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ROOSEVELT V. BISHOP: BALANCING LOCAL INTERESTS WITH STATE EQUITY INTERESTS IN SCHOOL FINANCING*

I. INTRODUCTION

By almost any measure, education is the primary service provided by state and local governments in the United States. In the 1954 case, *Brown v. Board of Education*, the court said:

[T]oday, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. 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, where the state has undertaken to provide it, is a right which must be available to all on equal terms.¹

Almost five times as much money is spent on education by local governments than for police and fire protection.² Expenditures for public elementary and secondary schools have varied between three and a half and four percent of gross national product (GNP) since 1970, and nearly forty percent of local government spending.³ Furthermore, perceptions of local schools have a significant influence on location choices of both individuals

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1. *Brown v. Board of Education*, 347 U.S. 483, 493 (1954).
 2. RONALD C. FISHER, *STATE AND LOCAL PUBLIC FINANCE* 371 (1993).
 3. FISHER at 371.

and businesses, thus directly influencing property values in specific locations.⁴

Currently, school districts are funded primarily through state-specific combinations of state and local funding, with federal funding playing a relatively minor role. Prior to the 1970's, local governments provided more than half of the funding while on average state governments provided forty percent.⁵ However, during the 1970's, their relative positions were reversed until the state governments were providing over fifty percent of the funding while the local government share decreased. This reversal came about because of several lawsuits requiring greater equalization of funding between school districts. As a result of the lawsuits, the states would distribute their funding to the school districts based on a formula designed to equitably distribute the funds—a method not available to the districts. Thus, to obtain equalization between districts, a greater proportion of the funding needed to come from the state government rather than the local.

This Note presents some of the difficulties in addressing school funding equity issues. Part II of this Note provides an overview of school funding and the background for the 1994 Arizona decision in *Roosevelt v. Bishop*.⁶ Part III briefly recites the facts and reasoning behind the Arizona Supreme Court's ruling in *Roosevelt*. Part IV analyzes the *Roosevelt* decision in light of some of the major policy issues surrounding school funding equity.

II. BACKGROUND

A. Overall Background of School Funding Cases

Of the several school funding cases filed in the early 1970's, the first one to reach the U.S. Supreme Court was *San Antonio Independent School District v. Rodriguez*.⁷ In its decision, the Court held first, that there was no federal right to education, and second, that differences in financial status between districts

4. FISHER at 371.

5. *Id.* at 373.

6. *Roosevelt Elementary Sch. Dist. No. 66 v. Bishop*, 877 P.2d 806, 808 (Ariz. 1994).

7. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973).

did not indicate poverty was a suspect classification requiring strict scrutiny. However, the Court did say that “[t]he need is apparent for reform in tax systems which may well have relied too long and too heavily on the local property tax But the ultimate solutions must come from the lawmakers and from the democratic pressures of those who elect them.”⁸ Since *Rodriguez*, school funding cases have remained in the state courts, where the majority of the states have considered the meaning of state constitutional requirements for education.⁹ While some of the state courts have found their funding systems adequate, more and more courts are finding the funding discrepancies between school districts unconstitutional under an emerging state constitutional right to education.¹⁰

The earliest of these state cases took place in California. In *Serrano v. Priest*, the California Supreme Court applied a narrow, measurable standard—the equality of dollar inputs per student, thus emphasizing discrimination on the basis of

8. *San Antonio* at 58-9.

