting article VII, section 1, of

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16. Id.
17. Id.
18. Id. at 391-92.
19. Id. at 392. “Efficiency” provisions are but one state constitutional mandate that state courts have employed to evaluate the constitutional sufficiency of the traditional school financing systems. Montana, for instance, invalidated its school financing system as unconstitutional under a state constitutional mandate requiring “equality of educational opportunity.” Helena Elem. School Dist. No. 1 v. State, 769 P.2d 684, 690 (Mont. 1989). Arkansas, on the other hand, employed a combination of state constitutional equal protection analysis and “efficiency” requirements to invalidate its traditional school financing system. DuFfee v. Alma School Dist. No. 30, 279 Ark. 340, 651 S.W.2d 90 (1983). Other states have invalidated their school financing systems strictly on equal protection grounds. See, e.g., Serrano v. Priest, 5 Cal. 3d 584, 96 Cal. Rptr. 601, 487 P.2d 1241 (1971).
the Texas constitution, which provides: "A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools." The court noted that this provision imposed an affirmative duty on the legislature to provide for free public schools in a manner consistent with the standards expressed in the provision. According to the court, the constitution mandated that the legislature "make 'suitable' provision for an 'efficient' system for the . . . 'general diffusion of knowledge.' " The court admitted that these terms were not precise but argued that "they do provide a standard by which this court must, when called upon to do so, measure the constitutionality of the legislature's actions." Thus, if the school financing system is not efficient, the legislature has not fulfilled its duty and the court must so rule. However, the court began its examination of the school financing system with a presumption of constitutionality.

In determining the substance of the constitutional standard, the court looked to "the intent of the people who adopted it." The court declared that "'[i]n determining the intent, 'the history of the times out of which it grew and to which it may be rationally supposed to have direct relationship, the evils intended to be remedied and the good to be accomplished, [were] proper subjects of inquiry.' " However, because of the difficulties inherent in determining the intent of voters over a century ago, the court gave great weight to the literal text of the constitutional provision.

The state argued that efficient was used in article VII, section 1 to mean "a simple and inexpensive system." The court quickly rejected this interpretation of the word by noting that "'[t]he language of the Constitution must be presumed to have been carefully selected" and "the Constitution requires an 'efficient,' not an

23. Id. at 394.
24. Id.
25. Id.
26. Id. (quoting Director of Dep't of Agriculture and Envt'l v. Printing Indus. Ass'n, 600 S.W.2d 264, 267 (Tex. 1980)).
27. Id. (quoting, Markowsky v. Newman, 134 Tex. 440, 136 S.W.2d 808, 813 (1940)).
28. Edgewood, 777 S.W.2d at 394.
29. Id.
'economical,' 'inexpensive,' or 'cheap' system.'\textsuperscript{30}

The court believed that "efficient" meant the same thing in 1875 as it does now. To the court, efficient "convey[ed] the meaning of effective or productive of results and connote[d] the use of resources so as to produce results with little waste." The court bolstered its conclusion as to the meaning of the word efficient by comparing today's dictionary definition of efficient with the definition of efficient from a dictionary that the framers used.\textsuperscript{31}

The court also examined the school financing system which was created by the Texas Constitution of 1876 to ascertain what the framers intended when they mandated an efficient system. "The 1876 Constitution provided a structure whereby the burdens of school taxation fell equally and uniformly across the state, and each student in the state was entitled to exactly the same distribution of funds."\textsuperscript{32} Originally, the state distributed funds on a strictly per-capita basis. The state raised its school funds through a poll tax of one dollar per voter. The court concluded from this evidence that at the time of the constitution's adoption, "the people were contemplating that the tax burden would be shared uniformly and that the state's resources would be distributed on an even, equitable basis."\textsuperscript{33}

The court then concluded that the vast disparities which currently existed in both the tax burden and the per-student expenditures were contrary to the efficient system mandated by the framers of the Texas constitution. The court stated that the purpose of an efficient system — to provide for the general diffusion of knowledge — was not served by the existing school financing system. Rather, the existing system provided for a diffusion of knowledge that was not general but "limited and unbalanced." Accordingly, the court declared the resulting inequalities to be "directly contrary to the constitutional vision of efficiency."\textsuperscript{34}

The court spent the remainder of the opinion anticipating and answering possible objections to the opinion and outlining the limitations of the decision. One argument anticipated by the court was that the 1883 constitutional amendment of article VII, section 3 — which created school districts with the power of local taxa-

\textsuperscript{30} Id. at 395.
\textsuperscript{31} Id.
\textsuperscript{32} Id. at 396 (footnote omitted).
\textsuperscript{33} Id.
\textsuperscript{34} Id.
tion — specifically authorized the existing school financing system. The court countered that article VII, section 3 was not intended to preclude an efficient system, but to "serve as a vehicle for injecting more money into an efficient system." To support this proposition, the court examined the legislative history of article VII, section 3 which indicated that local financing was to supplement state funding, not supersede it.

Next, the court countered the argument that the state's efforts at reducing disparities had fulfilled its obligation under the constitutional mandate. Although the legislature had attempted to reduce disparities and improve the funding system, "the undisputed facts of this case mad[e] [it] painfully clear [that] the reality [was] that the constitutional mandate ha[d] not been met." The court went so far as to declare that allocating more state money to the property-poor school districts under the existing financing system "would at best only postpone the reform that is necessary to make the system efficient." The court firmly declared that "[a] band-aid will not suffice; the system itself must be changed."

The court also dismissed arguments that its decision would threaten, eliminate, or diminish local control. The court suggested that an efficient system in which funding was equitably distributed would, in fact, "allow for more local control, not less." The court reasoned that more local control would flow from the availability of a greater number of economic alternatives to the property-poor districts which had few alternatives available to them under the traditional funding structure.

