

URBAN RESEARCH AND RESOURCE JOURNAL

THE LEGAL HISTORY OF THE PUBLIC EDUCATION FUNDING IN TEXAS
A PUBLICATION OF THE TEXAS SOUTHERN UNIVERSITY
URBAN RESEARCH AND RESOURCE CENTER

MARCIA JOHNSON, DIRECTOR

About the Urban Research and Resource Center

The Urban Research and Resource Center (URRC) is a research institute that combines scholarly endeavors with community outreach. It was established in January 2017 through a collaboration between the Thurgood Marshall School of Law and the Barbara Jordan Mickey Leland School of Public Affairs at Texas Southern University, the state of Texas's only legislatively recognized academic institution for urban programming.

Vision

To be the most influential research and resource center for urban issues by conducting world-class research, scholarship, and publications and developing and pursuing creative effective strategies to enhance knowledge and the lives of the global urban community.

Mission

To develop and expand research programs that conforms to our institutional mission, strategic plan, and community needs.

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- ❖ To take advantage of the university's central location in the thriving city of Houston in the state of Texas, by developing strategic coalitions to realize its mission
- ❖ To build upon the university's strengths in order to maximize our presence on the world stage
- ❖ To demand a sustained level of excellence in the production of our research and all our work
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- ❖ To work with students to hone their analytical, research and writing skills
- ❖ To work closely with urban communities, blending our resources and talents for improving the neighborhood and the lives of the people who live, work and play there
- ❖ To work with every department on campus to help facilitate their urban research needs including planning, development and funding

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ABSTRACT

This research paper is one of a series of papers on education reform K-12. If there has been one constant in 20th century public education, it is change. In our search for effective strategies to educate our children so that they will be productive and globally competitive after graduation, we have tried everything from vouchers to charter schools, from transforming curriculum to modernizing teaching the basics, from employing numerous performance evaluation techniques to testing exemptions, from addressing special needs to providing for the gifted and talented independent learner. Our research is designed to take a comprehensive look at the state of public education, determine what if any, reform measures should be taken and to recommend policies to establish a productive academic environment that encourages scholastic excellence. This paper provides a historical overview of one of the most contentious areas in public education; public school funding. We look at the history so that we will know from where we have come in order to propel ourselves and our children forward into the future.

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THE LEGAL HISTORY OF PUBLIC EDUCATION FUNDING IN TEXAS

Vicente Guerrero served as the second president of the liberated Mexico. He served in that capacity during a time that Texas was a part of Mexico. Guerrero, a progressive leader, had a strong civil/human rights agenda that included, among other things, support for the establishment of public schools.¹ Antonio de Padua María Severino López de Santa Anna y Pérez de Lebrón (Santa Anna) first became president of Mexico in 1833.² By 1835, Antonio López de Santa Anna dissolved the Congress and began centralizing power.³ He established himself as a dictator backed by the military.⁴ In response to that dictatorship, the call for Texas independence grew. On March 2, 1836, a delegation at Washington-on-the-Brazos adopted the Texas Declaration of Independence, and thus was born the Republic of Texas.⁵ The signers expressed their sentiments against the failures of the Santa Anna leadership stating their growing and urgent concern that the Santa Anna government was not living up to its constitutional mandates.⁶ Among their grievances was the government's failure to provide for a free and public education system. The declaration reads:

¹ Vicente Guerrero, Mexico's first Black Indian President served as part of a three person junta that governed Mexico from 1823-24 before becoming the nation's second elected president in 1829. Guerrero called for public schools, but did not provide funding, land title reforms and on September 16, 1829, signed a decree titled Abolocion de la Esclavitud that formally abolished slavery. See Theodore G. Vincent, *The Legacy of Vincente Guerrero: Mexico's First Black Indian President* (Gainesville: University Press of Florida, 2001)

² See Antonio Lopez de Santa Anna available at http://www.pbs.org/weta/thewest/people/s_z/santaanna.htm and see Christopher Minster, *Biography of Antonio Lopez de Santa Anna*, available at <https://www.thoughtco.com/antonio-lopez-de-santa-anna-biography-2136663> reporting that Santa Anna served eleven non-consecutive terms as President of Mexico

³ At the time Santa Anna became president the country was governed pursuant to The Federal Constitution of the United Mexican States of 1824 (Spanish: Constitución Federal de los Estados Unidos Mexicanos de 1824) which was enacted on October 4 of 1824. In this constitution, the republic took the name of United Mexican States, and was defined as a representative federal republic, with Catholicism as the official and unique religion.

⁴ *Supra* n 1 reporting that Santa Ana led a military coup against his own government before repudiating Mexico's constitution and replacing the country's democratic form of government

⁵ See Texas Declaration of Independence, showing full text of the document is available at <http://www.lsjunction.com/docs/tdoi.htm>

⁶ See Texas Declaration of Independence stating that the government was not in compliance with its constitutional mandates. The declaration reads in part: "When a government has ceased to protect the lives, liberty and property of the people, from whom its legitimate powers are derived, and for the advancement of whose happiness it was instituted, and so far from being a guarantee for the enjoyment of those inestimable and inalienable rights, becomes an instrument in the hands of evil rulers for their oppression.

When the Federal Republican Constitution of their country, which they have sworn to support, no longer has a substantial existence, and the whole nature of their government has been forcibly changed, without their consent, from a restricted federative republic, composed of sovereign states, to a consolidated central military despotism, in which every interest is disregarded but that of the army and the priesthood, both the eternal enemies of civil liberty, the ever ready minions of power, and the usual instruments of tyrants."

It has failed to establish any public system of education, although possessed of almost boundless resources, (the public domain,) and although it is an axiom in political science, that unless a people are educated and enlightened, it is idle to expect the continuance of civil liberty, or the capacity for self-government.⁷

Following Texas's secession from the Mexican Government, it established itself as the Republic of Texas.⁸ Texas remained a sovereign republic until it was admitted as a state of the United States of America December 29, 1845.⁹

The Republic had been led by six men:

David G. Burnet (interim who later served as Lamar's vice president) Mar. 16, 1836 - Oct. 22, 1836

Sam Houston Oct. 22, 1836 - Dec. 10, 1838

Mirabeau B. Lamar Dec. 10, 1838 - Dec. 13, 1841

Sam Houston Dec. 13, 1841 - Dec. 9, 1844 and

Anson Jones Dec. 9, 1844 - Feb. 19, 1846.

⁷ Texas Declaration of Independence and further stating "These, and other grievances, were patiently borne by the people of Texas, until they reached that point at which forbearance ceases to be a virtue. We then took up arms in defense of the national constitution. We appealed to our Mexican brethren for assistance. Our appeal has been made in vain. Though months have elapsed, no sympathetic response has yet been heard from the Interior. We are, therefore, forced to the melancholy conclusion, that the Mexican people have acquiesced in the destruction of their liberty, and the substitution therefore of a military government; that they are unfit to be free, and incapable of self-government.

The necessity of self-preservation, therefore, now decrees our eternal political separation.

We, therefore, the delegates with plenary powers of the people of Texas, in solemn convention assembled, appealing to a candid world for the necessities of our condition, do hereby resolve and declare, that our political connection with the Mexican nation has forever ended, and that the people of Texas do now constitute a free, Sovereign, and independent republic, and are fully invested with all the rights and attributes which properly belong to independent nations; and, conscious of the rectitude of our intentions, we fearlessly and confidently commit the issue to the decision of the Supreme arbiter of the destinies of nations."

