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 hold-
ings and dicta or non-binding statements of law; state
constitutional history on school finance; a review of fed-
eral 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 major-
y’s ultimate outcome but disagreed to the extent that he
believed that the legislature, not the judiciary, is respon-
sible 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 ade-
quate 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 sepa-
ration 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 educa-
tional 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 legisla-
tive 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 last 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 can-
not 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 addi-
tional funding to pay for newer school buildings,
facilities, books, and equipment, based on the experi-
ences 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 achieve-
ment 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, legis-
lators 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 opin-
ions 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.

References
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