

THE FINANCING OF TEXAS PUBLIC SCHOOLS:  
NO ROOM FOR COMPROMISE

THESIS

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For my wife Joann, first of all a friend and a loving companion

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## **INTRODUCTION**

The state of Texas has been fighting over the educational system since it was still part of Mexico. The arguments today are not new, but they are simply the continuation of a century long fight. Texas schools have always been under funded by the state, but many of the citizens did not mind in the past. The early settlers believed that it was the right and the duty of the parents to educate their own children. When the times finally changed and more support for public education increased, there were still arguments over the nature of a free school. Many individuals felt that this simply meant that the state would provide the children with buildings to use. Others felt that the state should provide for the education of the poor and orphaned children, and a minority felt that a free school system should be available to all Texans. As times changed and the attitude against the state became less harsh, a broader form of free education was adopted. Cities could tax and pay for education, but even these taxes did not cover the entire costs; many parents would have to add supplemental tuition costs to ensure that the best teachers would be in their schools. County school eventually gained the right to tax property as well, and districts formed around the state.

The state had been willing to use its resources to provide a Permanent School Fund for education. The interest collected from the fund would be distributed to the schools on a per student basis, but the fund never completely covered the costs of education; for the most part, the state had engaged in these activities in order to further

varying causes. The first cause was to gain independence from Mexico; the second cause was to provide the state with a means to achieve its desire to create a railroad system. More recently, districts have used education to attract businesses to their communities. Education is almost always tied to another goal, or it is tied to a tax increase that will never be passed. Rarely in the state's history has there been a time when education was considered an end in itself. The rhetoric has often been there, but the actions have failed to support any coherent system.

Not until the United States Supreme Court ruled that education could not rely solely on the wealth a district possessed did the states start to change the system. The Texas Supreme Court eventually declared the over reliance on property taxes and the disparities it created as unconstitutional. The Court ordered the system to be changed, but it has taken the Legislature over a decade to replace the inequitable system. The process has frustrated the court and property poor districts, but it should be expected in a state like Texas and in a democracy. Democracies tend to be slow in their governmental procedures, and Texas is no exception. In fact, the process is actually slower because the legislature only meets every other year. This was intended to keep the government small and inactive.

Because the governor has the ability to call a special session, these are controlled and directed by him or her, which changes the overall complexion. The governors have been reluctant to make the whole sales tax changes that would be required to remove the burden from the local property taxpayer to the state. The staunchest opponent to these measures was Governor Clements, but even he was willing to compromise to keep the courts from imposing their version of the law.

The struggle between the courts and the legislature epitomizes the very nature of the struggle over the Texas school system. It is an issue that revolves around power and has too often been polarized by the different parties. The legislature passed law after law that did not change the structure of the system, and even before they were passed the plaintiffs were informing the state they were going to sue. The courts quickly obliged the individuals and ruled law after law unconstitutional. The courts were willing to rule on these cases before the system could actually complete an entire school year.

Unfortunately for the wealthy districts, the courts stopped this practice for the current system, which is one that they have warned would eventually become unconstitutional.

The Texas public school financing system has been marred by the lawmakers' unwillingness to consider the issue alone; it has always been tied to other desires. The discussion has also been hindered by the fact that an efficient system is not always an equal system; as the public cries for some form of accountability in a system that is often regarded as a money pit, many do not realize that they are calling for changes to which the courts and plaintiffs would object.

With the ambiguities that exist between a constitutionally mandated efficient system and an equal system, is it actually possible for the legislature to produce a new school-financing plan? Have the citizens of Texas changed the educational system to the point that the family and the community have been removed, and the state has been given the responsibilities that were once regarded as the sole duty of the parents? To an extent they have, which has taken the family too far out of the equation leaving the government to make a system that they are ill prepared for if not incapable of creating.

## CHAPTER I

If we desire to establish a Republican Government upon a broad and permanent basis, it will become our duty to adopt a comprehensive and well-regulated system of mental and moral culture. Education is the only subject in which every citizen, and especially every parent, feels a deep and lively concern. It is one in which no jarring interests are involved, and no acrimonious political feelings excited; for its benefits are so universal that all parties can cordially unite in advancing it. It is admitted by all, that cultivated mind is the guardian genius of Democracy, and while guided and controlled by virtue, is the noblest attribute of man. It is the only dictator that freemen acknowledge and the only security that freemen desire (Eby 1925; 86-87).

