San Antonio Independent School District

Vs

Rodriguez

No. 71-1332

21.03.1973

411 U.S. 1

POWELL, J., lead opinion

MR. JUSTICE POWELL delivered the opinion of the Court.

This suit attacking the Texas system of financing public education was initiated by Mexican-American parents whose children attend the elementary and secondary [411 U.S. 5] schools in the Edgewood Independent School District, an urban school district in San Antonio, Texas.{1} They brought a class action on behalf of school children throughout the State who are members of minority groups or who are poor and reside in school districts having a low property tax base. Named as defendants{2} 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 [411 U.S. 6] was filed in the summer of 1968, and a three-judge court was impaneled in January, 1969.{3} In December, 1971,{4} the panel rendered its judgment in a per curiam opinion holding the Texas school finance system unconstitutional under the Equal Protection Clause of the Fourteenth Amendment.{5} The State appealed, and we noted probable jurisdiction to consider the far-reaching constitutional questions presented. 406 U.S. 966 (1972). For the reasons stated in this opinion, we reverse the decision of the District Court.

I

The first Texas State Constitution, promulgated upon Texas‘ entry into the Union in 1845, provided for the establishment of a system of free schools.{6} Early in its history, Texas adopted a dual approach to the financing of its schools, relying on mutual participation by the local school districts and the State. As early as 1883, the state [411 U.S. 7] constitution was amended to provide for the creation of local school districts empowered to levy ad valorem taxes with the consent of local taxpayers for the "erection . . . of school buildings" and for the "further maintenance of public free schools."{7} Such local funds as were raised were supplemented by funds distributed to each district from the State’s Permanent and Available School Funds.{8} The Permanent School Fund, its predecessor established in 1854 with $2,000,000 realized from an annexation settlement,{9} was thereafter endowed with millions of acres of public land set aside to assure a continued source of income for school support.{10} The Available School Fund, which received income from the Permanent School Fund as well as from a state ad valorem property tax and other designated taxes,{11} served as the disbursing arm for most state educational funds throughout the late 1800‘s and first half of this century. Additionally, in 1918, an increase in state property taxes was used to

finance a program providing free textbooks throughout the State.{12}

Until recent times, Texas was a predominantly rural State, and its population and property wealth were spread [411 U.S. 8] relatively evenly across the State.{13} Sizable differences in the value of assessable property between local school districts became increasingly evident as the State became more industrialized and as rural-to-urban population shifts became more pronounced.{14} The location of commercial and industrial property began to play a significant role in determining the amount of tax resources available to each school district. These growing disparities in population and taxable property between districts were responsible in part for increasingly notable differences in levels of local expenditure for education.{15} In due time, it became apparent to those concerned with financing public education that contributions from the Available School Fund were not sufficient to ameliorate these disparities.{16} Prior to 1939, the Available School Fund contributed money to every school district at a rate of $17.50 per school-age child.{17} Although the amount was increased several times in the early 1940's,{18} [411 U.S. 9] the Fund was providing only $46 per student by 1945.{19}

Recognizing the need for increased state funding to help offset disparities in local spending and to meet Texas' changing educational requirements, the state legislature, in the late 1940's, undertook a thorough evaluation of public education with an eye toward major reform. In 1947, an 18-member committee, composed of educators and legislators, was appointed to explore alternative systems in other States and to propose a funding scheme that would guarantee a minimum or basic educational offering to each child and that would help overcome inter-district disparities in taxable resources. The Committee's efforts led to the passage of the Gilmer-Aikin bills, named for the Committee's co-chairmen, establishing the Texas Minimum Foundation School Program.{20} Today, this Program accounts for approximately half of the total educational expenditures in Texas.{21}

The Program calls for state and local contributions to a fund earmarked specifically for teacher salaries, operating expenses, and transportation costs. The State, supplying funds from its general revenues, finances approximately 80% of the Program, and the school districts are responsible -- as a unit -- for providing the remaining 20%. The districts' share, known as the Local Fund Assignment, is apportioned among the school districts [411 U.S. 10] under a formula designed to reflect each district's relative taxpaying ability. The Assignment is first divided among Texas' 254 counties pursuant to a complicated economic index that takes into account the relative value of each county's contribution to the State's total income from manufacturing, mining, and agricultural activities. It also considers each county's relative share of all payrolls paid within the State and, to a lesser extent, considers each county's share of all property in the State.{22} Each county's assignment is then divided among its school districts on the basis of each district's share of assessable property within the county.{23} The district, in turn, finances its share of the Assignment out of revenues from local property taxation.

The design of this complex system was twofold. First, it was an attempt to assure that the Foundation Program would have an equalizing influence on expenditure levels between school districts by placing the heaviest burden on the school districts most capable of paying. Second, the Program's architects sought to establish a Local Fund Assignment that would force every school district to contribute to the education of its children,{24} but that would not, by itself, exhaust any district's resources.{25} Today every school district does impose a property tax from which it derives locally expendable [411 U.S. 11] funds in excess of the amount necessary to satisfy its Local Fund Assignment under the Foundation Program.

In the years since this program went into operation in 1949, expenditures for education -- from state as well as local sources -- have increased steadily. Between 1949 and 1967, expenditures increased approximately 500%.{26} In the last decade alone, the total public school budget rose from $750 million to $2.1 billion,{27} and these increases have been reflected in consistently rising per-pupil expenditures throughout the State.{28} Teacher salaries, by far the largest item in any school's budget, have increased dramatically -- the state supported minimum salary for teachers possessing college degrees has risen from $2,400 to $6,000 over the last 20 years.{29}

The school district in which appellees reside, the Edgewood Independent School District, has been compared throughout this litigation with the Alamo Heights Independent School District. This comparison between the least and most affluent districts in the San Antonio area serves to illustrate the manner in which the dual system of finance operates, and to indicate the extent to which substantial disparities exist despite the State's impressive progress in recent years. Edgewood is one of seven public school districts in the metropolitan area. Approximately 22,000 students are enrolled in its 25 elementary [411 U.S. 12] and secondary schools. The district is situated in the core-city sector of San Antonio in a residential neighborhood that has little commercial or industrial property. The residents are predominantly of Mexican-American descent: approximately 90% of the student population is Mexican-American and over 6% is Negro. The average assessed property value per pupil is $5,960 -- the lowest in the metropolitan area -- and the median family income ($4,686) is also the lowest.{30} At an equalized tax rate of $1.05 per $100 of assessed property -- the highest in the metropolitan area -- the district contributed $26 to the education of each child for the 1967-1968 school year above its Local Fund Assignment for the Minimum Foundation Program. The Foundation Program contributed $222 per pupil for a state-local total of $248.{31} Federal funds added another $108, for a total of $356 per pupil.{32}

Alamo Heights is the most affluent school district in San Antonio. Its six schools, housing approximately 5,000 students, are situated in a residential community quite unlike the Edgewood District. The school population is predominantly "Anglo," having only 18% Mexican-Americans [411 U.S. 13] and less than 1% Negroes. The assessed property value per pupil exceeds $49,000,{33} and the median family income is $8,001. In 1967-1968 the local tax rate of $.85 per $100 of valuation yielded $333 per pupil over and above its contribution to the Foundation Program. Coupled with the $225 provided from that Program, the district was able to supply $558 per student. Supplemented by a $36 per-pupil grant from federal sources, Alamo Heights spent $594 per pupil.

Although the 1967-1968 school year figures provide the only complete statistical breakdown for each category of aid,{34} more recent partial statistics indicate that the previously noted trend of increasing state aid has been significant. For the 1970-1971 school year, the Foundation School Program allotment for Edgewood was $356 per pupil, a 62% increase over the 1967-1968 school year. Indeed, state aid alone in 1970-1971 equaled Edgewood's entire 1967-1968 school budget from local, state, and federal sources. Alamo Heights enjoyed a similar increase under the Foundation Program, netting $491 per pupil in 1970-1971.{35} These recent figures [411 U.S. 14] also reveal the extent to which these two districts' allotments were funded from their own required contributions to the Local Fund Assignment. Alamo Heights, because of its relative wealth, was required to contribute out of its local property tax collections approximately $100 per pupil, or about 20% of its Foundation grant. Edgewood, on the other hand, paid only $8.46 per pupil, which is about 2.4% of its grant.{36} It appears then that, at least as to these two districts, the Local Fund Assignment does reflect a rough approximation of the relative taxpaying potential of each.{37} [411 U.S. 15]

Despite these recent increases, substantial inter-district disparities in school expenditures found by the District Court to prevail in San Antonio and in varying degrees throughout the State{38} still exist. And it was [411 U.S. 16] these disparities, largely attributable to differences in the amounts of money collected through local property taxation, that led the District Court to conclude that Texas' dual system of public school financing violated the Equal Protection Clause. The District Court held that the Texas system discriminates on the basis of wealth in the manner in which education is provided for its people. 337 F.Supp. at 282. Finding that wealth is a "suspect" classification, and that education is a "fundamental" interest, the District Court held that the Texas system could be sustained only if the State could show that it was premised upon some compelling ate interest. Id. at 282-284. On this issue the court concluded that

[n]ot only are defendants unable to demonstrate compelling state interests . . . they fail even to establish a reasonable basis for these classifications.

Id. at 284.

Texas virtually concedes that its historically rooted dual system of financing education could not withstand the strict judicial scrutiny that this Court has found appropriate in reviewing legislative judgments that interfere with fundamental constitutional rights{39} or that involve suspect classifications.{40} If, as previous decisions have indicated, strict scrutiny means that the State's system is not entitled to the usual presumption of validity, that the State, rather than the complainants, must carry a "heavy burden of justification," that the State must [411 U.S. 17] demonstrate that its educational system has been structured with "precision," and is "tailored" narrowly to serve legitimate objectives, and that it has selected the "less drastic means" for effectuating its objectives,{41} the Texas financing system and its counterpart in virtually every other State will not pass muster. The State candidly admits that "[n]o one familiar with the Texas system would contend that it has yet achieved perfection."{42} Apart from its concession that educational financing in Texas has "defects"{43} and "imperfections,"{44} the State defends the system's rationality with vigor, and disputes the District Court's finding that it lacks a "reasonable basis."

This, then, establishes the framework for our analysis. We must decide, first, whether the Texas system of financing public education operates to the disadvantage of some suspect class or impinges upon a fundamental right explicitly or implicitly protected by the Constitution, thereby requiring strict judicial scrutiny. If so, the judgment of the District Court should be affirmed. If not, the Texas scheme must still be examined to determine whether it rationally furthers some legitimate, articulated state purpose, and therefore does not constitute an invidious discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment.

II

The District Court's opinion does not reflect the novelty and complexity of the constitutional questions posed by appellees' challenge to Texas' system of school financing. In concluding that strict judicial scrutiny was required, [411 U.S. 18] that court relied on decisions dealing with the rights of indigents to equal treatment in the criminal trial and appellate processes,{45} and on cases disapproving wealth restrictions on the right to vote.{46} Those cases, the District Court concluded, established wealth as a suspect classification. Finding that the local property tax system discriminated on the basis of wealth, it regarded those precedents as controlling. It then reasoned, based on decisions of this Court affirming the undeniable importance of

education,{47} that there is a fundamental right to education, and that, absent some compelling state justification, the Texas system could not stand.

We are unable to agree that this case, which in significant aspects is sui generis, may be so neatly fitted into the conventional mosaic of constitutional analysis under the Equal Protection Clause. Indeed, for the several reasons that follow, we find neither the suspect classification nor the fundamental interest analysis persuasive.

A

The wealth discrimination discovered by the District Court in this case, and by several other courts that have recently struck down school financing laws in other States,{48} is quite unlike any of the forms of wealth discrimination [411 U.S. 19] heretofore reviewed by this Court. Rather than focusing on the unique features of the alleged discrimination, the courts in these cases have virtually assumed their findings of a suspect classification through a simplistic process of analysis: since, under the traditional systems of financing public schools, some poorer people receive less expensive educations than other more affluent people, these systems discriminate on the basis of wealth. This approach largely ignores the hard threshold questions, including whether it makes a difference, for purposes of consideration under the Constitution, that the class of disadvantaged "poor" cannot be identified or defined in customary equal protection terms, and whether the relative -- rather than absolute -- nature of the asserted deprivation is of significant consequence. Before a State‘s laws and the justifications for the classifications they create are subjected to strict judicial scrutiny, we think these threshold considerations must be analyzed more closely than they were in the court below.

The case comes to us with no definitive description of the classifying facts or delineation of the disfavored class. Examination of the District Court’s opinion and of appellees‘ complaint, briefs, and contentions at oral argument suggests, however, at least three ways in which the discrimination claimed here might be described. The Texas system of school financing might be regarded as discriminating (1) against "poor" persons whose incomes fall below some identifiable level of poverty or who might be characterized as functionally "indigent,"{49} or [411 U.S. 20] (2) against those who are relatively poorer than others{50} or (3) against all those who, irrespective of their personal incomes, happen to reside in relatively poorer school districts.{51} Our task must be to ascertain whether, in fact, the Texas system has been shown to discriminate on any of these possible bases and, if so, whether the resulting classification may be regarded as suspect.

The precedents of this Court provide the proper starting point. The individuals, or groups of individuals, who constituted the class discriminated against in our prior cases shared two distinguishing characteristics: because of their impecunity, they were completely unable to pay for some desired benefit, and, as a consequence, they sustained an absolute deprivation of a meaningful opportunity to enjoy that benefit. In Griffin v. Illinois, [411 U.S. 21] 351 U.S. 12 (1956), and its progeny,{52} the Court invalidated state laws that prevented an indigent criminal defendant from acquiring a transcript, or an adequate substitute for a transcript, for use at several stages of the trial and appeal process. The payment requirements in each case were found to occasion de facto discrimination against those who, because of their indigency, were totally unable to pay for transcripts. And the Court in each case emphasized that no constitutional violation would have been shown if the State had provided some "adequate substitute" for a full stenographic transcript. Britt v. North Carolina, 404 U.S. 226, 228 (1971); Gardner v. California, 393 U.S. 367 (1969); Draper v. Washington, 372 U.S. 487 (1963); Eskridge v. Washington Prison Board, 357 U.S. 214 (1958).

Likewise, in Douglas v. California, 372 U.S. 353 (1963), a decision establishing an indigent defendant's right to court-appointed counsel on direct appeal, the Court dealt only with defendants who could not pay for counsel from their own resources and who had no other way of gaining representation. Douglas provides no relief for those on whom the burdens of paying for a criminal defense are, relatively speaking, great but not insurmountable. Nor does it deal with relative differences in the quality of counsel acquired by the less wealthy.

Williams v. Illinois, 399 U.S. 235 (1970), and Tate v. Short, 401 U.S. 395 (1971), struck down criminal penalties that subjected indigents to incarceration simply because [411 U.S. 22] of their inability to pay a fine. Again, the disadvantaged class was composed only of persons who were totally unable to pay the demanded sum. Those cases do not touch on the question whether equal protection is denied to persons with relatively less money on whom designated fines impose heavier burdens. The Court has not held that fines must be structured to reflect each person's ability to pay in order to avoid disproportionate burdens. Sentencing judges may, and often do, consider the defendant's ability to pay, but, in such circumstances, they are guided by sound judicial discretion, rather than by constitutional mandate.

Finally, in Bullock v. Carter, 405 U.S. 134 (1972), the Court invalidated the Texas filing fee requirement for primary elections. Both of the relevant classifying facts found in the previous cases were present there. The size of the fee, often running into the thousands of dollars and, in at least one case, as high as $8,900, effectively barred all potential candidates who were unable to pay the required fee. As the system provided "no reasonable alternative means of access to the ballot" (id. at 149), inability to pay occasioned an absolute denial of a position on the primary ballot.

Only appellees' first possible basis for describing the class disadvantaged by the Texas school financing system -- discrimination against a class of definably "poor" persons -- might arguably meet the criteria established in these prior cases. Even a cursory examination, however, demonstrates that neither of the two distinguishing characteristics of wealth classifications can be found here. First, in support of their charge that the system discriminates against the "poor," appellees have made no effort to demonstrate that it operates to the peculiar disadvantage of any class fairly definable as indigent, or as composed of persons whose incomes are beneath any [411 U.S. 23] designated poverty level. Indeed, there is reason to believe that the poorest families are not necessarily clustered in the poorest property districts. A recent and exhaustive study of school districts in Connecticut concluded that

[i]t is clearly incorrect . . . to contend that the "poor" live in "poor" districts. . . . Thus, the major factual assumption of Serrano -- that the educational financing system discriminates against the "poor" -- is simply false in Connecticut.{53}

Defining "poor" families as those below the Bureau of the Census "poverty level,"{54} the Connecticut study found, not surprisingly, that the poor were clustered around commercial and industrial areas -- those same areas that provide the most attractive sources of property tax income for school districts.{55} Whether a similar pattern would be discovered in Texas is not known, but there is no basis on the record in this case for assuming that the poorest people -- defined by reference to any level of absolute impecunity -- are concentrated in the poorest districts.

