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# Equal Protection- School Financing System Based on Local Property Taxes Held Unconstitutional

**Equal Protection**—SCHOOL FINANCING SYSTEM BASED ON LOCAL PROPERTY TAXES HELD UNCONSTITUTIONAL—*Serrano v. Priest*

The fourteenth amendment of the United States Constitution allows unequal protection of the laws, provided such unequal treatment and discrimination bear some rational relationship to a conceivably legitimate state objective.[1] This "rational relationship" test allows the states wide latitude and discretion in enacting legislation. However, where any state statute involves so-called "suspect classifications" or "fundamental interests," the statute will be subjected to a strict scrutiny test, under which the state must establish that there is not only a compelling state interest which justifies the law but also that the distinctions drawn in the statute are *necessary* to further such interests.[2]

In the recent decision of *Serrano v. Priest*,[3] the California Supreme Court found that a statute establishing a school financing system, based primarily on local property taxes and resulting in substantial disparities among individual school districts in the amount of revenue available per pupil,[4] was

[1] *See* McGowan v. Maryland, 366 U.S. 420 (1961); Kotch v. Board of River Port Pilot Comm'rs, 330 U.S. 552 (1947); Metropolitan Cas. Ins. Co. v. Brownell, 294 U.S. 580 (1935); Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61 (1911); Atchison, T. & S.F.R.R. v. Matthews, 174 U.S. 96 (1899).

[2] *See* Williams v. Illinois, 399 U.S. 235, 260 (1970) (Harlan, J., concurring); Kramer v. Union School Dist., 395 U.S. 621 (1969); McDonald v. Board of Elections, 394 U.S. 802 (1969); Shapiro v. Thompson, 394 U.S. 618, 658 (1969) (Harlan, J., dissenting); Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1966); Skinner v. Oklahoma, 316 U.S. 535 (1942); Note, *Developments in the Law—Equal Protection*, 82 HARV. L. REV. 1065, 1087-1130 (1969).

[3] 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971).

[4] *Id.* at 592-95, 600, 487 P.2d at 1246-48, 1252, 96 Cal. Rptr. at 606-08, 612. Figures analyzed by the court showed the following:

(1) 55.7 per cent of California's educational revenues for the fiscal year 1968-69 came from local property taxes.

(2) The assessed valuation of real property per pupil (actually, per unit of average daily attendance) varied between districts from $103 to $952,156 in 1969-70.

(3) Each district received "basic state aid" consisting of $125 per pupil per year, regardless of its relative wealth.

(4) Through "equalization aids," each school district is guaranteed $355 for each elementary school pupil and $488 for each high school student. The aid is computed by adding $125 (the basic aid) to a hypothetical amount which would be generated if each district levied a property tax at a rate of $1 on each assessed $100 (80¢ per $100 in high school districts) and then taking the difference, if any, between that total and the guaranteed amount.

(5) Even with such aid, expenditures during 1969-70 varied from $407 per pupil to $2586 per pupil.

(6) Poorer districts, taxing at three times the rate of wealthier ones, were still spending only one third as much per pupil.

drawn on the basis of wealth, a suspect classification, and affected education, a fundamental interest. The court therefore applied the strict scrutiny test and found that the financing system was *not necessary* to accomplish the state objective[5] and was thus violative of the fourteenth amendment.[6]

The correctness of the court's decision depends on whether the strict scrutiny approach was the proper test, and if so, whether it was properly applied. It is therefore necessary to determine 1) whether the classifications according to school districts are "suspect" because they result in districts of differing wealth, and 2) whether education is a "fundamental interest."

The United States Supreme Court has held that classifications which result in wealth discrimination are traditionally disfavored.[7] The Court, in recent dictum, has also stated that wealth, like race, is a factor which would independently render a classification suspect and demand the more exacting strict scrutiny test.[8] However, in all cases in which a wealth classification has been involved and a statute held violative of the fourteenth amendment, a fundamental interest has also been present.[9] This has occasioned some debate as to whether a wealth classification alone would demand the more rigid test.[10] While the Supreme Court has held that the right to vote, a fundamental interest, may not be based on the payment of a tax (*i.e.* wealth),[11] it is common knowledge that other "rights" (such as driving), not fundamental, are conditioned on the payment of a fee. The *Serrano* court impliedly recognized this difficulty and based its decision on the combination of a wealth classification *and* a fundamental interest.[12]

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[5] *Id.* at 589, 487 P.2d at 1244, 96 Cal. Rptr. at 604. The state objective cited was local responsibility for control of the schools. Conceding that this *might* be a compelling state interest, the court nevertheless correctly noted that the present financing system was not a necessary element in encouraging local responsibility. The court obviously applied the strict scrutiny test properly. *Id.* at 610, 487 P.2d at 1260, 96 Cal. Rptr. at 620.

