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**A Public School Financing System Which Relies Heavily on Local Property Taxes and Causes Substantial Disparities among Individual School Districts in the Amount of Revenue Available Per Pupil for the District's Educational Grants Invidiously Discriminates against the Poor and Violates the Equal Protection Clause of the Fourteenth Amendment.**

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ousted." Although the claimant's property was characterized as both unsalable and unrentable after 1963 because of the "value depressing acts" of the city, there was no "legal interference with his power of disposition." And finally, although the area fell into general disrepair because of "wide spread publicity, all of which may be termed . . . continuous agitation,"<sup>42</sup> there was no "legal interference with the physical possession or enjoyment of the property."

As concise as this definition may be, the problem in administering it will no doubt be great. This problem of determining the date of "taking" in eminent domain proceedings cannot be settled by applying this or any other presently known definition because the application always involves questions of fact. To avoid the inherent confusion in such definitions, the condemning authorities must avoid "de facto taking." If the date of taking for compensation purposes is established as the date of the "designation of blight," then any possible "de facto taking" will be eliminated.<sup>43</sup> Any subsequent "value depressing acts" will be irrelevant on the issue of compensation. The result will be the administration of justice, not only to the person forced to sell his land for the use of the public, but to the public who must pay for it.

*Shelby A. Jordan*

**CONSTITUTIONAL LAW—A PUBLIC SCHOOL FINANCING SYSTEM WHICH RELIES HEAVILY ON LOCAL PROPERTY TAXES AND CAUSES SUBSTANTIAL DISPARITIES AMONG INDIVIDUAL SCHOOL DISTRICTS IN THE AMOUNT OF REVENUE AVAILABLE PER PUPIL FOR THE DISTRICT'S EDUCATIONAL GRANTS INVIDIOUSLY DISCRIMINATES AGAINST THE POOR AND VIOLATES THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT. *Serrano v. Priest*, 487 P.2d 1241 (Cal. 1971).**

A class action was brought by elementary and high school pupils and parents representing all pupils in the California public school system and all parents who pay real property taxes and have children in public schools against certain state officials charged with administering the school financing system. Plaintiffs asked declaratory and injunctive relief from a system which allows a wealthy school district like Beverly Hills to spend \$1,232 per child for education while Baldwin Park, a poorer district, can spend only \$577 for each of its students. To raise this \$577, Baldwin Park was forced to tax its citizens at a rate of

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<sup>42</sup> *Id.* at 899.

<sup>43</sup> *Jersey City Redevelopment Agency v. Kugler*, 267 A.2d 64 (N.J. Super. 1970).

\$5.48 per \$100 of assessed real property, while the taxing effort of Beverly Hills, \$2.38 per \$100, raised \$1,232 for each student. Plaintiffs contended that this system resulted in substantial disparities in quality and extent of availability of educational opportunities and that the present form of state aid has failed to alleviate these inequities. The Superior Court of Los Angeles County dismissed the suit when plaintiffs failed to amend their complaint after demurrers were sustained. Held—*Reversed and cause remanded with directions*. A public school financing system which relies heavily on local property taxes and causes substantial disparities among individual school districts in the amount of revenue available per pupil for the district's educational grants invidiously discriminates against the poor and violates the equal protection clause of the fourteenth amendment.

The California public school financing system, which is similar to systems in most states,<sup>1</sup> is divided into districts. Each district obtains funds from two sources: assessed real property tax<sup>2</sup> and state aid. Financial aid from the state consists of a basic grant per student<sup>3</sup> and equalization aid distributed inversely to the wealth of the district.<sup>4</sup> The amount raised by the real property tax in any district depends on the total assessed value of real property within the district and the rate of taxation, which is decided by the voters of the individual districts. In theory, the quality of education in each district<sup>5</sup> is determined by the individual district's willingness to tax itself.<sup>6</sup> However, due to vast differences in the property tax base between districts, a wealthy district can provide a higher quality education with a lower tax rate than a poor district can with a much higher rate.<sup>7</sup> State grants and a complex

<sup>1</sup> Coons, Clune & Sugarman, *Educational Opportunity: A Workable Constitutional Test For State Financial Structures*, 57 CALIF. L. REV. 305, 312 n.n.18, 19 (1969).

<sup>2</sup> CAL. CONST., art IX, § 6.

<sup>3</sup> CAL. ED. CODE §§ 17751, 17801 (Deering 1969).

<sup>4</sup> CAL. ED. CODE §§ 17702, 17901, 17902 (Deering 1969).