Second, neither appellees nor the District Court addressed the fact that, unlike each of the foregoing cases, lack of personal resources has not occasioned an absolute deprivation of the desired benefit. The argument here is not that the children in districts having relatively low assessable

property values are receiving no public education; rather, it is that they are receiving a poorer quality education than that available to children in districts having more assessable wealth. Apart from the unsettled and disputed question whether the quality of education may be determined by the amount of money [411 U.S. 24] expended for it,{56} a sufficient answer to appellees' argument is that, at least where wealth is involved, the Equal Protection Clause does not require absolute equality or precisely equal advantages.{57} Nor, indeed, in view of the infinite variables affecting the educational process, can any system assure equal quality of education except in the most relative sense. Texas asserts that the Minimum Foundation Program provides an "adequate" education for all children in the State. By providing 12 years of free public school education, and by assuring teachers, books, transportation, and operating funds, the Texas Legislature has endeavored to

guarantee, for the welfare of the state as a whole, that all people shall have at least an adequate program of education. This is what is meant by "A Minimum Foundation Program of Education."{58}

The State repeatedly asserted in its briefs in this Court that it has fulfilled this desire, and that it now assures "every child in every school district an adequate education."{59} No proof was offered at trial persuasively discrediting or refuting the State's assertion. [411 U.S. 25]

For these two reasons -- the absence of any evidence that the financing system discriminates against any definable category of "poor" people or that it results in the absolute deprivation of education -- the disadvantaged class is not susceptible of identification in traditional terms.{60}

As suggested above, appellees and the District Court may have embraced a second or third approach, the second of which might be characterized as a theory of relative or comparative discrimination based on family income. Appellees sought to prove that a direct correlation exists between the wealth of families within each district and the expenditures therein for education. That is, along a continuum, the poorer the family, the lower the dollar amount of education received by the family's children.

The principal evidence adduced in support of this comparative discrimination claim is an affidavit submitted by Professor Joel S. Berke of Syracuse University's Educational Finance Policy Institute. The District Court, relying in major part upon this affidavit and apparently accepting the substance of appellees' theory, [411 U.S. 26] noted, first, a positive correlation between the wealth of school districts, measured in terms of assessable property per pupil, and their levels of per-pupil expenditures. Second, the court found a similar correlation between district wealth and the personal wealth of its residents, measured in terms of median family income. 337 F.Supp. at 282 n. 3.

If, in fact, these correlations could be sustained, then it might be argued that expenditures on education -- equated by appellees to the quality of education -- are dependent on personal wealth. Appellees' comparative discrimination theory would still face serious unanswered questions, including whether a bare positive correlation or some higher degree of correlation{61} is necessary to provide a basis for concluding that the financing system is designed to operate to the peculiar disadvantage of the comparatively poor,{62} and whether a class of this size and diversity could ever claim the special protection accorded "suspect" classes. These questions need not be addressed in this case, however, since appellees' proof fails to support their allegations or the District Court's conclusions.

Professor Berke's affidavit is based on a survey of approximately 10% of the school districts

in Texas. His findings, previously set out in the margin,{63} show only [411 U.S. 27] that the wealthiest few districts in the sample have the highest median family incomes and spend the most on education, and that the several poorest districts have the lowest family incomes and devote the least amount of money to education. For the remainder of the districts -- 96 districts composing almost 90% of the sample -- the correlation is inverted, i.e., the districts that spend next to the most money on education are populated by families having next to the lowest median family incomes, while the districts spending the least have the highest median family incomes. It is evident that, even if the conceptual questions were answered favorably to appellees, no factual basis exists upon which to found a claim of comparative wealth discrimination.{64}

This brings us, then, to the third way in which the classification scheme might be defined -- district wealth discrimination. Since the only correlation indicated by the evidence is between district property wealth and expenditures, it may be argued that discrimination might be found without regard to the individual income characteristics of district residents. Assuming a perfect correlation between district property wealth and expenditures from top to bottom, the disadvantaged class might be [411 U.S. 28] viewed as encompassing every child in every district except the district that has the most assessable wealth and spends the most on education.{65} Alternatively, as suggested in MR. JUSTICE MARSHALL's dissenting opinion, post at 96, the class might be defined more restrictively to include children in districts with assessable property which falls below the state-wide average, or median, or below some other artificially defined level.

However described, it is clear that appellees' suit asks this Court to extend its most exacting scrutiny to review a system that allegedly discriminates against a large, diverse, and amorphous class, unified only by the common factor of residence in districts that happen to have less taxable wealth than other districts.{66} The system of alleged discrimination and the class it defines have none of the traditional indicia of suspectness: the class is not saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.

We thus conclude that the Texas system does not operate to the peculiar disadvantage of any suspect class. [411 U.S. 29] But in recognition of the fact that this Court has never heretofore held that wealth discrimination alone provides an adequate basis for invoking strict scrutiny, appellees have not relied solely on this contention.{67} They also assert that the State's system impermissibly interferes with the exercise of a "fundamental" right, and that, accordingly, the prior decisions of this Court require the application of the strict standard of judicial review. Graham v. Richardson, 403 U.S. 365, 375-376 (1971); Kramer v. Union School District, 395 U.S. 621 (1969); Shapiro v. Thompson, 394 U.S. 618 (1969). It is this question -- whether education is a fundamental right, in the sense that it is among the rights and liberties protected by the Constitution -- which has so consumed the attention of courts and commentators in recent years.{68}

B

In Brown v. Board of Education, 347 U.S. 483 (1954), a unanimous Court recognized that "education is perhaps the most important function of state and local governments." Id. at 493. What was said there in the context of racial discrimination has lost none of its vitality with the passage of time:

Compulsory school attendance laws and the great expenditures for education both demonstrate our

[411 U.S. 30] recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

Ibid. This theme, expressing an abiding respect for the vital role of education in a free society, may be found in numerous opinions of Justices of this Court writing both before and after Brown was decided. Wisconsin v. Yoder, 406 U.S. 205, 213 (BURGER, C.J.), 237, 238-239 (WHITE, J.), (1972); Abington School Dist. v. Schempp, 374 U.S. 203, 230 (1963) (BRENNAN, J.); McCollum v. Board of Education, 333 U.S. 203 212 (1948) (Frankfurter, J.); Pierce v. Society of Sisters, 268 U.S. 510 (1925); Meyer v. Nebraska, 262 U.S. 390 (1923); Interstate Consolidated Street R. Co. v. Massachusetts, 207 U.S. 79 (1907).

Nothing this Court holds today in any way detracts from our historic dedication to public education. We are in complete agreement with the conclusion of the three-judge panel below that "the grave significance of education both to the individual and to our society" cannot be doubted.{69} But the importance of a service performed by the State does not determine whether it must be regarded as fundamental for purposes of examination under the Equal Protection Clause. Mr. Justice [411 U.S. 31] Harlan, dissenting from the Court's application of strict scrutiny to a law impinging upon the right of interstate travel, admonished that "[v]irtually every state statute affects important rights." Shapiro v. Thompson, 394 U.S. at 655, 661. In his view, if the degree of judicial scrutiny of state legislation fluctuated, depending on a majority's view of the importance of the interest affected, we would have gone "far toward making this Court a `super-legislature.'" Ibid. We would, indeed, then be assuming a legislative role, and one for which the Court lacks both authority and competence. But MR. JUSTICE STEWART s response in Shapiro to Mr. Justice Harlan's concern correctly articulates the limits of the fundamental rights rationale employed in the Court's equal protection decisions:

The Court today does not "pick out particular human activities, characterize them as `fundamental,' and give them added protection. . . ." To the contrary, the Court simply recognizes, as it must, an established constitutional right, and gives to that right no less protection than the Constitution itself demands.

Id. at 642. (Emphasis in original.)

MR. JUSTICE STEWART's statement serves to underline what the opinion of the Court in Shapiro makes clear. In subjecting to strict judicial scrutiny state welfare eligibility statutes that imposed a one-year durational residency requirement as a precondition to receiving AFDC benefits, the Court explained:

[I]n moving from State to State . . . appellees were exercising a constitutional right, and any classification which serves to penalize the exercise of that right, unless shown to be necessary to promote a compelling governmental interest, is unconstitutional.

Id. at 634. (Emphasis in original.) [411 U.S. 32] The right to interstate travel had long been recognized as a right of constitutional significance,{70} and the Court's decision, therefore, did not

require an ad hoc determination as to the social or economic importance of that right.{71}

Lindsey v. Normet, 405 U.S. 56 (1972), decided only last Term, firmly reiterates that social importance is not the critical determinant for subjecting state legislation to strict scrutiny. The complainants in that case, involving a challenge to the procedural limitations imposed on tenants in suits brought by landlords under Oregon's Forcible Entry and Wrongful Detainer Law, urged the Court to examine the operation of the statute under "a more stringent standard than mere rationality." Id. at 73. The tenants argued that the statutory limitations implicated "fundamental interests which are particularly important to the poor," such as the "`need for decent shelter'" and the "`right to retain peaceful possession of one's home." Ibid. MR. JUSTICE WHITE's analysis, in his opinion for the Court, is instructive:

> We do not denigrate the importance of decent, safe, and sanitary housing. But the Constitution does not provide judicial remedies for every social and economic ill. We are unable to perceive in that document any constitutional guarantee of access [411 U.S. 33] to dwellings of a particular quality or any recognition of the right of a tenant to occupy the real property of his landlord beyond the term of his lease, without the payment of rent. . . . Absent constitutional mandate, the assurance of adequate housing and the definition of landlord-tenant relationships are legislative, not judicial, functions.

Id. at 74. (Emphasis supplied.)

Similarly, in Dandridge v. Williams, 397 U.S. 471 (1970), the Court's explicit recognition of the fact that the "administration of public welfare assistance . . . involves the most basic economic needs of impoverished human beings," id. at 485,{72} provided no basis for departing from the settled mode of constitutional analysis of legislative classifications involving questions of economic and social policy. As in the case of housing, the central importance of welfare benefits to the poor was not an adequate foundation for requiring the State to justify its law by showing some compelling state interest. See also Jefferson v. Hackney, 406 U.S. 535 (1972); Richardson v. Belcher, 404 U.S. 78 (1971).

The lesson of these cases in addressing the question now before the Court is plain. It is not the province of this Court to create substantive constitutional rights in the name of guaranteeing equal protection of the laws. Thus, the key to discovering whether education is "fundamental" is not to be found in comparisons of the relative societal significance of education, as opposed to subsistence or housing. Nor is it to be found by weighing whether education is as important as the right to travel. Rather, the answer lies in assessing whether there is a right to education explicitly or implicitly guaranteed by the Constitution. [411 U.S. 34] Eisenstadt v. Baird, 405 U.S. 438 (1972);{73} Dunn v. Blumstein, 405 U.S. 330 (1972);{74} Police Dept. of Chicago v. Mosley, 408 U.S. 92 (197);{75} Skinner v. Oklahoma, 316 U.S. 535 (1942).{76} [411 U.S. 35]

Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected. As we have said, the undisputed importance of education will not, alone, cause this Court to depart from the usual standard for reviewing a State's social and economic legislation. It is appellees' contention, however, that education is distinguishable from other services and benefits provided by the State, because it bears a peculiarly close relationship to other rights and liberties accorded protection under the Constitution. Specifically, they insist that education is itself a fundamental personal right, because it is essential to the effective exercise of First Amendment freedoms and to intelligent

utilization of the right to vote. In asserting a nexus between speech and education, appellees urge that the right to speak is meaningless unless the speaker is capable of articulating his thoughts intelligently and persuasively. The "marketplace of ideas" is an empty forum for those lacking basic communicative tools. Likewise, they argue that the corollary right to receive information{77} becomes little more than a hollow privilege when the recipient has not been taught to read, assimilate, and utilize available knowledge.

A similar line of reasoning is pursued with respect to the right to vote.{78} Exercise of the franchise, it is contended, cannot be divorced from the educational foundation [411 U.S. 36] of the voter. The electoral process, if reality is to conform to the democratic ideal, depends on an informed electorate: a voter cannot cast his ballot intelligently unless his reading skills and thought processes have been adequately developed.

We need not dispute any of these propositions. The Court has long afforded zealous protection against unjustifiable governmental interference with the individual‘s rights to speak and to vote. Yet we have never presumed to possess either the ability or the authority to guarantee to the citizenry the most effective speech or the most informed electoral choice. That these may be desirable goals of a system of freedom of expression and of a representative form of government is not to be doubted.{79} These are indeed goals to be pursued by a people whose thoughts and beliefs are freed from governmental interference. But they are not values to be implemented by judicial intrusion into otherwise legitimate state activities.

Even if it were conceded that some identifiable quantum of education is a constitutionally protected prerequisite to the meaningful exercise of either right, we have no indication that the present levels of educational expenditures [411 U.S. 37] in Texas provide an education that falls short. Whatever merit appellees’ argument might have if a State‘s financing system occasioned an absolute denial of educational opportunities to any of its children, that argument provides no basis for finding an interference with fundamental rights where only relative differences in spending levels are involved and where -- as is true in the present case -- no charge fairly could be made that the system fails to provide each child with an opportunity to acquire the basic minimal skills necessary for the enjoyment of the rights of speech and of full participation in the political process.

Furthermore, the logical limitations on appellees’ nexus theory are difficult to perceive. How, for instance, is education to be distinguished from the significant personal interests in the basics of decent food and shelter? Empirical examination might well buttress an assumption that the ill-fed, ill-clothed, and ill-housed are among the most ineffective participants in the political process, and that they derive the least enjoyment from the benefits of the First Amendment.{80} If so, appellees‘ thesis would cast serious doubt on the authority of Dandridge v. Williams, supra, and Lindsey v. Normet, supra.

We have carefully considered each of the arguments supportive of the District Court’s finding that education is a fundamental right or liberty, and have found those arguments unpersuasive. In one further respect, we find this a particularly inappropriate case in which to subject state action to strict judicial scrutiny. The present case, in another basic sense, is significantly different from any of the cases in which the Court has [411 U.S. 38] applied strict scrutiny to state or federal legislation touching upon constitutionally protected rights. Each of our prior cases involved legislation which "deprived," "infringed," or "interfered" with the free exercise of some such fundamental personal right or liberty. See Skinner v. Oklahoma, supra, at 536; Shapiro v. Thompson, supra at 634; Dunn v. Blumstein, supra, at 338-343. A critical distinction between

those cases and the one now before us lies in what Texas is endeavoring to do with respect to education. MR. JUSTICE BRENNAN, writing for the Court in Katzenbach v. Morgan, 384 U.S. 641 (1966), expresses well the salient point:{81}

This is not a complaint that Congress . . . has unconstitutionally denied or diluted anyone's right to vote, but rather that Congress violated the Constitution by not extending the relief effected [to others similarly situated]. . . .

[The federal law in question] does not restrict or deny the franchise, but, in effect, extends the franchise to persons who otherwise would be denied it by state law. . . . We need only decide whether the challenged limitation on the relief effected . . . was permissible. In deciding that question, the principle that calls for the closest scrutiny of distinctions in laws denying fundamental rights . . . is [411 U.S. 39] inapplicable; for the distinction challenged by appellees is presented only as a limitation on a reform measure aimed at eliminating an existing barrier to the exercise of the franchise. Rather, in deciding the constitutional propriety of the limitations in such a reform measure we are guided by the familiar principles that a "statute is not invalid under the Constitution because it might have gone farther than it did," . . . that a legislature need not "strike at all evils at the same time," . . . and that "reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind. . . ."

Id. at 656-657. (Emphasis in original.) The Texas system of school financing is not unlike the federal legislation involved in Katzenbach in this regard. Every step leading to the establishment of the system Texas utilizes today -- including the decisions permitting localities to tax and expend locally, and creating and continuously expanding state aid -- was implemented in an effort to extend public education and to improve its quality.{82} Of course, every reform that benefits some more than others may be criticized for what it fails to accomplish. But we think it plain that, in substance, the thrust of the Texas system is affirmative and reformatory, and, therefore, should be scrutinized under judicial principles sensitive to the nature of the State's efforts and to the rights reserved to the States under the Constitution.{83} [411 U.S. 40]

C

It should be clear, for the reasons stated above and in accord with the prior decisions of this Court, that this is not a case in which the challenged state action must be subjected to the searching judicial scrutiny reserved for laws that create suspect classifications or impinge upon constitutionally protected rights.