-Mirabeau Lamar, President of the Republic of Texas

While Texas might seem to have been an uninhabited portion of Mexico, it would eventually become a part of the United States. The transition and desire for change was driven by educational needs, but under the rhetoric, the citizens of Texas often used education to achieve other goals and desires. Once these were accomplished, education was overlooked until it could be connected to another cause. The first cause was independence, and the second major cause during early statehood was to build railroads, which would allow Texas to move commerce and improve their economy. Since education was tied to these concepts, they were quickly approved and education was used as nothing more than a means to an end.



The trend to use education to achieve other goals did not make the citizens in Texas ignorant. Most of the inhabitants did not want state run schools. They felt that it was the duty of the family to educate children, and when the fields were not being worked, the family would pass their knowledge on to their children. The extended family was also involved in this process, and often times the local churches also helped educate children.

However, as time progressed, the small segment of society that wanted free public schools began to grow. There was initial resistance to this group, but it was greatly helped by two major sudden and revolutionary changes to the system. The first of the changes came after the Civil War, and the new government forced the compulsory attendance and taxes on the citizens. While community schools and private schools had been in existence for many years, the parents and local community still had control over them. The system under the reconstruction government was extremely centralized and took the control away from the local communities. The citizens hated the system and changed it after the reconstruction government left, but it had accomplished changing the ideas of many people, and many of the concepts it presented would eventually be reestablished in the educational system. Parents and the community were becoming more willing to leave their children's education to the state. They had moved from believing the state had no business in education to allowing the collection of taxes to maintain the school system.

The State of Texas has embraced the concept of free education since it was founded. Dating back to the Constitution of the Republic of Texas, which was adopted in March of 1836, one of the provisions charged the State's Congress to provide a system of

education for the newly formed republic (Historical 2004). Texas broke from Mexico due to the lack of educational systems to which the citizens felt entitled (Eby 1925,79). In its first Constitution, Texas stated that, “it shall be the duty of the Congress, as soon as circumstances permit, to provide, by law, a general system of education” (Hobby 2002).

While Texas might have seemed a wild adventurous paradise to other Americans, it was actually inhabited by many well-educated citizens who wanted to encourage culture and public education. The religious settlers had desired to transform Texas into a place where humanity would be peaceful and religious. In order to accomplish this goal, they established denominational schools. As they first started, they did not favor the idea of the state being involved in the process. Others desired a state system that would teach the necessary skills required of a democratic citizen (Eby 1925,81). These people eventually decided to pursue the concept of a Philosophic Society, which had been made popular by Benjamin Franklin as well as others in his generation. Influencing European countries and people, these schools allowed for the spreading of knowledge without the conflicts present in the denominational schools (Jones 2000).

President Lamar wanted the Republic to establish a system of “free” public education and encouraged the Congress to pursue this purpose as early as 1838. The idea did not receive much attention until the Republic became part of the United States of America. Instead, the Republic had many private schools that were referred to as “Cornfield schools” (Texas Education 2004). While Lamar’s organization did not succeed or last for a prolonged period of time, it indicated that the original citizens of Texas were concerned with education. They mirrored their ideas after the founders of the United States and believed that “civil rights and liberty could be maintained only in a

government where the intelligence of all the citizens had been enlightened by the freest diffusion of knowledge” (Eby 1925, 82-83). While the United States government and the state governments had set aside large areas of land to pay for schools and be the future sites of schoolhouses, the Mexican government seemed indifferent to this process, which led to the Texans desiring independence (Eby 1925, 83).

While the rhetoric around the Declaration had been impressive when it came to education, the actual phrasing in the Constitution was less inspiring. In fact, it failed to even establish a date for “free” education to come into existence, and the first Congress did not even discuss the subject; although, they did charter some private schools (Eby 1925, 84).

The first President of the Republic wanted the Congress to act quickly. He believed that the time was right for them to set aside public lands to aid in the process of free education. In what turns out to be an accurate depiction of the future, he warned against waiting too long because the government would no longer have access to the public domain lands which would create the need for taxation. This would lead to the different regions of the state (republic) being jealous of what the others received, and the entire plan would suffer from insufficient funds or be defeated by the inability of the people to set aside their regional differences. It was believed that if the Congress would act it could make an endowment from the land that would last, but if it waited just a few years, millions of dollars would be required to achieve the same goals (Eby 1925, 85,87).