<sup>5</sup> "Quality of education" will hereinafter refer to the amount of money spent by each district per A.D.A. or Average Daily Attendance. For the purpose of school aid, determinations are based on A.D.A., a number computed by adding the number of students present on each school day and dividing by the number of days school was taught. A.D.A. approximates 98 per cent of total enrollment. *Serrano* uses "per pupil" interchangeably with "per unit A.D.A." and so shall this case note. *Serrano v. Priest*, 487 P.2d 1241, 1247 n.4 (Cal. 1971).

<sup>6</sup> *McInnis v. Shapiro*, 293 F. Supp. 327, 333 (N.D. Ill. 1968), *aff'd mem. sub nom.*, *McInnis v. Ogilvie*, 394 U.S. 322, 89 S. Ct. 1197, 22 L. Ed.2d 308 (1969). There the court, speaking of Illinois school legislation, said, ". . . the General Assembly's delegation of authority to school districts appears designed to allow individual localities to determine their own tax burden according to the importance which they place upon public schools."

<sup>7</sup> *Serrano v. Priest*, 487 P.2d 1241, 1252 n.15 (Cal. 1971), quoting *Legislative Analyst, Public School Finance, Part V, Expenditures for Education* 8 (1970).

County	Tax Rate	Expenditure per A.D.A.
Los Angeles		
Beverly Hill Unified	\$2.38	\$1,232
Baldwin Park Unified	\$5.48	\$ 577

system of aid to the poor districts failed to alleviate this disparity and the great differences in education between districts continued.<sup>8</sup>

In determining whether a statute violates the equal protection clause of the fourteenth amendment, the Supreme Court has defined two standards of review. The traditional standard is the *reasonable relationship* test:<sup>9</sup>

[T]he Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality.<sup>10</sup>

When the interest of the individual is not a fundamental right but only a desire to be "treated the same as some particular group of his fellows,"<sup>11</sup> the court will look only for a rational relationship between the legislative classification and its intended purpose. The rational standard was applied in *McInnis v. Shapiro*,<sup>12</sup> where the Illinois system of school financing was held constitutional. The court stated, citing *Metropolitan Casualty Insurance Co. v. Brownell*:<sup>13</sup>

A statutory discrimination will not be set aside as the denial of equal protection of the laws if any state of facts reasonably may be conceived to justify it.<sup>14</sup>

*McInnis* found that "the existing school legislation is neither arbitrary nor does it constitute an invidious discrimination"<sup>15</sup> and "[w]here differences do exist from district to district, they can be explained rationally."<sup>16</sup>

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These disparities are present throughout the country. See, e.g., Levi, *The University, The Professions, and The Law*, 56 CALIF. L. REV. 251, 258 (1968). "[T]he expenditure per high school pupil in a suburb to the north of Chicago is 1,283 dollars; in a suburb to the south of the city it is 723 dollars. The expenditure per elementary school pupil in a northern suburb is 919 dollars, in a southern suburb it is 421 dollars."

<sup>8</sup> *Serrano v. Priest*, 487 P.2d 1241, 1247 (Cal. 1971), gives a complete explanation of the California's system of equalization aid and its failings.

<sup>9</sup> *Dunham v. Pulsifer*, 312 F. Supp. 411, 416 (D. Vt. 1970).

<sup>10</sup> *McGowan v. Maryland*, 366 U.S. 420, 425, 81 S. Ct. 1101, 1105, 6 L. Ed.2d 393, 399 (1961).

<sup>11</sup> *Dunham v. Pulsifer*, 312 F. Supp. 411, 417 (D. Vt. 1970).

<sup>12</sup> 293 F. Supp. 327 (N.D. Ill. 1968), *aff'd mem. sub nom.*, *McInnis v. Ogilvie*, 394 U.S. 322, 89 S. Ct. 1197, 22 L. Ed.2d 308 (1969).

<sup>13</sup> 294 U.S. 580, 55 S. Ct. 538, 79 L. Ed. 1070 (1935).

<sup>14</sup> *McInnis v. Shapiro*, 293 F. Supp. 327, 332 (N.D. Ill. 1968), *aff'd mem. sub nom.*, *McInnis v. Ogilvie*, 394 U.S. 322, 89 S. Ct. 1197, 22 L. Ed.2d 308 (1969), *citing* *Metropolitan Casualty Insurance Co. v. Brownell*, 294 U.S. 580, 584, 55 S. Ct. 538, 540, 79 L. Ed. 1070, 1072 (1935).