We need not rest our decision, however, solely on the inappropriateness of the strict scrutiny test. A century of Supreme Court adjudication under the Equal Protection Clause affirmatively supports the application of the traditional standard of review, which requires only that the State's system be shown to bear some rational relationship to legitimate state purposes. This case represents far more than a challenge to the manner in which Texas provides for the education of its children. We have here nothing less than a direct attack on the way in which Texas has chosen to raise and disburse state and local tax revenues. We are asked to condemn the State's judgment in conferring on political subdivisions the power to tax local property to supply revenues for local interests. In so doing, appellees would have the Court intrude in an area in which it has traditionally deferred to state legislatures.{84} This Court has often admonished against such interferences with the State's fiscal policies under the Equal Protection Clause:

The broad discretion as to classification possessed by a legislature in the field of taxation has long been recognized. . . . [T]he passage of time has only served to underscore the wisdom of that recognition of the large area of discretion which is needed by a legislature in formulating sound tax policies. . . . [411 U.S. 41] It has . . . been pointed out that in taxation, even more than in other fields, legislatures possess the greatest freedom in classification. Since the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes. . . .

Madden v. Kentucky, 309 U.S. 83, 87-88 (1940). See also Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356 (1973); Wisconsin v. J. C. Penney Co., 311 U.S. 435, 445 (1940).

Thus, we stand on familiar ground when we continue to acknowledge that the Justices of this Court lack both the expertise and the familiarity with local problems so necessary to the making of wise decisions with respect to the raising and disposition of public revenues. Yet we are urged to direct the States either to alter drastically the present system or to throw out the property tax altogether in favor of some other form of taxation. No scheme of taxation, whether the tax is imposed on property, income, or purchases of goods and services, has yet been devised which is free of all discriminatory impact. In such a complex arena in which no perfect alternatives exist, the Court does well not to impose too rigorous a standard of scrutiny lest all local fiscal schemes become subjects of criticism under the Equal Protection Clause.{85} [411 U.S. 42]

In addition to matters of fiscal policy, this case also involves the most persistent and difficult questions of educational policy, another area in which this Court's lack of specialized knowledge and experience counsels against premature interference with the informed judgments made at the state and local levels. Education, perhaps even more than welfare assistance, presents a myriad of "intractable economic, social, and even philosophical problems." Dandridge v. Williams, 397 U.S. at 487. The very complexity of the problems of financing and managing a state-wide public school system suggests that "there will be more than one constitutionally permissible method of solving them," and that, within the limits of rationality, "the legislature's efforts to tackle the problems" should be entitled to respect. Jefferson v. Hackney, 406 U.S. at 546-547. On even the most basic questions in this area, the scholars and educational experts are divided. Indeed, one of the major [411 U.S. 43] sources of controversy concerns the extent to which there is a demonstrable correlation between educational expenditures and the quality of education{86} -- an assumed correlation underlying virtually every legal conclusion drawn by the District Court in this case. Related to the questioned relationship between cost and quality is the equally unsettled controversy as to the proper goals of a system of public education.{87} And the question regarding the most effective relationship between state boards of education and local school boards, in terms of their respective responsibilities and degrees of control, is now undergoing searching reexamination. The ultimate wisdom as to these and related problems of education is not likely to be divined for all time even by the scholars who now so earnestly debate the issues. In such circumstances, the judiciary is well advised to refrain from imposing on the States inflexible constitutional restraints that could circumscribe or handicap the continued research and experimentation so vital to finding even partial solutions to educational problems and to keeping abreast of ever-changing conditions. [411 U.S. 44]

It must be remembered, also, that every claim arising under the Equal Protection Clause has implications for the relationship between national and state power under our federal system. Questions of federalism are always inherent in the process of determining whether a State's laws are to be accorded the traditional presumption of constitutionality, or are to be subjected instead to

rigorous judicial scrutiny. While

[t]he maintenance of the principles of federalism is a foremost consideration in interpreting any of the pertinent constitutional provisions under which this Court examines state action,{88}

it would be difficult to imagine a case having a greater potential impact on our federal system than the one now before us, in which we are urged to abrogate systems of financing public education presently in existence in virtually every State.

The foregoing considerations buttress our conclusion that Texas' system of public school finance is an inappropriate candidate for strict judicial scrutiny. These same considerations are relevant to the determination whether that system, with its conceded imperfections, nevertheless bears some rational relationship to a legitimate state purpose. It is to this question that we next turn our attention.

III

The basic contours of the Texas school finance system have been traced at the outset of this opinion. We will now describe in more detail that system and how it operates, as these facts bear directly upon the demands of the Equal Protection Clause.

Apart from federal assistance, each Texas school receives its funds from the State and from its local school [411 U.S. 45] district. On a state-wide average, a roughly comparable amount of funds is derived from each source.{89} The State's contribution, under the Minimum Foundation Program, was designed to provide an adequate minimum educational offering in every school in the State. Funds are distributed to assure that there will be one teacher -- compensated at the state supported minimum salary -- for every 25 students.{90} Each school district's other supportive personnel are provided for: one principal for every 30 teachers;{91} one "special service" teacher -- librarian, nurse, doctor, etc. -- for every 20 teachers;{92} superintendents, vocational instructors, counselors, and educators for exceptional children are also provided.{93} Additional funds are earmarked for current operating expenses, for student transportation,{94} and for free textbooks.{95}

The program is administered by the State Board of Education and by the Central Education Agency, which also have responsibility for school accreditation{96} and for monitoring the statutory teacher-qualification standards.{97} As reflected by the 62 increase in funds allotted to the Edgewood School District over the last three years,{98} the State's financial contribution to education is steadily increasing. None of Texas' school districts, however, [411 U.S. 46] has been content to rely alone on funds from the Foundation Program.

By virtue of the obligation to fulfill its Local Fund Assignment, every district must impose an ad valorem tax on property located within its borders. The Fund Assignment was designed to remain sufficiently low to assure that each district would have some ability to provide a more enriched educational program.{99} Every district supplements its Foundation grant in this manner. In some districts, the local property tax contribution is insubstantial, as in Edgewood, where the supplement was only $26 per pupil in 1967. In other districts, the local share may far exceed even the total Foundation grant. In part, local differences are attributable to differences in the rates of taxation or in the degree to which the market value for any category of property varies from its assessed value.{100} The greatest inter-district disparities, however, are attributable to differences

in the amount of assessable property available within any district. Those districts that have more property, or more valuable property, have a greater capability for supplementing state funds. In large measure, these additional local revenues are devoted to paying higher salaries to more teachers. Therefore, the primary distinguishing attributes of schools in property-affluent districts are lower pupil-teacher ratios and higher salary schedules.{101} [411 U.S. 47]

This, then, is the basic outline of the Texas school financing structure. Because of differences in expenditure levels occasioned by disparities in property tax income, appellees claim that children in less affluent districts have been made the subject of invidious discrimination. The District Court found that the State had failed even "to establish a reasonable basis" for a system that results in different levels of per-pupil expenditure. 337 F.Supp. at 284. We disagree.

In its reliance on state, as well as local, resources, the Texas system is comparable to the systems employed [411 U.S. 48] in virtually every other State.{102} The power to tax local property for educational purposes has been recognized in Texas at least since 1883.{103} When the growth of commercial and industrial centers and accompanying shifts in population began to create disparities in local resources, Texas undertook a program calling for a considerable investment of state funds.

The "foundation grant" theory upon which Texas legislators and educators based the Gilmer-Aikin bills was a product of the pioneering work of two New York educational reformers in the 1920's, George D. Strayer and Robert M. Haig.{104} Their efforts were devoted to establishing a means of guaranteeing a minimum state-wide educational program without sacrificing the vital element of local participation. The Strayer-Haig thesis [411 U.S. 49] represented an accommodation between these two competing forces. As articulated by Professor Coleman:

The history of education since the industrial revolution shows a continual struggle between two forces: the desire by members of society to have educational opportunity for all children and the desire of each family to provide the best education it can afford for its own children.{105}

The Texas system of school finance is responsive to these two forces. While assuring a basic education for every child in the State, it permits and encourages a large measure of participation in and control of each district's schools at the local level. In an era that has witnessed a consistent trend toward centralization of the functions of government, local sharing of responsibility for public education has survived. The merit of local control was recognized last Term in both the majority and dissenting opinions in Wright v. Council of the City of Emporia, 407 U.S. 451 (1972). MR. JUSTICE STEWART stated there that "[d]irect control over decisions vitally affecting the education of one's children is a need that is strongly felt in our society." Id. at 469. THE CHIEF JUSTICE, in his dissent, agreed that

[l]ocal control is not only vital to continued public support of the schools, but it is of overriding importance from an educational standpoint as well.

Id. at 478.

The persistence of attachment to government at the lowest level where education is concerned reflects the depth of commitment of its supporters. In part, local control means, as Professor Coleman suggests, the freedom to devote more money to the education of one's children. Equally important, however, is the opportunity [411 U.S. 50] it offers for participation in the

decisionmaking process that determines how those local tax dollars will be spent. Each locality is free to tailor local programs to local needs. Pluralism also affords some opportunity for experimentation, innovation, and a healthy competition for educational excellence. An analogy to the Nation-State relationship in our federal system seems uniquely appropriate. Mr. Justice Brandeis identified as one of the peculiar strengths of our form of government each State's freedom to "serve as a laboratory; and try novel social and economic experiments."{106} No area of social concern stands to profit more from a multiplicity of viewpoints and from a diversity of approaches than does public education.

Appellees do not question the propriety of Texas' dedication to local control of education. To the contrary, they attack the school financing system precisely because, in their view, it does not provide the same level of local control and fiscal flexibility in all districts. Appellees suggest that local control could be preserved and promoted under other financing systems that resulted in more equality in educational expenditures. While it is no doubt true that reliance on local property taxation for school revenues provides less freedom of choice with respect to expenditures for some districts than for others,{107} [411 U.S. 51] the existence of "some inequality" in the manner in which the State's rationale is achieved is not alone a sufficient basis for striking down the entire system. McGowan v. Maryland, 366 U.S. 420, 425-426 (1961). It may not be condemned simply because it imperfectly effectuates the State's goals. Dandridge v. Williams, 397 U.S. at 485. Nor must the financing system fail because, as appellees suggest, other methods of satisfying the State's interest, which occasion "less drastic" disparities in expenditures, might be conceived. Only where state action impinges on the exercise of fundamental constitutional rights or liberties must it be found to have chosen the least restrictive alternative. Cf. Dunn v. Blumstein, 405 U.S. at 343; Shelton v. Tucker, 364 U.S. 479, 488 (1960). It is also well to remember that even those districts that have reduced ability to make free decisions with respect to how much they spend on education still retain, under the present system, a large measure of authority as to how available funds will be allocated. They further enjoy the power to make numerous other decisions with respect to the operation of the schools.{108} The people of Texas may be [411 U.S. 52] justified in believing that other systems of school financing, which place more of the financial responsibility in the hands of the State, will result in a comparable lessening of desired local autonomy. That is, they may believe [411 U.S. 53] that along with increased control of the purse strings at the state level will go increased control over local policies.{109}

Appellees further urge that the Texas system is unconstitutionally arbitrary because it allows the availability of local taxable resources to turn on "happenstance." They see no justification for a system that allows, as they contend, the quality of education to fluctuate on the basis of the fortuitous positioning of the boundary lines of political subdivisions and the location of valuable commercial and industrial property. But any scheme of [411 U.S. 54] local taxation -- indeed the very existence of identifiable local governmental units -- requires the establishment of jurisdictional boundaries that are inevitably arbitrary. It is equally inevitable that some localities are going to be blessed with more taxable assets than others.{110} Nor is local wealth a static quantity. Changes in the level of taxable wealth within any district may result from any number of events, some of which local residents can and do influence. For instance, commercial and industrial enterprises may be encouraged to locate within a district by various actions -- public and private.

Moreover, if local taxation for local expenditures were an unconstitutional method of providing for education, then it might be an equally impermissible means of providing other necessary services customarily financed largely from local property taxes, including local police and fire protection, public health and hospitals, and public utility facilities of various kinds. We perceive

no justification for such a severe denigration of local property taxation and control as would follow from appellees' contentions. It has simply never been within the constitutional prerogative of this Court to nullify state-wide measures for financing public services merely because the burdens or benefits thereof fall unevenly depending upon the relative wealth of the political subdivisions in which citizens live.

In sum, to the extent that the Texas system of school financing results in unequal expenditures between children [411 U.S. 55] who happen to reside in different districts, we cannot say that such disparities are the product of a system that is so irrational as to be invidiously discriminatory. Texas has acknowledged its shortcomings, and has persistently endeavored -- not without some success -- to ameliorate the differences in levels of expenditures without sacrificing the benefits of local participation. The Texas plan is not the result of hurried, ill-conceived legislation. It certainly is not the product of purposeful discrimination against any group or class. On the contrary, it is rooted in decades of experience in Texas and elsewhere, and, in major part, is the product of responsible studies by qualified people. In giving substance to the presumption of validity to which the Texas system is entitled, Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78 (1911), it is important to remember that, at every stage of its development, it has constituted a "rough accommodation" of interests in an effort to arrive at practical and workable solutions. Metropolis Theatre Co. v. City of Chicago, 228 U.S. 61, 69-70 (1913). One also must remember that the system here challenged is not peculiar to Texas or to any other State. In its essential characteristics, the Texas plan for financing public education reflects what many educators for a half century have thought was an enlightened approach to a problem for which there is no perfect solution. We are unwilling to assume for ourselves a level of wisdom superior to that of legislators, scholars, and educational authorities in 50 States, especially where the alternatives proposed are only recently conceived and nowhere yet tested. The constitutional standard under the Equal Protection Clause is whether the challenged state action rationally furthers a legitimate state purpose or interest. McGinnis v. Royster, 410 U.S. 263, 270 (1973). We hold that the Texas plan abundantly satisfies this standard. [411 U.S. 56]

IV

In light of the considerable attention that has focused on the District Court opinion in this case and on its California predecessor, Serrano v. Priest, 5 Cal.3d 584, 487 P.2d 1241 (1971), a cautionary postscript seems appropriate. It cannot be questioned that the constitutional judgment reached by the District Court and approved by our dissenting Brothers today would occasion in Texas and elsewhere an unprecedented upheaval in public education. Some commentators have concluded that, whatever the contours of the alternative financing programs that might be devised and approved, the result could not avoid being a beneficial one. But, just as there is nothing simple about the constitutional issues involved in these cases, there is nothing simple or certain about predicting the consequences of massive change in the financing and control of public education. Those who have devoted the most thoughtful attention to the practical ramifications of these cases have found no clear or dependable answers, and their scholarship reflects no such unqualified confidence in the desirability of completely uprooting the existing system.

The complexity of these problems is demonstrated by the lack of consensus with respect to whether it may be said with any assurance that the poor, the racial minorities, or the children in overburdened core-city school districts would be benefited by abrogation of traditional modes of financing education. Unless there is to be a substantial increase in state expenditures on education across the board -- an event the likelihood of which is open to considerable question{111} -- these

groups stand to [411 U.S. 57] realize gains in terms of increased per-pupil expenditures only if they reside in districts that presently spend at relatively low levels, i.e., in those districts that would benefit from the redistribution of existing resources. Yet recent studies have indicated that the poorest families are not invariably clustered in the most impecunious school districts.{112} Nor does it now appear that there is any more than a random chance that racial minorities are concentrated in property-poor districts.{113} Additionally, [411 U.S. 58] several research projects have concluded that any financing alternative designed to achieve a greater equality of expenditures is likely to lead to higher taxation and lower educational expenditures in the major urban centers,{114} a result that would exacerbate, rather than ameliorate, existing conditions in those areas.

These practical considerations, of course, play no role in the adjudication of the constitutional issues presented here. But they serve to highlight the wisdom of the traditional limitations on this Court's function. The consideration and initiation of fundamental reforms with respect to state taxation and education are matters reserved for the legislative processes of the various States, and we do no violence to the values of federalism and separation of powers by staying our hand. We hardly need add that this Court's action today is not to be viewed as placing its judicial imprimatur on the status quo. 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 [411 U.S. 59] 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.

Reversed.

STEWART, J., concurring

MR. JUSTICE STEWART, concurring.

The method of financing public schools in Texas, as in almost every other State, has resulted in a system of public education that can fairly be described as chaotic and unjust.{1} It does not follow, however, and I cannot find, that this system violates the Constitution of the United States. I join the opinion and judgment of the Court because I am convinced that any other course would mark an extraordinary departure from principled adjudication under the Equal Protection Clause of the Fourteenth Amendment. The uncharted directions of such a departure are suggested, I think, by the imaginative dissenting opinion my Brother MARSHALL has filed today.

Unlike other provisions of the Constitution, the Equal Protection Clause confers no substantive rights and creates no substantive liberties.{2} The function of the Equal Protection Clause, rather, is simply to measure the validity of classifications created by state laws. [411 U.S. 60]

There is hardly a law on the books that does not affect some people differently from others. But the basic concern of the Equal Protection Clause is with state legislation whose purpose or effect is to create discrete and objectively identifiable classes.{3} And, with respect to such legislation, it has long been settled that the Equal Protection Clause is offended only by laws that are invidiously discriminatory -- only by classifications that are wholly arbitrary or capricious. See, e.g.,

Rinaldi v. Yeager, 384 U.S. 305. This settled principle of constitutional law was compendiously stated in Mr. Chief Justice Warren's opinion for the Court in McGowan v. Maryland, 366 U.S. 420, 425-426, in the following words:

Although no precise formula has been developed, the Court has held that the Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.

