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Serrano v. Prient: Is Public Law 874 Constitutional?

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COMMENTS

SERRANO v. PRIEST: IS PUBLIC LAW 874 CONSTITUTIONAL?

In a complex opinion based upon recent United States Supreme Court decisions interpreting the Equal Protection Clause the California Supreme Court held that the California system of public school financing violates the Equal Protection Clause of the Fourteenth Amendment. While the precise meaning of the California decision is as yet unclear, it has been widely noted that affirmance of the decision by the United States Supreme Court may invalidate school funding systems in many states.

As yet, little attention has been directed toward resulting constitutional problems involving federal education legislation. If the California Court is upheld, federal restrictions on state eligibility for PL 874 "impacted areas" school aid may be unconstitutional, because the restrictions tend to coerce the states to violate the Equal Protection Clause.

In *Serrano v. Priest,*[1] the California Supreme Court found that the state school financing system is heavily dependent on local property taxes, thereby causing substantial inequalities in available per-pupil revenue among the state's school districts. The court held that the system therefore invidiously discriminates against the poor, in violation of the Equal Protection Clause.

Two particular holdings of *Serrano* are of special interest in the present context. The Court held that the school financing system may not discriminate on the basis of the fortuitous distribution of real property among the various school districts of the state.[2] But the Court also appeared to hold that, regardless of the method of school financing, some degree of territorial uniformity is constitutionally required.[3] This holding indicates that even a financing system not utilizing property taxes may be unconstitutional if there are great disparities in available per-pupil revenues among the state's school districts.

The possible implications of *Serrano* are far reaching indeed, since school systems in most states have relied on local property taxes as a major revenue source for many years. In 1969-1970, 52.5% of

1. 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971). *See also* Note, *Serrano v. Priest and its Impact on New Mexico,* 2 N.M. L. Rev. (1972).
2. *Id.* at 601, 487 P.2d at 1252, 96 Cal. Rptr. at 612.
3. *Id.* at 612, 487 P.2d at 1261, 96 Cal. Rptr. at 621.

revenue receipts for American elementary and secondary education were from local sources,[4] though not all of these receipts were from property taxes.

In contrast to the national norm, New Mexico has derived a much smaller portion of its educational revenues from local sources. For 1969-1970, only 23.3% of New Mexico elementary and secondary school revenue was so derived,[5] an amount less than half the national percentage. The comparatively light reliance on property taxes in New Mexico is shown by the fact that the per-capita property tax revenue to state and local governments in 1960-1970 was only $81.18, compared to the U.S. average of $167.59.[6] One of the principal reasons for New Mexico's lesser reliance on the property tax is the fact that 34% of the total acreage in the state is federal land[7] and is thus removed from the property tax base.

Not surprisingly, the New Mexico public schools have relied on federal educational aid funds to a much greater extent than most other states. In fact, for 1969-1970, New Mexico derived 14% of its school revenues from federal aid, while the national average was only 6.7%. Such reliance on federal aid results not only from a smaller property tax base, but also from the lack of adequate alternative state revenue sources. New Mexico ranks 49th among the states in personal income per school age child,[8] partly because the state is highest in the nation for percentage of school age population.[9]

An important form of federal educational aid is the "impacted areas" aid provided under Public Law 874. These funds are intended to compensate local school districts for the increased financial burdens produced by federal activity, particularly from the removal of land from the property tax base through federal acquisition and from the presence of additional school children associated with federal installations. The federal grants are computed on the basis of national standards, but are provided directly to the local school districts. The state is forbidden to reduce its support for the schools of impact districts, by a requirement that the Public Law (PL) 874 money be withheld if such action is taken. Thus the impacted areas program has produced wide inequalities in per pupil expenditures

4. Advisory Commission on Intergovernmental Relations, *State-Local Finances and Suggested Legislation* 187 (1971).

5. *Id.*

6. Report of New Mexico Revenue Commissioner Franklin Jones to New Mexico Legislative Interim Tax Study Committee, Nov. 17, 1971, at 8.