After the president had given this message, the Congress received a report from the Committee on Education in 1839 that detailed how to establish an endowment for the system. At the end of 1839, the proposed bill became law. This first bill on education set

aside three leagues of land in every county that would be used to build primary and secondary schools, which equates to 13,284 acres (Eby 1925, 88, Bay 2004). Containing a serious defect, the bill failed to establish the appropriate measures to actually begin schools that had any coherent system or educators (Eby 1925, 88).

The people who had championed the idea of education quickly presented President Lamar with a more complete plan, which called for a Bureau of Education that would have control over the leagues that had been previously set aside and would establish a system of education that would be used by the entire Republic. The second part of the education plan was passed into law in February of 1840 (Eby 1925, 88). Additionally, the new law expanded the league requirement to four (Breif 2004). The land was to be surveyed, and the county was to establish a board of school commissioners. The board would be able to divide the county into different districts, and they would also have the power to grant teaching certificates those applicants they deemed qualified. On top of these duties, the board was also charged with supervising the schools and inspecting them to make sure they were working properly (Eby 1925, 88).

The quantity of land granted to each district was substantial for the time, amounting to just under 18,000 acres. The initial three leagues that the Congress had established for each county was to be used perpetually by the schools; it could not be sold, but it could be leased out to individuals or companies, creating yearly revenue for the schools. The additional league could be sold, and the money gained would be “applied ‘to the purchase of the necessary scientific endowments, one half for the use and

benefit of an academic school of each county, and the remainder distributed equally among the various common school districts which may be laid off” (Eby, 1925, 88-89).

Following generations have misinterpreted the original concepts of education and the real intent of these laws, which are very vague. If the literature of the time is examined, there is no clear meaning or coherent system of a state supported and controlled system of education. These laws cannot be viewed with the concept of the school system that is present today. There is no evidence that the state desired to support and control the school system, and they did not seem to believe that it was the state’s duty to force each county to actually make a school, and there was never the idea that the Republic would impose a tax on “all the property of the state for education of all the children” (Eby 1925, 90). The system that they had established simply made provisions available for all the land that had yet to be settled and made into communities to make schools if they desired. The parents of the school children would be responsible for maintaining and controlling the schools. The lands were given to the county, and at this point, the Congress had no more authority over the land or directing the communities in how to operate their schools. The state’s only concern with school was ensuring that the poor and orphaned children had their tuition paid, if it was deemed appropriate. The state did not refer to this educational system as being “free” at any time. At that time, the responsibility to educate children was thought of as a right that could not be controlled or taken away by the government. The citizens would have viewed a state controlled compulsory attended school as an invasion of their rights. It may have even been regarded as a tyrannical move. It was believed that people would want their children to learn the culture and new ideas, so there would not have been a need to force education

on children. This created an environment where the only responsibility of the state was to provide a facility to be used by the community for education, and then the parents would use the facilities to educate their children in the manner they deemed appropriate (Eby 1925, 90-91).

The system provided the means to create all levels of education, but the only level that was considered necessary was primary. At this level, people learned all of the skills that would be required in a free society. However, the granting of these leagues of land to the counties proved to fail in providing a system of education. The failure did not come from the idea directly but was a result of the large amount of land that was available in the Republic. The Republic was so unsettled that land was abundant, which meant that the prices were low (Eby 1925, 91).

The counties believed that the four leagues of land should be kept until it became more profitable to sell or lease. They hoped that this would occur after the area had become more densely settled. Establishing schools was not deemed important by the citizens in the county, so the process was delayed. Nearly two years after the initial law of 1839, there still had not been one survey conducted concerning the lands. Many had not completed the surveys even as late as 1855, and the land did not really begin to benefit the counties until after 1900. The main problem rested with the fact that the land had been given to the counties. If the state had retained the rights to the land and organized the schools, the process would have been expedited. The officials that had been charged with maintaining and overseeing schools did not have the same interest in spreading education and culture as President Lamar and the Congress (Eby 1925, 91-92).

The fact that most of the citizens in these counties preferred private and religious education also hurt the development of county schools. After Texas gained independence, the settlers brought with them their educational systems and class structure. The different individuals all sought to educate their children in the manner they were most familiar. The individuals that had a moderate level of living often educated their children at home and placed their children in a community school if they were available. The richer citizens often hired private tutors to teach their children, or they would actually send their children back to the states they had come from to receive a more proper education. The poorer individuals, who represented the majority, just let their children learn where they could with life experience as their main teacher (Eby 1925, 92-93).