This doctrine is no more than a specific application of one of the first principles of constitutional adjudication -- the basic presumption of the constitutional validity of a duly enacted state or federal law. See Thayer, The Origin and Scope of the American Doctrine of Constitutional Law, 7 Harv.L.Rev. 129 (1893). [411 U.S. 61]

Under the Equal Protection Clause, this presumption of constitutional validity disappears when a State has enacted legislation whose purpose or effect is to create classes based upon criteria that, in a constitutional sense, are inherently "suspect." Because of the historic purpose of the Fourteenth Amendment, the prime example of such a "suspect" classification is one that is based upon race. See, e.g., Brown v. Board of Education, 347 U.S. 483; McLaughlin v. Florida, 379 U.S. 184. But there are other classifications that, at least in some settings, are also "suspect" -- for example, those based upon national origin,{4} alienage,{5} indigency,{6} or illegitimacy.{7}

Moreover, quite apart from the Equal Protection Clause, a state law that impinges upon a substantive right or liberty created or conferred by the Constitution is, of course, presumptively invalid, whether or not the law's purpose or effect is to create any classifications. For example, a law that provided that newspapers could be published only by people who had resided in the State for five years could be superficially viewed as invidiously discriminating against an identifiable class in violation of the Equal Protection Clause. But, more basically, such a law would be invalid simply because it abridged the freedom of the press. Numerous cases in this Court illustrate this principle.{8} [411 U.S. 62]

In refusing to invalidate the Texas system of financing its public schools, the Court today applies with thoughtfulness and understanding the basic principles I have so sketchily summarized. First, as the Court points out, the Texas system has hardly created the kind of objectively identifiable classes that are cognizable under the Equal Protection Clause.{9} Second, even assuming the existence of such discernible categories, the classifications are in no sense based upon constitutionally "suspect" criteria. Third, the Texas system does not rest "on grounds wholly irrelevant to the achievement of the State's objective." Finally, the Texas system impinges upon no substantive constitutional rights or liberties. It follows, therefore, under the established principle reaffirmed in Mr. Chief Justice Warren's opinion for the Court in McGowan v. Maryland, supra, that the judgment of the District Court must be reversed.

BRENNAN, J., dissenting

MR. JUSTICE BRENNAN, dissenting.

Although I agree with my Brother WHITE that the Texas statutory scheme is devoid of any rational basis, and, for that reason, is violative of the Equal Protection Clause, I also record my disagreement with the Court's rather distressing assertion that a right may be deemed "fundamental" for the purposes of equal protection analysis only if it is "explicitly or implicitly guaranteed by the Constitution." Ante at 33-34. As my Brother MARSHALL convincingly demonstrates, our prior cases stand for the proposition that "fundamentality" is, in large measure, a function of the right's importance in terms of the effectuation of those rights which are in fact, constitutionally guaranteed. Thus,

[a]s the nexus between the specific constitutional guarantee and the nonconstitutional [411 U.S. 63] interest draws closer, the nonconstitutional interest becomes more fundamental and the degree of judicial scrutiny applied when the interest is infringed on a discriminatory basis must be adjusted accordingly.

Post at 102-103.

Here, there can be no doubt that education is inextricably linked to the right to participate in the electoral process and to the rights of free speech and association guaranteed by the First Amendment. See post at 111-115. This being so, any classification affecting education must be subjected to strict judicial scrutiny, and since even the State concedes that the statutory scheme now before us cannot pass constitutional muster under this stricter standard of review, I can only conclude that the Texas school-financing scheme is constitutionally invalid.

WHITE, J., dissenting

MR. JUSTICE WHITE, with whom MR. JUSTICE DOUGLAS and MR. JUSTICE BRENNAN join, dissenting.

The Texas public schools are financed through a combination of state funding, local property tax revenue, and some federal funds.{1} Concededly, the system yields wide disparity in per-pupil revenue among the various districts. In a typical year, for example, the Alamo Heights district had total revenues of $594 per pupil, while the Edgewood district had only $356 per pupil.{2} The majority and the State concede, as they must, the existence [411 U.S. 64] of major disparities in spendable funds. But the State contends that the disparities do not invidiously discriminate against children and families in districts such as Edgewood, because the Texas scheme is designed

to provide an adequate education for all, with local autonomy to go beyond that as individual school districts desire and are able. . . . It leaves to the people of each district the choice whether to go beyond the minimum and, if so, by how much.{3}

The majority advances this rationalization:

While assuring a basic education for every child in the State, it permits and encourages a large measure of participation in and control of each district's schools at the local level.

I cannot disagree with the proposition that local control and local decisionmaking play an important part in our democratic system of government. Cf. James v. Valtierra, 402 U.S. 137 (1971). Much may be left to local option, and this case would be quite different if it were true that the Texas system, while insuring minimum educational expenditures in every district through state funding,

extended a meaningful option to all local districts to increase their per-pupil expenditures, and so to improve their children's education to the extent that increased funding would achieve that goal. The system would then arguably provide a rational and sensible method of achieving the stated aim of preserving an area for local initiative and decision.

The difficulty with the Texas system, however, is that it provides a meaningful option to Alamo Heights and like school districts, but almost none to Edgewood and those other districts with a low per-pupil real estate tax base. In these latter districts, no matter how desirous parents are of supporting their schools with greater revenues, it is impossible to do so through the use of the [411 U.S. 65] real estate property tax. In these districts, the Texas system utterly fails to extend a realistic choice to parents because the property tax, which is the only revenue-raising mechanism extended to school districts, is practically and legally unavailable. That this is the situation may be readily demonstrated.

Local school districts in Texas raise their portion of the Foundation School Program -- the Local Fund Assignment -- by levying ad valorem taxes on the property located within their boundaries. In addition, the districts are authorized, by the state constitution and by statute, to levy ad valorem property taxes in order to raise revenues to support educational spending over and above the expenditure of Foundation School Program funds.

Both the Edgewood and Alamo Heights districts are located in Bexar County, Texas. Student enrollment in Alamo Heights is 5,432, in Edgewood 22,862. The per-pupil market value of the taxable property in Alamo Heights is $49,078, in Edgewood $5,960. In a typical, relevant year, Alamo Heights had a maintenance tax rate of $1.20 and a debt service (bond) tax rate of 20¢ per $100 assessed evaluation, while Edgewood had a maintenance rate of 52¢ and a bond rate of 67¢. These rates, when applied to the respective tax bases, yielded Alamo Heights $1,433,473 in maintenance dollars and $236,074 in bond dollars, and Edgewood $223,034 in maintenance dollars and $279,023 in bond dollars. As is readily apparent, because of the variance in tax bases between the districts, results, in terms of revenues, do not correlate with effort, in terms of tax rate. Thus, Alamo Heights, with a tax base approximately twice the size of Edgewood's base, realized approximately six times as many maintenance dollars as Edgewood by using a tax rate only approximately two and one-half times larger. Similarly, Alamo Heights realized slightly fewer bond [411 U.S. 66] dollars by using a bond tax rate less than one-third of that used by Edgewood.

Nor is Edgewood's revenue-raising potential only deficient when compared with Alamo Heights. North East District has taxable property with a per-pupil market value of approximately $31,000, but total taxable property approximately four and one-half times that of Edgewood. Applying a maintenance rate of $1, North East yielded $2,818,148. Thus, because of its superior tax base, North East was able to apply a tax rate slightly less than twice that applied by Edgewood and yield more than 10 times the maintenance dollars. Similarly, North East, with a bond rate of 45¢, yielded $1,249,159 -- more than four times Edgewood's yield with two-thirds the rate.

Plainly, were Alamo Heights or North East to apply the Edgewood tax rate to its tax base, it would yield far greater revenues than Edgewood is able to yield applying those same rates to its base. Conversely, were Edgewood to apply the Alamo Heights or North East rates to its base, the yield would be far smaller than the Alamo Heights or North East yields. The disparity is, therefore, currently operative, and its impact on Edgewood is undeniably serious. It is evident from statistics in the record that show that, applying an equalized tax rate of 85¢ per $100 assessed valuation, Alamo Heights was able to provide approximately $330 per pupil in local revenues over and above

the Local Fund Assignment. In Edgewood, on the other hand, with an equalized tax rate of $1.05 per $100 of assessed valuation, $26 per pupil was raised beyond the Local Fund Assignment.{4} As previously noted, in Alamo Heights, [411 U.S. 67] total per-pupil revenues from local, state, and federal funds was $594 per pupil, in Edgewood $356.{5}

In order to equal the highest yield in any other Bexar County district, Alamo Heights would be required to tax at the rate of 68¢ per $100 of assessed valuation. Edgewood would be required to tax at the prohibitive rate of $5.76 per $100. But state law places a $1.50 per $100 ceiling on the maintenance tax rate, a limit that would surely be reached long before Edgewood attained an equal yield. Edgewood is thus precluded in law, as well a in fact, from achieving a yield even close to that of some other district.

The Equal Protection Clause permits discriminations between classes, but requires that the classification bear some rational relationship to a permissible object sought to be attained by the statute. It is not enough that the Texas system before us seeks to achieve the valid, rational purpose of maximizing local initiative; the means chosen by the State must also be rationally related to the end sought to be achieved. As the Court stated just last Term in Weber v. Aetna Casualty & Surety Co., 406 U.S. 164, 172 (1972):

The tests to determine the validity of state statutes under the Equal Protection Clause have been variously expressed, but this Court requires, at a minimum, that a statutory classification bear some rational relationship to a legitimate state purpose. Morey v. Doud, 354 U.S. 457 (1957); Williamson v. Lee Optical Co., 348 U.S. 483 (1955); Gulf, Colorado & Santa Fe R. Co. v. Ellis, 165 U.S. 150 (1897); Yick Wo v. Hopkins, 118 U.S. 356 (1886). [411 U.S. 68]

Neither Texas nor the majority heeds this rule. If the State aims at maximizing local initiative and local choice, by permitting school districts to resort to the real property tax if they choose to do so, it utterly fails in achieving its purpose in districts with property tax bases so low that there is little if any opportunity for interested parents, rich or poor, to augment school district revenues. Requiring the State to establish only that unequal treatment is in furtherance of a permissible goal, without also requiring the State to show that the means chosen to effectuate that goal are rationally related to its achievement, makes equal protection analysis no more than an empty gesture.{6} In my view, the parents and children in Edgewood, and in like districts, suffer from an invidious discrimination violative of the Equal Protection Clause. This does not, of course, mean that local control may not be a legitimate goal of a school financing system. Nor does it mean that the State must guarantee each district an equal per-pupil revenue from the state school financing system. Nor does it mean, as the majority appears to believe, that, by affirming the decision below, [411 U.S. 69] this Court would be

imposing on the States inflexible constitutional restraints that could circumscribe or handicap the continued research and experimentation so vital to finding even partial solutions to educational problems and to keeping abreast of ever-changing conditions.

On the contrary, it would merely mean that the State must fashion a financing scheme which provides a rational basis for the maximization of local control, if local control is to remain a goal of the system, and not a scheme with

different treatment be[ing] accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute.

Reed v. Reed, 404 U.S. 71, 75-76 (1971).

Perhaps the majority believes that the major disparity in revenues provided and permitted by the Texas system is inconsequential. I cannot agree, however, that the difference of the magnitude appearing in this case can sensibly be ignored, particularly since the State itself considers it so important to provide opportunities to exceed the minimum state educational expenditures.

There is no difficulty in identifying the class that is subject to the alleged discrimination and that is entitled to the benefits of the Equal Protection Clause. I need go no farther than the parents and children in the Edgewood district, who are plaintiffs here and who assert that they are entitled to the same choice as Alamo Heights to augment local expenditures for schools but are denied that choice by state law. This group constitutes a class sufficiently definite to invoke the protection of the Constitution. They are as entitled to the protection of the Equal Protection Clause as were the voters in allegedly underrepresented counties in the reapportionment case. See, e.g., Baker v. Carr, 369 U.S. 186, 204-208 (1962); Gray v. Sanders, 372 U.S. 368, 375 (1963); Reynolds v. Sims, 377 U.S. 533, 654-556 (1964). And in Bullock v. Carter, 405 U.S. 134 (1972), where a challenge to the [411 U.S. 70] Texas candidate filing fee on equal protection grounds was upheld, we noted that the victims of alleged discrimination wrought by the filing fee

cannot be described by reference to discrete and precisely defined segments of the community as is typical of inequities challenged under the Equal Protection Clause,

but concluded that

we would ignore reality were we not to recognize that this system falls with unequal weight on voters, as well as candidates, according to their economic status.

Id. at 144. Similarly, in the present case, we would blink reality to ignore the fact that school districts, and students in the end, are differentially affected by the Texas school financing scheme with respect to their capability to supplement the Minimum Foundation School Program. At the very least, the law discriminates against those children and their parents who live in districts where the per-pupil tax base is sufficiently low to make impossible the provision of comparable school revenues by resort to the real property tax which is the only device the State extends for this purpose.

MARSHALL, J., dissenting

MR. JUSTICE MARSHALL, with whom MR. JUSTICE DOUGLAS concurs, dissenting.

The Court today decides, in effect, that a State may constitutionally vary the quality of education which it offers its children in accordance with the amount of taxable wealth located in the school districts within which they reside. The majority's decision represents an abrupt departure from the mainstream of recent state and federal court decisions concerning the unconstitutionality of state educational financing schemes dependent upon taxable local wealth.{1} More unfortunately, though, the [411 U.S. 71] majority's holding can only be seen as a retreat from our historic commitment to equality of educational opportunity and as unsupportable acquiescence in a system which deprives children in their earliest years of the chance to reach their full potential as citizens. The Court does this despite the absence of any substantial justification for a scheme which arbitrarily channels educational resources in accordance with the fortuity of the amount of taxable wealth within each district.

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.{2} 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 [411 U.S. 72] and minds in a way unlikely ever to be undone." Brown v. Board of Education, 347 U.S. 483, 494 (1954). I must therefore respectfully dissent.

I

The Court acknowledges that "substantial inter-district disparities in school expenditures" exist in Texas, ante at 15, and that these disparities are "largely attributable to differences in the amounts of money collected through local property taxation," ante at 16. But instead of closely examining the seriousness of these disparities and the invidiousness of the Texas financing scheme, the Court undertakes an elaborate exploration of the efforts Texas has purportedly made to close the gaps between its districts in terms of levels of district wealth and resulting educational funding. Yet however praiseworthy Texas' equalizing efforts, the issue in this case is not whether Texas is doing its best to ameliorate the worst features of a discriminatory scheme, but rather whether the scheme itself is, in fact, unconstitutionally discriminatory in the face of the Fourteenth Amendment's guarantee of equal protection of the laws. When the Texas financing scheme is taken as a whole, I do not think it can be doubted that it produces a discriminatory impact on substantial numbers of the school-age children of the State of Texas.

A

Funds to support public education in Texas are derived from three sources: local ad valorem property taxes; the Federal Government; and the state government.{3} It is enlightening to consider these in order. [411 U.S. 73]

Under Texas law, the only mechanism provided the local school district for raising new, unencumbered revenues is the power to tax property located within its boundaries.{4} At the same time, the Texas financing scheme effectively restricts the use of monies raised by local property taxation to the support of public education within the boundaries of the district in which they are raised, since any such taxes must be approved by a majority of the property-taxpaying voters of the district.{5}

The significance of the local property tax element of the Texas financing scheme is apparent from the fact that it provides the funds to meet some 40% of the cost of public education for Texas as a whole.{6} Yet the amount of revenue that any particular Texas district can raise is dependent on two factors -- its tax rate and its amount of taxable property. The first factor is determined by the property-taxpaying voters of the district.{7} But, regardless of the enthusiasm of the local voters for public [411 U.S. 74] education, the second factor -- the taxable property wealth of the district -- necessarily restricts the district's ability to raise funds to support public education.{8} Thus, even though the voters of two Texas districts may be willing to make the same tax effort, the results for the districts will be substantially different if one is property rich, while the other is property poor. The necessary effect of the Texas local property tax is, in short, to favor property-rich districts and

to disfavor property-poor ones.

