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Marty Strange*

Equitable and Adequate Funding for Rural Schools: Ensuring Equal Educational Opportunity for All Students

INTRODUCTION

Since the early 1970's, state court litigation has been brought in forty-six of the fifty states, with plaintiffs asserting legal claims under state equal protection and education clauses.¹ Overall, plaintiffs have prevailed in a majority of these cases. In rural states such as Kentucky, Vermont, Wyoming, and Tennessee, extensive education reforms have resulted.

These lawsuits were prompted by various factors. In many southern states, inequities in school funding are vestiges of formerly racially segregated school systems outlawed in *Brown v. Board of Education*.² Heavy reliance by states on local property assessments and taxes to pay for education is also the cause of inequities leading to litigation. Taxpayer resistance to spending on education has been another cause.

As school finance policy and law have evolved, legal scholars have focused much of their attention on issues affecting urban schools. Yet, nearly one-third of the public school students in the United States attend schools in rural areas and small towns. Those schools are very important to the communities they serve. Additionally, such schools have been at the heart of many of the most enduring legal and political battles over school finance. A number of early court victories in state constitution challenges were in rural states, such as Arkansas and West Virginia. Many of the more recent victories linking finance issues to state academic standards, Kentucky, Tennessee, Vermont, and Wyoming, were also cases in which the rural factor was crucial. Moreover, nearly all of the recent court cases involving financing of school facilities had their origins in rural states or in the rural areas of

* Policy Director, Rural School and Community Trust.

1. Anna Williams Shavers, *Rethinking the Equity vs. Adequacy Debate: Implications for Rural School Finance Reform Litigation*, 82 NEB. L. REV. 133 (2003).

2. 347 U.S. 483 (1954).

larger states – Alaska, Arizona, Arkansas, Colorado, New Mexico, Ohio, and Idaho.

This special edition of the Nebraska Law Review is therefore intended to fill an important gap in legal scholarship by reviewing school finance law as it relates to rural education. Moreover, this issue discusses some of the school finance issues that are of particular importance to rural areas and have been or are likely to be litigated. John Dayton's summary of the litigation brought by advocates for rural schools since *Serrano v. Priest*³ provides an excellent overview of the field, describing the judicial decisions and discussing the current status of funding litigation concerning rural schools.

All courts that have found state school finance systems to be constitutionally inequitable or inadequate have implicitly held that money matters in education. As a New York court concluded: "There is a causal link between funding and educational opportunity" and "increased educational resources, if properly deployed, can have a significant and lasting effect on student performance."⁴ Several studies have found a correlation between financial investment and higher student achievement.⁵

These relationships are sure to intensify the debate over school finance in the years ahead because standards-based reform has raised expectations of schools, specified outcomes, and provided for measurement of progress. In the course of doing so, new ways of evaluating and challenging funding systems have been created out of the voluminous test score data on which plaintiffs are certain to rely.

Likewise, the new federal *No Child Left Behind Act*⁶ has imposed further student assessment and school accountability requirements on states, adding substantially to education costs⁷ and aggravating funding problems. Judith A. Winston's article describes this federal effort to reform education nationally and discusses whether it comports with the realities of rural education and the lives of children, families, and communities in rural America.

As these cost pressures on schools multiply, a weak economy is putting increased pressure on state budgets and local tax bases. In this environment of rising costs and diminished revenue flows, the equitable distribution of funds for education has become a crucial issue in many states.

3. 487 P.2d 1241 (Cal. 1971).

4. Campaign for Fiscal Equity v. State, 719 N.Y.S.2d 475, 525 (N.Y. Sup. Ct. 2001).

5. Ronald F. Ferguson, *Paying For Public Education: New Evidence on How and Why Money Matters*, 28 HARV. J. ON LEGIS. 465 (1991); Larry V. Hedges et al., *Does Money Matter? A Meta-Analysis of Studies of the Effects of Differential School Inputs on Student Outcomes*, EDUC. RESEARCHER, Apr., 1994, at 5.

6. 20 U.S.C. §§ 6301-8962 (2001).