This did not mean that the population was ignorant. In 1850, only 12.2 percent of the white males over 20 were illiterate, and only 20.2 percent of the white females were. Much of the education of these individuals came from their home environment. Families and relatives would teach children how to read and write during the months of the year that required little work. There were also schools opened by wandering teachers or by skilled individuals that could not find other work. They would open a school in communities that were large enough to support them. Using influential members of the community, these teachers would try to form a school. Most of the small towns wanted a school because it allowed them to claim to be "the Athens of Texas" (Eby 1925, 93-94). These schools also allowed children to stay at home, and they attracted more individuals to move to a community, which was good for business. These community schools were known as "old field" or "cornfield" schools, but there is no way to actually tell how many

existed across the Republic (Eby 1925, 94). These schools employed teachers who would rotate to different plantations and communities to teach and were popular between 1840 and 1850 (Texas Education 2004). These communities and other organizations such as the Free Masons supported education through the use of public and private buildings. This trend continued until free public schools were established in the area (Historical 2004).

The citizens once again became interested in education when Texas was annexed into the United States. There were meetings by citizens who wanted to establish an educational system and public system that would help to train teachers. (Eby 1925, 100-101).

Religion was inseparably tied to education during these times. Many of the teachers were also the town ministers who would teach to earn extra money. The school was also tied to the church in a more physical way. The building that housed the school usually belonged to a church or religion, and school was held during the week, while church services were held on the weekends (Eby 1925, 102).

Schools adapted to the need to have the children work during harvesting times. While the boys worked, the teachers allowed their younger siblings to attend. Often, the schools had to rely on scare materials and children using different texts. This was beneficial to the parents and helped relieve the cost of education (Eby 1925, 103-104).

When Texas was annexed into the United States in 1845, it had to write a new State Constitution (Historical 2004). The framers of the State Constitution made the articles about education more explicit than they were in the Republic's Constitution. The issue was addressed in the first section of the new Constitution, and it calls for the



legislature to make a provision that will maintain and support a public school system. Immediately following this charge is the second section, which calls the state legislature to pass legislation to achieve this goal as soon as possible. This meant that free schools were to be established throughout the state, and that they would be furnished, supplied, and maintained through property taxes. The framers also included a provision, which set aside a minimum of ten percent of the state's yearly revenue from taxes to be given to a fund that would be available perpetually and be used to support the free schools, which was passed in 1848 (Eby 1925, 104).

The Constitution actually called for two different types of schools. The first section called for public schools, and the second section called for and established a fund for free public schools. These may seem like interchangeable distinctions for the same institutions, but they are not. It actually was a compromise by the legislature to satisfy different sociological groups and their attitudes toward the best method of education (Eby 1925, 105).

Even with the newly legislated school system, there was no uniform way to organize a school and teach. There were vastly different traditional methods of teaching being used, and there was no clear consensus amongst politicians as to the appropriate manner to impart a practical education. Once again, it fell back on the ideas that the immigrants brought with them to Texas. All told, there were four prevailing concepts that "were proposed to control legislation at this time in Texas" (Eby 1925, 105).

Most of the citizens of Texas actually believed that education was something that should be kept within the family. The family was responsible for providing their child with the education that they deemed appropriate. In this way, the parent could instill in

their child the ideals and morality that they believed. This was not a simple preference by some, but was actually seen as “a duty imposed at once by divine command and by order of nature” (Eby 1925, 105). This meant that the state had no right or authority to dictate to the parent how they should educate their children, and if they did, the state would be subverting the inalienable rights given to the parents. The right made it the duty of the parents to provide for their children and their children alone, which created tension over the idea of property taxes to pay for free education. The tax was seen as a way for the state to steal money from the people in an act that was nothing more than robbery hidden behind a law. In this concept of education, every parent would be responsible for the education of his or her own children, and that is where their responsibility ended (Eby 1925, 105-106).

The second concept concerning education revolved around the church. Since the church had provided many of the classes in the past, it had become accustomed to serving people and educating them. There was no conflict between these two competing concepts of education. Many of the people who believed it was the duty of the family sent their children to religiously run schools. They were even more likely to do so if the school was run by their denomination (Eby 1925, 106).

The third concept of how schools should operate favored the free public schools for all children in Texas. These schools would be supported by the state. There were few people at the time that favored this position (Eby 1925, 106).