The seriously disparate consequences of the Texas local property tax, when that tax is considered alone, are amply illustrated by data presented to the District Court by appellees. These data included a detailed study of a sample of 110 Texas school districts{9} for the 1967-1968 school year conducted by Professor Joel S. Berke of Syracuse University's Educational Finance Policy Institute. Among other things, this study revealed that the 10 richest districts examined, each of which had more than $100,000 in taxable property per pupil, raised through local effort an average of $610 per pupil, whereas the four poorest districts studied, each of which had less than $10,000 in taxable property per pupil, were able [411 U.S. 75] to raise only an average of $63 per pupil.{10} And, as the Court effectively recognizes, ante at 27, this correlation between the amount of taxable property per pupil and the amount of local revenues per pupil holds true for the 96 districts in between the richest and poorest districts.{11}

It is clear, moreover, that the disparity of per-pupil revenues cannot be dismissed as the result of lack of local effort -- that is, lower tax rates by property-poor districts. To the contrary, the data presented below indicate that the poorest districts tend to have the highest tax rates and the richest districts tend to have the lowest tax rates.{12} Yet, despite the apparent extra effort being made by the poorest districts, they are unable even to begin to match the richest districts in terms of the production of local revenues. For example, the 10 richest districts studied by Professor Berke were able to produce $585 per pupil with an equalized tax rate of 31¢ [411 U.S. 76] on $100 of equalized valuation, but the four poorest districts studied, with an equalized rate of 70¢ on $100 of equalized valuation, were able to produce only $60 per pupil.{13} Without more, this state-imposed system of educational funding presents a serious picture of widely varying treatment of Texas school districts, and thereby of Texas school children, in terms of the amount of funds available for public education.

Nor are these funding variations corrected by the other aspects of the Texas financing scheme. The Federal Government provides funds sufficient to cover only some 10% of the total cost of public education in Texas.{14} Furthermore, while these federal funds are not distributed in Texas solely on a per-pupil basis, appellants do not here contend that they are used in such a way as to ameliorate significantly the widely varying consequences for Texas school districts and school children of the local property tax element of the state financing scheme.{15}

State funds provide the remaining some 50% of the monies spent on public education in Texas.{16} Technically, they are distributed under two programs. The first is the Available School Fund, for which provision is made in the Texas Constitution.{17} The Available [411 U.S. 77] School Fund is composed of revenues obtained from a number of sources, including receipts from the state ad valorem property tax, one-fourth of all monies collected by the occupation tax, annual contributions by the legislature from general revenues, and the revenues derived from the Permanent School Fund.{18} For the 1970-1971 school year, the Available School Fund contained $296,000,000. The Texas Constitution requires that this money be distributed annually on a per capita basis{19} to the local school districts. Obviously, such a flat grant could not alone eradicate the funding differentials attributable to the local property tax. Moreover, today the Available School Fund is in reality simply one facet of the second state financing program, the Minimum Foundation School Program,{20} since each district's annual share of the Fund is deducted from the sum to which the district is entitled under the Foundation Program.{21}

The Minimum Foundation School Program provides funds for three specific purposes:

professional salaries, current operating expenses, and transportation expenses.{22} The State pays, on an overall basis, for approximately 80% of the cost of the Program; the remaining 20% is distributed among the local school districts under the [411 U.S. 78] Local Fund Assignment.{23} Each district's share of the Local Fund Assignment is determined by a complex "economic index" which is designed to allocate a larger share of the costs to property-rich districts than to property-poor districts.{24} Each district pays its share with revenues derived from local property taxation.

The stated purpose of the Minimum Foundation School Program is to provide certain basic funding for each local Texas school district.{25} At the same time, the Program was apparently intended to improve, to some degree, the financial position of property-poor districts relative to property-rich districts, since -- through the use of the economic index -- an effort is made to charge a disproportionate share of the costs of the Program to rich districts.{26} It bears noting, however, that substantial criticism has been leveled at the practical effectiveness of the economic index system of local cost allocation.{27} In theory, the index is designed to ascertain the relative ability of each district to contribute to the Local Fund Assignment from local property taxes. Yet the index is not developed simply on the basis of each district's taxable wealth. It also takes into account the district's relative income from manufacturing, mining, and agriculture, its payrolls, and its scholastic population.{28} [411 U.S. 79] It is difficult to discern precisely how these latter factors are predictive of a district's relative ability to raise revenues through local property taxes. Thus, in 1966, one of the consultants who originally participated in the development of the Texas economic index adopted in 1949 told the Governor's Committee on Public School Education: "The Economic Index approach to evaluating local ability offers a little better measure than sheer chance, but not much."{29}

Moreover, even putting aside these criticisms of the economic index as a device for achieving meaningful district wealth equalization through cost allocation, poor districts still do not necessarily receive more state aid than property-rich districts. For the standards which currently determine the amount received from the Foundation School Program by any particular district{30} favor property-rich districts.{31} Thus, focusing on the same [411 U.S. 80] Edgewood Independent and Alamo Heights School Districts which the majority uses for purposes of illustration, we find that, in 1967-1968, property-rich Alamo Heights,{32} which raised $333 per pupil on an equalized tax rate of 85¢ per $100 valuation, received $225 per pupil from the Foundation School Program, while property-poor Edgewood,{33} which raised only $26 per pupil with an equalized tax rate of $1.05 per $100 valuation, received only $222 per pupil from the Foundation School Program.{34} And, more recent data, which indicate that, for the 1970-1971 school year, Alamo Heights received $491 per pupil from [411 U.S. 81] the Program while Edgewood received only $356 per pupil, hardly suggest that the wealth gap between the districts is being narrowed by the State Program. To the contrary, whereas, in 1967-1968, Alamo Heights received only $3 per pupil, or about 1%, more than Edgewood in state aid, by 1970-1971, the gap had widened to a difference of $135 per pupil, or about 38%.{35} It was data of this character that prompted the District Court to observe that "the current [state aid] system tends to subsidize the rich at the expense of the poor, rather than the other way around."{36} 337 F.Supp. 280, 282. And even the appellants go no further here than to venture that the Minimum Foundation School Program has "a mildly equalizing effect."{37}

Despite these facts, the majority continually emphasizes how much state aid has, in recent years, been given [411 U.S. 82] to property-poor Texas school districts. What the Court fails to emphasize is the cruel irony of how much more state aid is being given to property-rich Texas school districts on top of their already substantial local property tax revenues.{38} Under any view, then, it is apparent that the state aid provided by the Foundation School Program fails to compensate

for the large funding variations attributable to the local property tax element of the Texas financing scheme. And it is these stark differences in the treatment of Texas school districts and school children inherent in the Texas financing scheme, not the absolute amount of state aid provided to any particular school district, that are the crux of this case. There can, moreover, be no escaping the conclusion that the local property tax which is dependent upon taxable district property wealth is an essential feature of the Texas scheme for financing public education.{39}

B

The appellants do not deny the disparities in educational funding caused by variations in taxable district property wealth. They do contend, however, that whatever the differences in per-pupil spending among Texas districts, there are no discriminatory consequences for the children of the disadvantaged districts. They recognize that what is at stake in this case is the quality of the [411 U.S. 83] public education provided Texas children in the districts in which they live. But appellants reject the suggestion that the quality of education in any particular district is determined by money -- beyond some minimal level of funding which they believe to be assured every Texas district by the Minimum Foundation School Program. In their view, there is simply no denial of equal educational opportunity to any Texas school children as a result of the widely varying per-pupil spending power provided districts under the current financing scheme.

In my view, though, even an unadorned restatement of this contention is sufficient to reveal its absurdity. Authorities concerned with educational quality no doubt disagree as to the significance of variations in per-pupil spending.{40} Indeed, conflicting expert testimony was presented to the District Court in this case concerning the effect of spending variations on educational achievement.{41} We sit, however, not to resolve disputes over educational theory, but to enforce our Constitution. It is an inescapable fact that, if one district has more funds available per pupil than another district, the [411 U.S. 84] former will have greater choice in educational planning than will the latter. In this regard, I believe the question of discrimination in educational quality must be deemed to be an objective one that looks to what the State provides its children, not to what the children are able to do with what they receive. That a child forced to attend an underfunded school with poorer physical facilities, less experienced teachers, larger classes, and a narrower range of courses than a school with substantially more funds -- and thus with greater choice in educational planning -- may nevertheless excel is to the credit of the child, not the State, cf. Missouri ex rel. Gaines v. Canada, 305 U.S. 337, 349 (1938). Indeed, who can ever measure for such a child the opportunities lost and the talents wasted for want of a broader, more enriched education? Discrimination in the opportunity to learn that is afforded a child must be our standard.

Hence, even before this Court recognized its duty to tear down the barriers of state-enforced racial segregation in public education, it acknowledged that inequality in the educational facilities provided to students may be discriminatory state action as contemplated by the Equal Protection Clause. As a basis for striking down state-enforced segregation of a law school, the Court in Sweatt v. Painter, 339 U.S. 629, 633-634 (1950), stated:

[W]e cannot find substantial equality in the educational opportunities offered white and Negro law students by the State. In terms of number of the faculty, variety of courses and opportunity for specialization, size of the student body, scope of the library, availability of law review and similar activities, the [whites-only] Law School is superior. . . . It is difficult to believe that one who had a free choice between these law schools would consider the question close. [411 U.S. 85]

See also McLaurin v. Oklahoma State Regents for Higher Education, 339 U.S. 637 (1950). Likewise, it is difficult to believe that, if the children of Texas had a free choice, they would choose to be educated in districts with fewer resources, and hence with more antiquated plants, less experienced teachers, and a less diversified curriculum. In fact, if financing variations are so insignificant to educational quality, it is difficult to understand why a number of our country's wealthiest school districts, which have no legal obligation to argue in support of the constitutionality of the Texas legislation, have nevertheless zealously pursued its cause before this Court.{42}

The consequences, in terms of objective educational input, of the variations in district funding caused by the Texas financing scheme are apparent from the data introduced before the District Court. For example, in 1968-1969, 100% of the teachers in the property-rich Alamo Heights School District had college degrees.{43} By contrast, during the same school year, only 80.02% of the teachers had college degrees in the property poor Edgewood Independent school District.{44} Also, in 1968-1969, approximately 47% of the teachers in the Edgewood District were on emergency teaching permits, whereas only 11% of the teachers in Alamo Heights were on such permits.{45} This is undoubtedly a reflection of the fact that the top of Edgewood's teacher salary scale was [411 U.S. 86] approximately 80% of Alamo Heights'.{46} And, not surprisingly, the teacher-student ratio varies significantly between the two districts.{47} In other wards, as might be expected, a difference in the funds available to districts results in a difference in educational inputs available for a child's public education in Texas. For constitutional purposes, I believe this situation, which is directly attributable to the Texas financing scheme, raises a grave question of state-created discrimination in the provision of public education. Cf. Gaston County v. United States, 395 U.S. 285, 293-294 (1969).

At the very least, in view of the substantial inter-district disparities in funding and in resulting educational inputs shown by appellees to exist under the Texas financing scheme, the burden of proving that these disparities do not, in fact, affect the quality of children's education must fall upon the appellants. Cf. Hobson v. Hansen, 327 F.Supp. 844, 860-861 (DC 1971). Yet appellants made no effort in the District Court to demonstrate that educational quality is not affected by variations in funding and in resulting inputs. And, in this Court, they have argued no more than that the relationship is ambiguous. This is hardly sufficient to overcome appellees' prima facie showing of state-created discrimination between the school children of Texas with respect to objective educational opportunity.

Nor can I accept the appellants' apparent suggestion that the Texas Minimum Foundation School Program effectively eradicates any discriminatory effects otherwise resulting from the local property tax element of the [411 U.S. 87] Texas financing scheme. Appellants assert that, despite its imperfections, the Program "does guarantee an adequate education to every child."{48} The majority, in considering the constitutionality of the Texas financing scheme, seems to find substantial merit in this contention, for it tells us that the Foundation Program "was designed to provide an adequate minimum educational offering in every school in the State," ante at 45, and that the Program "assur[es] a basic education for every child," ante at 49. But I fail to understand how the constitutional problems inherent in the financing scheme are eased by the Foundation Program. Indeed, the precise thrust of the appellants' and the Court's remarks are not altogether clear to me.

The suggestion may be that the state aid received via the Foundation Program sufficiently improves the position of property-poor districts vis-a-vis property-rich districts -- in terms of educational funds -- to eliminate any claim of inter-district discrimination in available educational resources which might otherwise exist if educational funding were dependent solely upon local

property taxation. Certainly the Court has recognized that to demand precise equality of treatment is normally unrealistic, and thus minor differences inherent in any practical context usually will not make out a substantial equal protection claim. See, e.g., Mayer v. City of Chicago, 404 U.S. 189, 194-195 (1971); Draper v. Washington, 372 U.S. 487, 495-496 (1963); Bain Peanut Co. v. Pinson, 282 U.S. 499, 501 (1931). But, as has already been seen, we are hardly presented here with some de minimis claim of discrimination resulting from the play necessary in any functioning system; to the contrary, it is clear that the Foundation Program utterly fails to [411 U.S. 88] ameliorate the seriously discriminatory effects of the local property tax.{49}

Alternatively, the appellants and the majority may believe that the Equal Protection Clause cannot be offended by substantially unequal state treatment of persons who are similarly situated so long as the State provides everyone with some unspecified amount of education which evidently is "enough."{50} The basis for such a novel view is far from clear. It is, of course, true that the Constitution does not require precise equality in the treatment of all persons. As Mr. Justice Frankfurter explained:

The equality at which the "equal protection" clause aims is not a disembodied equality. The Fourteenth Amendment enjoins "the equal protection of the laws," and laws are not abstract propositions. . . . The Constitution does not require things which are different in fact or opinion to be treated in law as though they were the same.

Tigner v. Texas, 310 U.S. 141, 147 (1940). See also Douglas v. California, 372 U.S. 353, 357 (1963); Goesaert v. Cleary, 335 U.S. 464, 466 (1948). [411 U.S. 89] But this Court has never suggested that, because some "adequate" level of benefits is provided to all, discrimination in the provision of services is therefore constitutionally excusable. The Equal Protection Clause is not addressed to the minimal sufficiency, but rather to the unjustifiable inequalities of state action. It mandates nothing less than that "all persons similarly circumstanced shall be treated alike." F. S. Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920).

Even if the Equal Protection Clause encompassed some theory of constitutional adequacy, discrimination in the provision of educational opportunity would certainly seem to be a poor candidate for its application. Neither the majority nor appellants inform us how judicially manageable standards are to be derived for determining how much education is "enough" to excuse constitutional discrimination. One would think that the majority would heed its own fervent affirmation of judicial self-restraint before undertaking the complex task of determining at large what level of education is constitutionally sufficient. Indeed, the majority's apparent reliance upon the adequacy of the educational opportunity assured by the Texas Minimum Foundation School Program seems fundamentally inconsistent with its own recognition that educational authorities are unable to agree upon what makes for educational quality, see ante at 42-43 and n. 86 and at 47 n. 101. If, as the majority stresses, such authorities are uncertain as to the impact of various levels of funding on educational quality, I fail to see where it finds the expertise to divine that the particular levels of funding provided by the Program assure an adequate educational opportunity -- much less an education substantially equivalent in quality to that which a higher level of funding might provide. Certainly appellants' mere assertion before this Court of the adequacy of the education guaranteed by the Minimum [411 U.S. 90] Foundation School Program cannot obscure the constitutional implications of the discrimination in educational funding and objective educational inputs resulting from the local property tax -- particularly since the appellees offered substantial uncontroverted evidence before the District Court impugning the now much-touted "adequacy" of the education guaranteed by the Foundation Program.{51}

In my view, then, it is inequality -- not some notion of gross inadequacy -- of educational opportunity that raises a question of denial of equal protection of the laws. I find any other approach to the issue unintelligible, and without directing principle. Here, appellees have made a substantial showing of wide variations in educational funding and the resulting educational opportunity afforded to the school children of Texas. This discrimination is, in large measure, attributable to significant disparities in the taxable wealth of local Texas school districts. This is a sufficient showing to raise a substantial question of discriminatory state action in violation of the Equal Protection Clause.{52} [411 U.S. 91]

C

Despite the evident discriminatory effect of the Texas financing scheme, both the appellants and the majority raise substantial questions concerning the precise character of the disadvantaged class in this case. The District Court concluded that the Texas financing scheme draws "distinction between groups of citizens depending upon the wealth of the district in which they live," and thus creates a disadvantaged class composed of persons living in property-poor districts. See 337 F.Supp. at 282. See also id. at 281. In light of the data introduced before the District Court, the conclusion that the school children of property-poor districts constitute a sufficient class for our purposes seems indisputable to me.

Appellants contend, however, that, in constitutional terms, this case involves nothing more than discrimination against local school districts, not against individuals, since, on its face, the state scheme is concerned only with the provision of funds to local districts. The result of the Texas financing scheme, appellants suggest, is merely that some local districts have more available revenues for education; others have less. In that respect, [411 U.S. 92] they point out, the States have broad discretion in drawing reasonable distinctions between their political subdivisions. See Griffin v. County School Board of Prince Edward County, 377 U.S. 218, 231 (1964); McGowan v. Maryland, 366 U.S. 420, 427 (1961); Salsbury v. Maryland, 346 U.S. 545, 550-554 (1954).