⁸ The Constitution of the Republic of Texas, 1836 available at <https://tarltonapps.law.utexas.edu/constitutions/download/texas1836/texas1836.pdf>

⁹ See Public Acts of the Twenty-ninth Congress of the United States, Chapter 1. An act to extend the laws of the United States over the State of Texas, and for other purposes, December 29, 1845 available at <http://www.loc.gov/law/help/statutes-at-large/29th-congress/session-1/c29s1ch1.pdf> and see joint resolution for annexing Texas to the United States approved March 1, 1845 available at <https://www.tsl.texas.gov/ref/abouttx/annexation/march1845.html> citing as source Peters, Richard, ed., The Public Statutes at Large of the United States of America, v.5, pp. 797-798, Boston, Chas. C. Little and Jas. Brown, 1850. See resolution post-secession for Texas's admission to Representation in the Congress of the United States, Ch. XXXIX, Forty-first Congress, Session II, March 30 1870 and available at <http://www.loc.gov/law/help/statutes-at-large/41st-congress/session-2/c41s2ch39.pdf>

1839-1900

During Sam Houston's first term, there was some increase in private education but the first definite action toward a system of public education was taken during the administration of Mirabeau B. Lamar, who requested Congress establish and endow a public education system.¹⁰ In response, "Congress passed bills in 1839 and 1840 that, among other things, adopted a plan for a school system ranging from the primary to the university level, delegated control over this system to the counties, and granted 17,712 acres to each county for the support of schools.¹¹ These land grants were established to fund County Permanent School Funds, the forerunner to the Permanent School Fund.¹² The county schools in all but fifteen Texas counties, which were organized after the public domain was exhausted, received land grants totaling 4,229,166 acres.¹³

The plan failed to produce the desired results immediately because land prices were too low at the time to generate adequate revenue to support a school system.¹⁴ There was also some popular indifference on the county level to the establishment of schools, as evinced by the fact that by 1855 thirty-eight counties had made no effort even to survey their school land. In spite of these setbacks, however, Lamar's vision later earned him the nickname "Father of Education in Texas."¹⁵

However, by charter in 1837, San Antonio, Gonzales, and Victoria were allowed to promote the establishment of common school free to poor children.¹⁶ Schools begun under such legislation could not be described as what is currently viewed as a comprehensive free public education system but such system did have its beginnings in Texas there.¹⁷

In 1854 the Texas legislature, in making grants to encourage railroad construction, provided that the railroads in surveying their lands should also survey alternate sections to

¹⁰ See Presidential Message, December 21, 1838, Mirabeau B. Lamar Papers #948, Archives and Information Services Division, Texas State Library and Archives Commission, also available at https://www.tsl.texas.gov/exhibits/presidents/lamar/m_lamar_dec21_1838.html for copy of

¹¹ Act approved Jan. 20, 1840, 4th Cong., R.S., §§ 1-2, 1840 Republic of Texas Laws 3, 4, reprinted in 2 H.P.N. GAMMEL, LAWS OF TEXAS 177, 178 (1898)

¹² Daniel Webb, A Brief History of Texas School Finance: Litigation, Legislation and Other Engrossing Events from the Civil War to the Present, Vol I, 2nd edition, pg 6 ISBN-13 978-0976408000 (2005)

¹³ *Handbook of Texas Online*, Aldon S. Lang and Berte R. Haigh, "Land Appropriations For Education," accessed March 06, 2017, <http://www.tshaonline.org/handbook/online/articles/mnl01>.

¹⁴ *Supra* n.2

¹⁵ <https://tshaonline.org/handbook/online/articles/khe01>; while Lamar's vision did not include education for all of the children in the republic as he was a slaveowner and argued strongly against Indian rights, he is credited with bringing Guerrero's concept to the republic. See John Nova Lomax, The problem with Mirabeau Lamar, *The Texas Monthly*, September 17, 2015 stating "Whether you judge it through hindsight or by the standards of his own times, Lamar's Texas presidency was a miserable failure, much of it thanks to Lamar's extreme racism and ethnocentrism."

¹⁶ See Allan E. Parker, Jr. Public Free Schools: A Constitutional Right To Educational Choice In Texas, 45 Sw. L.J. 825; 836 (Fall, 1991) citing C. Evans, *The Story Of Texas Schools* 52; 102 (1955)

¹⁷ *Id.* stating that "public schools" in 1845 actually meant state-supported private education that was open to the public, and "free schools" meant tuition grants for the orphan and indigent to attend private schools...."Any attempt at this time to establish public fee schools under laws and regulations ...would have been condemned..."

be allotted to the public schools. The final grant to the schools from the public domain was made in the Constitution of 1876, which granted to the public schools one-half of the unappropriated public domain, including the alternate sections of the grants to railroads. A total of more than 42,500,000 acres was appropriated in this manner.¹⁸

Also, in 1854, the Texas Legislature passed the Common School Law establishing the Texas School Fund and appropriated \$2,000,000 as a permanent endowment for the benefit of Texas public schools.¹⁹ The purpose of the Texas School Fund was to help finance public education.²⁰ However, during the 1860s the money was used to fund the Civil War.²¹

In 1865, the United States government supervised the education of African Americans in Texas. At the end of 1865, sixteen schools were serving just over 1,000 black pupils. By July of 1870, the last month of the bureau's activities, 150 schools enrolled 9,086 black students.²²

The Texas Constitution of 1869²³ required the state legislature to provide for a free public school system. It states, in pertinent part:

ARTICLE IX.
PUBLIC SCHOOLS.

SECTION I. It shall be the duty of the Legislature of this State, to make suitable provisions for the support and maintenance of a system of Public Free Schools, for the gratuitous instruction of *all the inhabitants of this State*, between the ages of six and eighteen years.²⁴

...SECTION III....The Legislature may lay off the State into convenient school Districts, and provide for the formation of a Board of School Directors in each

¹⁸ *Handbook of Texas Online*, Aldon S. Lang and Berte R. Haigh, "Land Appropriations For Education," accessed March 06, 2017, <http://www.tshaonline.org/handbook/online/articles/mnl01>.

¹⁹ Act approved Jan. 31, 1854, 5th Leg., R.S., ch. 18, 1854 Tex.Gen.Laws 17, 3 H. Gammel, *Laws Of Texas* 1461 (1898).

²⁰ *Handbook of Texas Online*, Michael E. McClellan, "Permanent School Fund," accessed March 07, 2017, <http://www.tshaonline.org/handbook/online/articles/khp01>. Later, this Texas school fund which was created by legislative act would become the state's permanent school fund; see Permanent School Fund of Texas: Progress Report: Legislative Proposals, Fund Management & Investments, note 4

²¹ Texas School Finance: Basics and Reform, Texas Public Policy Foundation, 2016 at 11 available at <https://www.texaspolicy.com/library/doclib/TexasSchoolFinanceBasicsAndReform.pdf>, last visited 4.19.17

²² *Handbook of Texas Online*, Cecil Harper, Jr., "Freedmen's Bureau," accessed March 16, 2017, <http://www.tshaonline.org/handbook/online/articles/ncf01>.

²³ TASB and Education in the States: Historical Development and Outlook, *Journal of Texas Public Education*, Vol. 1, Winter 1993, at 43. The Texas Constitution of 1869 was considered a post-civil war reconstruction document. Referred to as the Carpetbag Constitution, it was abolished in 1876 after having provided the most sweeping legislation to date for centralized public school systems.

²⁴ Emphasis added since this is the first legislation that did not exclude African Americans from the state educational system; see Republic of Texas Constitution 1836, General Provisions, Sections 6, 9 and 10 excluding Africans, descendants of Africans from citizenship and the rights thereto appertaining

District. It may give the District Boards such legislative powers, in regard to the schools, schoolhouses, and school fund of the District, as may be deemed necessary and proper. ...

SECTION IV. The Legislature shall establish a uniform system of Public Free Schools throughout the State.

...

SECTION VI. As a basis for the establishment and endowment of said Public Free Schools, all the funds, lands, and other property heretofore set apart and appropriated, or that may hereafter be set apart and appropriated, for the support and maintenance of Public Schools, shall constitute the Public School Fund. And all sums of money that may come to this State hereafter from the sale of any portion of the public domain of the State of Texas, shall also constitute a part of the Public School Fund. And the Legislature shall set apart, for the benefit of Public Schools, one fourth of the annual revenue derivable from general taxation; and shall also cause to be levied and collected, an annual poll tax of one dollar, on all male persons in this State, between the ages of twenty-one and sixty years, for the benefit of Public Schools. And said fund and the income derived therefrom, and the taxes herein provided for school purposes, shall be a perpetual fund, to be applied, as needed, exclusively for the education of all the scholastic inhabitants of this State; and no law shall ever be made appropriating such fund for any other use or purpose whatever.