9. *E.g.*, *Pinto v. Alabama Coalition for Equity, Inc.*, 662 So. 2d 894 (Ala. 1995); *Matanuska-Susitna Borough Sch. Dist. v. State*, 931 P.2d 391 (Alaska 1997); *Roosevelt Elementary Sch. Dist. Number 66 v. Bishop*, 877 P.2d 806 (Ariz. 1994); *Dupree v. Alma Sch. Dist.*, 651 S.W.2d 90 (Ark. 1988); *Serrano v. Priest*, 487 P.2d 1241 (Cal. 1971); *Serrano v. Priest*, 557 P.2d 929 (Cal. 1977); *Lujan v. Colorado State Bd. of Educ.*, 649 P.2d 1005 (Colo. 1982); *Horton v. Meskill*, 376 A.2d 359 (Conn. 1977); *McDaniel v. Thomas*, 285 S.E.2d 156 (Ga. 1981); *Thompson v. Engelking*, 537 P.2d 635 (Idaho 1975); *Committee for Educational Rights v. Edgar*, 672 N.E.2d 1178 (Ill. 1996); *Rose v. Council for Better Educ., Inc.* 790 S.W.2d 186 (Ky. 1989); *Hornbeck v. Somerset County Bd. of Educ.*, 458 A.2d 758 (Md. 1983); *McDuffy v. Secretary of the Executive Office of Education*, 615 N.E.2d 516 (Mass. 1993); *Milliken v. Green*, 212 N.W.2d 711 (Mich. 1973); *Committee for Educational Equality v. State*, 878 S.W.2d 446 (Minn. 1994); *Helena Elementary Sch. Dist. No.1 v. State*, 769 P.2d 684 (Mont. 1989), *opinion amended by* 784 P.2d 412 (Mont. 1990); *Gould v. Orr*, 506 N.W.2d 349 (Neb. 1993); *Robinson v. Cahill*, 303 A.2d 273 (N.J.), *cert. denied*, 414 U.S. 1138 (1973); *Board of Educ. v. Nyquist*, 439 N.E.2d 359 (N.Y. 1982), *appeal dismissed*, 459 U.S. 1138 (1983); *Britt v. North Carolina State Bd. of Educ.*, 357 S.E.2d 432, 435-36 (N.C. Ct. App.), *cert. denied*, 361 S.E.2d 71 (N.E. 1987); *Bismarck Public Sch. Dist. #1 v. State*, 511 N.W.2d 247 (N.D. 1994); *DeRolph v. State*, 678 N.E.2d 886 (Ohio 1997); *Fair Sch. Fin. Council of Okla., Inc. v. State*, 746 P.2d 1135 (Okla. 1987); *Olsen v. State*, 554 P.2d 139 (Or. 1976); *Danson v. Casey*, 399 A.2d 360 (Pa. 1979); *Woonsocket v. Sundlun v. Pawtucket*, 662 A.2d 40 (R.I. 1995); *Tennessee Small Sch. Sys. v. McWherter*, 851 S.W.2d 139 (Tenn. 1993); *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391 (Tex. 1989); *Brigham v. State*, 692 A.2d 384 (Va. 1997); *Seattle Sch. Dist. v. State*, 585 P.2d 71 (Wash. 1978); *Pauley v. Kelly*, 255 S.E.2d 859 (W.Va. 1979); *Buse v. Smith*, 247 N.W.2d 141 (Wis. 1976); *Washakie County Sch. Dist. v. Herschler*, 606 P.2d 310 (Wyo.), *cert. denied*, 449 U.S. 824 (1980).

10. Allen W. Hubsch, *The Emerging Right to Education under State Constitutional Law*, 65 TEMP. L. REV. 1325 (1992).

wealth—and allowed a successful challenge under the equal protection clause of the Federal Fourteenth Amendment on the basis of classification according to wealth.¹¹ The court held that under the California State Constitution education was a fundamental right and thus, school district wealth differences create a suspect classification. Since the state did not have a compelling reason for maintaining the inequities in the finance plan, it was held to be unconstitutional.¹² Six years later, relitigating the same issue, the California Supreme Court again held that the schools' financing systems violated equal protection provisions. However, this time the systems violated the equal protection provisions of the California State Constitution rather than those of the Federal Constitution.¹³ Fifteen years after the *Serrano I* decision, on the fourth case addressing the same issue, the California state appellate court declared that the state legislature had sufficiently met the standard of fiscal neutrality through its good faith efforts.¹⁴ As a result of this ruling, and the ruling of a similar case in New Jersey,¹⁵ many of the state legislatures began to revise their school funding systems. The most common method of doing so was to raise the percentage of educational funds coming from state money, thus lowering the percentage of contribution from local funds.

B. Methods of Financing Elementary and Secondary Education

Although there is no single formula which states use to finance elementary and secondary education, there are two methods commonly used, either alone or in combination with each other, to determine the level of state funding that each school district will receive. The first method is a foundation aid program that requires a basic dollar amount per pupil and is perhaps a way of reducing the amount for richer districts.¹⁶ This was the method commonly used before the 1977 *Serrano I* decision. Since it makes no attempt to equalize resources across districts, many of the states, after *Serrano I* began to use, at least to some extent, the second method. This method guaran-

11. *Serrano v. Priest*, 487 P.2d 1241 (Cal. 1971) [Hereinafter *Serrano I*].

