Litigation and School Finance: A Cautionary Tale

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Beginning in the early 1970s, plaintiffs initiated a veritable tidal wave of litigation over financing public education in states with unequal funding for students in poor school systems. In the only case on school finance to reach the United States Supreme Court, *San Antonio Independent School District v. Rodriguez* (1973), the justices rejected a challenge to Texas' method of funding public schools on the basis that education is not a federally protected constitutional right. In so ruling, the Court opened the floodgates of litigation. Plaintiffs in the majority of states have succeeded in reforming about one-half of the school funding systems in the United States.

In the most recent school finance case, *Connecticut Coalition for Justice in Education Funding v. Rell* (*Rell* 2010), a plurality of justices held that since the plaintiffs' challenge to the state's system of funding was subject to judicial review, the dispute had to be remanded for a trial on the merits of their claims.

Overview of School Finance Litigation

The Supreme Court of California's decision in *Serrano v. Priest* (*Serrano I* 1971), the first major school finance case, generated more reaction than any other such litigation in a state court. In *Serrano I* the court found that a funding plan that dictated that the quality of a child's education was based on a school system's wealth discriminated against poor students by violating the Equal Protection Clause of the Fourteenth Amendment and the state constitution. While the United States Supreme Court essentially repudiated *Serrano I* a year and one-half later in *San Antonio*, the Supreme Court of California ultimately reaffirmed its initial judgment in *Serrano v. Priest II* (1976) under the state constitution.

Shortly after *Serrano I*, a federal trial court in Texas applied its rationale in striking down the state's system of funding public education. However, in *San Antonio Independent School District v. Rodriguez* (1973) the Supreme Court reversed in favor of Texas, rejecting the plaintiffs' claim that the system was discriminatory because per-child costs bore a rational relationship to the state's goal of educating students. In often-quoted language, the Court noted that "[e]ducation, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected" (p. 35). The Court added that since the legislature and local school boards were better prepared to address school funding, it would defer to their authority.

Since *San Antonio*, school finance has been litigated exclusively in state courts, ordinarily under the equal protection clauses of their constitutions. Starting with *Serrano I*, school finance litigation passed through three stages (Thro 1994). The cases during the first phase, *Serrano I* and *San Antonio*, focused on the federal constitution. The second wave, starting in New Jersey with

Robinson v. Cahill (1973) and including *Serrano II* (1976), involved litigation fought on the equality provisions in state constitutions. The third wave began with Kentucky's *Rose v. Council for Better Education* (1989), initiating a series of disputes that emphasized educational adequacy under state constitutions.

Because of litigation, state supreme courts frequently order legislatures to modify their funding formulas when discrepancies vary greatly between and among school systems, usually when plans fail to narrow the gap between poor and wealthy districts. The courts usually grant legislatures time to redesign their plans but still commonly result in multiple rounds of litigation.

Connecticut Coalition for Justice in Education Funding v. Rell

Connecticut Coalition for Justice in Education Funding v. Rell (Rell 2010) represents the third round of litigation to reach the state's supreme court on the adequacy of financing public schools. In *Rell*, the plaintiffs filed suit alleging that the state's public schools did not offer substantially equal educational opportunities to all students and that African Americans were disproportionately affected.

In *Rell*, the seven-member court handed down a judgment in excess of 100 pages. At its heart, *Rell* was a three-justice plurality opinion, meaning that it is not binding precedent since a majority of members of the court failed to agree on exactly the same rationale.

At the outset of its analysis, the three-justice plurality cited Connecticut's first school finance case, *Horton v. Meskill* (1977), which declared that the state had the duty to "provide a substantially equal educational opportunity to youth in its free public elementary and secondary school" (*Rell* at 210, citing *Meskill* at 375). The plurality asserted that almost 20 years later, in *Sheff v. O'Neill* (1996), the court acknowledged its role "in ensuring that our state's public school students receive that fundamental guarantee" (*Rell* at 210). Relying on *Scheff*, the plurality rejected the state's contention that *Rell* was a non-justiciable political question. Instead, the plurality identified the issue before it as whether the legislature met the state constitutional mandate to provide an appropriate education.

The plurality further described its task as resolving whether the state constitution provides public school students with "the right to a particular minimum quality of education, namely, suitable educational opportunities" (*Rell* 2010, p. 211). In its more than 40-page opinion, the plurality divided its analysis into six sections, discussing the key passage from the state constitution, article eighth, § 1, according to which "[t]here shall always be free public and elementary schools in the state. The general assembly shall imple-

ment this principle by appropriate legislation"; its holdings and dicta or non-binding statements of law; state constitutional history on school finance; a review of federal case law; relevant case law from other states; and economic and sociological public policy considerations.