7. U.S. Dep't of Commerce, *Statistical Abstract of the United States*, 189 (1971).

8. Franklin Jones, *supra* note 6, at 4.

9. *Id.* at table 7.

among the New Mexico school districts; variations of nearly 100% are not uncommon.[10]

If *Serrano* is affirmed by the Supreme Court, there are two related constitutional challenges to Public Law 874 which may be made. First, if school financing may not be based on local property taxes, PL 874 may be challenged to the extent that it in effect provides property tax revenue to school districts, by compensating them for federal land acquisition. Secondly, if *Serrano* requires some degree of uniformity in per pupil expenditures among the state's school districts, the PL 874 restriction forbidding a state to consider the 874 grants in its allocations may be invalid as coercing the state to violate the Equal Protection Clause. These questions will be approached from the viewpoint of *Serrano* and previous litigation involving Public Law 874.

CONGRESSIONAL INTENT AND PREVIOUS LITIGATION INVOLVING PUBLIC LAW 874

Originally enacted in 1950, PL 874 may now be found in the United States Code at 20 U.S.C.A. §§ 236-241, under Chapter 13, subchapter I, "Assistance for Local Educational Agencies in Areas Affected by Federal Activity." The basic congressional policy of PL 874 is expressed in § 236, which states that the assistance is provided to local school districts where:

> (1) The revenues available to such agencies from local sources have been reduced as the result of the acquisition of real property by the United States; or
> (2) such agencies provide education for children residing on federal property; or
> (3) such agencies provide education for children whose parents are employed on Federal property; or
> (4) there has been a sudden and substantial increase in school attendance as a result of federal activities.

At the time PL 874 was initially being considered, a congressional committee report implied that such assistance was not expected to lead to any reduction in state assistance: "The effect of the payments provided by this section is to compensate the local educational agency for the loss in its *local* revenues. *There is no compensation for any loss in State revenues.*"[11] (Emphasis added.)

Nonetheless a number of states reduced their support for districts receiving PL 874 funds. As a result, in 1966 Congress enacted

10. *See* Note, *Serrano v. Priest and its Impact on New Mexico*, 2 N.M. L. Rev. p. 280, table III.

11. Shepheard v. Godwin, 280 F. Supp. 869, 874 (E.D. Va. 1968).

§ 240(d)(1), allowing proportionate reductions in federal assistance wherever state aid is reduced. The committee report supporting the amendment made the Congressional intent clear:

> Fifteen states offset the amount of PL 874 funds received by their school districts by reducing part of their state aid to those districts. *This is in direct contravention to Congressional Intent.* Impact aid funds are intended to compensate districts for loss of tax revenues due to federal connection, *not to substitute for State funds the districts would otherwise receive.*[12] (Emphasis added.)

However, the remedy provided by § 240(d)(1) was a discretionary one; it did not *require* reduction of federal support.

Then in 1968, in *Shepheard v. Godwin,*[13] a federal district court held that state reductions in aid to PL 874 districts were not only contrary to the Congressional intent, but were void under the Supremacy Clause. The same result was reached by other federal courts in *Douglas Independent School District No. 3 v. Jorgenson,*[14] *Hergenreter v. Hayden,*[15] and *Carlsbad Union School District of San Diego County v. Rafferty.*[16]

The Equal Protection Clause was also involved in *Shepheard* and *Carlsbad.* In *Shepheard* the federal court held that, in addition to violating the Supremacy Clause, the particular system employed by Virginia to reduce state aid to PL 874 districts violated the Equal Protection Clause, even though the effect of the state reduction was to make school spending more uniform throughout the state. Virginia attempted to exclude both the PL 874 money and the children associated with federal installations in figuring its school fund allocations, but the Court held that these children were entitled to be counted on the same basis as other children.[17] On the other hand, in *Carlsbad,* supra, the Court specifically held that California's reduction in state aid to PL 874 districts did not violate the Equal Protection Clause:

> In good faith, the state of California has attempted to devise a system whereby both state and federal aid are used to provide a more uniform educational opportunity for every child in the state. There is no doubt that the state has honestly attempted to achieve educational parity. While such an attempt may conflict with federal law and thus the Supremacy clause, it does not violate plaintiff's right to equal protection.[18]

12. *Id.* at 875.
13. 280 F. Supp. 869 (E.D. Va. 1968).
14. 293 F. Supp. 849 (D.S.D. 1968).
15. 295 F. Supp. 251 (D. Kan. 1968).
16. 300 F. Supp. 434 (S.D. Cal. 1969), *aff'd* 429 F.2d 339 (9th Cir. 1970).
17. Shepheard v. Godwin, 280 F. Supp. 869, 875-876 (E.D. Va. 1968).
18. Carlsbad Union School District v. Rafferty, 300 F. Supp. 434, 442 (S.D. Cal. 1969).