12. *Id.*

13. *Serrano v. Priest*, 557 P.2d 929 (Cal. 1977) [Hereinafter *Serrano II*].

14. *Serrano v. Priest*, 226 Cal. Rptr. 584 (Cal. 1986) [Hereinafter *Serrano IV*].

15. *Robinson v. Cahill*, 303 A.2d 273 (N.J. 1973).

16. FISHER, *supra* note 3, at 377.

tees a certain tax base for each district in the state, which uses state grants to “match” the funds supplied through local taxes, thus reducing the price of education to the school districts.¹⁷ The main result of the second method reduces the local property taxes, without necessarily increasing educational spending.¹⁸

C. *Background of School Equity in Arizona*

In Arizona, as in most of the other states, financial equity between school districts became an issue in the early 1970's. This was about the time the Arizona case, *Shofstall v. Hollins*,¹⁹ was filed. *Shofstall* alleged that inequity between school districts was unconstitutional. Meanwhile, the Arizona State Legislature revised the financing provision for the public schools in 1973, effective July 1, 1974. Thus, by the time *Shofstall v. Hollins* came before the Arizona Supreme Court, the Court said that the recent legislative action made it unnecessary to examine the alleged defects in the “old” financing system. However, the court discussed the basic contentions of the plaintiffs and held that the state constitution established a fundamental right of education for children between six and twenty-one. The court also held that a school financing system meeting the educational mandates of the constitution “need otherwise be only rational, reasonable and neither discriminatory nor capricious.”²⁰ Thus, the court established a presumption that if the school financing system provided for an education that was uniform, free, available to persons between six and twenty-one, and open a minimum of six months out of the year, then it had a rational and reasonable basis, and would not be deemed unconstitutional unless it was demonstrated to be discriminatory or capricious. Twenty-one years later, in *Roosevelt v. Bishop*, the Arizona Supreme Court held the school financing system to be unconstitutional under this standard.

17. FISHER, *supra* note 3, at 378.

18. *Id.* at 384. See also AUSTIN D. SWANSON AND RICHARD A. KING, SCHOOL FINANCE: ITS ECONOMICS AND POLITICS (1991) (an additional description of the policy implications of financing methods).

19. *Shofstall v. Hollins*, 515 P.2d 590 (Ariz. 1973).

20. *Shofstall* at 592.

III. DISCUSSION OF *ROOSEVELT V. BISHOP*A. *Facts of the Case*

The circumstances and facts of *Roosevelt v. Bishop* are similar to those of many school funding cases—school districts with lower funding and parents with children in those school districts file equity suits against the state board of education or superintendent of education. *Roosevelt* was somewhat unique, however, because it was specifically concerned with the quality of the facilities available to the elementary and high school students in Arizona. For example, some of the districts had excellent facilities including “indoor swimming pools, a domed stadium, science laboratories, television studios, well stocked libraries, satellite dishes, and extensive computer systems.”²¹ On the other hand, some districts had facilities that were “unsafe, unhealthy, and in violation of building, fire, and safety codes.”²² Other districts used “dirt lots for playgrounds.”²³ In addition, there were schools “without libraries, science laboratories, computer rooms, art programs, gymnasiums, and auditoriums.”²⁴ Recognizing the funding disparity between districts, the districts with lower funding, in conjunction with parents and children from those districts, filed an action against the state and the board of education seeking a declaration that the existing statutory scheme for financing public education was unconstitutional.

Prior to the lawsuit, the amount of funding, and thus the quality of the facilities, was directly proportional to the value of the real property in the district. This scheme was not easy to understand. First, the base-level funding need of each district was calculated by multiplying the number of students in the district by an arbitrary state-wide dollar amount per pupil.²⁵ Next, the district’s required contribution was calculated by multiplying the district’s total assessed property value by an arbitrary dollar amount that each district was expected to raise from a statewide local primary property tax.²⁶ If the second figure was less than the first, then the state made up the difference. If the

21. *Roosevelt* at 808.

22. *Id.*

23. *Id.*

24. *Id.* at 806.