SECTION VII. The Legislature shall, if necessary, in addition to the income derived from the Public School Fund, and from the taxes for school purposes provided for in the foregoing section, provide for the raising of such amount by taxation, in the several School Districts in the State, as will be necessary to provide the necessary school houses in each district, and insure the education of all the scholastic inhabitants of the several Districts.

SECTION VIII. The public lands heretofore given to counties shall be under the control of the Legislature, and may be sold under such regulations as the Legislature may prescribe; and in such case the proceeds of the same shall be added to the Public School Fund.

SECTION IX. The Legislature shall, at its first session, (and from time to time thereafter, as may be found necessary,) provide all needful rules and regulations for the purpose of carrying into effect the provisions of this Article. It is made the imperative duty of the Legislature to see to it, that all the children in the State, with the scholastic age, are, without delay, provided with ample means of education. The Legislature shall annually appropriate for school purposes, and to be equally distributed among all the scholastic population of the State, the interest accruing on the School Fund, and the income derived from taxation for school purposes; and shall, from time to time, as may be necessary, invest the principal of the School Fund in the bonds of the United States Government, and in no other security.”

This new constitution was adopted by the Post-Civil War Reconstructionists and it required one-fourth of general revenue by allocated for public education. It also provided for an unpopular state property tax. Both provisions would be eliminated by the Texas Constitution of 1876, which was adopted after the Reconstructionists had been booted out and the old Southern Conservatives had regained power.²⁵

The 1876 Texas Constitution²⁶ stipulated that certain lands and all proceeds from the sale of those lands would become a part of the PSF.²⁷ The constitution provides in pertinent part:

Art. III, Texas Constitution 1876

SEC. 48. The Legislature shall not have the right to levy taxes or impose burdens upon the people, except to raise revenue sufficient for the economical administration of the government, in which may be included the following purposes:

The support of public schools, in which shall be included colleges and universities established by the State; and the maintenance and support of the Agricultural and Mechanical College of Texas.

ARTICLE VII.

Education--The Public Free Schools.

SECTION 1. A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.

SEC. 2. All funds, lands and other property heretofore set apart and appropriated for the support of public schools; all the alternate sections of land reserved by the State out of grants heretofore made or that may hereafter be made to railroads, or

²⁵ Daniel Webb, A Brief History of Texas School Finance, supra n. 12 at 8 stating that the constitution “abolished the office of state superintendent, founded a board of education composed of the governor, comptroller, and secretary of state, eliminated compulsory attendance, provided for segregated schools, and made no provision for local school taxes.” It further reports that “The constitution further required the legislature to establish an institution of higher education for the instruction of the black youth of the state. To support the university and its branches, the constitution set aside one million acres of the public domain, with all sales and proceeds therefrom to be placed in a Permanent University Fund. It also provided that proceeds from the lands previously granted for the establishment and maintenance of the university (including the fifty-league grant by the legislature in 1858 but not the one-tenth of the alternate sections of land granted to railroads) and all future grants would permanently belong to the university.”

²⁶ Texas Constitution, signed November 24, 1875, available at <https://tarltonapps.law.utexas.edu/constitutions/texas1876>

²⁷ Texas Permanent School Fund, Texas Education Agency, available at http://tea.texas.gov/index4.aspx?id=2147485578&menu_id=2147483695

other corporations, or any nature whatsoever; one-half of the public domain of the State, and all sums of money that may come to the State from the sale of any portion of the same, shall constitute a perpetual public school fund.

SEC. 3. There shall be set apart annually not more than one-fourth of general revenue of the State, and a poll tax of one dollar on all male inhabitants in this State between the ages of twenty-one and sixty years, for the benefit of the public free schools.

SEC. 4. The lands herein set apart to the public free school fund shall be sold under such regulations, at such times and on such terms as may be prescribed by law; and the Legislature shall not have power to grant any relief to the purchasers thereof. The comptroller shall invest the proceeds of such sales, and of those heretofore made, as may be directed by the Board of Education herein provided for, in the bonds of this State, if the same can be obtained, otherwise in United States bonds; and the United States bonds now belonging to said fund shall likewise be invested in State bonds, if the same can be obtained on terms advantageous to the school fund.

SEC. 5. The principal of all bonds and other funds, and the principal arising from the sale of land herein before set apart to said school fund, shall be the permanent school fund, and all the interest derivable therefrom and the taxes herein authorized and levied shall be the available school fund, which shall be applied annually to the support of the public free schools. And no law shall ever be enacted appropriating any part of the permanent or available school fund to any other purpose whatever; nor shall the same or any part thereof ever be appropriated to or used for the support of any sectarian school; and the available school fund herein provided shall be distributed to the several counties according to their scholastic population and applied in manner as may be provided by law.

SEC. 6. All lands heretofore or hereafter granted to the several counties of this State for education, or schools, are of right the property of said counties respectively to which they were granted and title thereto is vested in said counties, and no adverse possession or limitation shall ever be available against the title of any county. Each county may sell or dispose of its lands in whole or in part, in manner to be provided by the Commissioners' Court of the county. Actual settlers residing on said lands shall be protected in the prior right of purchasing the same to the extent of their settlement, not to exceed one hundred and sixty acres, at the price fixed by said court, which price shall not include the value of existing improvements made thereon by such settlers. Said lands and the proceeds thereof, when sold, shall be held by said counties alone as a trust for the benefit of public schools therein; said proceeds to be vested in bonds of the State of Texas, or of the United States, and only the interest thereon to be used and expended annually.

SEC. 7. Separate schools shall be provided for the white and colored children, and impartial provision shall be made for both.

SEC. 8. The governor, comptroller and secretary of state shall constitute a Board of Education, who shall distribute said funds to the several counties and perform such other duties concerning public schools as may be prescribed by law.

In 1883, a constitutional amendment did away with the general appropriations to education, instead dedicating one-fourth of occupation taxes to education, lowering the ad valorem tax to \$0.20 per \$100 of value and allowing local districts up to \$0.20 of local enrichment with a two-thirds vote of property owners.²⁸

1900-1970

In 1900 it was found that the state had disposed of slightly more than one-half the lands that were unappropriated in 1876, thus causing the Permanent School Fund to fall 17,180 acres short of its share. In settlement of the account the legislature transferred \$17,180 from the general fund to the Permanent School Fund, thus balancing the account and recognizing the exhaustion of the unappropriated public domain. The sale of school land was continued, however, the proceeds going into the permanent school fund. In 1942 only about a million acres of the public school lands remained unsold. At that time the Permanent School Fund had in bonds and cash \$72,837,412 plus unpaid principal indebtedness on notes securing the purchase of school lands; the latter amounted to \$16,864,090 on August 31, 1944. Although the Permanent School Fund has been accumulated chiefly through the sale of land, it has been augmented by mineral royalties. Mineral rights were reserved on the sale of 7,485,000 acres of school lands, and since 1929 the mineral estate of riverbeds, channels, lakes, and areas within the tidewater limits, whose surface areas had been previously reserved by the state itself, has been appropriated to become a part of the public school fund.²⁹

In 1915, the state legislature appropriated \$1,000,000 to rural school districts to minimize the disparity in funding between the rural and urban school districts.³⁰ This effort to make common or rural schools equal with those in the independent or urban districts took another step forward with passage of a law in 1917 authorizing state purchase of textbooks.³¹

In 1929, previously established rural equalization aid was adjusted for a district's wealth and tax effort. Adjustments to funding for a district's wealth would become an increasingly important and common aspect of state funding formulas in later years, but this was one of the first recorded "equity adjustments." Rural school aid laws were

²⁸ Daniel Webb, A Brief History of Texas School Finance, supra at n 12; 8

²⁹ *Handbook of Texas Online*, Aldon S. Lang and Berte R. Haigh, "Land Appropriations for Education," accessed March 06, 2017, <http://www.tshaonline.org/handbook/online/articles/mnl01>.