In its rationale the plurality included the substantive requirement that the state offer students an education affording them a variety of overlapping opportunities such as entering higher education, participating fully in the democratic activities of voting and jury duty, and finding productive employment. Reversing an earlier order to the contrary, the plurality concluded that since *Rell* did not present a political question that was exempt from judicial review, it had to be returned to the trial court for further proceedings to consider how the state could provide "suitable educational opportunities" (*Rell* 2010, p. 211) for all children in Connecticut.

Justice Palmer's concurrence agreed with the majority's ultimate outcome but disagreed to the extent that he believed that the legislature, not the judiciary, is responsible for defining an adequate education. In focusing on constitutional issues, Justice Schaller's concurrence echoed similar concerns in questioning whether a trial court has the ability to evaluate the nature of an adequate education.

Justice Vertefuille's dissent agreed with the plurality that *Rell* was justiciable but disagreed as to the meaning of the disputed state constitutional text. Justice Vertefuille reasoned that since the language did mean to ensure that public schools always existed in Connecticut, but was not designed to establish a suitable educational standard, the court should have affirmed the earlier order dismissing the case. Justice Zarella, joined by Justice McLachlan would have dismissed the suit as non-justiciable, cautioning that the plurality set a dangerous precedent by further blurring the lines between the separation of powers between the legislature and judiciary.

Reflections

As well-intentioned as the plurality's judgment in *Rell* appears to be in its quest to provide a quality education for all public school students in the state, its remanding the case for a trial opens a proverbial "can of worms" for three reasons. Whether viewed together or separately, these points can serve as part of a cautionary tale for school business officials and others who are interested in public education.

First, in remanding *Rell* for proceedings that are likely to stretch out for years, the court delayed the creation of an equitable funding solution to better serve the educational needs of children. The parties should thus strive to reach a non-judicial agreement on how to reform the state's school funding formula.

Second, regardless of how the litigation plays out, the plurality may have created extra difficulties in failing to set an appropriate standard defining the limits of an "adequate education."

Third, pursuant to language in the disputed provision of the state constitution that was highlighted by the dissent, that control over public education is a legislative prerogative, vociferous debate will continue over the fundamental question of whether school finance reform should be directed by elected political officials or the judiciary.

As a practical matter, evidenced in the majority of school finance cases during the past 40 years, a host of practical issues remain even if the court or Connecticut General Assembly could devise an acceptable funding formula. On the one hand, a funding formula still cannot adequately address such intangibles as parental assistance in helping their children learn, teacher quality, student motivation, and creating an ethos in schools and communities that encourages students to strive for higher achievement.

Turning to tangible factors, even if lawmakers or judges can devise an equitable formula to provide additional funding to pay for newer school buildings, facilities, books, and equipment, based on the experiences of other states where school finance litigation has occurred, it is unclear whether these extra expenditures are likely to have much of an impact on student achievement in communities that are economically depressed. Such a result is particularly questionable in Connecticut, since it ranks eighth in national averages in per pupil funding at $11,885 per child, well above the national norm of $9,963 (Mitani, 2009, citing National Center for Education Statistics).

Clearly, insofar as funding is not necessarily the sole factor in seeking to increase student achievement, legislators and jurists need to be mindful of the need to seek a holistic solution.

The major additional costs associated with school reform that emerged in concurring and dissenting opinions in *Rell*, and which are examined in the next paragraph, are of course focused on Connecticut. Even so, this discussion can serve to caution school business officials and others who are interested in public schools. Hopefully education leaders can rely on *Rell* to avoid some of the issues that emerged in Connecticut's more than 30-year seemingly never-ending cycle of legislation being litigated, revised, and re-litigated because of the tremendous financial costs that are likely to arise in such a sequence of events.

Citing a 2005 report released by the plaintiffs in the run up to *Rell*, Justice Palmer noted that the study suggested that if the state were to meet the standard of education desired by the coalition, it could cost an addition $2.2 billion per year. Palmer commented that this total was "approximately 92% more than the amount that the state actually spent" (*Rell* p. 267) during the 2003-04 school

year on which the sum was predicated. Palmer was quick to concede that it may well have been premature to use such an estimate. Yet, given annual inflation and related cost increases, it is hard to imagine that this amount would be less and could impose a major strain on already highly taxed citizens during a down economy.

Without referring to this study, but maintaining that the plurality overstepped its bounds, Justice Zarella's dissent observed that "[i]t will require the legislature to appropriate *at least* $2 billion per year in additional funding to ensure that Connecticut schoolchildren will be provided with the resources allegedly required for a suitable education" (*Rell*, p. 301).

Rell should encourage education leaders to promote legislative solutions rather than ask judges to resolve the essentially political question of how best to finance public schools. Such an approach should be speedier and more cost-effective than engaging in years of protracted litigation.

Clearly, if legislatures cannot balance the complex combination of educational, funding, legal, and sociological questions associated with providing suitable financial resources for schools, the courts must intervene. However, to the extent that judicial action often takes years and consumes untold resources without moving any closer to the goal of providing equitable funding for public schools, then perhaps leaders of good faith can come together to devise plans to better educate America's children.

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