<sup>15</sup> *McInnis v. Shapiro*, 293 F. Supp. 327, 332 (N.D. Ill. 1968), *aff'd mem. sub nom.*, *McInnis v. Ogilvie*, 394 U.S. 322, 89 S. Ct. 1197, 22 L. Ed.2d 308 (1969).

<sup>16</sup> *Id.* at 334.

In some areas of legislative action the *rational* standard has given way to the *strict scrutiny* standard of review. The beginnings of this standard can be found in *Skinner v. Oklahoma*:<sup>17</sup>

Marriage and procreation are fundamental to the very existence and survival of the race. . . . [T]hat strict scrutiny of the classification which a State makes in a sterilization law is essential, lest unwittingly, or otherwise, invidious discriminations are made against groups or types of individuals. . . .<sup>18</sup>

If the interest to be protected is *fundamental*<sup>19</sup> or if the classification is *suspect*, then the legislative action will be subjected to the strict scrutiny standard. Classifications made on the basis of race<sup>20</sup> or, more pertinent to *Serrano*, wealth, have been strictly examined:

[A] careful examination on our part is especially warranted where lines are drawn on the basis of wealth . . . [a factor] which would independently render a classification highly suspect and thereby demand a more exacting judicial scrutiny.<sup>21</sup>

To overcome the strict scrutiny standard the legislative policy must be *necessary* to advance a *compelling interest* of the state.<sup>22</sup> The court will look to the result of the classification rather than the intent of the legislature in deciding the constitutionality of a statute. "[A] law non-discriminatory on its face may be grossly discriminatory in its operation."<sup>23</sup>

*Serrano* concluded that education is a fundamental right thus warranting the use of the strict scrutiny standard of review. The court found support for this holding in two cases, *Brown v. Board of Education*<sup>24</sup> and *Hargrave v. McKinney*.<sup>25</sup> In *Brown*, the Supreme Court stated, ". . . education is perhaps the most important function of state and local governments."<sup>26</sup> On the opportunity of education, the court

<sup>17</sup> 316 U.S. 535, 62 S. Ct. 1110, 86 L. Ed. 1655 (1942). *Skinner* invalidated a statute allowing the state to sterilize a "habitual criminal."

<sup>18</sup> *Id.* at 541, 62 S. Ct. at 1113, 86 L. Ed. at 1660.

<sup>19</sup> *Shapiro v. Thompson*, 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed.2d 600 (1969), held that interstate travel is a fundamental right. Procreation was held fundamental in *Skinner v. Oklahoma*, 316 U.S. 535, 62 S. Ct. 1110, 86 L. Ed. 1655 (1942).

<sup>20</sup> *Loving v. Virginia*, 388 U.S. 1, 87 S. Ct. 1817, 18 L. Ed.2d 1010 (1967); *Korematsu v. United States*, 323 U.S. 214, 65 S. Ct. 193, 89 L. Ed. 194 (1944).

<sup>21</sup> *McDonald v. Board of Election*, 394 U.S. 802, 807, 89 S. Ct. 1404, 1407, 22 L. Ed.2d 739, 744 (1969).

<sup>22</sup> *Kramer v. Union Free School District*, 395 U.S. 621, 89 S. Ct. 1886, 23 L. Ed.2d 583 (1969).

<sup>23</sup> *Williams v. Illinois*, 399 U.S. 235, 242, 90 S. Ct. 2018, 2023, 26 L. Ed.2d 586, 593 (1970), quoting *Griffin v. Illinois*, 351 U.S. 12, 17 n.11, 76 S. Ct. 585, 590 n.11, 100 L. Ed. 891, 898 n.11 (1956).

<sup>24</sup> 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954). *Brown* deals with a racial rather than a wealth discrimination as in *Serrano*, both, however, pertain to equal protection in education.

<sup>25</sup> 413 F.2d 320 (5th Cir. 1969).