³⁰ Act of May 26, 1915, 34th Leg., 1st C.S., ch. 10, 1915 Tex.Gen.Laws 22 and see *Carrollton-Farmers Branch Indep. Sch. Dist. v. Edgewood Indep. Sch. Dist. (Edgewood III)*, 826 S.W.2d 489, 495 (Tex. 1992)

³¹ Passed during the 35th legislature 1st called session, April 14, 1917

rewritten in 1937; the financing was altered again and was renamed the “Equalization Fund.”³²

The Texas legislature formed the Gilmer-Aikin committee in 1947 to review public school funding. The Committee reported an unenviable Texas public schools system. The committee found that the Texas public education system failed to adequately address various conflicting demands for equality, the preservation of local control of schools, the establishment of minimum salary schedules for teachers, adherence to the concept of a state-supported educational minimum, and a fairer distribution of tax burdens.³³ In response to their findings, the Committee concluded that every school-age child should receive an equal minimal educational opportunity, to be financed by an equalized tax effort among school districts. It proposed the Minimum Foundation Program, a set of formulas for allocating state funds for personnel and operations. In most instances, the state would pay the bulk of the costs of the program, later established at eighty per cent, while the local districts would contribute the remainder. By the use of an "economic index," additional funds were to be allocated to poorer school districts, in effect forgiving all or part of their required twenty per cent share, to enable them to provide an education at the state established minimum. Local districts were free to enrich their educational programs beyond the state minimum in accordance with their fiscal capacity and willingness to tax.³⁴ The legislature passed the Gilmer-Aikin Act of 1949, which relied on the Committee’s report with the goal of meeting their constitutional mandate to create an efficient public educational system.³⁵

³² Daniel Webb, A Brief History of Texas School Finance supra n. 12 at 9 also stating that “Local tax effort was still required to obtain these funds, but the development of a teacher–unit allocation formula necessitated the creation of a statutory minimum salary schedule. The 1938 Texas School Adequacy Study recommended a number of changes in education, including massive consolidations of school districts. The legislature ignored most of the recommendations, following a time–honored tradition that still exists today of legislative indifference to the results of studies they themselves commission.”

³³ Shirley Hall, Leadership for Changing Times, Texas Association of School Boards, 1989 at 15-16 available at <https://www.tasb.org/Services/Leadership-Team-Services/documents/Leadership-for-Changing-Times.pdf>

³⁴ Mark G. Yudof and Daniel C. Morgan, Rodriguez v. San Antonio Independent School District: Gathering the Ayes of Texas--The Politics of School Finance Reform, 38 Law & Contemp. Probs. 383, 386 (1974), Available at: <http://scholarship.law.berkeley.edu/facpubs/2234>

³⁵ H. Con. Res. 48, 50th Tex. Legis. (1947). The act followed the report of the Gilmer-Aikin committee report and was generally hailed as landmark legislation. Daniel Webb, A Brief History of Texas School Finance, supra n. 12 reports that “The effects of the new law were immediately evident, as 4,500 school districts were consolidated into 2,900 districts. State equalization funding supplemented local taxes. In addition, higher salaries attracted teachers to the classroom and encouraged the study of education among prospective teachers. The position of education specialist made its debut on school district staff rosters. State funding was based heavily on attendance, putting some financial incentive into the mandatory attendance requirement. The act changed the nine–member appointed State Board of Education and the elected state superintendent of public instruction into an elected twenty–one–member board with the power to appoint a commissioner of education, subject to confirmation by the Texas senate. The board and commissioner, supported by a staff, composed the State Department of Education, now the Texas Education Agency. The statute also guaranteed Texas children minimum public–schooling opportunities for 12 school years of 9 months with a minimum of 175 actual teaching days per year. Subsequent debates over the direction of educational reform in Texas have all been conducted within the framework provided by the Gilmer–Aiken Laws.”

After the Gilmer-Aikin Act³⁶ and its minimum foundation program had been in effect for almost twenty years, its successes and failures were evaluated. In 1965, Governor John Connally established a blue ribbon Governor's Committee on Public School Education to "conduct a pervasive inquiry" of elementary and secondary schooling in Texas and to recommend "a definite long range plan" for Texas Public Education.³⁷

In 1975, the state legislature passed House Bill 1126 which provided the first state compensatory funds and provided for state equalization aid to poor school districts.³⁸ However, the equalization measures still left the poorest districts far behind the wealthier districts in providing education funding.³⁹

Over the next decade, school finance reforms evolved in various ways that impacted local taxation, reviewed the quality of public education, considered the desegregation mandates and provided state aid to rural education districts.⁴⁰ The Gilmer-Aikin Act was amended numerous times. But in spite of all that activity, many challenges to the method of public education funding occurred, with much of the activity occurring in the courtrooms.

³⁶ The act is named for State Den. A.M. Aiken, Jr. and State Rep. Claud Gilmer. Among other major reforms, the Act created the Texas Education Agency.

³⁷ Yudof and Morgan, *supra* n. 26 at 387 reporting that the findings of the Governor's Committee on Public School Education were published in seven volumes. In August, 1968, a digest of recommendations and an official report were published. Governor's Committee on Public School Education, *The Challenge And The Chance: Digest Of Recommendations* (1968); Governor's Committee Report. In 1969, five additional volumes were published, more carefully detailing and documenting their research and findings. 1-5 Governor's Committee On Public School Education, *The Challenge And The Chance: Research Report* (1969).

³⁸ The bill also allowed school district contributions to the Foundation School Program to be determined by market value of taxable property and enhanced bilingual education opportunities

³⁹ HB 1126 passed in 1975 provided a state compensatory education allotment titled "Support for Educationally Disadvantaged Pupils referred to in Daniel Webb, *A Brief History of Texas School Finance* *supra*, n 12 at 13 reports that House Bill 1126 changed the calculation of the local share for school districts from an indirect economic set of indicators to a direct link to local taxable values. This change eventually led to a series of tax reforms a couple of sessions later that centralized the appraisal of property on a county-by-county basis in Senate Bill 621 known as the Peveto Bill and enacted in 1979. Among other things, it also led to the end of fractional or partial assessment of values and to the right of local voters to exercise control, via a referendum, over large tax increases.

⁴⁰ It is worth noting that during this period, various state and national actions were taken to provide quality education. In 1964, the United States government established the Head Start program designed to bridge the academic gap between disadvantaged children and their peers. In Texas, the Laredo United Consolidated School District established the state's first bilingual education program. In 1965, the United States Congress passed the Elementary and Secondary Education Act (ESEA) which provided funding to public schools. In 1973, Senate Bill 121 required bilingual education in certain schools, effectively abolishing the English-only teaching rules begun in 1918.

The Courts Weigh In: 1970-2016⁴¹

When the state's public school funding system is believed inadequate and ineffective, those who suffer under the system will seek redress. That started happening throughout the country in the late 1960s and early 1970s. While law suits had been filed before that time in Texas,⁴² a series of cases beginning with *San Antonio ISD v Rodriguez* are commonly considered the most impactful on the state's public school funding history. For the most part, the judicial rulings in these cases would send the losing parties scrambling to regroup and prepare for the next challenge.