25. ARIZ. REV. STAT. §15-943.

26. ARIZ. REV. STAT. § 15-971.

second figure was greater than the first, then the district was not entitled to any state funds and it was not required to send the surplus to the state educational fund coffers. This formula provided for the maintenance and operations budgets of the Arizona school districts, ensuring that each district had at least a roughly equal base amount of funding per pupil, although there was some disagreement as to whether the base level was adequate.²⁷

The Arizona formula (see Figure 1) was a combination of both methods discussed above in Section II. The first part of the formula was most similar to the foundation aid system be-

Figure 1

$$G = (S * B) - (P * E)$$

G = state grant to district

S = number of students

B = base state-wide fixed dollar amount/pupil

P = district's total assessed property value

E = fixed amount each district is expected to raise from property taxes.

cause it provided a minimal base for each student to which local revenue supplements may be added. The second part was most similar to the matching method because it guaranteed a certain tax base to each district. Under this system, the state funded 45% of the educational expenses, the local districts 45%, and the federal government and counties 10%.²⁸

In contrast, funds for school construction were raised primarily through the sale of district bonds repaid through a secondary property tax levy,²⁹ which were subject to voter approval and therefore, based solely on available property wealth and the willingness of taxpayers to pay higher taxes. For capital improvements, each district had a budgeted amount to meet those needs. However, the districts could use their capital funds for maintenance and operations if their maintenance and opera-

27. Memorandum from Lisa Graham Keegan, Superintendent of Public Instruction, to Residents of Arizona. (January 2, 1997) (on file with author).

28. *Roosevelt* at 810.

29. *Id.*

tions budgets were insufficient.³⁰ When that happened, the districts did not have the funds necessary to replace any capital facilities that deteriorated beyond repair.

As the funding was dependent upon the assessed value of the property in a given district, the districts with the best funded schools were not necessarily found in districts with a higher income population. Instead, they were the districts with the most taxable commercial property. For example, the Ruth Fisher Elementary School District had an assessed property valuation per pupil of \$5.8 million because that was where the Palo Verde Nuclear Generating Station was located. On the other hand, the San Carlos Unified District had an assessed valuation per pupil of \$749 because there was little commercial property in Gila County where the district is located. Only four percent of the land in Gila County was available for commercial or individual use.³¹ Because of the extreme variation in assessed property values, it was impossible for the property poor districts to generate the same amount of money as the property rich districts, no matter how high their tax rate was. One example of this is that in 1989-90, the composite tax rate of one district was \$4.37 per \$100 of assessed value, while that of another district was \$.11 per \$100 of assessed value.³² In other words, those districts rich in commercial property, regardless of the population's level of income, had the potential to generate significantly more money to fund their school districts than those districts poor in commercial property.

In addition to commercial property valuation, school funding was also affected by demographic factors such as income and student population. One example of this was the Madison and Roosevelt Elementary School Districts. Both districts had similar distributions of commercial and residential property, but Madison was largely middle income while Roosevelt was largely lower income.³³ The result was that residential property values differed significantly, thus affecting the assessed property valuation and the school funding. Furthermore, Roosevelt had a larger number of students, thus requiring a smaller amount of money to be spread among a larger number of students. "Madi-

30. *Roosevelt* at 810.

31. *Id.*

32. *Id.* at 809.

33. *Id.*

son's assessed value per pupil [was] \$130,778 while Roosevelt's assessed value per pupil [was] only \$18,293."³⁴ Commercial property valuation, income level, and student population all played important roles in *Roosevelt* in contributing to the differences in funding between the various school districts in Arizona.

None of these facts were disputed by the parties, and furthermore, in deposition, C. Diane Bishop, the Superintendent of Public Instruction, acknowledged that a district's property value largely determined its ability to fund capital investment. Bishop also agreed that the quality of education children receive should be the same regardless of whether they live in rich or poor districts,³⁵ indicating her dissatisfaction with the current scheme of educational funding.

In *Roosevelt*, the plaintiffs made two separate state constitutional arguments that the Arizona educational financing system was unconstitutional. First, they argued under Article XI of the Arizona Constitution, the education clause, that education is a fundamental right. Additionally, "the school finance system violates the state equal protection clause (the privileges or immunities clause) because it discriminates against children and denies them equal educational opportunities because of where they live."³⁶ In response, the defendants argued that under the court's 1973 *Shofstall* decision, acknowledging education as a fundamental right and upholding the existing financing system using the rational basis test, the districts' privileges and immunities argument was foreclosed.³⁷ Therefore, the districts had failed to state a claim upon which relief could be granted, and the state was entitled to summary judgment.