But this Court has consistently recognized that, where there is, in fact, discrimination against individual interests, the constitutional guarantee of equal protection of the laws is not inapplicable simply because the discrimination is based upon some group characteristic such as geographic location. See Gordon v. Lance, 403 U.S. 1, 4 (1971); Reynolds v. Sims, 377 U.S. 533, 565-566 (1964); Gray v. Sanders, 372 U.S. 368, 379 (1963). Texas has chosen to provide free public education for all its citizens, and it has embodied that decision in its constitution.{53} Yet, having established public education for its citizens, the State, as a direct consequence of the variations in local property wealth endemic to Texas' financing scheme, has provided some Texas school children with substantially less resources for their education than others. Thus, while, on its face, the Texas scheme may merely discriminate between local districts, the impact of that discrimination falls directly upon the children whose educational opportunity is dependent upon where they happen to live. Consequently, the District Court correctly concluded that the Texas financing scheme discriminates, from a constitutional perspective, between school children on the basis of the amount of taxable property located within their local districts.

In my Brother STEWART's view, however, such a description of the discrimination inherent in this case is apparently not sufficient, for it fails to define the "kind of objectively identifiable classes" that he evidently perceives [411 U.S. 93] to be necessary for a claim to be "cognizable under the Equal Protection Clause," ante at 62. He asserts that this is also the view of the majority, but he is unable to cite, nor have I been able to find, any portion of the Court's opinion which

remotely suggests that there is no objectively identifiable or definable class in this case. In any event, if he means to suggest that an essential predicate to equal protection analysis is the precise identification of the particular individuals who compose the disadvantaged class, I fail to find the source from which he derives such a requirement. Certainly such precision is not analytically necessary. So long as the basis of the discrimination is clearly identified, it is possible to test it against the State's purpose for such discrimination -- whatever the standard of equal protection analysis employed.{54} This is clear from our decision only last Term in Bullock v. Carter, 405 U.S. 134 (1972), where the Court, in striking down Texas' primary filing fees as violative of equal protection, found no impediment to equal protection analysis in the fact that the members of the disadvantaged class could not be readily identified. The Court recognized that the filing fee system tended

to deny some voters the opportunity to vote for a candidate of their choosing; at the same time it gives the affluent the power to place on the ballot their own names or the names of persons they favor.

Id. at 144. The [411 U.S. 94] Court also recognized that

[t]his disparity in voting power based on wealth cannot be described by reference to discrete and precisely defined segments of the community as is typical of inequities challenged under the Equal Protection Clause. . . .

Ibid. Nevertheless it concluded that

we would ignore reality were we not to recognize that this system falls with unequal weight on voters . . . according to their economic status.

Ibid. The nature of the classification in Bullock was clear, although the precise membership of the disadvantaged class was not. This was enough in Bullock for purposes of equal protection analysis. It is enough here.

It may be, though, that my Brother STEWART is not in fact, demanding precise identification of the membership of the disadvantaged class for purposes of equal protection analysis, but is merely unable to discern with sufficient clarity the nature of the discrimination charged in this case. Indeed, the Court itself displays some uncertainty as to the exact nature of the discrimination and the resulting disadvantaged class alleged to exist in this case. See ante at 120. It is, of course, essential to equal protection analysis to have a firm grasp upon the nature of the discrimination at issue. In fact, the absence of such a clear, articulable understanding of the nature of alleged discrimination in a particular instance may well suggest the absence of any real discrimination. But such is hardly the case here.

A number of theories of discrimination have, to be sure, been considered in the course of this litigation. Thus, the District Court found that, in Texas, the poor and minority group members tend to live in property-poor districts, suggesting discrimination on the basis of both personal wealth and race. See 337 F.Supp. at 282 and n. 3. The Court goes to great lengths to discredit the data upon which the District Court relied, and thereby its conclusion that poor people live in property-poor districts.{55} [411 U.S. 95] Although I have serious doubts as to the correctness of the Court's analysis in rejecting the data submitted below,{56} I have no need to join issue on these factual disputes. [411 U.S. 96]

I believe it is sufficient that the overarching form of discrimination in this case is between the school children of Texas on the basis of the taxable property wealth of the districts in which they happen to live. To understand both the precise nature of this discrimination and the parameters of the disadvantaged class, it is sufficient to consider the constitutional principle which appellees contend is controlling in the context of educational financing. In their complaint, appellees asserted that the Constitution does not permit local district wealth to be determinative of educational opportunity.{57} This is simply another way of saying, as the District Court concluded, that, consistent with the guarantee of equal protection of the laws, "the quality of public education may not be a function of wealth, other than the wealth of the state as a whole." 337 F.Supp. at 284. Under such a principle, the children of a district are excessively advantaged if that district has more taxable property per pupil than the average amount of taxable property per pupil considering the State as a whole. By contrast, the children of a district are disadvantaged if that district has less taxable property per pupil than the state average. The majority attempts to disparage such a definition of the disadvantaged class as the product of an "artificially defined level" of district wealth. Ante at 28. But such is clearly not the case, for this is the [411 U.S. 97] definition unmistakably dictated by the constitutional principle for which appellees have argued throughout the course of this litigation. And I do not believe that a clearer definition of either the disadvantaged class of Texas school children or the allegedly unconstitutional discrimination suffered by the members of that class under the present Texas financing scheme could be asked for, much less needed.{58} Whether this discrimination, against the school children of property-poor districts, inherent in the Texas financing scheme, is violative of the Equal Protection Clause is the question to which we must now turn.

II

To avoid having the Texas financing scheme struck down because of the inter-district variations in taxable property wealth, the District Court determined that it was insufficient for appellants to show merely that the State's scheme was rationally related to some legitimate state purpose; rather, the discrimination inherent in the scheme had to be shown necessary to promote a "compelling state interest" in order to withstand constitutional scrutiny. The basis for this determination was twofold: first, the financing scheme divides citizens on a wealth basis, a classification which the District Court viewed as highly suspect; and second, the discriminatory scheme directly affects what it considered to be a "fundamental interest," namely, education.

This Court has repeatedly held that state discrimination which either adversely affects a "fundamental interest," see, e.g., Dunn v. Blumstein, 405 U.S. 330, 336-342 (1972); Shapiro v. Thompson, 394 U.S. 618, 629-631 (1969), or is based on a distinction of a suspect character, see, e.g., Graham v. Richardson, 403 U.S. 365, 372 [411 U.S. 98] (1971); McLaughlin v. Florida, 379 U.S. 184, 191-192 (1964), must be carefully scrutinized to ensure that the scheme is necessary to promote a substantial, legitimate state interest. See, e.g., Dunn v. Blumstein, supra, at 342-343; Shapiro v. Thompson, supra, at 634. The majority today concludes, however, that the Texas scheme is not subject to such a strict standard of review under the Equal Protection Clause. Instead, in its view, the Texas scheme must be tested by nothing more than that lenient standard of rationality which we have traditionally applied to discriminatory state action in the context of economic and commercial matters. See, e.g., McGowan v. Maryland, 366 U.S. at 425-426; Morey v. Doud, 354 U.S. 457, 465-466 (1957); F. S. Royster Guano Co. v. Virginia, 253 U.S. at 415; Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78-79 (1911). By so doing, the Court avoids the telling task of searching for a substantial state interest which the Texas financing scheme, with its variations in taxable district property wealth, is necessary to further. I cannot accept such an emasculation of the

Equal Protection Clause in the context of this case.

A

To begin, I must once more voice my disagreement with the Court's rigidified approach to equal protection analysis. See Dandridge v. Williams, 397 U.S. 471, 519-521 (1970) (dissenting opinion); Richardson v. Belcher, 404 U.S. 78, 90 (1971) (dissenting opinion). The Court apparently seeks to establish today that equal protection cases fall into one of two neat categories which dictate the appropriate standard of review -- strict scrutiny or mere rationality. But this Court's decisions in the field of equal protection defy such easy categorization. A principled reading of what this Court has done reveals that it has applied a spectrum of standards in reviewing discrimination allegedly violative of the Equal Protection [411 U.S. 99] Clause. This spectrum clearly comprehends variations in the degree of care with which the Court will scrutinize particular classifications, depending, I believe, on the constitutional and societal importance of the interest adversely affected and the recognized invidiousness of the basis upon which the particular classification is drawn. I find, in fact, that many of the Court's recent decisions embody the very sort of reasoned approach to equal protection analysis for which I previously argued -- that is, an approach in which

concentration [is] placed upon the character of the classification in question, the relative importance to individuals in the class discriminated against of the governmental benefits that they do not receive, and the asserted state interests in support of the classification.

Dandridge v. Williams, supra, at 520-521 (dissenting opinion).

I therefore cannot accept the majority's labored efforts to demonstrate that fundamental interests, which call for strict scrutiny of the challenged classification, encompass only established rights which we are somehow bound to recognize from the text of the Constitution itself. To be sure, some interests which the Court has deemed to be fundamental for purposes of equal protection analysis are themselves constitutionally protected rights. Thus, discrimination against the guaranteed right of freedom of speech has called for strict judicial scrutiny. See Police Dept. of Chicago v. Mosley, 408 U.S. 92 (1972). Further, every citizen's right to travel interstate, although nowhere expressly mentioned in the Constitution, has long been recognized as implicit in the premises underlying that document: the right "was conceived from the beginning to be a necessary concomitant of the stronger Union the Constitution created." United States v. Guest, 383 U.S. 745, 758 (1966). See also Crandall v. Nevada, 6 Wall. 35, 48 (1868). Consequently, the Court has required that a state classification affecting the constitutionally [411 U.S. 100] protected right to travel must be "shown to be necessary to promote a compelling governmental interest." Shapiro v. Thompson, 394 U.S. at 634. But it will not do to suggest that the "answer" to whether an interest is fundamental for purposes of equal protection analysis is always determined by whether that interest "is a right . . . explicitly or implicitly guaranteed by the Constitution," ante at 33-34.{59}

I would like to know where the Constitution guarantees the right to procreate, Skinner v. Oklahoma, 316 U.S. 535 541 (1942) or the right to vote in state elections, e.g., Reynolds v. Sims, 377 U.S. 533 (1964) or the right to an appeal from a criminal conviction, e.g., Griffin v. Illinois, 351 U.S. 12 (1956). These are instances in which, due to the importance of the interests at stake, the Court has displayed a strong concern with the existence of discriminatory state treatment. But the Court has never said or indicated that these are interests which independently enjoy full-blown constitutional protection.

Thus, in Buck v. Bell, 274 U.S. 200 (1927), the Court refused to recognize a substantive constitutional guarantee of the right to procreate. Nevertheless, in Skinner v. Oklahoma, supra, at 541 the Court, without impugning the continuing validity of Buck v. Bell, held that "strict scrutiny" of state discrimination affecting procreation "is essential," for "[m]arriage and procreation are fundamental to the very existence and survival of the race." Recently, in Roe v. Wade, 410 U.S. 113, 152-154 (1973), [411 U.S. 101] the importance of procreation has, indeed, been explained on the basis of its intimate relationship with the constitutional right of privacy which we have recognized. Yet the limited stature thereby accorded any "right" to procreate is evident from the fact that, at the same time, the Court reaffirmed its initial decision in Buck v. Bell. See Roe v. Wade, supra, at 154.

Similarly, the right to vote in state elections has been recognized as a "fundamental political right," because the Court concluded very early that it is "preservative of all rights." Yick Wo v. Hopkins, 118 U.S. 356, 370 (1886); see, e.g., Reynolds v. Sims, supra, at 561-562. For this reason,

this Court has made clear that a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction.

Dunn v. Blumstein, 405 U.S. at 336 (emphasis added). The final source of such protection from inequality in the provision of the state franchise is, of course, the Equal Protection Clause. Yet it is clear that whatever degree of importance has been attached to the state electoral process when unequally distributed, the right to vote in state elections has itself never been accorded the stature of an independent constitutional guarantee.{60} See Oregon v. Mitchell, 400 U.S. 112 (1970); Kramer v. Union School District, 395 U.S. 621, 626-629 (1969); Harper v. Virginia Bd. of Elections, 383 U.S. 663, 665 (1966). [411 U.S. 102]

Finally, it is likewise "true that a State is not required by the Federal Constitution to provide appellate courts or a right to appellate review at all." Griffin v. Illinois, 351 U.S. at 18. Nevertheless, discrimination adversely affecting access to an appellate process which a State has chosen to provide has been considered to require close judicial scrutiny. See, e.g., Griffin v. Illinois, supra; Douglas v. California, 372 U.S. 353 (1963).{61}

The majority is, of course, correct when it suggests that the process of determining which interests are fundamental is a difficult one. But I do not think the problem is insurmountable. And I certainly do not accept the view that the process need necessarily degenerate into an unprincipled, subjective "picking-and-choosing" between various interests, or that it must involve this Court in creating "substantive constitutional rights in the name of guaranteeing equal protection of the laws," ante at 33. Although not all fundamental interests are constitutionally guaranteed, the determination of which interests are fundamental should be firmly rooted in the text of the Constitution. The task in every case should be to determine the extent to which constitutionally guaranteed rights are dependent on interests not mentioned in the Constitution. As the nexus between the specific constitutional guarantee and the nonconstitutional interest draws closer, the nonconstitutional interest becomes [411 U.S. 103] more fundamental and the degree of judicial scrutiny applied when the interest is infringed on a discriminatory basis must be adjusted accordingly. Thus, it cannot be denied that interests such as procreation, the exercise of the state franchise, and access to criminal appellate processes are not fully guaranteed to the citizen by our Constitution. But these interests have nonetheless been afforded special judicial consideration in the face of discrimination because they are, to some extent, interrelated with constitutional guarantees. Procreation is now understood to be important because of its interaction with the established constitutional right of privacy. The exercise of the state franchise is closely tied to basic civil and political rights inherent in the First

Amendment. And access to criminal appellate processes enhances the integrity of the range of rights{62} implicit in the Fourteenth Amendment guarantee of due process of law. Only if we closely protect the related interests from state discrimination do we ultimately ensure the integrity of the constitutional guarantee itself. This is the real lesson that must be taken from our previous decisions involving interests deemed to be fundamental.

The effect of the interaction of individual interests with established constitutional guarantees upon the degree of care exercised by this Court in reviewing state discrimination affecting such interests is amply illustrated by our decision last Term in Eisenstadt v. Baird, 405 U.S. 438 (1972). In Baird, the Court struck down as violative of the Equal Protection Clause a state statute which denied unmarried persons access to contraceptive devices on the same basis as married persons. The Court [411 U.S. 104] purported to test the statute under its traditional standard whether there is some rational basis for the discrimination effected. Id. at 446-447. In the context of commercial regulation, the Court has indicated that the Equal Protection Clause "is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective." See, e.g., McGowan v. Maryland, 366 U.S. at 425; Kotch v. Board of River Port Pilot Comm'rs, 330 U.S. 552, 557 (1947). And this lenient standard is further weighted in the State's favor by the fact that "[a] statutory discrimination will not be set aside if any state of facts reasonably may be conceived [by the Court] to justify it." McGowan v. Maryland, supra, at 426. But, in Baird, the Court clearly did not adhere to these highly tolerant standards of traditional rational review. For although there were conceivable state interests intended to be advanced by the statute -- e.g., deterrence of premarital sexual activity and regulation of the dissemination of potentially dangerous articles -- the Court was not prepared to accept these interests on their face, but instead proceeded to test their substantiality by independent analysis. See 405 U.S. at 449-454. Such close scrutiny of the State's interests was hardly characteristic of the deference shown state classifications in the context of economic interests. See, e.g., Goesaert v. Cleary, 335 U.S. 464 (1948); Kotch v. Board of River Port Pilot Comm'rs, supra. Yet I think the Court's action was entirely appropriate, for access to and use of contraceptives bears a close relationship to the individual's constitutional right of privacy. See 405 U.S. at 453-454; id. at 463-464 (WHITE, J., concurring in result). See also Roe v. Wade, 410 U.S. at 152-153.

A similar process of analysis with respect to the invidiousness of the basis on which a particular classification is drawn has also influenced the Court as to the [411 U.S. 105] appropriate degree of scrutiny to be accorded any particular case. The highly suspect character of classifications based on race,{63} nationality,{64} or alienage{65} is well established. The reasons why such classifications call for close judicial scrutiny are manifold. Certain racial and ethnic groups have frequently been recognized as "discrete and insular minorities" who are relatively powerless to protect their interests in the political process. See Graham v. Richardson, 403 U.S. at 372; cf. United States v. Carolene Products Co., 304 U.S. 144, 152-153, n. 4 (1938). Moreover, race, nationality, or alienage is,

"in most circumstances, irrelevant" to any constitutionally acceptable legislative purpose, Hirabayashi v. United States, 320 U.S. 81, 100.

McLaughlin v. Florida, 379 U.S. at 192. Instead, lines drawn on such bases are frequently the reflection of historic prejudices, rather than legislative rationality. It may be that all of these considerations, which make for particular judicial solicitude in the face of discrimination on the basis of race, nationality, or alienage, do not coalesce -- or at least not to the same degree -- in other forms of discrimination. Nevertheless, these considerations have undoubtedly influenced the care

with which the Court has scrutinized other forms of discrimination.