<sup>26</sup> *Brown v. Board of Education*, 347 U.S. 483, 493, 74 S. Ct. 686, 691, 98 L. Ed. 873, 880 (1954).

held: “. . . where the state has undertaken to provide it, is a right which must be made available to all on equal terms.”<sup>27</sup> In *Hargrave*, the federal court of appeals, citing *Brown* and *Hobson v. Hansen*, and referring to education, stated: “. . . we are here dealing with interests which may well be deemed fundamental . . . .”<sup>28</sup> *Hargrave* was an appeal from a refusal of the lower court to convene a three-judge court in an action attacking the constitutionality of a Florida statute which limited the property tax rate a county could impose to support the public school system. On remand, the district court, using the *rational* standard, invalidated the statute:

Having concluded that there is no rational basis for the distinction which the legislature has drawn, we decline the invitation to explore the fundamental-right-to-an-education thesis, and thus we do not reach the more exacting “compelling interest” approach.<sup>29</sup>

Finding little direct precedent on the fundamental-right-to-an-education thesis, *Serrano* turned to criminal cases establishing the rights of indigent defendants; and the right to vote unhindered by a poll tax. Both sources are relevant since they deal with rights deemed *fundamental* protected against the *suspect* classification of wealth. *Griffin v. Illinois*<sup>30</sup> held that a state may not grant appellate review in such a way as to discriminate against some defendants on account of their poverty. *Douglas v. California*<sup>31</sup> gave the indigent defendant the right to counsel on appeal. *Tate v. Short*<sup>32</sup> held that an indigent defendant cannot be imprisoned for failure to pay a traffic fine. These cases advance the principle that, “[A]ll people charged with a crime must, so far as the law is concerned, stand on an equality before the bar of justice . . . .”<sup>33</sup> The poll tax was held unconstitutional in *Harper v. Virginia State Board of Elections*<sup>34</sup> because it made the affluence of the voter an electoral standard, a qualification which has no relation to intelligent voting. The court in *Serrano* reasoned that a person’s education is at least as important as his vote and:

<sup>27</sup> *Id.* at 493, 74 S. Ct. at 691, 98 L. Ed. at 880.

<sup>28</sup> *Hargrave v. McKinney*, 413 F.2d 320, 324 n.7 (5th Cir. 1969), citing *Brown v. Board of Education*, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954) and *Hobson v. Hansen*, 269 F. Supp. 401 (D.D.C. 1967), *aff’d sub nom.*, *Smuch v. Hobson*, 408 F.2d 175 (D.C. Cir. 1969). *Hobson* held that the school system of the District of Columbia deprived Negro and poor children, by segregation, of their right to equal educational opportunity.

<sup>29</sup> *Hargrave v. Kirk*, 313 F. Supp. 944, 948 (M.D. Fla. 1970). The Supreme Court reversed on other grounds, *Askew v. Hargrave*, 401 U.S. 476, 91 S. Ct. 856, 28 L. Ed.2d 196 (1971), but strongly intimated that the question of equal protection should be considered.

<sup>30</sup> 351 U.S. 12, 76 S. Ct. 585, 100 L. Ed. 891 (1956).

<sup>31</sup> 372 U.S. 353, 83 S. Ct. 814, 9 L. Ed.2d 811 (1963).

<sup>32</sup> 401 U.S. 395, 91 S. Ct. 668, 28 L. Ed.2d 130 (1971).

<sup>33</sup> *Griffin v. Illinois*, 351 U.S. 12, 76 S. Ct. 585, 590, 100 L. Ed. 891, 898 (1956), citing *Chambers v. Florida*, 309 U.S. 227, 241, 60 S. Ct. 472, 479, 84 L. Ed. 716, 724 (1939).

<sup>34</sup> 383 U.S. 663, 86 S. Ct. 1079, 16 L. Ed.2d 169 (1966).

[F]rom a larger perspective, education may have a far greater social significance than a free transcript or a court appointed lawyer.<sup>35</sup>

Defendant state officials raised the defense that geographical uniformity in a state financing system is not required under equal protection.<sup>36</sup> This defense is answered by reference to the *Reapportionment* cases and *School Closing*<sup>37</sup> cases to show:

[W]here fundamental rights or suspect classifications are at stake, a state's general freedom to discriminate on a geographical basis will be significantly curtailed by the equal protection clause.<sup>38</sup>

Defendants attempted to show that the present financing system was necessary to fulfill a compelling state interest. To meet this requirement, "The state must demonstrate the pressing importance of the classification in the context of some necessary governmental objective."<sup>39</sup> The state argued that the present financing system was necessary to achieve two compelling objectives—local administrative control and local fiscal control to reflect the quality of education desired. *Serrano* did not say that these objectives were not compelling, but that the system not only was unnecessary to achieve these objectives, but, in the case of fiscal control, it actually frustrated a compelling objective of the state. As to administrative control the court stated:

<sup>35</sup> *Serrano v. Priest*, 487 P.2d 1241, 1258 (Cal. 1971).