The second constitutional argument that the plaintiffs made was that under Article XI, §§1, 8, 9, and 10 of the Arizona Constitution, the legislature was required to "maintain a general and uniform public school system and finance it by general and special appropriation."³⁸ In response, the state argued that the Arizona public school system was not within the scope of article XI, §10 and that funding a general and uniform public school system was the school districts' responsibility, not that of the

34. *Roosevelt* at 809.

35. *Id.*

36. *Id.* at 811.

37. *Id.*

38. *Id.* at 813.

state.³⁹ Again, relying on *Shofstall*, the state argued that “as long as the framework of the system [was] general and uniform, the substance of that system need not be.”⁴⁰

The district court agreed with the defendants on the first argument that, as a matter of law, the districts had not stated a claim under the Arizona Constitution, but it agreed with the districts that the statutory scheme was responsible for the disparities in facilities between the school districts.⁴¹ The districts then filed an appeal in the Arizona Court of Appeals and simultaneously filed a petition for an order transferring the case to the Arizona Supreme Court. Because of the importance of the issues—requiring an interpretation of the Arizona Constitution and possibly overruling a prior decision⁴²—the case was transferred to the Arizona Supreme Court which then reversed the lower court’s decision and remanded the case.⁴³

B. Arizona Supreme Court Decision

1. Majority opinion

The Arizona Supreme Court addressed “whether a statutory financing scheme for public education that is itself the cause of gross disparities in school facilities complies with the ‘general and uniform’ requirement of Article XI, §1 of the Arizona Constitution.”⁴⁴ The court eventually held that a financing scheme that caused gross disparities in school facilities did not comply with the constitutional “general and uniform” requirements. The state could delegate some of its authority to the school districts to help finance public education, but it could not delegate its responsibility under the Arizona Constitution to produce a general and uniform financing scheme for educational funding.⁴⁵ The court also found that while the case dealt solely with the capital disparities between districts, these disparities were “simply the first symptoms of a system-wide problem.”⁴⁶

39. *Roosevelt* at 813.

40. *Id.*

41. *Id.* at 808.

42. ARIZ. R. CIV. APP. P. RULE 19(a).

43. *Roosevelt* at 808.

44. *Id.* at 808.

45. *Id.* at 813.

46. *Id.* at 810.

The court, although recognizing precedent from *Shofstall* deeming education a fundamental right under the Arizona Constitution, avoided analyzing the school funding system under the equal protection provision. Instead, the court said that “where the constitution specifically addresses the particular subject at issue, we must address that specific provision first.”⁴⁷ By analyzing the system under the education clause rather than the equal protection clause, the *Roosevelt* court avoided resolving the conundrum presented in *Shofstall* where the court held that education was a fundamental right, thus implying a compelling state interest (strict scrutiny) test, but then applied a rational basis test.⁴⁸ After examining the history surrounding the adoption of the education clause, the court concluded that the “general and uniform” requirement would only be met if “[f]unding mechanisms . . . provide sufficient funds to educate children on substantially equal terms.”⁴⁹ “Gross disparities” resulting from a financing system would render the system unconstitutional.⁵⁰

2. *Points of disagreement*

a. Concurrence. While the majority opinion avoided addressing the issue under the equal protection clause, Chief Justice Feldman was not averse to doing so in his concurring opinion. Using an equal protection analysis, he indicated that because the statutes infringed upon a fundamental right per *Shofstall*, that strict scrutiny, or the compelling state interest test, should apply. Under that test, he would have decided that the funding system resulted in gross disparities and was unnecessary to serve the compelling state interest in preserving local control over education.⁵¹ Feldman also indicated that he felt the court had an obligation to the legislature, since it would now have to create a new financing system, to explain “just what the constitution requires and what we [the court] mean when we state that the system must provide an adequate education.”⁵² To do that, Feldman analyzed several Arizona statutes and two

47. *Roosevelt* at 811, n.3.

48. *Shofstall v. Hollins*, 515 P.2d 590 (Ariz. 1973); *See also Roosevelt* at 811.

49. *Roosevelt* at 814.

50. *Id.* at 814-15.

51. *Roosevelt* at 816-818.

52. *Id.* at 819.

