

Texas: Supreme Court concludes that the school finance system is constitutional



David M. Kall | Saturday, May 21, 2016

Last week, the Texas Supreme Court handed down another school funding decision in the case [*Morath, et al. v. The Texas Taxpayer and Student Fairness Coalition, et al.*](#) The court noted that since the late 1980s, this was the seventh time it faced the state’s school financing system, which the court characterized as “a recondite scheme for which the word ‘Byzantine’ seems generous.”

Background

Since 2005, the basic financing structure, involving local, state, and federal funds, has remained in place, though with a few changes. The primary source of state funding is the Foundational School Program (FSP). This is a two-tiered system designed to guarantee that each district has “adequate resources to provide each eligible student a basic instructional program and facilities suitable to the student’s educational needs.”

The local component of the funding system comes mostly from property taxes, which, in turn, stem from maintenance and operation (M&O) taxes, and a facilities tax known as the interest-and-sinking (I&S) fund. The M&O tax is now capped at \$1.17 per \$100 of property value for most districts.

Tier One of the FSP is derived from both state funds and local taxes. From 2009-2013, districts with a M&O tax of \$1 or more per \$100 received a starting allotment of \$4,765 per student. This was then modified for factors such as geographic variations and costs of education for matters beyond the district’s control, like district size, salary variations and the number of low income students, to reach each district’s actual

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allotment. The adjustments for economically disadvantaged and bilingual students were especially relevant to the case at hand.

Tier Two, based upon a weighted average daily attendance, allows districts to obtain additional funds by adopting a different M&O tax rate. The strategy here is to inflate the number of students in a district to account for the needs of those whose education requires more funding.

In 2011, the state cut its education funding, which it justified as being driven by the economic downturn and a loss of temporary federal funding. However, the legislature made alterations and restorations in subsequent actions that increased the FSP basic allotment to \$4,950 per student for the 2013-14 school year and \$5,040 for 2014-15, up from the starting point of \$4,765 per student from 2009-2013.

The plaintiffs sued Texas, alleging that the funding protocol violated the state constitution. The lower court agreed, holding that the system was “inadequate, unsuitable, and financially inefficient,” except with respect to the charter school plaintiffs. In so doing, the lower court enjoined the state from distributing money under the financing system until its constitutional violations were remedied. The state appealed, eventually bringing the question of whether the school financing system violated the adequacy, suitability, and efficiency requirements of the state constitution, among others, to the Texas Supreme Court.

The court’s analysis: adequacy

In its 100-page opinion, the court conducted a lengthy examination of the history of prior school financing decisions and numerous procedural questions, like the court’s role on review, standing, justiciability, and ripeness for review. And although numerous parties with occasionally different interests and claims participated as plaintiffs, the most important question was the adequacy requirement “at the heart of the case.” On this, the Supreme Court criticized the lower court’s analysis as “flawed” and “wrong,” “bleed[ing] over into other issues and infect[ing] much of the trial court’s analysis of them.”

One problem was the lower court’s determination that there is a specific amount of funding needed to “achieve a general diffusion of knowledge.” The Supreme Court opined that such a conclusion is both “beyond the current state of science in this field” and unconstitutional.

Additionally, it was problematic that the lower court addressed adequacy with respect to particular subgroups of students, economically disadvantaged and bi-lingual students. The Supreme Court proclaimed that to start down the path of entertaining claims of particular subgroups could have, perhaps, “...no end in sight.” Ultimately, the plaintiffs could not convince the high court that the “system was so parsimonious in its allocation of resources to economically disadvantaged and bi-lingual students as to amount to an unconstitutionally inadequate allocation.”

Instead, the proper focus should be on “outputs that measure student performance,” such as SAT and ACT exam results, performance gaps, and graduation and dropout rates. The Supreme Court determined that even though the lower court did consider these outputs, it reached the incorrect legal conclusion that they demonstrate a constitutionally inadequate system.

The Supreme Court asserted that “[i]t is safe to say that the current Texas school system leaves much to be desired. Few would argue that the state cannot do better.” But in the end, the plaintiffs did not meet their burden of proving that the system is constitutionally inadequate.

Suitability

The Supreme Court also considered the lower court’s decision that the school system is constitutionally

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unsuitable. It has addressed suitability in previous cases, which is related to the “education needed to participate fully in the social, economic and educational opportunities available in Texas,” and “the means chosen to achieve an adequate education through an efficient system.” One particularly relevant opinion declared that the suitability requirement was met because “[n]either the structure nor the operation of the funding system prevents it from efficiently accomplishing a general diffusion of knowledge.”

Pointing out that the Supreme Court has never held that the school system is constitutionally unsuitable, it once again declined to do so here. The justices rejected the lower court’s decision to the contrary, which it justified on a finding that the system is underfunded, thereby impermissibly tying its suitability analysis to its “flawed conclusion that the system is constitutionally inadequate because it is underfunded.”

Financial efficiency

Finally, the Supreme Court examined the trial court’s holding that the system violates the constitutional requirements of financial efficiency. For systems that are dependent on local property taxes, efficiency means that revenue must be drawn from all the property at a substantially similar rate, “necessary to provide a general diffusion of knowledge,” though exact equality of funding is not required.

On this requirement, though the trial court made hundreds of findings of fact, the Supreme Court rejected its final determination that the system was unconstitutional, because it was inextricably and erroneously tied to findings that Texas had to spend more money. Instead, though there is no “single magic number” that determines financial efficiency, the system does not violate financial efficiency obligation.

Conclusion

In recognizing the “Byzantine” nature of the school funding system for a second time in the opinion, the Supreme Court declined “to usurp legislative authority by issuing reform diktats from on high, supplanting lawmakers’ policy wisdom with our own.” However, it expressed “hope that lawmakers will seize this urgent challenge and upend an ossified regime ill-suited for 21st century Texas.”



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