In James v. Strange, 407 U.S. 128 (1972), the Court held unconstitutional a state statute which provided for recoupment from indigent convicts of legal defense fees paid by the State. The Court found that the statute impermissibly differentiated between indigent criminals in debt to the State and civil judgment debtors, since criminal debtors were denied various protective exemptions [411 U.S. 106] afforded civil judgment debtors.{66} The Court suggested that, in reviewing the statute under the Equal Protection Clause, it was merely applying the traditional requirement that there be "`some rationality'" in the line drawn between the different types of debtors. I.d. at 140. Yet it then proceeded to scrutinize the statute with less than traditional deference and restraint. Thus, the Court recognized "that state recoupment statutes may betoken legitimate state interests" in recovering expenses and discouraging fraud. Nevertheless, MR. JUSTICE POWELL, speaking for the Court, concluded that

these interests are not thwarted by requiring more even treatment of indigent criminal defendants with other classes of debtors to whom the statute itself repeatedly makes reference. State recoupment laws, notwithstanding the state interests they may serve, need not blight in such discriminatory fashion the hopes of indigents for self-sufficiency and self-respect.

Id. at 141-142. The Court, in short, clearly did not consider the problems of fraud and collection that the state legislature might have concluded were peculiar to indigent criminal defendants to be either sufficiently important or at least sufficiently substantiated to justify denial of the protective exemptions afforded to all civil judgment debtors, to a class composed exclusively of indigent criminal debtors.

Similarly, in Reed v. Reed, 404 U.S. 71 (1971), the Court, in striking down a state statute which gave men [411 U.S. 107] preference over women when persons of equal entitlement apply for assignment as an administrator of a particular estate, resorted to a more stringent standard of equal protection review than that employed in cases involving commercial matters. The Court indicated that it was testing the claim of sex discrimination by nothing more than whether the line drawn bore "a rational relationship to a state objective," which it recognized as a legitimate effort to reduce the work of probate courts in choosing between competing applications for letters of administration. Id. at 76. Accepting such a purpose, the Idaho Supreme Court had thought the classification to be sustainable on the basis that the legislature might have reasonably concluded that, as a rule, men have more experience than women in business matters relevant to the administration of an estate. 93 Idaho 511, 514, 465 P.2d 635, 638 (1970). This Court, however, concluded that

[t]o give a mandatory preference to members of either sex over members of the other merely to accomplish the elimination of hearings on the merits is to make the very kind of arbitrary legislative choice forbidden by the Equal Protection Clause of the Fourteenth Amendment. . . .

404 U.S. at 76. This Court, in other words, was unwilling to consider a theoretical and unsubstantiated basis for distinction -- however reasonable it might appear -- sufficient to sustain a statute discriminating on the basis of sex.

James and Reed can only be understood as instances in which the particularly invidious character of the classification caused the Court to pause and scrutinize with more than traditional care the rationality of state discrimination. Discrimination on the basis of past criminality and on the

basis of sex posed for the Court the specter of forms of discrimination which it implicitly recognized to have deep social and legal roots without necessarily having any basis in actual differences. Still, [411 U.S. 108] the Court's sensitivity to the invidiousness of the basis for discrimination is perhaps most apparent in its decisions protecting the interests of children born out of wedlock from discriminatory state action. See Weber v. Aetna Casualty & Surety Co., 406 U.S. 164 (1972); Levy v. Louisiana, 391 U.S. 68 (1968).

In Weber, the Court struck down a portion of a state workmen's compensation statute that relegated unacknowledged illegitimate children of the deceased to a lesser status with respect to benefits than that occupied by legitimate children of the deceased. The Court acknowledged the true nature of its inquiry in cases such as these: "What legitimate state interest does the classification promote? What fundamental personal rights might the classification endanger?" Id. at 173. Embarking upon a determination of the relative substantiality of the State's justifications for the classification, the Court rejected the contention that the classifications reflected what might be presumed to have been the deceased's preference of beneficiaries as "not compelling . . . where dependency on the deceased is a prerequisite to anyone's recovery. . . ." Ibid. Likewise, it deemed the relationship between the State's interest in encouraging legitimate family relationships and the burden placed on the illegitimates too tenuous to permit the classification to stand. Ibid. A clear insight into the basis of the Court's action is provided by its conclusion:

[I]mposing disabilities on the illegitimate child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing. Obviously, no child is responsible for his birth and penalizing the illegitimate child is an ineffectual -- as well as an unjust -- way of deterring the parent. Courts are powerless to prevent the social opprobrium suffered by these hapless children, but the Equal Protection [411 U.S. 109] Clause does enable us to strike down discriminatory laws relating to status of birth. . . .

Id. at 175-176. Status of birth, like the color of one's skin, is something which the individual cannot control, and should generally be irrelevant in legislative considerations. Yet illegitimacy has long been stigmatized by our society. Hence, discrimination on the basis of birth -- particularly when it affects innocent children -- warrants special judicial consideration.

In summary, it seems to me inescapably clear that this Court has consistently adjusted the care with which it will review state discrimination in light of the constitutional significance of the interests affected and the invidiousness of the particular classification. In the context of economic interests, we find that discriminatory state action is almost always sustained, for such interests are generally far removed from constitutional guarantees. Moreover,

[t]he extremes to which the Court has gone in dreaming up rational bases for state regulation in that area may in many instances be ascribed to a healthy revulsion from the Court's earlier excesses in using the Constitution to protect interests that have more than enough power to protect themselves in the legislative halls.

Dandridge v. Williams, 397 U.S. at 520 (dissenting opinion). But the situation differs markedly when discrimination against important individual interests with constitutional implications and against particularly disadvantaged or powerless classes is involved. The majority suggests, however, that a variable standard of review would give this Court the appearance of a "super-legislature." Ante at 31. I cannot agree. Such an approach seems to me a part of the guarantees of our Constitution and of the historic experiences with oppression of and discrimination against discrete,

powerless minorities which underlie that document. In truth, [411 U.S. 110] the Court itself will be open to the criticism raised by the majority so long as it continues on its present course of effectively selecting in private which cases will be afforded special consideration without acknowledging the true basis of its action.{67} Opinions such as those in Reed and James seem drawn more as efforts to shield, rather than to reveal, the true basis of the Court's decisions. Such obfuscated action may be appropriate to a political body such as a legislature, but it is not appropriate to this Court. Open debate of the bases for the Court's action is essential to the rationality and consistency of our decisionmaking process. Only in this way can we avoid the label of legislature and ensure the integrity of the judicial process.

Nevertheless, the majority today attempts to force this case into the same category for purposes of equal protection analysis as decisions involving discrimination affecting commercial interests. By so doing, the majority ingles this case out for analytic treatment at odds with what seems to me to be the clear trend of recent decisions in this Court, and thereby ignores the constitutional importance of the interest at stake and the invidiousness of the particular classification, factors that call for far more than the lenient scrutiny of the Texas financing scheme which the majority pursues. Yet if the discrimination inherent in the Texas scheme is scrutinized with the care demanded by the interest and classification present in this case, the unconstitutionality of that scheme is unmistakable.

B

Since the Court now suggests that only interests guaranteed by the Constitution are fundamental for purposes of equal protection analysis, and since it rejects [411 U.S. 111] the contention that public education is fundamental, it follows that the Court concludes that public education is not constitutionally guaranteed. It is true that this Court has never deemed the provision of free public education to be required by the Constitution. Indeed, it has on occasion suggested that state-supported education is a privilege bestowed by a State on its citizens. See Missouri ex rel. Gaines v. Canada, 305 U.S. at 349. Nevertheless, the fundamental importance of education is amply indicated by the prior decisions of this Court, by the unique status accorded public education by our society, and by the close relationship between education and some of our most basic constitutional values.

The special concern of this Court with the educational process of our country is a matter of common knowledge. Undoubtedly, this Court's most famous statement on the subject is that contained in Brown v. Board of Education, 347 U.S. at 493:

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. . . .

Only last Term, the Court recognized that "[p]roviding public schools ranks at the very apex of the function of a State." Wisconsin v. Yoder, 406 U.S. 205, 213 (1972). This is clearly borne out by the fact that, in 48 [411 U.S. 112] of our 50 States, the provision of public education is mandated by the state constitution.{68} No other state function is so uniformly recognized{69} as an essential

element of our society's wellbeing. In large measure, the explanation for the special importance attached to education must rest, as the Court recognized in Yoder, id. at 221, on the facts that "some degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system . . . ," and that "education prepares individuals to be self-reliant and self-sufficient participants in society." Both facets of this observation are suggestive of the substantial relationship which education bears to guarantees of our Constitution.

Education directly affects the ability of a child to exercise his First Amendment rights, both as a source and as a receiver of information and ideas, whatever interests he may pursue in life. This Court's decision in Sweezy v. New Hampshire, 354 U.S. 234, 250 (1957), speaks of the right of students "to inquire, to study and to evaluate, to gain new maturity and understanding. . . ." Thus, we have not casually described the classroom as the "`marketplace of ideas.'" Keyishian v. Board of Regents, 385 U.S. 589, 603 (1967). The opportunity for formal education may not necessarily be the essential determinant of an individual's ability to enjoy throughout his life the rights of free speech and association [411 U.S. 113] guaranteed to him by the First Amendment. But such an opportunity may enhance the individual's enjoyment of those rights not only during, but also following, school attendance. Thus, in the final analysis,

the pivotal position of education to success in American society and its essential role in opening up to the individual the central experiences of our culture lend it an importance that is undeniable.{70}

Of particular importance is the relationship between education and the political process. "Americans regard the public schools as a most vital civic institution for the preservation of a democratic system of government." Abington School Dist. v. Schempp, 374 U.S. 203, 230 (1963) (BRENNAN, J., concurring). Education serves the essential function of instilling in our young an understanding of and appreciation for the principles and operation of our governmental processes.{71} Education may instill the interest and provide the tools necessary for political discourse and debate. Indeed, it has frequently been suggested that education is the dominant factor affecting political consciousness and participation.{72} A system of

[c]ompetition in ideas and governmental [411 U.S. 114] policies is at the core of our electoral process and of the First Amendment freedoms.

Williams v. Rhodes, 393 U.S. 23, 32 (1968). But of most immediate and direct concern must be the demonstrated effect of education on the exercise of the franchise by the electorate. The right to vote in federal elections is conferred by Art. I, § 2, and the Seventeenth Amendment of the Constitution, and access to the state franchise has been afforded special protection because it is "preservative of other basic civil and political rights," Reynolds v. Sims, 377 U.S. at 562. Data from the Presidential Election of 1968 clearly demonstrate a direct relationship between participation in the electoral process and level of educational attainment,{73} and, as this Court recognized in Gaston County v. United States, 395 U.S. 285, 296 (1969), the quality of education offered may [411 U.S. 115] influence a child's decision to "enter or remain in school." It is this very sort of intimate relationship between a particular personal interest and specific constitutional guarantees that has heretofore caused the Court to attach special significance, for purposes of equal protection analysis, to individual interests such as procreation and the exercise of the state franchise.{74}

While ultimately disputing little of this, the majority seeks refuge in the fact that the Court has

never presumed to possess either the ability or the authority to guarantee to the citizenry the most effective speech or the most informed electoral choice.

Ante at 36. This serves only to blur what is in fact, at stake. With due respect, the issue is neither provision of the most effective speech nor of the most informed vote. Appellees [411 U.S. 116] do not now seek the best education Texas might provide. They do seek, however, an end to state discrimination resulting from the unequal distribution of taxable district property wealth that directly impairs the ability of some districts to provide the same educational opportunity that other districts can provide with the same or even substantially less tax effort. The issue is, in other words, one of discrimination that affects the quality of the education which Texas has chosen to provide its children; and, the precise question here is what importance should attach to education for purposes of equal protection analysis of that discrimination. As this Court held in Brown v. Board of Education, 347 U.S. at 493, the opportunity of education, "where the state has undertaken to provide it, is a right which must be made available to all on equal terms." The factors just considered, including the relationship between education and the social and political interests enshrined within the Constitution, compel us to recognize the fundamentality of education and to scrutinize with appropriate care the bases for state discrimination affecting equality of educational opportunity in Texas' school districts{75} -- a conclusion [411 U.S. 117] which is only strengthened when we consider the character of the classification in this case.

C

The District Court found that, in discriminating between Texas school children on the basis of the amount of taxable property wealth located in the district in which they live, the Texas financing scheme created a form of wealth discrimination. This Court has frequently recognized that discrimination on the basis of wealth may create a classification of a suspect character, and thereby call for exacting judicial scrutiny. See, e.g., Griffin v. Illinois, 351 U.S. 12 (1956); Douglas v. California, 372 U.S. 353 (1963); McDonald v. Board of Election Comm'rs of Chicago, 394 U.S. 802, 807 (1969). The majority, however, considers any wealth classification in this case to lack certain essential characteristics which it contends are common to the instances of wealth discrimination that this Court has heretofore recognized. We are told that, in every prior case involving a wealth classification, the members of the disadvantaged class have

shared two distinguishing characteristics: because [411 U.S. 118] of their impecunity, they were completely unable to pay for some desired benefit, and as a consequence, they sustained an absolute deprivation of a meaningful opportunity to enjoy that benefit.

Ante at 20. I cannot agree. The Court's distinctions may be sufficient to explain the decisions in Williams v. Illinois, 399 U.S. 235 (1970); Tate v. Short, 401 U.S. 395 (1971); and even Bullock v. Carter, 405 U.S. 134 (1972). But they are not, in fact, consistent with the decisions in Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1966), or Griffin v. Illinois, supra, or Douglas v. California, supra.

In Harper, the Court struck down, as violative of the Equal Protection Clause, an annual Virginia poll tax of $1.50, payment of which by persons over the age of 21 was a prerequisite to voting in Virginia elections. In part, the Court relied on the fact that the poll tax interfered with a fundamental interest -- the exercise of the state franchise. In addition, though, the Court emphasized that "[l]ines drawn on the basis of wealth or property . . . are traditionally disfavored." 383 U.S. at 668. Under the first part of the theory announced by the majority, the disadvantaged class in Harper,

in terms of a wealth analysis, should have consisted only of those too poor to afford the $1.50 necessary to vote. But the Harper Court did not see it that way. In its view, the Equal Protection Clause "bars a system which excludes [from the franchise] those unable to pay a fee to vote or who fail to pay." Ibid. (Emphasis added.) So far as the Court was concerned, the "degree of the discrimination [was] irrelevant." Ibid. Thus, the Court struck down the poll tax in toto; it did not order merely that those too poor to pay the tax be exempted; complete impecunity clearly was not determinative of the limits of the disadvantaged class, nor was it essential to make an equal protection claim. [411 U.S. 119]

Similarly, Griffin and Douglas refute the majority's contention that we have in the past required an absolute deprivation before subjecting wealth classifications to strict scrutiny. The Court characterizes Griffin as a case concerned simply with the denial of a transcript or an adequate substitute therefor, and Douglas as involving the denial of counsel. But, in both cases, the question was, in fact, whether "a State that [grants] appellate review can do so in a way that discriminates against some convicted defendants on account of their poverty." Griffin v. Illinois, supra, at 18 (emphasis added). In that regard, the Court concluded that inability to purchase a transcript denies "the poor an adequate appellate review accorded to all who have money enough to pay the costs in advance," ibid. (emphasis added), and that "the type of an appeal a person is afforded . . . hinges upon whether or not he can pay for the assistance of counsel," Douglas v. California, supra, at 355-356 (emphasis added). The right of appeal itself was not absolutely denied to those too poor to pay, but, because of the cost of a transcript and of counsel, the appeal was a substantially less meaningful right for the poor than for the rich.{76} It was on these terms that the Court found a denial of equal protection, and those terms clearly encompassed degrees of discrimination on the [411 U.S. 120] basis of wealth which do not amount to outright denial of the affected right or interest.{77}

This is not to say that the form of wealth classification in this case does not differ significantly from those recognized in the previous decisions of this Court. Our prior eases have dealt essentially with discrimination on the basis of personal wealth.{78} Here, by contrast, the [411 U.S. 121] children of the disadvantaged Texas school districts are being discriminated against not necessarily because of their personal wealth or the wealth of their families, but because of the taxable property wealth of the residents of the district in which they happen to live. The appropriate question, then, is whether the same degree of judicial solicitude and scrutiny that has previously been afforded wealth classifications is warranted here.

As the Court points out, ante at 28-29, no previous decision has deemed the presence of just a wealth classification to be sufficient basis to call forth rigorous judicial scrutiny of allegedly discriminatory state action. Compare, e.g., Harper v. Virginia Bd. of Elections, supra, with, e.g., James v. Valtierra, 402 U.S. 137 (1971). That wealth classifications alone have not necessarily been considered to bear the same high degree of suspectness as have classifications based on, for instance, race or alienage may be explainable on a number of grounds. The "poor" may not be seen as politically powerless as certain discrete and insular minority groups.{79} Personal poverty may entail much the same social stigma as historically attached to certain racial or ethnic groups.{80} But personal poverty is not a permanent disability; its shackles may be escaped. Perhaps most importantly, though, personal wealth may not necessarily share the general irrelevance as a basis for legislative action that race or nationality is recognized to have. While the "poor" have frequently been a [411 U.S. 122] legally disadvantaged group,{81} it cannot be ignored that social legislation must frequently take cognizance of the economic status of our citizens. Thus, we have generally gauged the invidiousness of wealth classifications with an awareness of the importance of the interests being affected and the relevance of personal wealth to those interests. See Harper v.