The final concept was concerned with providing education and training to the poor and orphaned children of the state. This sentiment was kept alive in Texas because the citizens felt an obligation to those men who had fought and died to make the territory

its own Republic. In this way, they could honor the men by giving their children a free education. The State would use public funds from taxes to pay the tuition required to provide the poor and orphaned an education. This group was not at odds with the first group, and they felt that education was not to be administered primarily by the state, “but for the sake of public safety they believed that the state ought to provide for the training of indigent and orphaned children” (Eby 1925, 106-107).

The Constitution had called for two different schools, and in the first section it called for public schools. The way the state would establish these schools was thought to be by helping the private and community schools that were already in existence. They were not going to pay tuition for all the students and make them free to attend. They also had no desire to provide funds to these schools through taxation or take over the schools and make them state run and owned enterprises. The proponents of the first two concepts of education expected the state to support them to fulfill this section of the Constitution (Eby 1925, 107).

The Second Section was the one that provided for free education under a system of property taxes. The church and family advocates favored this idea to bring education to the poor and orphaned children. The idea was not to create entirely different schools for these students where the state would own the school and fund every aspect of it, but it was to be a simple method of providing funds sufficient to pay the tuition for these children at an already established school. This section created controversy because people who supported the idea of a popular free education felt that this section provided everyone with free education (Eby 1925, 107).

While the Constitution's language provided support for all the different concepts of education, the differing opinions fought to control the system. It took over fifty years before a system of education was created, and the ambiguity in the Constitution did not help to resolve the issue. This led to the concepts of education fluctuating through the years and prevented education from progressing steadily throughout the state's history (Eby 1925, 108).

The principle of paying even the tuition of poor and orphaned children by taxation is a radical departure from what had previously been done to support education in Texas. It changed the idea of supporting education through the leasing of large amounts of land by individual districts because the system had not produced the results that were desired. In fact, the idea of taxing and setting aside revenue was a major step. The citizens did not oppose this concept, but they were not in favor of local taxes being collected to support schools. The two ideas of free schools and taxation were presented in the new Constitution, but they did not have the same meaning that they do today (Eby 1925, 108).

Since the days of Mexican rule, the communities around the schools had managed the affairs and maintenance required. Many of the communities formed councils after the new Constitution was ratified to establish schools that would teach in English for their communities. Galveston went the furthest in this regard and established a tax to provide for free public education. The school was opened in 1847 with much fanfare. It was staffed with professional teachers out of New Orleans, but opposition to the tax quickly grew. While attendance in the school was large, it only lasted two years. The funds were insufficient to support the school, and they were controversial. These provisions are still

important because it set the precedence of local control over the schools and local control over the right to raise taxes to support them (Eby 1925, 108-109).

The conditions in Texas started to change after it was annexed. They were now part of a Union, which gave it more strength and protection than it had as a Republic (Eby 1925, 110). Texas gave up its claims to the land to the north and the west, and by doing so they received ten million dollars (Brief 2004). Governor Pease requested that the Legislature provide \$2 million from the settlement for the Special School Fund; the interest from the fund would help pay for education (Bay 2004). They could now focus on improving the standard of social and commercial living, building permanent highways, and establishing educational institutions (Eby 1925, 111).

The citizens were motivated to refocus on education for four main reasons. First, they wanted to prevent their children from being educated in northern schools that might teach them to believe in the abolitionist movement or that states rights were not as important as the national government. Second, they wanted to keep the money gained from tuition in the state instead of seeing it used for travel expenses and out of state tuition. Third, the sentiment that previous efforts had been failures increased the desire to reevaluate and fix school systems. Most importantly, the main reason to pursue education was to secure a fund that would allow railroads to be built, and the interest off this fund would be used to establish a new educational system (Eby 1925, 112).

Schools were still not readily available in the 1850s. Most of the children in Texas were not receiving an education. In fact, five out of every six children were not being educated in a school. The odds of receiving an education were even worse in the rural areas, but the state believed that the population was too spread out and the money

was too scarce to actually create a school system. The increasing population helped with both of these problems, and the funds were beginning to grow since the government had been setting aside at least ten percent of its annual revenues in the state treasury for schools. This money, in addition to the leased lands from the original four leagues, would still have proven to be inadequate if the state had not received the large settlement from the disputed territories (Eby 1925, 114-115).

