

# Educational Standards and Adequacy Lawsuits

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- I. Brief history of school finance litigation**
- II. Educational adequacy in the courts**
- III. Legislated standards and adequacy lawsuits**

## **Three waves of school finance litigation**

- Ø Equal protection theories in the federal courts  
(1960s to 1973)
- Ø Equal protection theories in the state courts  
(1970s to 1980s)
- Ø Adequacy theories in the state courts  
(1989 to present)

## **First wave: equal protection / federal court**

- Ø Welfare rights adjudication in the Warren Court
- Ø *San Antonio Independent School District v. Rodriguez* (1973)
- Ø Equality of what? Does money matter? What about local control?
- Ø School finance reached the Supreme Court too early and too late
- Ø Federal constitutional right to educational adequacy still unresolved

## **Second wave: equal protection / state court**

- Ø Serrano v. Priest (Cal. 1976)
- Ø Mixed results in state courts after *Serrano*
- Ø Impact of school finance litigation: leveling up, not leveling down

## **Third wave: adequacy / state court**

- Ø *Rose* (Ky. 1989); *Abbott* (N.J. 1990); *Campaign for Fiscal Equity* (N.Y. 2003); *Montoy* (Kan. 2005)
- Ø Shifting from equity to adequacy
- Ø Plaintiffs in adequacy lawsuits have won in 20 out of 28 states since 1989

## **Educational adequacy in the courts**

- Ø “The courts’ prime responsibility in an education adequacy case is to articulate the constitutional parameters for an adequate education in a principled manner that will guide legislative and executive efforts to develop specific policies and structures that comply with constitutional requirements.”

Michael Rebell, Teachers College, *Education Week*, Feb. 13, 2008

## **Education clauses of state constitutions**

- Ø Kentucky: “efficient system of common schools”
- Ø New Jersey: “thorough and efficient” education
- Ø New York: “a system of free common schools”
- Ø Texas: “suitable provision for the support and maintenance of an efficient system of public free schools”
- Ø Illinois: “an efficient system of high quality public educational institutions and services”

## **Interpretation of education clause**

- Ø *Rose* (Ky. 2003): An adequate education is one that provides every child with (i) oral and written communication skills for a complex, rapidly changing civilization; (ii) knowledge of economic, social, and political systems to enable the student to make informed choices; (iii) understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation; (iv) self-knowledge and knowledge of his or her mental and physical wellness; ....

## **Interpretation of education clause**

- Ø *Rose* (Ky. 2003): .... (v) grounding in the arts to enable each student to appreciate his or her cultural and historical heritage; (vi) training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and (vii) academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market.

## **Interpretation of education clause**

- Ø *Campaign for Fiscal Equity* (N.Y. 2003): An adequate education is “a meaningful high school education.” It must prepare students “to function productively as civic participants”—as workers, voters, jurors, and citizens in a democratic society and modern economy.

## **Implementing adequacy**

- Ø Remedies and resistance: judicial colloquy with the political branches
- Ø Costing out studies
- Ø Blurry line between equity and adequacy
- Ø Monitoring progress

## **Legislated standards and adequacy lawsuits**

- Ø Conventional wisdom: legislated standards provide a ready resource for courts in defining what constitutes an adequate education
- Ø Absorption of legislated standards into state constitutional standard: Kansas
- Ø Refusal to adopt legislated standards in defining constitutional standard: New York

## **Why courts might hesitate to adopt legislated standards**

- Ø Legislated standards are more narrowly focused than judicial interpretations of educational adequacy.
- Ø Test scores that meet legislated standards can excuse resource disparities or inadequacies (equity vs. adequacy again).
- Ø Constitutionalizing legislated standards creates a perverse incentive for legislatures to lower standards.

James E. Ryan, Standards, Testing, and School Finance Litigation  
("Rethinking *Rodriguez*" Symposium, UC Berkeley, 2006)

## **How might national standards affect adequacy lawsuits?**

- Ø Legislated standards, whether state or national, will continue to inform—but not constitute—legal standards of educational adequacy.
- Ø Courts are more likely to absorb national standards designed to promote fairness in individual opportunity and to reflect the importance of education to political participation and our social fabric.
- Ø National standards that have the purpose or effect of focusing the educational system narrowly on raising math and reading test scores in the interest of national economic competitiveness hold little appeal for courts.

## **How might national standards affect adequacy lawsuits?**

- Ø In the long run, a lasting commitment to national educational standards and serious implementation of the standards by the states and federal government may provide traction for revisiting the question left open by *Rodriguez*: whether the U.S. Constitution guarantees a right to educational adequacy.