7. William J. Mathis, *No Child Left Behind: Costs and Benefits*, 84 PHI DELTA KAP-PAN 679 (2003).

Though it is widely accepted that many inner-city neighborhoods cannot afford the growing financial investments required in education without increased state aid, there remains ambivalence about socio-economic conditions in rural America. In fact, socio-economic conditions vary widely in rural America. But on the whole, rural America is as racially and ethnically diverse as urban America, and it is economically poorer. Of the 250 counties with the lowest per capita income in the nation, 240 are rural (6 of the 10 lowest are in Nebraska).⁸ Likewise, if you are African American or Hispanic, your chances of living in poverty are greater if you live in rural America than if you live in the inner-city.⁹

Can an equal educational opportunity be afforded to students from these distressed rural communities that have diminishing economic and political influence in an urban society? The legal theories surrounding school finance have turned on two issues embraced by the concept of equal educational opportunity – equity and adequacy. Finance systems have been ruled unconstitutional because they distribute resources inequitably among schools and students, because they provide resources equitably but woefully inadequately, and for both reasons. Professor Anna Williams Shavers reviews the vitality of equity arguments in lawsuits that include rural school districts and compares the use of adequacy claims as a litigation strategy. She considers the equity based theories in more detail, examining two cases involving rural school districts.

When school finance systems are found unconstitutional and litigation reaches the remedy stage, state policy makers almost without exception have turned to school consolidation as a remedy. This has been a controversial choice in almost every instance. Professor Robert M. Bastress assesses the impact of litigation on rural students and examines whether and to what extent courts should impose substantive limitations on state efforts to close and consolidate community schools.

Gregory C. Malhoit and Derek Black further analyze the framework by which the branches of government design and implement remedies, focusing especially on the efficacy of small schools and the role they play as laboratories for democratic education. Smaller schools are, they argue, an essential part of a quality education.

8. BUREAU OF ECONOMIC ANALYSIS, U.S. DEP'T OF COMMERCE, LOCAL AREA PERSONAL INCOME (2001) (on file with the author), *available at* <http://www.bea.doc.gov/bea/regional/reis/pcpilow.cfm>.

9. ELIZABETH BEESON & MARTY STRANGE, RURAL SCHOOL AND COMMUNITY TRUST, WHY RURAL MATTERS: THE NEED FOR EVERY STATE TO TAKE ACTION ON RURAL EDUCATION (2003), *available at* http://www.ruraledu.org/streport/pdf/WRM_2003.pdf.

In school funding debates, five issues stand out as central to rural education.

Competitive Salaries for Educators. On average, rural teachers are paid less than nonrural teachers in all but seven states. The salary gap can be very large. Nebraska leads the nation with the lowest ratio of average rural teacher pay to average non-rural teacher pay (79 percent).¹⁰ This pay disparity places rural districts at a competitive disadvantage in the teacher labor market. Clearly, this disadvantage is often aggravated by poorer facilities, less stable administrative leadership, expectations of increased extracurricular responsibilities, and fewer professional development opportunities, remoteness and isolation, the low level of education among adults who form a prospective teacher's peer group in the community, and the limited choices among church denominations, medical practitioners, recreation facilities, and many other services and amenities. Suburban superintendents know that the most fertile ground for recruiting good teachers are the rural schools that cannot afford to compete for the services of the best free agent teachers on their faculty.

Courts in several states have ruled that inequitable outcomes of public school students are strongly linked to disparities in teacher pay. For example, in Arkansas, a court ruling in favor of a rural school district plaintiff recently found that disparities in teachers' salaries "are so great that they work to destabilize the education system by driving qualified teachers away from districts where they are most needed. Schools and school districts with more disadvantaged students need more qualified teachers per student."¹¹

Equity in Place. Kids go someplace to school, and for each one, "equity" can only occur in a place where they feel safe, wanted, needed, and expected to do well. The vexing question is this: Is a state that is obligated to provide an equal educational opportunity for all its children, obligated to do so wherever it finds them, no matter where the child lives? Does a child have a right to "equity in place?" This raises the interrelated issues of small school size and long distance busing that are major factors for remote schools in sparsely settled regions.

Sparseness clearly contributes to higher per pupil costs of education. When costs are inherent in the child, or in the circumstances, (for example, learning disabilities, poverty, and limited English proficiency) the child brings to school, they are often recognized by single courts and legislatures as "legitimate" sources of unequal spending because they are beyond the control of the school.