Even with these other issues, the main driving force was the building of railroads across the state. These two things may seem disconnected, but they became related. The state Constitution prevented the legislature from participating in any direct commercial enterprise. It was also blocked from loaning money to private companies or individuals for private undertakings. This meant that no private enterprise would be willing to invest the large amounts of capital necessary to lay railroad across the state. They would have to receive an incentive to undertake such a major operation. This created a dilemma for the state. They had to find a way to obtain railroads otherwise they would remain isolated from access to commercial markets for their crops and goods. In order to resolve this crisis, the legislature linked together the two major improvements that the citizens desired. They decided that they could accomplish both goals at once. Now, they only needed a reliable enterprise or person to borrow this money so they could collect the interest. It just conveniently worked out that the railroads would be willing to borrow the money, so the “fund [would] be loaned to the various railway companies on reliable security and at a remunerative rate of interest” (Eby 1925, 115).

The two entities being tied together made many people more willing to support the idea of popular education because it satisfied both groups. Those who wanted

railroads were happy that they would be built, and those concerned with education felt that it would adequately support schools; it was a good business practice because the United States Bonds at the time were only five percent, and the railroads would be willing to borrow the money at six percent (Eby 1925, 115).

Many of the politicians began to support the idea, and the end result was the production of the school law in 1854. The law had four main features. These features represent a compromise between the competing philosophies at the time because there was no clear consensus in the public concerning the issue (Eby 1925, 116). The new fund was established from bonds drawn on the United States Treasury, and the initial amount was two million dollars (Historical 2004). The bonds would only draw five percent interest, and the money gained on the interest would be distributed to schools on a per student basis every year. It would be a permanent school fund, and was referred to as "The Special School Fund" (Eby 1925, 116). The second characteristic of the new law was to organize a system for common schools, and the state appointed a superintendent who would carry out the new law. These responsibilities fell to the state's treasurer, and the responsibilities at the county level would fall on the judge and commissioners who would form a county school board. The school board was then responsible for dividing each county into districts, and each district would elect three trustees. The money would be distributed to the schools on a per student basis, and the county tax assessor would be responsible for accounting for how many children resided in his district that were between the ages of six to sixteen (Eby 1925, 116-117).

The system was not completely determined by the state, but the citizens had a large amount of input. Each district would have elections, which would determine the

location of the school. The local citizens, who had children of school age, would also determine the length of the school year during a meeting between the citizens and the trustees, and there it would also be determined what type of teacher was desired and how much the community would be willing to pay to acquire his or her services. The trustee would then hire a teacher based on the requirements, and they would monitor the activities at the school (Eby 1925, 117).

At the end of every fiscal year, the state sent out the per student allocation of money to the districts, and they were to use the money to pay the teacher's salary (Eby 1925, 117). The first year the fund was available was for the 1854-1855 school year, and the school received sixty-two cents per student. The per student allowance was the only funding that the state provided for public education, and it was only intended to pay for salaries. If these funds would not adequately pay for the salaries of the teachers required by the school, parents who were financially secure were supposed to pay the remaining difference between the allocated monies and the required budget (Historical 2004). The districts would also have to have a building that was suitable for educating. Only the districts that complied with this requirement would be able to claim money from the state (Eby 1925, 117).

The law also established that poor and orphaned children in each county would have their tuition costs paid by the state. The trustees were to make a list of all such children in their districts, and they would send the list to the county judge, who would report the amount required to pay the student's share of the teacher's salary to the state treasurer. At this point, the treasurer would take the funds from the 10 percent of the



annual funds that were collected from the state for education and send it back to the districts (Eby 1925, 117).

The final part of the new school law allowed the trustees of a district to convert local private schools into common schools. This meant that the local districts could simply use established private schools as the district school. This rather innocuous section of the law prevented many districts from establishing their own common school and prevented the true establishment of a state public school system (Eby 1925, 117-118).

The school law had been the first real attempt to create a school system, but the competing ideas resulted in two camps of individuals. The first group favored the state support of private schools and the paying of the poor and orphaned children's tuition. The second group wanted free schools for all white children in the state. The former group enjoyed the majority support. The established schools preferred state support of private institutions because private individuals had established them as either a business or an evangelical tool. However, more and more of the population was beginning to favor the idea of a free school system for everyone, and they believed the Constitution had meant more by free schools than simply a provision to pay the poor and orphaned children's tuition. The law had been a compromise, and each party hoped that they could use it to establish their vision of what a "free" education was, and the state could use it start the process of building an infrastructure to transport goods. Even with all the compromises and underlying influences, the system was the only realistic measure the state could actually begin at the time (Eby 1925, 118-120).