[6] The court also held that the financing scheme violated article I, sections 11 and 21, of the California constitution. *Id.* at 596 n.11, 487 P.2d at 1249 n.11, 96 Cal. Rptr. at 609 n.11. Thus, regardless of whether such a scheme violated the fourteenth amendment, it was invalid in California under the state constitution.

[7] *See, e.g.*, Harper v. Virginia Bd. of Elections, 383 U.S. 663, 668 (1966).

[8] McDonald v. Board of Elections, 394 U.S. 802, 807 (1969).

[9] *See* Tate v. Short, 401 U.S. 395 (1971) (criminal rights); Williams v. Illinois, 399 U.S. 235 (1970) (criminal rights); Shapiro v. Thompson, 394 U.S. 618 (1969) (right of travel); Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1966) (voting); Douglas v. California, 372 U.S. 353 (1963) (criminal rights); Griffin v. Illinois, 351 U.S. 12 (1956) (criminal rights).

[10] *See* Michelman, *The Supreme Court 1968 Term*, 83 HARV. L. REV. 7 (1969).

[11] *See* Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1966).

[12] Serrano v. Priest, 5 Cal. 3d 584, 604, 614, 487 P.2d 1241, 1255, 1262-63, 96 Cal. Rptr. 601, 615, 622-23 (1971).

The defendants primary argument with respect to wealth was that the classifications according to school districts amounted to only an indirect, unintentional, and therefore de facto, wealth classification. By analogy to the school desegration cases, they argued that a de facto distinction was permissible.[13] The California Court felt that the classification was de jure because of the state action involved,[14] but this conclusion is certainly questionable because the wealth classification was merely an indirect and unintentional result of the statute.[15] However, even if the classification were conceded to be de facto, the defendants' argument should not prevail. Invalid wealth classifications, in combination with a fundamental interest, have been found to exist when the classifications were neither intentionally nor directly made on the basis of wealth.[16]

Thus, the key to the holding in *Serrano* is the court's finding that education is a "fundamental interest." This is an extension of the law since heretofore the United States Supreme Court has found only voting,[17] travel,[18] procreation,[19] and certain criminal rights[20] to be fundamental. Unfortunately, the Court has not articulated a general test to distinguish fundamental interests from other interests for the purpose of equal protection. One case

[13] It should be noted, however, that the California Supreme Court has also held de facto racial segregation invalid. *See* San Francisco Unified School Dist. v. Johnson, 3 Cal. 3d 937, 479 P.2d 669, 92 Cal. Rptr. 309 (1971); Jackson v. Pasadena City School Dist., 59 Cal. 2d 876, 382 P.2d 878, 31 Cal. Rptr. 606 (1963). Thus, no analogy to de facto racial segregation is possible in California.

[14] Serrano v. Priest, 5 Cal. 3d 584, 603, 487 P.2d 1241, 1254, 96 Cal. Rptr. 601, 614 (1971).

[15] It is generally agreed, with respect to *racial* segregation, that the discrimination must be *intentional* to be de jure. *See generally* Annot., 11 A.L.R.3d 780 (1967). *Serrano* admitted that this *wealth* classification was not alleged to be intentional or purposeful. Serrano v. Priest, 5 Cal. 3d 584, 601, 487 P.2d 1241, 1252, 96 Cal. Rptr. 601, 612 (1971).

[16] *See* Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1966) (direct but unintentional); Douglas v. California, 372 U.S. 353 (1963) (indirect and unintentional); Griffin v. Illinois, 351 U.S. 12 (1956) (indirect and unintentional). Note that the result in *Serrano* is to classify education as fundamental, and to hold invalid a de facto wealth classification affecting education. Such a decision may have implications for the school desegregation cases which involve de facto race classifications affecting education.

[17] *See* Hall v. Beals, 396 U.S. 45, 52 (1969) (Brennan, J., dissenting); Cipriano v. City of Houma, 395 U.S. 701 (1969); Kramer v. Union School Dist., 395 U.S. 621 (1969); McDonald v. Board of Elections, 394 U.S. 802 (1969); Williams v. Rhodes, 393 U.S. 23 (1968); Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1966); Reynolds v. Sims, 377 U.S. 533, 561 (1964); Yick Wo v. Hopkins, 118 U.S. 356, 370 (1886).

[18] *See* Shapiro v. Thompson, 394 U.S. 618 (1969).

[19] *See* Skinner v. Oklahoma, 316 U.S. 535, 541 (1942).