San Antonio ISD v Rodriguez⁴³

In the spring of 1968, students in San Antonio, fed up with a lack of supplies and materials in addition to poor facilities, walked out of their classrooms in protest. A few months later, Demetrio P. Rodriguez along with other parents of children attending public school in the Edgewood Independent School District in San Antonio, Texas filed a law suit in federal district court attacking the Texas system of financing public education.⁴⁴ Plaintiffs' brought suit against the state on behalf of schoolchildren throughout the State who were members of minority groups or who were poor and resided in school districts having a low property tax base.⁴⁵ Their claim was principally that the state's finance structure was inequitable and disparately impacted minority and poor children in violation of the Equal Protection clause of the United States Constitution.⁴⁶ Texas provided about 80% of the money needed to operate public schools while the districts had to raise the additional 20% themselves. The case was originally heard by a three-judge federal district court that was impaneled in January 1969. In December 1971 the panel rendered its judgment in a per curiam opinion holding the Texas school finance system unconstitutional under the Equal Protection

⁴¹ It is significant to note the major impact of the courts on public education services and funding in Texas. For example, despite the fact that only 112 years earlier, Texas had been a part of Mexico, it was the court in *Delgado v. Bastrop ISD* that outlawed segregation of Mexican American children in public schools. Six years later, the United States Supreme Court rejected racial segregation of public schools, in *Brown vs Board of Education* and 16 years following the *Brown* decision, the United States Supreme Court ruled in *Cisneros v. Corpus Christi Independent School District* that the *Brown* anti-segregation decision extended to Mexican Americans and in 1971 the court ruled that busing was an acceptable way to achieve racial desegregation

⁴² See e.g. *Mumme v. Marrs*, 120 Tex. 383 (1931) challenged the state's distribution of funds for rural school districts and see *Love v City of Dallas*, 120 Tex. 351 (1931) where students without high school facilities in their areas sought to compel admission into the nearby Dallas high schools. The Texas Supreme Court ruled that a school district could not be forced to distribute its funds to students outside its district

⁴³ 93 S.Ct. 1278 (1973)

⁴⁴ *Rodriguez v. San Antonio Independent School District*, 337 F. Supp. 280 (USDC-W.D. Texas-San Antonio Div) 1971

⁴⁵ Defendants were the State Board of Education, the Commissioner of Education, the State Attorney General, and the Bexar County (San Antonio) Board of Trustees. The complaint was filed in the summer of 1968 and a three-judge court was impaneled in January 1969.

⁴⁶ *Rodriguez v San Antonio ISD*, 337 F. Supp. 280 (USDC-WD Texas-San Antonio Division, 1972). The plaintiffs claimed their school district had one of the highest tax rates in the county but raised only \$37 per pupil, while Alamo Heights, Bexar County's wealthiest district, raised \$413 per student. Studies revealed that in Bexar County the tax rate per \$100 property value needed to equalize education funding was \$0.68 for Alamo Heights but \$5.76 for Edgewood.

Clause of the Fourteenth Amendment.⁴⁷ The State appealed and the United States Supreme Court reversed the decision of the District Court ruling that education was not a fundamental right protected by the United States Constitution.⁴⁸

While the United States Supreme Court rejected the plaintiffs' arguments, it recognized flaws in the state's funding system. It stated:

The need is apparent for reform in tax systems which may well have relied too long and too heavily on the local property tax. And certainly innovative thinking as to public education, its methods, and its funding is necessary to assure both a higher level of quality and greater uniformity of opportunity. These matters merit the continued attention of the scholars who already have contributed much by their challenges. But the ultimate solutions must come from the lawmakers and from the democratic pressures of those who elect them.⁴⁹

But the court's ruling that the state would not be required to subsidize poorer school districts produced a scathing dissent from Supreme Court Justice Thurgood Marshall. Justice Marshall stated that the majority's decision constituted "a retreat from our historic commitment to equality of educational opportunity" and was "an emasculation of the Equal Protection Clause".⁵⁰ Justice Marshall expressed skepticism that the political process would yield an acceptable equalization funding scheme. For more than forty years after his impassioned dissent, the State legislature would wrestle with the challenge of developing a funding program that would meet the state's constitutional mandate.⁵¹

Edgewood ISD v Kirby⁵²

In 1983, the state legislature passed house Bill 72 in response to growing concerns about the literacy of the state's school children.⁵³ House Bill 72 modified the state funding system to take in consideration its recognition that some students were more costly to educate than others and providing a weighting system to use in calculating the funding

⁴⁷ Similarly in *Serrano v Priest*, 5 Cal.3d 584 (1971) the California Supreme court ruled that the right to an education in our public schools is a fundamental interest which cannot be conditioned on wealth,

⁴⁸ *Supra* n 43

⁴⁹ 347 U.S. 483, 493, 74 S.Ct. 686, 98 L.Ed. 873 (1954)

⁵⁰ *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973) Justice Marshall dissenting; stating In my judgment, the right of every American to an equal start in life, so far as the provision of a state service as important as education is concerned, is far too vital to permit state discrimination on grounds as tenuous as those presented by this record. Nor can I accept the notion that it is sufficient to remit these appellees to the vagaries of the political process which, contrary to the majority's suggestion, has proved singularly unsuited to the task of providing a remedy for this discrimination. I, for one, am unsatisfied with the hope of an ultimate "political" solution sometime in the indefinite future while, in the meantime, countless children unjustifiably receive inferior educations that "may affect their hearts and minds in a way unlikely ever to be undone."

⁵¹ Despite the Texas Supreme Court's 2016 opinion in *Morath* finding that the state funding scheme was constitutional, the majority attacked the plan calling for an educational funding program that met the needs of the 21st century, See *Morath*, *infra* n.

⁵² 777 S.W.2d 391 (Tex, 1989)

⁵³ 68th Legislature, Texas, passed in 1984 raised teachers' salaries based on teacher performance

formula. The resulting plan was a guaranteed tax yield that would guarantee an amount based on weighting, and if the district's tax base was insufficient to yield the needed amount, the state would pay the difference. HB 72 became law in 1984, the year that launched a series of lawsuits, called the Edgewood cases that would challenge the state's compliance with its state constitutional mandate for the next decades.

In May, 1984, a challenge similar to the one made in Rodriguez, was brought in state court alleging state constitution violations rather than violations of the federal constitution.⁵⁴ The plaintiffs charged that the state's methods of funding public schools violated the state constitution by failing to provide an efficient and free public education system. They contended that the state's funding system relied on local property taxes to provide adequate funding for an efficient education to its students. This funding method, they argued was unequal as property taxes varied widely between school districts. The unequal funding meant that the quality of education that Texas students received were largely based on their geographical residency. In response to the new funding law, the plaintiffs amended their petition in 1985, arguing that the law did not go far enough and that it illegally supported an unequal education system.⁵⁵

The district court ruled in favor of the plaintiffs but the appellate court reversed the trial court finding that education was not a basic right. The Texas Supreme Court unanimously reversed the decision of the appeals court and reinstated, with some modification, the trial court decision. The court found that the Constitution did not vest exclusive discretion in the legislature in this instance and that, rather the language of article VII, section 1 imposes on the legislature an affirmative duty to establish and provide for the public free schools. The court further stated that the duty could not be committed unconditionally in the legislature's discretion, but instead had to be accompanied by standards. Those standards, the court held, were by express constitutional mandate requiring the legislature to make "suitable" provision for an "efficient" system for the "essential" purpose of a "general diffusion of knowledge." Recognizing that these terms are admittedly imprecise, the court held that they do provide a standard by which this court must, when called upon to do so, measure the constitutionality of the legislature's actions.

The unanimous court declared the Texas school financing system as set forth in the Texas Education Code, sections 16.001, *et seq.*, and as implemented in conjunction with local school districts containing unequal taxable property wealth, unconstitutional under article VII, section 1 of the Texas Constitution.⁵⁶

⁵⁴ Edgewood Independent School District, sixty-seven other school districts, and numerous individual school children and parents filed suit seeking a declaration that the Texas school financing system violated the Texas Constitution. The trial court rendered judgment to that effect and declared that the system violates the Texas Constitution, article I, section 3, article I, section 19, and article VII, section 1. By a 2-1 vote, the court of appeals reversed that judgment and declared the system constitutional. 761 S.W.2d 859 (1988). The Texas Supreme Court unanimously reversed the judgment of the court of appeals and, with modification, affirmed the ruling of the trial court.

⁵⁵ *Id.*

⁵⁶ *Supra* note 39 at 398 where the court stated, "The legislature is duty-bound to provide for an efficient system of education, and only if the legislature fulfills that duty can we launch this great state into a strong economic future with educational opportunity for all."