35. Id.
36. Id. at 396-97. The Serrano court rejected a similar argument stating that the constitutional provision authorizing "local districts to levy school taxes" in no way implies that that section authorizes a system in violation of [constitutional] requirements." Serrano v. Priest, 18 Cal. 3d 728, 771 n.50, 135 Cal. Rptr. 345, 371, 557 P.2d 929, 955 (1976) (quoting Serrano v. Priest, 5 Cal. 3d 584, 598 n.12, 96 Cal. Rptr. 601, 611, 487 P.2d 1241, 1251 (1971)) (citation omitted).
37. Edgewood, 777 S.W.2d at 397.
38. Id.
39. Id.
40. Id. at 398.
41. Id. Concern over maintaining local control of educational systems is a consistent theme within various court opinions. For example, the DuPree court noted that its overturning of Arkansas' traditional school financing system did not mandate, as some feared, a reduction in local control over education. In fact, the court argued, its actions could enhance local control as the traditional school financing system deprived poor school districts of control and educational choice by limiting their programming options. DuPree v. Alma
Finally, the court was careful to expressly point out the limitations of its decision. First, the court stated that the opinion should not be read to preclude the state from recognizing and taking into account the differences in area costs or in costs associated with the education of the atypical or disadvantaged student. Nor, the court stated, did its opinion mean that the school districts could not supplement an "efficient system established by the [state] legislature" so long as local enrichment programs were funded solely by local tax revenues. Further, the court announced that it was not instructing the legislature as to the specifics of achieving an efficient system, nor was it ordering the legislature to raise taxes. Rather, the court pointed out that it had merely tested the existing system by the standard mandated by the constitution and that the existing school finance system had failed to meet the test.43

In concluding its opinion, the court noted that its decision was not without precedent as "[c]ourts in [at least] nine other states with similar school financing systems [and similar constitutional mandates] ha[d] ruled those systems to be unconstitutional."44

III. ANALYSIS

The court wrote a comprehensive opinion which progressed toward its ultimate conclusion in a logical, sensible, and forthright manner. It invites little, if any criticism.

The court's initial determination that it had an obligation, however difficult, to address the constitutionality of the state's school financing system rather than dismiss the case as a political question was both appropriate and, in a judicial sense, heroic. The state constitution provided a measurable standard by which to judge the legislature's action. Yet, that standard was sufficiently

School Dist. No. 30, 279 Ark. 340, 346, 651 S.W.2d 90, 93 (1983). The Helena court made a similar observation when it stated that "the present system of funding may be said to deny poorer school districts a significant level of local control, because they have fewer options due to fewer resources." Helena School Dist. No. 1 v. State, 769 P.2d 684, 690 (Mont. 1989).

42. Edgewood, 777 S.W.2d at 398.

43. Id. at 398-99. The Helena court also noted that the form of school finance reform was in the hands of the state legislature by declining to "spell out the percentages which are required on the part of the State" to create a constitutional educational financing system. Helena, 769 P.2d at 691.

44. Edgewood, 777 S.W.2d at 398.
vague so as to make the task of measuring the standard a difficult one.

The court, through a careful examination of semantic and legislative history, constructed a compelling case that the "efficiency" clause of the Texas Constitution prohibited the "glaring disparities" which marked the existing school financing system.

Furthermore, that history sufficiently supported the court's conclusion that the efficiency clause had discernible meaning. The court used the available semantic history to define "efficient" as "productive of results" — the results being a constitutionally mandated "general diffusion of knowledge." The court used the available legislative history to demonstrate that the earliest school financing system adopted by the legislature after the adoption of the efficiency mandate was marked by an equitable distribution of resources and a uniform tax burden. The court determined that the existing school finance system provided a limited and uneven tax burden and "glaring disparities" in per student expenditures. Thus, the court provided itself with a constitutional standard to measure the school finance system by and determined that the system failed to meet the requirements of the constitution as embodied in that standard.

The few sources the court called upon in the above exercise were persuasive, but lacking in overall breadth. The opinion would have been much more compelling if the court had provided a more exhaustive legislative and semantic history.

Similarly, the court's treatment of the argument that article VII, section 3 of the Texas constitution sanctioned the existing school financing system was plausible but hardly comprehensive. The opinion would have profited considerably from a more thorough examination of the original intent and function of article VII, section 3. This link of the court's opinion is, without doubt, its weakest. The court's argument here seemed intuitively correct but should have been bolstered with much more in the way of legislative history.

Once the court linked "efficiency" with requirements of equality, however, the opinion assumed a cogency that inextricably led to the result in this case. The statistical evidence marshaled by the court in order to illustrate the disparities and inequities of the existing school financing system were powerful and appropriate evidence for the court to consider.

The court's opinion is also to be lauded for what it did not do. The court did not exceed its constitutional role by attempting to
impose a judicial remedy on the state. Indeed, the court stated that it was not mandating any particular form of reform, only that reform was required. The court was also careful to announce that absolute equality of taxation and spending, and diminishment of local control, were not necessarily mandated by the court’s opinion.

CONCLUSION

At a time in our nation’s history when the need for educational reform is given high priority on our national agenda, the Edgewood opinion serves as an appropriate catalyst for legislative reform. Traditional school finance systems accept the existence of uneven tax burdens on similarly situated individuals and gross disparities in per-student expenditures. This decision merely asks us to measure the existing systems against the mandates of our state constitutions. If we undertake this task in honesty, we shall soon find ourselves on the road to educational reform.

DONALD S. YARAB