[20] *See* Tate v. Short, 401 U.S. 395 (1971); Williams v. Illinois, 399 U.S. 235 (1970); Douglas v. California, 372 U.S. 353 (1963); Griffin v. Illinois, 351 U.S. 12 (1956).

seems to suggest that an interest, to be fundamental, must be a *right* guaranteed by the Constitution.[21] If this is the test, education probably would not qualify, unless the fourteenth amendment makes it a right which must be made available to all on equal terms.[22]

However, most of the cases seem to classify an interest as fundamental because of its extreme importance, or as one writer has suggested, because of the severity of the detriment imposed on persons who are discriminated against.[23] Thus, voting was classified as fundamental because it is preservative of other basic civil and political rights,[24] and procreation was said to be fundamental to the very existence and survival of the human race.[25] In this respect, education compares quite favorably with the other fundamental interests. At a minimum it makes more meaningful the casting of a ballot. Education is the single most important factor in the economic status achieved by most persons. It affects directly a greater number of persons than does criminal law and probably aids in reducing the crime rate. It also supports other values of a democratic society, such as participation, communication, and social mobility.[26]

Finally, numerous cases have stressed the importance and necessity of education in our society.[27] And, as the *Serrano* court noted, education lasts for a lengthy period of time, is essential in maintaining free enterprise democracy, is universally relevant, and is important enough to be made compulsory.[28] The arguments, then, for treating education as fundamental because of its great importance in American life are obviously substantial.[29]

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[21] Shapiro v. Thompson, 394 U.S. 618, 629-34 (1969) (Court applied strict scrutiny test after noting that travel was a right guaranteed by the Constitution).

[22] *See* Brown v. Board of Educ., 347 U.S. 483 (1954). Opportunity for education "is a *right* which must be made available to all on equal terms." *Id.* at 493 (emphasis added).

[23] 82 HARV. L. REV., *supra* note 2, at 1130.

[24] Reynolds v. Sims, 377 U.S. 533, 561 (1964); Yick Wo v. Hopkins, 118 U.S. 356, 370 (1886).

[25] Skinner v. Oklahoma, 316 U.S. 535, 541 (1942).

[26] For a general discussion of the importance of education as compared with voting and criminal rights, see Coons, Clune, & Sugarman, *Educational Opportunity: A Workable Constitutional Test for State Financial Structures*, 57 CALIF. L. REV. 305, 361-69 (1969).

[27] *See* Palmer v. Thompson, 403 U.S. 217, 221 (1971); Brown v. Board of Educ., 347 U.S. 483, 493 (1954); Hargrave v. McKinney, 413 F.2d 320, 324 (5th Cir. 1969), *rev'd on other grounds sub nom.* Askew v. Hargrave, 401 U.S. 476 (1971); Hobson v. Hansen, 269 F. Supp. 401 (D.D.C. 1967), *aff'd sub nom.* Smuck v. Hobson, 408 F.2d 175 (D.C. Cir. 1969).

[28] Serrano v. Priest, 5 Cal. 3d 584, 609-10, 487 P.2d 1241, 1258-59, 96 Cal. Rptr. 601, 618-19 (1971).

[29] *Serrano* and the other authorities have addressed themselves to public elementary and secondary education. Whether the same arguments would apply to public higher

Since a fundamental interest alone is sufficient to justify the application of the strict scrutiny test,[30] and additionally noting that a wealth classification is present, the decision of the *Serrano* court has considerable merit.

One of the principal arguments of the defendants in *Serrano* was that the United States Constitution does not require equal per pupil expenditures or that expenditures be made only on the basis of educational needs.[31] However, *Serrano* did not hold that such expenditures are required. The court merely held invalid a financing system which relies heavily on local property taxes and results in substantial disparities among school districts in the amount of revenue *available* per pupil.[32] Presumably, the court would be satisfied if each school district had the same amount of assessable property or worked from the same tax base. Nothing in *Serrano* would prevent each district from taxing at its own rate or from spending the revenue as it saw fit.[33]

The primary reason for the California appellate court's rejection of the plaintiff's claims was its belief that the United States Supreme Court had foreclosed any consideration of the matter[34] by its summary affirmance of *Burruss v. Wilkerson*[35] and *McInnis v. Shapiro*.[36] Both cases involved attacks on public school financing systems similar to California's; both cases concluded that such systems were constitutional. In *Burruss*, the court merely stated that there was no discrimination by the state and that the financing plan was uniform and consistent.[37] No consideration was given to

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education is questionable, but at least arguable considering our present society and the emphasis placed on a college degree.

30 *See* note 2 *supra*.

31 *See* Serrano v. Priest, 10 Cal. App. 3d 1110, 1117, 89 Cal. Rptr. 345, 350 (1970) (Decision of court of appeal affirming trial court's judgment in sustaining demurrer to plaintiff's complaint. Justice McComb based his dissent in *Serrano* on this opinion by Justice Dunn).