The court suggested that the state's public finance system was instrumental to ensuring the overall failure to provide a general diffusion of knowledge equally among poor and wealthy students. It stated that "property-poor districts are trapped in a cycle of poverty from which there is no opportunity to free themselves. Because of their inadequate tax base, they must tax at significantly higher rates in order to meet minimum requirements for accreditation; yet their educational programs are typically inferior. The location of new industry and development is strongly influenced by tax rates and the quality of local schools. Thus, the property-poor districts with their high tax rates and inferior schools are unable to attract new industry or development and so have little opportunity to improve their tax base."⁵⁷

The court's admonishment to the state legislature was clear but it recognized the task with which it (and the constitution) charged the legislature was not an easy one. It stated "because of the enormity of the task now facing the legislature and because we want to avoid any sudden disruption in the educational processes, we modify the trial court's judgment so as to stay the effect of its injunction until May 1, 1990. *However, let there be no misunderstanding. A remedy is long overdue. The legislature must take immediate action.* Emphasis added.

Edgewood ISD v Kirby, ["Edgewood II "]⁵⁸

This action continued the case that was commenced in May 1984 when numerous school districts and individuals sought a judicial declaration that the state public school finance system was unconstitutional. After trial on the merits in 1987, the district court found that the system violated the Texas Constitution in several respects and enjoined the State from funding it after September 1, 1989, unless the Legislature repaired the constitutional defects by that date. The court of appeals reversed the district court's judgment in December 1988.⁵⁹ On October 2, 1989, the Texas Supreme Court reversed the judgment of the court of appeals and reinstated the injunction issued by the district court, but postponed its effect until May 1, 1990.⁶⁰ The district court extended the May 1 deadline to allow the Legislature to complete its work on a new funding bill. Following the court's decision in Edgewood I, the Texas governor called the legislature to a special session to establish a defensible education funding system. It took four special sessions before a law was passed to address the inadequacies of the public school funding system.⁶¹ The governor signed Senate Bill 1, into law June 7, 1990.⁶²

The law provided an increase in state support of public education by \$528,000,000.

Within three months after Senate Bill 1 passed the legislature, plaintiffs returned to the district court seeking both a declaration that the system remained unconstitutional and an order enforcing the injunction affirmed by the Texas Supreme Court in Edgewood I. After

⁵⁷ Id. at 393

⁵⁸ 804 S.W.2d 491 (Tex.1991)

⁵⁹ 761 S.W.2d 859.

⁶⁰ Supra note 39 at 399.

⁶¹ Tex.S.B. 1, S.J. of Tex., 71st Leg., 5th C.S. 145 (1990).

⁶² Id.

a lengthy hearing, the district court found that despite the changes in Senate Bill 1, the school finance system remained unconstitutional.⁶³ The State appealed.

Ultimately, the Texas Supreme Court ruled the new funding formula was unconstitutional and stated that the plan failed to address the deficiencies that the court had identified in Edgewood I.⁶⁴ Moreover, the court found that the legislation had not fundamentally changed the state's unconstitutional property tax system. In subsequent court action, the court provided some guidance on what the state could do as long as it met constitutional standards. For example, local property taxes could be used to educate students outside the district.⁶⁵ Also, the court suggested that local public school districts might provide unequal local enrichment where the property rich districts could supplement educational resources through collection of additional property taxes.⁶⁶

Specifically, the Texas Supreme Court held: (1) the trial court exceeded its authority by vacating the Supreme Court's injunction and postponing consideration of further injunctive relief; (2) although [SB 1] provided guaranteed revenue per student per each cent of local tax effort over specified minimum, statute remained unconstitutional for failure to remedy major causes of wide opportunity gaps between rich and poor school districts; (3) State Constitution did not provide barrier to general concept of school district tax base consolidations; and, on motion for rehearing, (4) local tax revenue could not be recaptured by the state for purposes of educational equalization.⁶⁷

Carrollton-Farmers Branch ISD v. Edgewood ISD (Edgewood III)⁶⁸

Thereafter, in January 1991, the state legislature passed Senate Bill 351 which established a county education district-based funding system.⁶⁹ Under this new funding formula, over 1,000 school districts would be consolidated into 188 County Education Districts (CEDs)

⁶³ 804 SW2d 491, 493 (Tex., 1991)

⁶⁴ Edgewood ISD v. Kirby (Edgewood II), 804 SW2d 491, 493 (Tex., 1991)

⁶⁵ Love v. City of Dallas 120 Tex. 351 (Tex., 1931)

⁶⁶ Supra n 49 at fn 17.1 where the court refers to the clarification sought by some rich districts regarding the interpretation of 'additional enrichment'. The court states "In addition, defendants' response to plaintiff-intervenors' motion for rehearing submits that "there continues to be considerable discussion of the meaning of the language of Edgewood I referenced in footnote 11 of Edgewood II." Defendants therefore "urge the Court to clarify whether local enrichment violates the Constitution as interpreted by Edgewood I and Edgewood II if the yield from local tax effort varies because of the value of a local community's tax base." Defendants have consistently urged the court to clarify whether unequalized local enrichment is permissible under the Constitution. Indeed, their original brief asserted by cross-point that the district court erred in "applying a standard of total equality" that mandated the elimination of all unequalized local enrichment. The motion for rehearing and defendants' response suggest the need for greater clarity in our resolution of defendants' argument." The court relies in part on Message of Governor Ireland, reprinted in Texas S.J., 18th Legislature, Regular Session, 66, 67 (January 29, 1883) stating that "In advocating the amendment of article VII, section 3 to permit local supplementation", Governor Ireland explained that local districts should be "allowed to levy and collect an additional tax for the purpose of aiding the State in its efforts at giving the people an education."

⁶⁷ 804 SW2d 491 (Tex., 1991)

⁶⁸ 826 SW2d 489 (Tex., 1992)

⁶⁹ Act of April 11, 1991, 72nd Leg., R.S., ch. 20, 1991 Tex.Gen.Laws 381, amended by Act of May 27, 1991, 72nd Leg., R.S., ch. 391, 1991 Tex.Gen.Laws 1475. SB 351 as amended by HB 2885.

that would serve as tax collection and equal redistributors. Because the law provided for equal distribution of funds, it also effectively resulted in wealthier districts losing money.

Numerous school districts and individual citizens, sued the State of Texas, certain County Education Districts (CEDs) created by Senate Bill 351, and other interested school districts and individual citizens on the grounds that the school finance system devised by Senate Bill 351 was unconstitutional on three grounds: (1) that it levied a state ad valorem tax in violation of article VIII, section 1–e; (2) that it levied an ad valorem tax without approval of the voters in violation of article VII, section 3; and (3) that it created county education districts (“CEDs”) in violation of article VII, section 3 and article III, sections 56 and 64(a).

In January 1992, the Texas Supreme Court declared the bill unconstitutional.⁷⁰ The Court found the bill created an unconstitutional statewide tax and impermissibly levied an ad valorem tax without a public election. After careful consideration of the constitutional principles in issue, the Texas Supreme Court sustained two of the appellants’ challenges to Senate Bill 351. First, the court held that Senate Bill 351 levied a state ad valorem tax in violation of article VIII, section 1–e; and second, it held that the Bill levied an ad valorem tax without an election in violation of article VII, section 3 of the Texas Constitution.

The court opined that SB 351’s reliance on local ad valorem taxes for more than half of the revenue for education was not new. However, the manner in which local funds would be contributed to the system changed dramatically under the Act. The State moved from encouraging school districts to contribute local tax revenue, to conditioning state funds on such contribution, to mandating a specified contribution. This reduced the geographical disparities in the availability of revenue for education. However, by requiring the taxpayers in one school district, without a vote of approval, to fund the schools in other districts over which they have no control presented the basis for the constitutional review. After review, the court concluded that the tax mandated by Senate Bill 351 constituted a state ad valorem tax that was prohibited by article VIII, section 1-e of the Texas constitution.⁷¹ The court also concluded that the bill’s provisions that created the CEDs was an unconstitutional in that they were not education districts but instead merely “tax redistribution mechanisms” and thereby a legislative overreach of its power to create and empower school districts.⁷²

Edgewood v Meno (Edgewood IV)⁷³

After Carrollton, the state Legislature enacted Senate Bill 7⁷⁴, commonly called Robin Hood school funding system in 1993.⁷⁵ Senate Bill 7 essentially required that wealthier school districts would assist in equalizing school funding by electing to do one of several options, including transferring some of their wealth to poorer school districts.⁷⁶

⁷⁰ Supra n 53 at 524

⁷¹ Id.at 503. (Carrollton)

⁷² Id.at 511.