10. *Id.*

11. See *Lake View Sch. Dist. No. 25 v. Huckabee*, No. 1992-5318 (Chancery Court, Pulaski County, Ark. May 25, 2001); *Lake View Sch. Dist. No. 25 v. Huckabee*, 91 S.W.3d 472 (Ark. 2002)

School funding systems often recognize the costs associated with sparseness by providing enhanced transportation subsidies that encourage larger schools serving larger catchment areas. Even though the state might compensate the school district for greater transportation costs, who can compensate the child for time and energy lost on long bus rides? This has, in fact, become a major school finance issue in some states, notably West Virginia, where a state policy of school consolidation has been pursued aggressively.

The issues related to sparseness, school size, and transportation have led to the descriptor "necessarily small." This term is used by some to distinguish between schools that are small because they are in remote or sparsely populated areas and those that are small only because adults want it that way.

Some states, even as they encourage busing by subsidizing it, also limit the length of school bus rides, although these limits may be merely advisory and poorly monitored and enforced. Yet, this issue is not merely about time on the bus, because it affects many factors critical to educational success, such as "community engagement" in the work of a school and "parental involvement" in the schooling of a child. What are the reasonable limits of defining spatial justice in the location of schools?

Small by Choice. It should be noted that many rural schools are small because rural communities want them to be small. As Gregory C. Malhoit and Derek Black observe, there is plenty of scholarly research to support a preference for small schools. The pedagogical evidence has become almost overwhelming in favor of the effectiveness of small schools.

Summarizing the field of studies on the topic, leading education researcher Mary Anne Raywid has concluded that the benefits of small schools have been "confirmed with a clarity and at a level of confidence rare in the annals of education research."¹²

So the growing public sentiment in favor of smaller schools in many urban and suburban communities is well-founded. While smaller schools are praised in the communities where most schools are large, smaller schools are still often regarded as an expensive luxury in the rural communities where they already exist. The Wyoming Supreme Court, however, has described smaller schools not as a luxury, but as essential to a "proper education" that "each Wyoming student is entitled to have whether she lives in Laramie or in Sundance."¹³ The status of small schools as an element of a constitu-

12. MARY ANNE RAYWID, CURRENT LITERATURE ON SMALL SCHOOLS, ERIC DOC. NO. ED425049 (1999) (briefly describing the research on small schools and discussing the policy issues).

13. Campbell County Sch. Dist. v. State, 907 P.2d 1238, 1279 (Wyo. 1995).

tionally adequate education is likely to be a central rural education issue in future school finance cases.

Paying for Facilities. Rural school facilities in many locales are dilapidated and deteriorating rapidly, victims of age and deferred maintenance¹⁴ as school boards are forced to choose between paying for facilities or for instructional services. It is estimated that 60% of rural schools in the nation need replacement or extensive repairs;¹⁵ 46% lack electrical wiring necessary to support technology;¹⁶ 84% lack fiber optic cable; and 46% lack operational computer networks.¹⁷

Most states have no more than a very modest role in financing school facilities, which are generally paid for by local communities through bonded indebtedness that is serviced by local property tax revenue.¹⁸ This heavy reliance on local property wealth to finance school capital projects is a major source of disparity in educational opportunities and is increasingly the subject of litigation. As noted above, most of these cases have originated with rural plaintiffs.

In several instances, political remedies have included a greater state role in facilities finance, notably in West Virginia, Kentucky, and Ohio. Minimum size standards or other administrative rules have been used to encourage or require school consolidation in the interest of economies of scale in school construction costs. Widespread controversy has surrounded this process, especially in West Virginia.¹⁹

It is not clear, however, that larger schools are really substantially less expensive to build. An analysis of the cost per pupil and per square foot of constructing 489 school facilities between 1990 and 2001 for student populations ranging from 24 to 4,000 showed surprisingly little difference in cost.²⁰ The smaller half of these schools cost only about 20% more per student to build than the larger half, and the

