Detailed legal history of school finance
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- Overview
  - Serrano v. Priest (1971)
- Third Wave (post-1989): State education adequacy claims
- The Edgewood cases and the "Robin Hood" system
  - Edgewood I
  - Legislative responses and Edgewood II and III
  - The "Robin Hood" system and Edgewood IV
- Texas state property tax litigation (2001-2006)
  - West Orange-Cove I
  - West Orange-Cove II
- Recent Texas Supreme Court decision
- References

Overview

School finance decisions in the last fifty years can be categorized within three different "waves" of school finance litigation, starting in the late 1960s (Evans, Murray, and Schwab, 1999, 72-73; Heise, 1995, 1736; Dinan, 2009, 96-97).

The first wave of litigation consists of federal equity claims based on the Equal Protection Clause in the United States Constitution (U.S. Const. amend. XIV, § 1), which includes the California Supreme Court decision in Serrano v. Priest (1971) and the landmark United States Supreme Court decision in San Antonio v. Rodriguez (1973).

The second wave (1973-1988) was grounded generally on state equity arguments, starting with the Robinson v. Cahill (1973) decision from the New Jersey Supreme Court (Dinan 2009, 97).

The third wave (post-1989) primarily consisted of adequacy challenges based on education clauses in state constitutions, which is evidenced by the Edgewood decisions of the Texas Supreme Court (Dinan, 2009, 97-98).

The school finance system in Texas has evolved primarily through legislative responses to court decisions stemming from lawsuits filed by school districts, parents, and special interest groups. The current school finance system was upheld as constitutional by the Texas Supreme Court in May 2016 (Morath, Commissioner of Education, et al. v. Texas Taxpayer & Student Fairness Coalition, et al., 2016).

First wave (1971-1973): Federal equity suits

Serrano v. Priest (1971)

The Serrano v. Priest decision marks the first wave of school finance litigation in the United States. The Serrano decision, while generally categorized under federal equity protection claims lawsuits, was actually brought on state and federal equal protection grounds and therefore litigated first in the state courts. In Serrano, the California Supreme Court struck down the state’s school finance structure on the basis of violating the Equal Protection Clause (the school finance system allowed for per-pupil expenditures disparity and quality of education was based on the school district’s tax base) (Serrano v. Priest, 1971; Coon and Sommer, 1972).

However, in the landmark 1973 U.S. Supreme Court decision in San Antonio v. Rodriguez, the court reversed a federal district court’s decision that ruled in favor of plaintiffs challenging the Texas school finance system on federal constitution equal protection grounds.


Background

Plaintiffs in San Antonio v. Rodriguez filed a federal class action lawsuit on behalf of Texas schoolchildren who were members of minority groups or considered poor and residing in school districts with a low property tax base. The suit challenged the Texas school finance system on the grounds of inequitable public education and was instigated by Mexican-American parents whose children attended elementary and secondary schools in the Edgewood Independent School District, located in San Antonio, Texas (San Antonio Indep. Sch. Dist. v. Rodriguez, 1973, 5-6).

The plaintiffs’ main arguments were the following: 1) low-income households located primarily in low-spending school districts constituted a suspect class and therefore triggered strict scrutiny review of the state school finance system and 2) education was a fundamental right under the Equal Protection Clause of the Fourteenth Amendment. Evidence of disparate treatment was based on per-pupil spending disparities between Edgewood and the wealthier Alamo Heights district, in addition to similar patterns of spending disparities in other school districts in Texas (Heise, 2007, 3).
The federal district court ruled in *San Antonio* that the Texas school finance system based on local property taxes was unconstitutional in that the system discriminated on the basis of wealth, thereby denying the plaintiffs the fundamental right to education. Additionally, the federal district court ruled that the state school finance system was not supported by a compelling interest (Heise, 2007, 5).