Washington cases by analogy, finally concluding that the Board was required to prescribe a minimum course of study and that the legislature was required to put into effect a financing system that would provide for facilities and equipment that would enable each district to give their students the opportunity to meet those minimum standards.⁵³

b. Dissent. The dissent, written by Vice Chief Justice Moeller and joined by Justice Corcoran, emphasized local autonomy. The two dissenters argued that the disparities in funding could be a result of political or economic decisions made by the individual districts⁵⁴ and indicated that they would have followed the U.S. Supreme Court's example in *Rodriguez*, leaving school funding decisions up to the legislature.⁵⁵ Vice Chief Justice Moeller argued that the legislature, in creating a school financing system, would certainly have considered that the current system made it more politically or economically difficult for some districts to raise as much money as other districts.⁵⁶ The dissenters further argued that equalizing capital funding between the districts would not solve the problem nor provide equal educational opportunities because of the "myriad other factors" at work besides the money spent to produce quality education.⁵⁷ They were also afraid that by limiting the funding authority of local districts, the court's decision "eviscerate[s] effective local control," despite the fact that both the majority opinion and the concurrence acknowledged the historical significance of local control.⁵⁸

IV. PUBLIC POLICY ANALYSIS

A. *State-wide Equity or Local Autonomy*

The fundamental policy issue in school financing concerns balancing the equity interests of the state with the districts' interest in local control. On the one hand, if the taxpayers in a district are concerned enough about education that they want to

53. *Roosevelt* at 822.

54. *Id.* at 825.

55. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 at 59 (1973).

56. *Roosevelt* at 825.

57. *Id.* at 826.

58. *Id.*

increase the funding for their school system, they should be allowed to do so. On the other hand, as is illustrated in the *Roosevelt* case, some districts, no matter how much the taxpayers want to increase funding, simply do not have the tax base to do so—generally because of low property values. One possible result is that in a district where the assessed property value is low and the schools are not funded as well as in other districts, the location decisions of families moving into the area may change, possibly causing property values in the area to depreciate which would lower the income available to the school districts even more. To remedy this, the state could increase the minimum funding level so that the districts with the lowest funding would receive supplements to place them roughly at the level of the districts with the highest funding. There are two major problems with this idea. First, it would create a system where a race to the top is the only possibility, where all of the districts want to be in the position of the Ruth Fischer School District in the *Roosevelt* case. Second, it is possible that such a method would encourage districts to decrease the amount of tax revenues they contribute to their school district, thus requiring the state to pick up even more of the gap. So, in balancing the need for state-wide equity with an interest in local autonomy, what factors can legitimately vary between school districts?

The standard commonly accepted among the states results from the California *Serrano* decision. In that decision, the California Supreme Court held that expenditures between school districts could legitimately vary according to tax effort (tax rate), student composition, or technological factors such as economies or diseconomies of scale in the production of education services. Expenditure variations attributable to fiscal capacity, property wealth, or household income were not legitimate.⁵⁹ This is a difficult standard to implement, but that is what the courts seem to expect of the state legislatures.

B. Role of Legislature in Deciding Equity Issues

When it comes to equitable school district funding, legislatures have often been required to try several different financing systems in an effort to find one that will solve the equity issues between districts to the satisfaction of the courts. The California

59. See *Serrano I.*

Supreme Court addressed the same issue four times before the legislature developed a system that was satisfactory.⁶⁰ The New Jersey Legislature tried for over three years before developing a system that the New Jersey Supreme Court would approve.⁶¹ One of the reasons for this might be that the state legislative process inhibits voluntary reform of the financing systems, thus requiring substantial legal pressure to reform the system.⁶² Another possibility might be that the compromising and negotiating required in the legislative process is not conducive to working out an equitable system between all of the districts in a given state. After all, legislators represent a district that generally includes no more than one or more school districts, and true to the nature of the representative system, they will fight for the interests of their district(s) more than they will for the district next door, or even for overall state-wide equity between districts. The representative system is one of compromise and negotiation which seldom results in an ideal solution with respect to issues of equity.

Ostensibly, a search for equity might be most easily satisfied by absolute equality of resources—giving each district the same amount of money per student. However, post-*Brown* decisions by the U.S. Supreme Court have determined that absolute equality denies equality of educational opportunity to all children, particularly those who have disabling conditions⁶³ or are deficient in speaking or writing English.⁶⁴ These decisions imply that children have the right of access to instructional programs appropriate to their individual learning potentials. Hawaii, which has only one school district for the state, has similarly found that, “equal per-pupil expenditures may not generate equal educational service.”⁶⁵ So, in their attempts to create more equality between the school districts, the state legislatures have a significant task which they may not be equipped to handle because of

60. *Serrano v. Priest*, 487 P.2d 1241 (Cal. 1971); 557 P.2d 929 (Cal. 1976); 226 Cal. Rptr. 584 (Cal. 1986); 763 P.2d 852 (Cal. 1988), (review denied and case sent to court of appeals for decision).