<sup>36</sup> *Salsburg v. Maryland*, 346 U.S. 545, 552, 74 S. Ct. 280, 284, 98 L. Ed. 281, 288 (1954). "It is equally clear, although less usual, that a state legislature may itself determine such an issue for each of its local subdivisions, having in mind the needs and desires of each. *Territorial uniformity is not a constitutional requisite.*" (Emphasis added.) *Salsburg* is an application of the *rational* standard of equal protection.

<sup>37</sup> The *Reapportionment* cases laid down the principle of *one man—one vote*. *Reynolds v. Sims*, 377 U.S. 533, 84 S. Ct. 1362, 12 L. Ed.2d 506 (1964); *Wesberry v. Sanders*, 376 U.S. 1, 84 S. Ct. 526, 11 L. Ed.2d 481 (1964); *Baker v. Carr*, 369 U.S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962).

The *School Closing* cases held unconstitutional attempts by certain counties to halt integration by the closing of public schools. *Griffin v. County School Board*, 377 U.S. 218, 84 S. Ct. 1226, 12 L. Ed.2d 256 (1964); *Hall v. St. Helena Parish School Board*, 197 F. Supp. 649 (E.D. La. 1961), *aff'd mem.*, 368 U.S. 515, 82 S. Ct. 529, 7 L. Ed.2d 521 (1962). These two lines of decisions are thought important in the case for equal educational opportunity because they show, "[A]ccidents of geography and the arbitrary boundary lines of local government can afford no basis for discrimination among citizens of a state." Kurland, *Equal Educational Opportunity: The Limits of Constitutional Jurisprudence Undefined*, 35 U. CHI. L. REV. 583, 585 (1968). A closer reading of these decisions will show that the emphasis was on the importance of the interest to be protected rather than a territorial classification. See Coons, Clune & Sugarman, *Educational Opportunity: A Workable Constitutional Test For State Financial Structures*, 57 CAL. L. REV. 305 (1969). In *McGowan v. Maryland*, 366 U.S. 420, 427, 81 S. Ct. 1101, 1106, 6 L. Ed.2d 393, 400 (1961), it was said "[W]e have held that the Equal Protection Clause relates to equality between persons as such, rather than between areas and that territorial uniformity is not a constitutional prerequisite."

<sup>38</sup> *Serrano v. Priest*, 487 P.2d 1241, 1261 (Cal. 1971). For an explanation of what "necessary to achieve a compelling state interest" entails in the area of criminal law, see *In re Antazo*, 473 P.2d 999 (Cal. 1970), the opinion written by Justice Sullivan, who also wrote the opinion in *Serrano*.

<sup>39</sup> *Dunham v. Pulsifer*, 312 F. Supp. 411, 417 (D. Vt. 1970).

No matter how the state decides to finance its system of public education, it can still leave this decision-making power in the hands of the local districts.<sup>40</sup>

The court calls a "cruel illusion" to poor districts the state's argument that the system allows the individual district to decide for itself what quality of education it desires.<sup>41</sup> Using the example of Baldwin Park and Beverly Hills,<sup>42</sup> the court stated:

[S]o long as the assessed valuation within a district's boundaries is a major determinant of how much it can spend for its schools, only a district with a large tax base will be truly able to decide how much it really cares about education. The poor district cannot freely choose to tax itself into an excellence which its tax roles cannot provide. Far from being necessary to provide local fiscal choice, the present financing system actually deprives the less worthy of that option.<sup>43</sup>

*McInnis v. Shapiro*,<sup>44</sup> a federal district case affirmed by the Supreme Court without oral argument or opinion, validated Illinois' system of financing and was followed in *Burruss v. Wilkinson*,<sup>45</sup> which upheld Virginia's system. The argument in *McInnis* was that the fourteenth amendment requires a school financing system based on the "needs" of the students.<sup>46</sup> Playing down the vast disparities in expenditures between districts, *McInnis* held, "[C]harges made in the complaint fall short of demonstrating either an arbitrary exercise of legislative power or an invidious discrimination,"<sup>47</sup> and "[T]here are no 'discernible and manageable standards' by which a court can determine when the constitution is satisfied. . . ."<sup>48</sup> Justice Sullivan, writing the opinion in *Serrano*, believed that the basis for *McInnis* was the indefiniteness and nonjusticiability of "educational needs" while *Serrano* pleads a recognizable criterion—discrimination by wealth of a fundamental right. On the Supreme Court's summary affirmance of *McInnis*, the court stated:

[A] Supreme Court affirmance can hardly be considered dispositive

<sup>40</sup> *Serrano v. Priest*, 487 P.2d 124, 1260 (Cal. 1971).