**U.S. Supreme Court decision**

In its 5-4 decision, the U.S. Supreme Court reversed the federal district court decision and ruled in *San Antonio* that education is not a fundamental right protected under the U.S. Constitution. Additionally, the court ruled that the Texas school finance system did not institute wealth-based discrimination, even though inter-district disparities were attributable to differences in the amount of assessable property available within any district, e.g., districts that had more property or more valuable property had a greater capability for supplementing state funds (*San Antonio Indep. Sch. Dist.*, 1973, 44-53).

According to the Court, the reason Texas’ system was not discriminatory under the Constitution was that wealth was not a “suspect classification” under the “strict scrutiny” standard of review. Since wealth therefore received only “rational basis” review, the court ruled that the school finance system was constitutional because it was rationally related to a legitimate government purpose. Although the court stated that the Texas school finance system was imperfect, these imperfections were not enough to invalidate an entire school finance system (*San Antonio Indep. Sch. Dist.*, 1973, 44-53).

**Second wave (1973-1988): State equity suits**

The second wave (1973-1988) was grounded generally on state equity arguments (Dinan, 2009, 97). After *Rodriguez*, rather than focusing on federal equal protection rights, school finance reform advocates focused on state equal protection rights, as all state constitutions contain clauses concerning education. This approach addressed the lack of a right to education provision in the U.S. Constitution. School finance reform plaintiffs argued that education was a fundamental right under their respective state constitutions and therefore would call for strict scrutiny review under state equal protection analysis (Buszin, 2013, 1619).

State courts in favor of the plaintiffs held that education was a fundamental right or that wealth was a suspect classification. From 1973 to 1983, supporters of invalidating school finance systems in their respective state obtained seven favorable rulings from state supreme courts (Dinan, 2009, 97-98). Starting with the *Robinson v. Cahill* decision from the New Jersey Supreme Court, these courts struck down states’ school finance systems and sought to equalize school district spending on the basis of state constitution equal protection clauses (Dinan 2009, 97-98).

However, from 1983-1988, plaintiffs were much less successful in school finance litigation – fifteen state supreme court decisions ruled in favor of the state finance systems in the face of state constitution equal protection arguments (Dinan, 2009, 97-98). Most state courts during the second wave period upheld school finance systems through the *Rodriguez* decision (Dinan, 2009, 96; Buszin, 2013, 1620).

**Third Wave (post-1989): State education adequacy claims**

The third wave (post-1989) primarily consisted of adequacy challenges based on education clauses in state constitutions (Dinan, 2009, 98). Plaintiffs generally claimed that school finance systems provided insufficient and minimally adequate educational resources as prescribed by state constitutions (Buskin, 2013, 1621). The third wave started with three state supreme court decisions coming out of Kentucky, Montana, and Texas, all ruling the states’ school finance systems unconstitutional due to the inadequacy of school funding based on the states’ constitution education clauses (Dinan, 2009, 98; *Ros e v. Council* 1989; *Helena v. State*, 1989; *Edgewood v. Kirby*; 1989).

For example, in Texas, third wave suits revolved around the state constitution’s education provision, which was interpreted to require that different districts have similar and adequate educational resources. But redistribution of resources from rich districts to poor districts led to challenges grounded in the state’s 1982 constitutional prohibition of a state property tax (TTARA, 2012, 25).

We focus on the Texas litigation here starting with *Edgewood I*, in which the Texas Supreme Court ruled the state’s school finance system unconstitutional due to the inadequacy of school funding based on the state’s constitution education clause.

**The *Edgewood* cases and the "Robin Hood" system**

*Edgewood I*

Texas’ school finance system is shaped by the interpretation of the state’s constitution education clause, particularly the phrase “efficient system of public free schools,” and the state’s constitutional prohibition on a statewide property tax (TTARA, 2012, 25).

**Education clause, Article VII, Section 1, Texas Constitution:**

“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 (Texas Constitution)”

**Property Tax clause, Article VIII, Section 1-e, Texas Constitution:**

“No State ad valorem taxes shall be levied upon any property within this State (Texas Constitution).”