⁷³ 917 S.W.2d 717 (Tex. 1995)

⁷⁴ See Austin Pennington, Comments, The Texas Education Agency And The Robin Hood Plan: Is Stealing From The Rich Really Giving More To The Poor?, 12 Tex. Tech. Admin. L.J. 389 (Spring, 2011)

⁷⁵ Act of May 28, 1993, 73rd Leg., R.S., ch. 347, 1993 Tex.Gen.Laws 1479.

⁷⁶ Tex. Educ. Code, Sec. 41.001

Senate Bill 7's options to wealthy school districts were designed to help equalize public school funding. Those options were:

1. Merging its tax base with a tax-poor district
2. Sending money to the state to help pay for students in poorer districts
3. Contracting to educate student in other districts
4. Consolidating voluntarily with one or more other districts, or
5. Transferring some of its taxable commercial property to another district's tax rolls.

A district that failed to choose one of the five options would be subject to the state's transfer of taxable property. If that was not enough to reduce the district's wealth to \$280,000 per student in weighted average daily attendance, the state would force consolidation.

This time, the Texas Supreme Court upheld the law in a 5-4 decision in January 1995.⁷⁷ While upholding the options plan, the Court also required the legislature continue to work on equalizing and improving school facilities in the state.

Although the court ruled that Senate Bill 7 was constitutional,⁷⁸ wealthier districts brought numerous court challenges including one joined by wealthy and poorer school districts alike claiming that the state funding system was inadequate and inequitable.⁷⁹

The Court began its review based on a basic legal principle that legislation is presumed constitutional and that the burden of rebutting that presumption is on the challenger.⁸⁰ The Court found that an efficient system does not require equality of access to revenue at all levels.⁸¹ The court rejected the district court's view that efficiency was synonymous with equity which would require districts must have substantially equal revenue for substantially equal tax effort *at all levels of funding*.⁸² The court found that under SB 7, the state met its constitutional duty of providing an efficient system through the new funding mechanism because the result was that children who live in property-poor districts and children who live in property rich districts had substantially equal access to the funds necessary for a general diffusion of knowledge.⁸³

Notwithstanding the court's finding that Senate Bill 7 was constitutional, it is instructive that the divided Court reached its decision because of an evidentiary void.⁸⁴ The court stated "...sadly, the existence of more than 1000 independent school districts in Texas,

⁷⁷ Senate Bill 7 was immediately challenged by numerous groups of plaintiffs, representing hundreds of school districts, both property-rich and property-poor, as well as many parents and local officials. After a trial on the consolidated actions, the district court held that Senate Bill 7 was constitutional, but found that the Legislature had failed to provide efficiently for facilities. *Id.* at 727

⁷⁸ *Edgewood IV* and see *Morath v. Tex. Taxpayer and Student fairness Coalition*, 490 S.W.3d 826 (Tex., 2016) also see Valerie Strauss, "Texas Supreme Court rules state school funding system is awful—but constitutional," *The Washington Post*, May 13, 2016.

⁷⁹ *Infra* n 77

⁸⁰ *Supra* n 58

⁸¹ *Id.* at 729

⁸² *Id.* at 730

⁸³ *Id.* at 731

⁸⁴ *Id.* at 725

each with duplicative administrative bureaucracies, combined with widely varying tax bases and an excessive reliance on local property taxes, has resulted in a state of affairs that can only charitably be called a “system.” For too long, the Legislature’s response to its constitutional duty to provide for an efficient system has been little more than crisis management. The rationality behind such a complex and unwieldy system is not obvious. We conclude that the system becomes minimally acceptable only when viewed through the prism of history. Surely Texas can and must do better.”⁸⁵

In 1999, the state legislature increased state funding for public education by \$3.86 billion which was the largest funding increase in the state’s history.⁸⁶ After years of requiring increasing fiscal and academics accountability,⁸⁷ the federal No Child Left Behind Act was signed into law in January 2002.⁸⁸

In 2003, the Texas legislature established education finance as its top priority, placed the school funding system under a sunset provision and gave itself until September 1, 2005 to adopt a new school funding system. It also established a state committee to conduct a study in order to define an “adequate education”.⁸⁹

West Orange-Cove Consolidated ISD v. Alanis (West Orange Cove I)⁹⁰

Four school districts filed suit against the State and other defendants claiming that they and other districts had been forced to tax at maximum rates set by statute in order to educate

⁸⁵ Id.at 726

⁸⁶ Catherine Clark, Texas Center for Education Research at 1 available at <https://nces.ed.gov/edfin/pdf/StFinance/Texas.pdf>

⁸⁷ Senate Bill 350 may have established the first state-wide school accountability measures when it created the Texas Assessment of Basic Skills (TABS) test. Other assessment tools included HB 246’s Essential Elements Curriculum that mandated a statewide curriculum, the Texas Educational Assessment of Minimum Skills (TEAMS) test which replaced the TABS test in 1985 and required an exit test before students could graduate high school, the self-evaluation Public Education Information Management System (PEIMS) was established in 1987, the Texas Assessment of Academic Skills (TAAS) replaced the TEAMS test in 1990. It remained in effect for 12 years. In 1993, Senate Bill 7 developed criteria are established to create ratings for a statewide accountability system that included district performance on the TAAS. In 1997, the state replaced the Essential Elements Curriculum with the Texas Essential Knowledge and Skills (TEKS) curriculum standards. In 1999, the state passes House Bill 4 which established the Student Success Initiative which required students in various grade levels to pass tests in order to be promoted to the next grade. In 2001, the legislature toughened testing and promotion requirements and introduced yet another testing instrument called the Texas Assessment of Knowledge and Skills (TAKS) test to replace TAAS. In 2001, Governor Rick Perry signed Senate Bill 218 which established the nation’s first public school fiscal accountability system. In 2010 the State of Texas Assessments of Academic Readiness (STAAR) test replaced the TAKS test.

⁸⁸ The act authorized appropriations through school year 2007-2008. In fiscal year 2007 more than \$75 billion were taken from the No Child Left Behind programs, most dramatically in cuts to Title I funding for disadvantaged students and schools that served them. While the funds were re-allocated after the losses from the cuts proved stifling, there were no commitments for permanent funding. Funding was continued under the act’s successor, Elementary and Secondary Education Act (ESEA).

⁸⁹ Texas 78th Legislative Session, 2003

⁹⁰ 107 SW3d 558 (Tex., 2003)

their students. These taxes, they claimed, had become indistinguishable from a state ad valorem tax prohibited by the Texas constitution.⁹¹

The district court dismissed the case on the pleadings, holding that a constitutional violation could not be alleged because far fewer than half of Texas' 1,035 school districts were taxing at the maximum rates allowed. The court of appeals affirmed, focusing not on how many districts were taxing at maximum rates but on whether any of them were forced to do so just to provide an accredited education as defined by statute. The Texas Supreme Court disagreed with both courts, concluding that the lower courts erred in dismissing the plaintiffs' action on the pleadings.⁹² Consequently, the Court reversed and remanded the case to the trial court for further proceedings.⁹³

Neely v. West Orange-Cove Consolidated Independent School District (West Orange Cove II)⁹⁴

West Orange–Cove Consolidated Independent School District and 47 districts which educated over a fourth of the State's more than 4.3 million school children, contended that property taxes, though imposed locally, had become a state property tax prohibited by article VIII, section 1–e of the Texas Constitution, because the State left districts no meaningful discretion to tax below maximum rates.⁹⁵ The other two groups, intervenors, totaling an additional 282 districts, also educate about a fourth of the State's school children. One group is led by Edgewood Independent School District, the other by Alvarado Independent School District. Intervenor contend that funding for school operations and facilities is inefficient in violation of article VII, section 1 of the Texas Constitution, because children in property-poor districts did not have substantially equal access to education revenue.⁹⁶ All three groups also contended that the public school system could not achieve “[a] general diffusion of knowledge” as required by article VII, section 1 of the Texas Constitution, because the system is underfunded.⁹⁷

In granting the plaintiff relief, the district court detailed evidence showing how the districts are struggling to maintain accreditation with increasing standards, a demographically

⁹¹ article VIII, section 1-e

⁹² Supra n 55 at 585

⁹³ Supra n 55 at 563-4

⁹⁴ 176 S.W.3d 746 (Tex, 2005)

⁹⁵ Article VIII, section 1–e states: “No State ad valorem taxes shall be levied upon any property within this State.”