32 Serrano v. Priest, 5 Cal. 3d 584, 589, 487 P.2d 1241, 1244, 96 Cal. Rptr. 601, 604 (1971). The court stated that the funding scheme invidiously discriminated against the poor because it made the quality of a child's education a function of the wealth of his parents and neighbors. It never stated that the funding scheme was invalid because it failed to guarantee equal per pupil expenditures throughout California.

33 *See* Coons, Clune, & Sugarman, *supra* note 24, at 338. The authors call such a plan a power equalized district system because districts that taxed at the same rate would spend the same amount per pupil. However, not all persons believe that such a plan would satisfy the fourteenth amendment. Some think that equal per pupil expenditures would generally be required. *See, e.g.*, Michelman, *supra* note 10, at 47-59.

34 Serrano v. Priest, 10 Cal. App. 3d 1110, 1114-17, 89 Cal. Rptr. 345, 348-50 (1970).

35 310 F. Supp. 572 (W.D. Va. 1969), *aff'd*, 397 U.S. 44 (1970).

36 293 F. Supp. 327 (N.D. Ill. 1968), *aff'd sub nom.* McInnis v. Ogilvie, 394 U.S. 322 (1969).

37 Burruss v. Wilkerson, 310 F. Supp. 572, 574 (W.D. Va. 1969). The court did express sympathy for the plaintiffs, citing their aim as commendable and praying that the

any of the issues raised in *Serrano*. The *McInnis* court did apply the traditional rational relationship test but did not deal with the possibilities of wealth as a suspect classification or education as a fundamental interest.[38] The plaintiffs in that case contended that a financing system must apportion funds according to the educational needs of students. The court's holding was essentially based on the fact that "educational needs" is a nebulous concept, rendering the issue nonjusticiable.[39] Since neither *Burruss* nor *McInnis* dealt with the issues raised in *Serrano*, the California Supreme Court could reasonably decide that it was not foreclosed from considering the matters raised. Furthermore, in the recent decision of *Askew v. Hargrave*,[40] the United States Supreme Court indicated that it had not foreclosed the possibility of equal protection applicability to school financing schemes.[41]

Since *Serrano*, federal courts in two states have invalidated school financing plans similar to California's.[42] Hopefully, this trend will continue and its weight will influence the ultimate decision of the United States Supreme Court. Education forms the very foundation of any viable society. The opportunity for a quality education[43] should be as even-handedly distributed

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General Assembly would come to their aid. Virginia's state financing system for public education is rather similar to California's. *See* Va. Acts of Assembly 1970, ch. 461, at 681.

[38] McInnis v. Shapiro, 293 F. Supp. 327, 332 (N.D. Ill. 1968).

[39] *Id.* at 335-36.

[40] 401 U.S. 476 (1971). A three-judge court held unconstitutional a Florida statute which limited the local property tax rate that a county could levy in raising school revenue. Having invalidated the statute under the traditional equal protection test, the court declined to consider plaintiff's contention that education was a fundamental interest requiring application of the strict scrutiny test. Hargrave v. Kirk, 313 F. Supp. 944 (M.D. Fla. 1970). The Supreme Court reversed the decision on other grounds, but indicated that the district court should thoroughly explore the equal protection issue on remand.

[41] The defendants also argued in line with a number of cases (*see* note 1, *supra*) that territorial uniformity is not generally required of legislation and should not be necessary in school financing. However, since those cases relied upon by defendants involved neither fundamental interests nor suspect classifications, the lack of territorial uniformity had to satisfy only the traditional test and not the strict scrutiny test. The school financing scheme in *Serrano* probably would have satisfied the former test also.

[42] Rodriquez v. San Antonio Independent School Dist., — F. Supp. — (W.D. Tex. 1971); Van Dusartz v. Hatfield, 334 F. Supp. 870 (D. Minn. 1971).

[43] The whole decision, of course, depends on the existence of a causal connection between money spent per pupil and the quality of education. *Serrano* notes that this is a matter for proof, but seems inclined to believe that there is such a connection. Serrano v. Priest, 5 Cal. 3d 584, 601, 487 P.2d 1241, 1253, 96 Cal. Rptr. 601, 613 (1971). It should be noted that even the *McInnis* court felt that the amount of money spent affected the quality of education. McInnis v. Shapiro, 293 F. Supp. 327, 331 (W.D. Ill. 1968).

as possible. The *Serrano* decision demanded this even-handed treatment when it defined education in terms of what it must be in modern society—a "fundamental interest."

*J. W. T.*