In the late 1980s, plaintiffs in *Edgewood Independent School District v. Kirby* (*Edgewood I*), challenged Texas’ school finance system on the basis of violating the Texas state constitutional education clause. The plaintiffs’ main argument was that there was great variance in school districts' property tax rates, as school districts with lower tax rates were able to gain more revenue because of the type of properties located in their districts (TTARA, 2012, 25). For example, school districts with industrial, oil and gas, nuclear power plant, or high-end residential property could gain more tax revenue at a lower tax rate than other school districts at higher tax rates (TTARA, 2012, 25).
In 1989, the Texas Supreme Court ruled in favor of the plaintiffs, stating that Texas’ school finance system violated the state constitution education provision requiring maintenance of an “efficient” system so as to achieve “general diffusion of knowledge.” In order for the education system to be “efficient,” school districts need “substantially equal access to similar revenue per pupil at similar levels of tax effort” (Edgewood Indep. Sch. Dist. v. Kirby, 1989).

### Legislative responses and Edgewood II and III

After the ruling in *Edgewood I*, there was a sequence of legislative actions to revise Texas’ school finance system (National Education Access Network, 2016). The first two legislative responses in 1990 and 1991 were ruled unconstitutional by the Texas Supreme Court in *Edgewood II and III*.

In 1990, the Legislature called for the allocation of additional state funds to the school finance system, as well as promised to place additional funds in the system for future years. The bill also set a goal of achieving the 95th percentile of Texas students in an equalized system, but the bill excluded wealthier districts from this equalized system (the state could not use resources from the wealthier districts to support the state system) (TTARA, 2012, 25). In *Edgewood II* (1991), the Texas Supreme Court ruled this system again unconstitutional, as the richest school districts could not be excluded from the equalization plan (Kauffman, 2009, 533; TTARA, 2012, 25).

In 1991, the Legislature responded by passing SB 351, which created 188 county education districts (CEDs), consolidating the tax bases of property rich and property poor districts until the tax bases were roughly equal. The CEDs had the power to tax at certain rates and distribute the tax revenue to school districts within the CED. The issue was that the bill allowed school districts to tax above the shared CED tax, and the Texas Supreme Court again ruled the school finance system unconstitutional in *Edgewood II* (1992). The court ruled that the tax imposed by the CED was in effect a state property tax and violated the state constitutional ban on a state property tax as stipulated in Article VIII, Section 1-e of the Texas Constitution (TTARA, 2012, 25).

This new system was challenged by both wealthy and poor districts, but in *Edgewood IV*, the Texas Supreme Court upheld the Texas school finance system as constitutional. The court deemed the system financially efficient and that the Legislature met its constitutional obligation to provide for the “general diffusion of knowledge” (TTARA, 2012, 27).

### The "Robin Hood" system and Edgewood IV

The third legislative response, SB 7, which the Texas school finance system is currently based on, was held as constitutional in *Edgewood IV* (1995).

SB 7, the “Local Option Plan,” better known as the “Robin Hood” system, called for the partial recapture of local revenues from property wealthy districts to be redistributed to property poor districts (National Education Access Network, 2016). The system directs property wealthy school districts to choose one of five methods to limit the amount of tax revenue the wealthy school district can access (TTARA, 2012, 25).

This new system was challenged by both wealthy and poor districts, but in *Edgewood IV*, the Texas Supreme Court upheld the Texas school finance system as constitutional. The court deemed the system financially efficient and that the Legislature met its constitutional obligation to provide for the “general diffusion of knowledge” (TTARA, 2012, 27).

### Texas state property tax litigation (2001-2006)

#### West Orange-Cove I

In *West Orange-Cove Consolidated ISD v. Nelson* (*West Orange Cove*) (2001), four property wealthy school districts argued that the $1.50 cap on a school district’s tax rate for maintenance and operations (M&O) was essentially a state property tax in violation of the constitutional ban on a statewide property tax as stipulated in Article VIII, Section 1-e of the Texas Constitution (*West Orange-Cove v. Nelson* 2001; National Education Access Network, 2016).