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14. Barbara Kent Lawrence, *Save a Penny, Lose a School: The Real Cost of Deferred Maintenance in Rural Schools*, RURAL TRUST POLICY BRIEF SERIES ON RURAL EDUCATION (Rural School and Community Trust eds. 2003) (on file with the author).
 15. HEALTH, EDUCATION & HUMAN SERVICES DIV., U.S. GENERAL ACCOUNTING OFFICE, *THE CONDITION OF AMERICA'S SCHOOLS* (1995).
 16. AMY ANDERSON ET AL., EDUCATION COMMISSION OF THE STATES, *MAKING BETTER DECISIONS ABOUT FUNDING SCHOOL FACILITIES* (1998) (on file with the author).
 17. SARAH DEWEES & GLEN EARTHMAN, *Trends and Issues Affecting School Facilities in Rural America: Challenges and Opportunities for Action*, in *IMPROVING RURAL SCHOOL FACILITIES: DESIGN, CONSTRUCTION, FINANCE, AND PUBLIC SUPPORT* (2000).
 18. RURAL SCHOOL AND COMMUNITY TRUST, *THE STATE ROLE IN PROVIDING SCHOOL FACILITIES — ADDRESSING THE NEEDS OF RURAL STUDENTS AND COMMUNITIES* (forthcoming) (manuscript on file with the Rural School and Community Trust).
 19. Eric Eyre & Scott Finn, *Closing Costs: School Consolidation in West Virginia*, CHARLESTON (WV) GAZETTE, August 25, 2002 (series on the costs of school consolidation running August 25 and 30, September 8, 12, 24, and 29, and October 3 and 6, 2002) (on file with the author).
 20. BARBARA KENT LAWRENCE ET AL., *DOLLARS AND SENSE: THE COST EFFECTIVENESS OF SMALL SCHOOLS*, at <http://www.ruraledu.org/docs/dollars.pdf> (2002).

cost per square foot was only about 5% higher (\$109 versus \$104).²¹ Because many of these schools were much larger than generally recommended by educators, another analysis was performed including only the 145 schools in the data set that were more reasonably sized – no more than 1,000 students for high schools, 750 for middle schools, and 500 for elementary schools. These are also schools of the size more likely to be constructed in most rural areas. The results showed the smaller of these schools were *less* expensive to build than the larger schools, on the basis of both cost per square foot (\$105 versus \$120) and cost per student (\$16,283 versus \$17,618).²²

Substantially Equal Curriculum. An equal educational opportunity requires that children throughout the state have access to and participate in a substantially equal curriculum with the content necessary to meet constitutionally required educational standards. Both access and participation are necessary to fulfill the expectation that children actually learn.

Access to such a curriculum may be more expensive in rural areas. The small scale of many rural schools makes delivery of such a curriculum problematic, especially at the high school level where specialized courses may be required. Providing advanced placement courses, high level math and science courses, or other low-demand, high-cost courses, may be very expensive. Advances in technology have made more cost-effective uses of distance learning possible, where students and teachers in different locations can interact simultaneously on television. Creative strategies for sharing faculty across several schools have also been used to enrich curriculum in rural schools. School size and location should not be a barrier to offering a high quality curriculum throughout a rural state.

On the issue of participation in the curriculum, rural areas may have an advantage. Small schools invite, indeed, implicitly require broader participation by students. Research in Nebraska indicates that while larger schools offer more courses than smaller ones across five size groupings, smaller schools have higher rates of participation in courses, including both academic, vocational, and visual and performing arts areas of the curriculum. Only in the health and physical area do the larger schools enjoy higher participation rates.²³

21. *Id.*

22. *Id.*

23. Donald F. Uerling & Larry L. Dlugosh, Selected Indicators of a Quality High School: Program Offerings and Student Participation, Address Before the Eighth Annual National Conference on Creating the Quality School (1999).

CONCLUSION

School finance cases are usually resolved in the political process and to prevail, rural people must ultimately win in the state legislature. However, winning first in the courts is often essential. That is because rural people are a demographic and political minority in all but four states (Maine, Mississippi, Vermont, and West Virginia), and represent well under a third of the population in most states, including some with a distinctly "rural" image, like Nebraska. Declining population in many rural areas is further diminishing rural political influence in some of the most characteristically rural regions – Appalachia, the Mississippi Delta, and especially the Great Plains. With reapportionment thinning the rural representation in most states, the rural minority will be politically ever more marginalized.

Consequently, when courts explicitly address rural concerns and find for rural plaintiffs, they are serving the time-honored judicial role of protector of the more vulnerable citizens in a democracy.