Virginia Bd. of Elections, supra.

When evaluated with these considerations in mind, it seems to me that discrimination on the basis of group wealth in this case likewise calls for careful judicial scrutiny. First, it must be recognized that, while local district wealth may serve other interests,{82} it bears no relationship whatsoever to the interest of Texas school children in the educational opportunity afforded them by the State of Texas. Given the importance of that interest, we must be particularly sensitive to the invidious characteristics of any form of discrimination that is not clearly intended to serve it, as opposed to some other distinct state interest. Discrimination on the basis of group wealth may not, to be sure, reflect the social stigma frequently attached to personal poverty. Nevertheless, insofar as group wealth discrimination involves wealth over which the disadvantaged individual has no significant control,{83} it represents in fact, a more serious basis of discrimination than does personal wealth. For such discrimination [411 U.S. 123] is no reflection of the individual's characteristics or his abilities. And thus -- particularly in the context of a disadvantaged class composed of children -- we have previously treated discrimination on a basis which the individual cannot control as constitutionally disfavored. Cf. Weber v. Aetna Casualty & Surety Co., 406 U.S. 164 (1972); Levy v. Louisiana, 391 U.S. 68 (1968).

The disability of the disadvantaged class in this case extends as well into the political processes upon which we ordinarily rely a adequate for the protection and promotion of all interests. Here legislative reallocation of the State's property wealth must be sought in the face of inevitable opposition from significantly advantaged districts that have a strong vested interest in the preservation of the status quo, a problem not completely dissimilar to that faced by underrepresented districts prior to the Court's intervention in the process of reapportionment,{84} see Baker v. Carr, 369 U.S. 186, 191-192 (1962).

Nor can we ignore the extent to which, in contrast to our prior decisions, the State is responsible for the wealth discrimination in this instance. Griffin, Douglas, Williams, Tate, and our other prior cases have dealt with discrimination on the basis of indigency which was attributable to the operation of the private sector. But we have no such simple de facto wealth discrimination here. The means for financing public education in Texas are selected and specified by the State. It is the State that has created local school districts, and tied educational funding to the local property tax, and thereby to local district wealth. At the same time, governmentally [411 U.S. 124] imposed land use controls have undoubtedly encouraged and rigidified natural trends in the allocation of particular areas for residential or commercial use,{85} and thus determined each district's amount of taxable property wealth. In short, this case, in contrast to the Court's previous wealth discrimination decisions, can only be seen as "unusual in the extent to which governmental action is the cause of the wealth classifications."{86}

In the final analysis, then, the invidious characteristics of the group wealth classification present in this case merely serve to emphasize the need for careful judicial scrutiny of the State's justifications for the resulting inter-district discrimination in the educational opportunity afforded to the school children of Texas.

D

The nature of our inquiry into the justifications for state discrimination is essentially the same in all equal protection cases: we must consider the substantiality of the state interests sought to be served, and we must scrutinize the reasonableness of the means by which the State has sought to

advance its interests. See Police Dept. of Chicago v. Mosley, 408 U.S. at 95. Differences in the application of this test are, in my view, a function of the constitutional importance of the interests at stake and the invidiousness of the particular classification. In terms of the asserted state interests, the Court has indicated that it will require, for instance, a "compelling," Shapiro v. Thompson, 394 U.S. at 634, or a "substantial" [411 U.S. 125] or "important," Dunn v. Blumstein, 405 U.S. at 343, state interest to justify discrimination affecting individual interests of constitutional significance. Whatever the differences, if any, in these descriptions of the character of the state interest necessary to sustain such discrimination, basic to each is, I believe, a concern with the legitimacy and the reality of the asserted state interests. Thus, when interests of constitutional importance are at stake, the Court does not stand ready to credit the State's classification with any conceivable legitimate purpose,{87} but demands a clear showing that there are legitimate state interests which the classification was in fact, intended to serve. Beyond the question of the adequacy of the State's purpose for the classification, the Court traditionally has become increasingly sensitive to the means by which a State chooses to act as its action affects more directly interests of constitutional significance. See, e.g., United States v. Robel, 389 U.S. 258, 265 (1967); Shelton v. Tucker, 364 U.S. 479, 488 (1960). Thus, by now, "less restrictive alternatives" analysis is firmly established in equal protection jurisprudence. See Dunn v. Blumstein, supra, at 343; Kramer v. Union School District, 395 U.S. at 627. It seems to me that the range of choice we are willing to accord the State in selecting the means by which it will act, and the care with which we scrutinize the effectiveness of the means which the State selects, also must reflect the constitutional importance of the interest affected and the invidiousness of the particular classification. Here, both the nature of the interest and the classification dictate close judicial scrutiny of the purposes which Texas seeks to serve with its present educational financing [411 U.S. 126] scheme and of the means it has selected to serve that purpose.

The only justification offered by appellants to sustain the discrimination in educational opportunity caused by the Texas financing scheme is local educational control. Presented with this justification, the District Court concluded that

[n]ot only are defendants unable to demonstrate compelling state interests for their classifications based upon wealth, they fail even to establish a reasonable basis for these classifications.

337 F.Supp. at 284. I must agree with this conclusion.

At the outset, I do not question that local control of public education, as an abstract matter, constitutes a very substantial state interest. We observed only last Term that "[d]irect control over decisions vitally affecting the education of one's children is a need that is strongly felt in our society." Wright v. Council of the City of Emporia, 407 U.S. 451, 469 (1972). See also id. at 477-478 (BURGER, C.J., dissenting). The State's interest in local educational control -- which certainly includes questions of educational funding -- has deep roots in the inherent benefits of community support for public education. Consequently, true state dedication to local control would present, I think, a substantial justification to weigh against simply inter-district variations in the treatment of a State's school children. But I need not now decide how I might ultimately strike the balance were we confronted with a situation where the State's sincere concern for local control inevitably produced educational inequality. For, on this record, it is apparent that the State's purported concern with local control is offered primarily as an excuse, rather than as a justification for inter-district inequality.

In Texas, state-wide laws regulate in fact, the most minute details of local public education.

For example, [411 U.S. 127] the State prescribes required courses.{88} All textbooks must be submitted for state approval,{89} and only approved textbooks may be used.{90} The State has established the qualifications necessary for teaching in Texas public schools and the procedures for obtaining certification.{91} The State has even legislated on the length of the school day.{92} Texas' own courts have said:

As a result of the acts of the Legislature, our school system is not of mere local concern, but it is state-wide. While a school district is local in territorial limits, it is an integral part of the vast school system which is coextensive with the confines of the State of Texas.

Treadaway v. Whitney Independent School District, 205 S.W.2d 97, 99 Tex.Ct. Civ.App. (1947). See also El Dorado Independent School District v. Tisdale, 3 S.W.2d 420, 422 (Tex. Comm'n App. 1928).

Moreover, even if we accept Texas' general dedication to local control in educational matters, it is difficult to find any evidence of such dedication with respect to fiscal matters. It ignores reality to suggest -- as the Court does, ante at 49-50 -- that the local property tax element of the Texas financing scheme reflects a conscious legislative effort to provide school districts with local fiscal control. If Texas had a system truly dedicated to local fiscal control, one would expect the quality of the educational opportunity provided in each district to vary with the decision of the voters in that district as [411 U.S. 128] to the level of sacrifice they wish to make for public education. In fact, the Texas scheme produces precisely the opposite result. Local school districts cannot choose to have the best education in the State by imposing the highest tax rate. Instead, the quality of the educational opportunity offered by any particular district is largely determined by the amount of taxable property located in the district -- a factor over which local voters can exercise no control.

The study introduced in the District Court showed a direct inverse relationship between equalized taxable district property wealth and district tax effort with the result that the property-poor districts making the highest tax effort obtained the lowest per-pupil yield.{93} The implications of this situation for local choice are illustrated by again comparing the Edgewood and Alamo Heights School Districts. In 1967-1968, Edgewood, after contributing its share to the Local Fund Assignment, raised only $26 per pupil through its local property tax, whereas Alamo Heights was able to raise $333 per pupil. Since the funds received through the Minimum Foundation School Program are to be used only for minimum professional salaries, transportation costs, and operating expenses, it is not hard to see the lack of local choice with respect to higher teacher salaries to attract more and better teachers, physical facilities, library books, and facilities, special courses, or participation in special state and federal matching funds programs -- under which a property-poor district such as Edgewood is forced to labor.{94} In fact, because of the difference in taxable local property wealth, Edgewood would have to tax itself almost nine times as heavily to obtain the same [411 U.S. 129] yield as Alamo Heights.{95} At present, then, local control is a myth for many of the local school districts in Texas. As one district court has observed,

rather than reposing in each school district the economic power to fix its own level of per pupil expenditure, the State has so arranged the structure as to guarantee that some districts will spend low (with high taxes) while others will spend high (with low taxes).

Van Dusatz v. Hatfield, 334 F.Supp. 870, 876 (Minn.1971).

In my judgment, any substantial degree of scrutiny of the operation of the Texas financing scheme reveals that the State has selected means wholly inappropriate to secure its purported interest in assuring its school districts local fiscal control.{96} At the same time, appellees have pointed out a variety of alternative financing schemes which may serve the State's purported interest in local control as well as, if not better than, the present scheme without the current impairment of the educational opportunity of vast numbers of Texas school children.{97} I see no need, however, to explore the practical or constitutional merits of those suggested alternatives at this time, for, whatever their positive or negative features, experience [411 U.S. 130] with the present financing scheme impugns any suggestion that it constitutes a serious effort to provide local fiscal control. If, for the sake of local education control, this Court is to sustain inter-district discrimination in the educational opportunity afforded Texas school children, it should require that the State present something more than the mere sham now before us.

III

In conclusion, it is essential to recognize that an end to the wide variations in taxable district property wealth inherent in the Texas financing scheme would entail none of the untoward consequences suggested by the Court or by the appellants.

First, affirmance of the District Court's decisions would hardly sound the death knell for local control of education. It would mean neither centralized decisionmaking nor federal court intervention in the operation of public schools. Clearly, this suit has nothing to do with local decisionmaking with respect to educational policy or even educational spending. It involves only a narrow aspect of local control -- namely, local control over the raising of educational funds. In fact, in striking down inter-district disparities in taxable local wealth, the District Court took the course which is most likely to make true local control over educational decisionmaking a reality for all Texas school districts.

Nor does the District Court's decision even necessarily eliminate local control of educational funding. The District Court struck down nothing more than the continued inter-district wealth discrimination inherent in the present property tax. Both centralized and decentralized plans for educational funding not involving such inter-district discrimination have been put forward.{98} The choice [411 U.S. 131] among these or other alternatives would remain with the State, not with the federal courts. In this regard, it should be evident that the degree of federal intervention [411 U.S. 132] in matters of local concern would be substantially less in this context than in previous decisions in which we have been asked effectively to impose a particular scheme upon the States under the guise of the Equal Protection Clause. See, e.g., Dandridge v. Williams, 397 U.S. 471 (1970); cf. Richardson v. Belcher, 404 U.S. 78 (1971).

Still, we are told that this case requires us "to condemn the State's judgment in conferring on political subdivisions the power to tax local property to supply revenues for local interests." Ante at 40. Yet no one in the course of this entire litigation has ever questioned the constitutionality of the local property tax as a device for raising educational funds. The District Court's decision, at most, restricts the power of the State to make educational funding dependent exclusively upon local property taxation so long as there exists inter-district disparities in taxable property wealth. But it hardly eliminates the local property tax as a source of educational funding or as a means of providing local fiscal control.{99}

The Court seeks solace for its action today in the possibility of legislative reform. The

Court's suggestions of legislative redress and experimentation will doubtless be of great comfort to the school children of Texas' disadvantaged districts, but, considering the vested interests of wealthy school districts in the preservation of the status quo, they are worth little more. The possibility of legislative action is, in all events, no answer to this Court's duty under the Constitution to eliminate unjustified state discrimination. In this case, we have been presented with an instance of such discrimination, in a particularly invidious form, against an individual interest of large constitutional and practical importance. To support the demonstrated discrimination in the provision [411 U.S. 133] of educational opportunity the State has offered a justification which, on analysis, takes on, at best, an ephemeral character. Thus, I believe that the wide disparities in taxable district property wealth inherent in the local property tax element of the Texas financing scheme render that scheme violative of the Equal Protection Clause.{100}

I would therefore affirm the judgment of the District Court. [411 U.S. 134]

APPENDIX I TO OPINION OF MARSHALL, J., DISSENTING

REVENUES OF TEXAS SCHOOL DISTRICTS CATEGORIZED

BY EQUALIZED PROPERTY VALUES AND SOURCE OF FUNDS

CATEGORIES Total Revenues

State and Local Per Pupil

Market Value of Revenues Per Federal (State-Local-

Taxable Property Local Revenues State Revenues Pupil (Columns Revenues Federal, Columns

Per Pupil Per Pupil Per Pupil 1 and 2) Per Pupil 1, 2 and 4)

Above $100,000 $610 $205 $815 $ 41 $856

(10 districts)

$100,000-$50,000 287 257 544 66 610

(26 districts)

$50,000-$30,000 224 260 484 45 529

(30 districts)

$30,000-$10,000 166 295 461 85 546

(40 districts)

Below $10,000 63 243 306 135 441

(4 districts)

Based on Table V to affidavit of Joel S. Berke, App. 208, which was prepared on the basis

of a sample of 110 selected Texas school districts from data for the 1967-1968 school year. [411 U.S. 135]

APPENDIX II TO OPINION OF MARSHALL, J., DISSENTING

TEXAS SCHOOL DISTRICTS CATEGORIZED BY

EQUALIZED PROPERTY VALUES, EQUALIZED

TAX RATES, AND YIELD OF RATES

CATEGORIES EQUALIZED YIELD PER PUPIL

Market Value of TAX (Equalized Rate

Taxable Property RATES Applied to District

Per Pupil ON $100 Market Value)

Above $100,000 $.31 $585

(10 districts)

$100,000-$50,000 .38 262

(26 districts)

$50,000-$30,000 .55 213

(30 districts)

$30,000-$10,000 .72 162

(40 districts)

Below $10,000 .70 60

(4 districts)

Based on Table II to affidavit of Joel S. Berke, App. 205, which was prepared on the basis of a sample of 110 selected Texas school districts from data for the 1967-1968 school year. [411 U.S. 136]

APPENDIX III TO OPINION OF MARSHALL, J., DISSENTING

SELECTED BEXAR COUNTY, TEXAS, SCHOOL DISTRICTS

CATEGORIZED BY EQUALIZED PROPERTY VALUATION AND

SELECTED INDICATORS OF EDUCATIONAL QUALITY

Selected Districts Per Cent of Per Cent of

From High to Low by Professional Teachers With Total Staff Student- Professional

Market Valuation Salaries Per College Masters With Emergen- Counselor Personnel

Per Pupil Pupil Degrees Degrees cy Permits Ratios Per 100 Pupils

ALAMO HEIGHTS $372 100% 40% 11% 645 4.80

NORTH EAST 288 99 24 7 1,516 4.50

SAN ANTONIO 251 98 29 17 2,320 4.00

NORTH SIDE 258 99 20 17 1,493 4.30

HARLANDALE 243 94 21 22 1,800 4.00

EDGEWOOD 209 96 15 47 3,098 4.06

Based on Table XI to affidavit of Joel S. Berke,App. 220, which was prepared on the basis of a sample of six selected school districts located in Bexar County, Texas, from data for the 1967-1968 school year. [411 U.S. 137]

APPENDIX IV TO OPINION OF MARSHALL, J., DISSENTING

BEXAR COUNTY, TEXAS, SCHOOL DISTRICTS RANKED BY

EQUALIZED PROPERTY VALUE AND TAX RATE REQUIRED TO

GENERATE HIGHEST YIELD IN ALL DISTRICTS

Districts Ranked from Tax Rate Per $100

High to Low Market Needed to Equal

Valuation Per Pupil Highest Yield

ALAMO HEIGHTS $0.68

JUDSON 1.04

EAST CENTRAL 1.17

NORTH EAST 1.21

SOMERSET 1.32

SAN ANTONIO 1.56

NORTH SIDE 1.65

SOUTH WEST 2.10

SOUTH SIDE 3.03

HARLANDALE 3.20

SOUTH SAN ANTONIO 5.77

EDGEWOOD 5.76

Based on Table IX to affidavit of Joel S. Berke, App. 218, which was prepared on the basis of the 12 school districts located in Bexar County, Texas, from data from the 1967-1968 school year.

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