<sup>41</sup> *Id.* at 1260.

<sup>42</sup> *Id.* at 1252 n.15.

<sup>43</sup> *Id.* at 1260.

<sup>44</sup> 293 F. Supp. 327 (N.D. Ill. 1968), *aff'd mem. sub nom.*, *McInnis v. Ogilvie*, 394 U.S. 322, 89 S. Ct. 1197, 22 L. Ed.2d 306 (1969).

<sup>45</sup> 310 F. Supp. 572 (W.D. Va.), *aff'd mem.*, 397 U.S. 44, 90 S. Ct. 812, 25 L. Ed.2d 37 (1970). In *McInnis*, Justice Douglas believed the case should be set for oral argument. In *Burruss*, Justice White joined Justice Douglas in this opinion.

<sup>46</sup> *McInnis v. Shapiro*, 293 F. Supp. 327, 331 (N.D. Ill. 1968), *aff'd mem. sub nom.*, *McInnis v. Ogilvie*, 394 U.S. 322, 89 S. Ct. 1197, 22 L. Ed.2d 37 (1970).

<sup>47</sup> *Id.* at 334.

<sup>48</sup> *Id.* at 335, *citing Reynolds v. Sims*, 377 U.S. 533, 557, 84 S. Ct. 1362, 1376, 12 L. Ed.2d 506, 524 (1964).



of the significant and complex constitutional questions presented here.<sup>49</sup>

*Serrano v. Priest* raised education to the inner circle of strictly examined rights and left California without a constitutional school financing system. Similar suits are pending in other states.<sup>50</sup> If the movement in this constitutional struggle follows *Serrano*, the financial structure of public education throughout the nation will have to be revised.<sup>51</sup> Public education has been legislated, districted, and taxed so that in many areas the kind of education a child receives depends on the income of his parents. An inferior education will insure a life of poverty for a child and an inferior education for his posterity.<sup>52</sup>

In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, when the state has undertaken to provide it, is a right which must be made available to all on equal terms.<sup>53</sup>

Lawrence J. Blume

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<sup>49</sup> *Serrano v. Priest*, 487 P.2d 1241, 1265 (Cal. 1971). It is suggested that the Supreme Court is waiting until the issues are more clearly defined. "It is probably more significant as an admonition to the protagonists to clarify the options before again invoking the Court's aid." Coons, Clune & Sugarman, *Educational Opportunity: A Workable Constitutional Test For State Financial Structures*, 57 CAL. L. REV. 305, 309 (1969).

<sup>50</sup> Coons, Clune & Sugarman, *Educational Opportunity: A Workable Constitutional Test For State Financial Structures*, 57 CAL. L. REV. 305, 307 (1969).

<sup>51</sup> One alternative is centralized financing by the state to districts on an equal per pupil basis. The district would be required to use the money in a reasonable manner, or more strictly, equally on each student. Another possibility is direct aid to the pupil. This, however, would imply freedom to spend the money in private schools. A more obvious solution would be retention of local financing, but state equalization aid which would insure equal allocation per A.D.A., district tax rates being equal. The advantage of this program is the retention of local fiscal control. The standard, which would allow a wide variety of programs, would be—"the quality of public education may not be a function of wealth other than the wealth of the State as a whole." Coons, Clune & Sugarman, *Educational Opportunity: A Workable Constitutional Test For State Financial Structures*, 57 CAL. L. REV. 305, 311 (1969).

<sup>52</sup> Speaking of the inequalities in the Washington, D.C., school system as a result of segregation, Judge Skelly Wright said, "[a]ny system of ability grouping which, through failure to include and implement the concept of compensatory education for the disadvantaged child or otherwise, fails in fact to bring the great majority of children into the mainstream of public education denies the children excluded equal educational opportunity and thus encounters the constitutional bar." *Hobson v. Hansen*, 269 F. Supp. 401, 515 (D.D.C. 1967), *aff'd sub nom.*, *Smuch v. Hobson*, 408 F.2d 175 (D.C. Cir. 1969).

<sup>53</sup> *Brown v. Board of Education*, 347 U.S. 483, 493, 74 S. Ct. 686, 691, 98 L. Ed. 873, 880 (1954).

ADDENDUM: A United States District Court in the Eighth Circuit (Minn.) relied extensively on *Serrano* in holding that the school financing system was a violation of the equal protection clause. *Van Dusartz v. Hatfield*, 40 U.S.L.W. 2228 (Oct. 12, 1971).