⁹⁶ The district court found: Lacking sufficient funding, property-poor districts such as the Edgewood Intervenor have been unable to provide adequate facilities for all the children in their districts. Substandard conditions include: overcrowded schools and classrooms; out-of-date buildings, equipment and fixtures; inadequate libraries, science labs, cafeterias, gymnasiums, and other school facilities.

The court identified health and safety concerns raised by some conditions, like inadequate heating, air conditioning, and ventilation, and science laboratories without emergency eye washes, fume hoods, exhaust fans, and other safety features. The court found that inadequate facilities negatively impacted student scores on standardized tests, and that “property-poor districts like the Edgewood Intervenor lack all the facilities essential to providing students a learning environment in which to attain a general diffusion of knowledge.”

See supra n 54 at 764

⁹⁷ Supra n 54 at 752

diverse and changing student population, and fewer qualified teachers, while cutting budgets even further. The district court found that due to inadequate funding: 52.8% of the newly hired teachers in 2002 were not certified, up from 14.1% in 1996; more teachers were being required to teach outside their areas of expertise; and attrition and turnover were growing. The court cited the higher costs of educating economically disadvantaged students and students with limited English proficiency, noting that 90% of the growth in the student population has come from low-income families. And as set out in more detail above, the district court noted the increased curriculum, testing, and accreditation standards, and the increased costs of meeting them.⁹⁸

The State defendants pointed out that though facing increased challenges, the focus districts had met or exceeded all accreditation requirements. However, it could not be inferred from that fact that the districts could lower taxes and still meet those requirements.⁹⁹ The district court credited evidence that districts statewide are spending over 97% of the revenue that would be available if every district taxed at maximum rates, up from 83% in 1993–1994. Only about a third of the districts with about a fifth of the student population exceed minimum accreditation standards. This is a marked decline from 2001, when over 60% of the districts with well over half of the student population exceeded minimum accreditation standards. The current situation has become virtually indistinguishable from one in which the State simply set an ad valorem tax rate of \$1.50 and redistributed the revenue to the districts.

Accordingly, in 2005, the Texas Supreme Court ruled that the public school finance system violated article VIII, section 1–e of the Texas Constitution, finding that a cap to which districts are inexorably forced by educational requirements and economic necessities, as they have been under Senate Bill 7, will in short order violate the prohibition of a state property tax.¹⁰⁰

In 2006, the state legislature enacted a law that cut school property taxes by almost one-third which was to be partially replaced by a \$1 per pact increase in state cigarette tax and a new broad-based business tax which replaced the franchise tax. The new tax, called the margin tax differed from the franchise tax which had been levied since the 1800s.¹⁰¹

⁹⁸ Neely at 796

⁹⁹ Id.

¹⁰⁰ Id.at 798

¹⁰¹ See Scott Drenkard, *The Texas Margin Tax: A Failed Experiment*, Tax Foundation Special Report, No. 226, January 2015 stating that “In 2005, a Texas Supreme Court decision declared the Texas school finance system unconstitutional, because it raised money from what was, in effect, a statewide property tax. In an effort to increase school funding from a source other than property taxes, policymakers chose to substantially alter the Texas Franchise Tax, which had been levied in some form since the 1800s. The new tax was intended to raise an additional \$3 billion in revenue each year.”

“The result of this legislative exercise, conducted during a special session of the Texas Legislature, was the 2008 enactment of what is now commonly called the Texas Margin Tax, a complicated hybrid of a gross receipts tax and a tax on business profits.”

“The Texas Franchise Tax prior to 2008 was mainly based on the capital stock of a company, but the new Margin Tax is based on total revenue of the company with certain deductions. The Margin Tax also expanded

Morath v. The Texas Taxpayer and Student Fairness Coalition¹⁰²

In 2011, school districts, Texas Charter School Association, and parents of charter school students brought action against State alleging the current school finance system violated the state constitution because it doesn't treat Texas taxpayers and school children fairly.¹⁰³ Other objectors intervened to argue that inefficient rules and policies violated the state constitution. In 2014, the 200th Judicial District Court, Travis County, rendered a final judgment after bench trial, declaring the school system constitutionally inadequate, unsuitable, and financially inefficient in violation of the state constitution, declaring that it was an unconstitutional statewide ad valorem tax, declaring that the system did not meet constitutional adequacy and suitability requirements for English language learners or economically disadvantaged students, and declaring that funding for charter schools was constitutionally inadequate.¹⁰⁴ The state appealed.

In 2016, the Texas Supreme Court held that despite the imperfections of the current school funding regime, it met minimum constitutional requirements.¹⁰⁵ As with past court decisions, victory is not its own reward. Again the Texas Supreme Court found the funding system sorely lacking. The court held that "Imperfection...did not mean imperfectible. Texas's more than five million school children deserve better than serial litigation over an increasingly Daedalean "system". They deserve transformational, top-to-bottom reforms that amount to more than Band-Aid on top of Band-Aid. They deserve a revamped, nonsclerotic system fit for the 21st century."¹⁰⁶ The Texas Supreme Court made it clear that the matter is left unresolved and that the state's education system is wanting.

The Road Ahead

In 2014, the Dallas Morning News reported that Texas ranked 46th of 50 states and the District of Columbia in per student spending.¹⁰⁷ From the institute's perspective the amount of money that is spent per child is only part of the issue. To determine whether the amount spent is adequate depends on numerous factors that need to be considered as we examine education and school finance reform. The Texas Constitution provides "A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools."¹⁰⁸ For fifty years, the legislature, courts, school districts, parents, students and other

the base of payers of the Franchise Tax to new business categories. While the Franchise Tax only applied to C corporations, S corporations, and LLCs, the current Margin Tax applies to partnerships, business trusts, and professional associations as well."

¹⁰² Supra note 63

¹⁰³ Originally styled *Texas Taxpayers & Student Fairness Coalition v. Michael Williams*

¹⁰⁴ Id.

¹⁰⁵ Id. at 833

¹⁰⁶ Id. at 834

¹⁰⁷ Terrence Stutz, Texas Improves school funding but still trails most states, Dallas Morning News March 2014 noting that Texas spent \$9,462 per student in 2010-11, ranking 40th among the states. Three years later, the state is spending \$464 less per student.

¹⁰⁸ Tex Const, Art. 7 sec 1

stakeholders have battled over what the constitution actually requires and how the mandate is to be met. Much of the battle has centered on “funding”, an obviously essential part of the equation.

During the Urban Research and Resource Center’s review of the Texas public education system K-12, we will consider a wide range of issues that include, but will not be limited to funding. What must a curriculum look like to help determine whether the knowledge that the state is providing is itself adequate for the preparation of the state’s students; how much money is needed to meet the state obligations; what performance goals and measures adequately provide for the academic as well as sociological and psychological impact of the programs suggested to name a few. We will explore best practices and analyze the reasons for successes as well as for failures in order to design a comprehensive education reform package. One thing appears certain, “there doubtless exist innovative reform measures to make Texas schools more accountable and efficient, both quantitatively and qualitatively.”¹⁰⁹ Through strategic collaborations, research and analyses, we intend to recommend comprehensive reform.

¹⁰⁹ Morath, *supra* n 63