The M&O tax rate was viewed as a state property tax because a great number of districts were taxed at the cap and did not have local authority on how to otherwise raise funding (TTARA, 2012, 25). The suit was dismissed by the state district and appeals court, but in 2003, the Texas Supreme Court reversed the dismissal and sent the case back to district court (National Education Access Network, 2016). Additionally, by 2004, almost 300 school district plaintiffs joined the suit claiming that the state school finance system was inadequate and inequitable (TTARA, 2012, 26).

On remand, the district court held in 2004 in *West Orange-Cove* (the following: 1) the school finance system failed to provide an adequate and efficient education system as required by the Texas Constitution and 2) the tax rate system was unconstitutional because it was essentially a statewide property tax (National Education Access Network, 2016).

#### West Orange-Cove II

In *Neeley v. West Orange-Cove Consolidated ISD* (*West Orange Cove II*) (2005), the Texas Supreme Court partially upheld and partially reversed the 2004 *West Orange-Cove I* district court decision, ruling the Texas school finance system unconstitutional on the basis of violating the state property tax clause. The court upheld that the $1.50 M&O tax rate cap was unconstitutional because it constituted a state property tax, as school districts did not have meaningful discretion in setting their own local M&O tax rates (*Neeley v. West Orange-Cove, 2005; TTARA, 2012, 26-27*).

However, the court found that the school finance system did not violate the state constitution education clause. The court stated that the state met its constitutional obligation to provide students an adequate education through its school finance system based on evidence of students’ improvement on standardized tests (*Neeley, 2005, 789; Kronberg, 2005*).

In 2006, the Texas Legislature responded to *West Orange-Cove II* with HB 1, which gave school districts “meaningful discretion” in setting tax rates. HB 1 compressed M&O tax rates by one-third and provided school districts a minimum of $0.17 taxing authority above the compressed M&O tax rate that school districts can access at their own discretion. As a result, HB1 provided districts local authority and meaningful discretion in setting tax rates. *West Orange-Cove II* was dissolved by agreement between the plaintiffs and the state (TTARA,2012, 26-27; Equity Center, 2016).
Recent Texas Supreme Court Decision

The 2016 suit Morath, Commissioner of Education, et al. v. Texas Taxpayer & Student Fairness Coalition, et al. (2016) stemmed from the Texas Legislature’s $5.4 billion cut in education funding in 2011, as well as lawsuits filed by over 600 school districts since 2001, claiming that the “Robin Hood” school finance system in which property wealthy districts share local property tax revenue with property poor districts was unconstitutional (Morath, et al., 2016; Collier, 2016).

Plaintiff school districts argued that the 2011 $5.4 billion cut resulted in unfairly distributed funding and forced districts to tax at the maximum rate to provide a basic education to its students (Morath et al., 2016; Strauss, 2016; Collier, 2016). Insufficient funding made it difficult to meet the state’s stricter and more difficult academic standards, as well as increased disparities between property wealthy and property poor school districts. Taxing at the maximum rate resulted in the school districts lacking meaningful discretion in setting their own tax rates, resulting in a violation of Texas’ constitutional prohibition of a state property tax (Morath, et al., 2016; Collier, 2016).

In Morath, the Texas Supreme Court unanimously ruled that the school finance system was constitutional, while urging the legislature to reform the current system. "Our Byzantine school funding ‘system’ is undeniably imperfect, with immense room for improvement," stated Judge Don Willett, "but it satisfies minimum constitutional requirements (Collier, 2016;) The court declined “to usurp legislative authority by issuing reform diktats from on high, supplanting lawmakers’ policy wisdom with our own," thereby leaving the question of overhauling the school finance system at the discretion of the Legislature (Morath, et al., 2016; Isensee, 2016).

References


Serrano v. Priest, 5 Cal. 3d. 584 (Cal. 1971).