Thus, it appears that a reduction in state aid to offset PL 874 funds does not violate the Equal Protection Clause unless the federal children are explicitly excluded in the state's calculations.

The *Shepheard* case was followed by Congressional enactment in 1968 of § 240(d)(2), which flatly prohibits payments of PL 874 funds to impact districts in states which reduce allocations as a result of such payments:

> No payments may be made during any fiscal year to any local educational agency in any State which has taken into consideration payments under this subchapter in determining the eligibility of any local educational agency for State aid. . . .

In a sense this amendment is superfluous under *Shepheard*, since any state regulations of this type would be unconstitutional. Nonetheless an additional barrier was provided against state reductions for school aid for PL 874 districts.

IF SERRANO IS AFFIRMED, IS PUBLIC LAW 874 CONSTITUTIONAL?

Even before the *Serrano* decision, one observer noted[19] the constitutional problem of PL 874 under the Equal Protection Clause. After observing that the states would probably acquiesce in § 240(d)(2) to avoid losing federal money, he said:

> Yet this result . . . produces two constitutionally unacceptable conditions, each of which seems to violate the fourteenth amendment's equal protection clause. The first is produced by the state making an affirmative choice to allow considerable benefit to be conferred on a class of people defined by the sole criterion of their residence. . . . The other problem lies in the area of the emerging claim to a fourteenth amendment right of equal access to educational opportunity . . . involving the concept that where the state undertakes to provide free public education . . . it may not arbitrarily cause a considerably lesser or greater educational opportunity, measured by dollar expenditures, to be provided to a class defined by strictly geographical terms . . .[20]

This raises constitutional questions concerning the *state's* action in *choosing* to allow children of PL 874 districts to receive additional benefits, as well as the problem of the resulting non-uniformity itself. If *Serrano* is upheld, in whole or in part, can PL 874 itself be constitutional if it tends to coerce states to violate the Fourteenth Amendment? There is fairly good authority that the answer is no.

It should be noted that even if *Serrano* is affirmed only on the

19. Note, The Dilemma of Federal Impact Area School Aid, 55 Minn. L. Rev. 33 (1970).
20. *Id.* at 56-57.

holding that school funding may not be substantially based on local property taxes, PL 874 may be unconstitutional. As § 236 points out, one of the principal reasons for federal aid is to compensate school districts for property taxes lost through federal land acquisition. To the extent that this is true PL 874 money is in effect property tax money; the effect of PL 874 grants is to continue to base school funding on property distributions.

If the stronger *Serrano* holding regarding educational uniformity is upheld, there is a strong case against the PL 874 restriction on reduction of state aid. The effect of § 240(d)(2) is to coerce the states to continue nonuniform educational expenditures.

Can the federal government coerce states to violate the Equal Protection Clause? In *Shapiro v. Thompson,*[21] which struck down a one year state welfare residency requirement, the state argued that § 402(b) of the Social Security Act of 1935 authorized the states to impose such requirements. The Supreme Court said that the section did not authorize such restrictions and went on to say that if it were construed to authorize them, it would be unconstitutional: "Congress may not authorize the states to violate the equal protection clause."[22] And in *Graham v. Richardson,*[23] which struck down special welfare residency requirements for aliens, the Supreme Court said: ". . . congress does not have the power to authorize the individual States to violate the Equal Protection Clause."[24] If Congress may not *authorize* such violations of the Constitution, it follows, *a fortiori* that it may not *coerce* them.

For these reasons, it is concluded that if *Serrano* is affirmed, in whole or in part, there will be a basis for a serious constitutional challenge to Public Law 874, in regard to the appropriations compensating for lost property taxes, the restrictions on state funding, or both.

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21. 394 U.S. 618 (1969).
22. *Id.* at 641.
23. 403 U.S. 365 (1971).
24. *Id.* at 382.