61. *Robinson v. Cahill*, 303 A.2d 273 (N.J. 1973); 306 A.2d 65 (N.J. 1973); 335 A.2d 6 (N.J. 1975); 351 A.2d 713 (N.J. 1975); 355 A.2d 129 (N.J. 1976).

62. *Swanson*, *supra* note 18, at 222.

63. *Mills v. Board of Education of the District of Columbia*, 348 F.Supp. 866 (1972).

64. *Lau v. Nichols*, 414 U.S. 563 (1974).

65. *Fisher*, *supra* note 3, at 385.

the nature of the representative system. Conversely, the court system, unfettered by financial considerations and by the representative nature of its members, are not the right group to create a solution either, as the U.S. Supreme Court indicated in the *Rodriguez* decision.⁶⁶

C. Flux or Flaws

Generally, state court systems can only provide the stimulus for reform, leaving the policy development to the legislatures. However, this policy frequently leads to periods of flux, or instability, while the legislatures propose various financing systems only to have them declared unconstitutional by the courts. In the *Roosevelt* decision, like in *Serrano* and *Robinson*,⁶⁷ the court did not give any specific guidelines as to what would be considered constitutional in a school financing system, although the concurring opinion urged the court to do so.⁶⁸ Since the *Roosevelt* decision was handed down, Arizona legislators have appropriated \$100 million for a School Capital Equity Fund.⁶⁹ In November 1996 the Maricopa County Superior Court ruled that the educational funding system in the state was still unconstitutional and that the legislature had until June 30, 1998 to fix the system or face a school shutdown.⁷⁰ In March 1997, the legislature passed an "Assistance to Build Classrooms" plan ("ABC plan") that the governor signed into law in March 1997. However, the Superior Court held, on August 29, 1997 that the ABC plan did not resolve the equity issue.⁷¹ When Governor Fife Symington asked the Arizona Supreme Court to declare the plan constitutional they let the lower court's ruling stand on October 24, 1997.⁷² Because the proposed plans do not change the way capital funds are distributed, the judges see them as short term solutions, not ones that solve the problem of school district equity in Arizona. Arizona, like New Jersey between 1973 and 1976, is in a state of flux. At what point is it better to have a

66. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973).

67. *Robinson v. Cahill*, 303 A.2d 273 (N.J. 1973); *Serrano v. Priest*, 487 P.2d 1241 (Cal. 1971).

68. *Roosevelt* at 822.

69. David Madrid, *School-Funding Fix to Start from Scratch*, THE TUCSON CITIZEN, October 25, 1997, at B1.

70. *Id.*

71. *Id.*

72. *Id.*

flawed system that is working to some degree than a system in flux for several years while the legislature attempts to find the best solution to the equity issue and the threat of school closure is continually in the air?

V. CONCLUSION

There are inherent difficulties in addressing school funding equity issues in the specific context of the Arizona case *Roosevelt v. Bishop*. While this Note does not attempt to offer a solution to the current situation in Arizona, it points out some of the policy issues the legislature is trying to address in Arizona as well as in other states that are currently struggling with school funding equity. In *Roosevelt*, the Arizona Supreme Court avoided addressing the issue of whether or not education is a fundamental right, which is a right emerging under several state constitutions. However, it did find a constitutional responsibility for the state to produce a general and uniform financing scheme for public education. The difficulty with this finding, as with similar findings by other state supreme courts, is that there is little or no guidance as to what financing scheme would be constitutional, leaving the legislature to flounder in the dark searching for something the court will know when it sees it.⁷³ Because that question is so difficult to answer, the courts and the legislatures engage in a dance, balancing state equity interests with local control and funding interests, in an attempt to meet the constitutional requirements of the various states.

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73. See generally *Jacobellis v. Ohio*, 378 U.S. 184, 197, 84 S.Ct. 1676, 1683, 12 L.Ed.2d 793 (1964) (Stewart, J. concurring) (Justice Stewart's famous test for obscenity— 'I know it when I see it').