The system had its fair share of problems. Districts had problems meeting the requirements of having a school meeting building, and the state had made no provisions in the law that would give money to the districts to build or acquire such building; citizens would either have to supply the building or voluntarily contribute to a fund to establish one. The districts had no right to establish any local tax unless there had been special legislation passed for the area, a task that was difficult to achieve (Eby 1925, 120).

The schools were also unorganized. The individuals charged with overseeing them did very little, and the trustees commonly failed to report on anything concerning the schools to the state treasurer, who was supposedly the state superintendent. Many of the individuals in the counties turned to the private schools to educate their children, and this helped the county because they would simply designate these common schools. For the most part, only the German communities actually tried to establish districts and attempted to found schoolhouses for the education of their children (Eby 1925, 120-121).

The population of the state was too spread out to make the district plan feasible, and the governor and state superintendent actually believed the system should be change. In 1856, a new law was passed, which abandoned the concept of splitting counties into districts. The new law made no effort to devise a system to actually build schoolhouses or establish a permanent location for the use of educating children. This resulted in a system that had no established trustees, and any group could easily establish a school; they would be the ones that decided how long the session would last and how much the teacher would be paid. The state would provide these schools no matter how large or small with the state funds set aside per student. This system favored the private schools

and was a victory for those that wanted the state to support private institutions (Eby 1925, 121).

The funds from the state were becoming more dedicated to the poor and orphaned children, which was how many interpreted the forming of “free” education. The money from the state was insufficient to actually provide much real assistance to the schools, and many of the schools did not bother to file to collect the allotted funds. Most people at this time wanted the fund to be limited to support just the poor and orphaned children that were attending the schools. The new law also provided that the General School Fund, which was built from ten percent of state’s revenue, and the Special School Fund, which was from the boundary settlement, be combined into The School Fund. The schools would be given the interest from this fund on a per student basis, and it would be used to primarily pay for the poor and orphaned children’s tuition; the remaining money would be divided to defray the costs of the other children. The law ultimately proved inadequate because the state had no control over the teacher’s salary or the school’s tuition rates. Many of the poor attended expensive schools if they were in a town, while those in rural areas went to inexpensive schools. This meant that the costs to supply an education to the poor and orphan children were vastly different between the counties of the state. People complained that the law was unjust, so the state passed another education law in 1858. This law set the tuition rate for every child in the state at ten cents per day they attended school (Eby 1925, 121-122).

The question then arose over which children should be labeled poor and receive the help from the state. The trustees were charged with this decision, but previous laws had abolished the position. The 1856 law left the burden on the families to prove that

they could not pay tuition, and they would present their case to the teacher; the teacher would then decide if they should receive the tuition aid. The 1858 law once again changed who would decide. The duty was now placed on the county court. This law only lasted until 1860, when it was changed and required the teacher to find two paying patrons of the school who would sign a certificate stating that the child was poor and his or her parents were unable to pay the tuition. The state refused to give the teacher any money for the child unless the certificates were signed (Eby 1925, 123).

The law had many defects, and the state often did not follow it closely. They often gave funds based on the total students per county. Parents who were able to pay often times got certificates that said they were not; the poor were unwilling to admit that they could not pay, so they would fail to enroll their children in any school. The decreasing amounts claimed by schools from year to year revealed the flaws in the law, and many schools refused to allow any child who required a poor tuition certificate into their schools. The very nature of the law made it impossible to establish any school designed to educate only the poor. Even with all the flaws, there was no consensus about whether the laws and systems were a failure or success (Eby 1925, 123-124).

The system after 1858 allowed for parents to send their children to the school they chose. The parents would then pay the teacher's salary all year long. At the end of the year, the teacher would turn in an attendance account to the county treasurer, and the treasurer would then give the parents the amount that the state had appropriated. There was no real supervision over the process, and the laws were often changed. It was unlikely that any coherent state school system would arise from these conditions. The laws were too fluid at the time for individuals to actually understand the process and

evaluate an effective way to establish a school before the law was changed substantially again. There was simply too much confusion in the system for schools to actually progress into a statewide system. Parents did not give up under the system, and many children received an education in the pre Civil War era. The smaller communities relied on the field schools that came and went as was needed and could be afforded, and the larger towns often had several schools and academies (Eby 1925, 125-126).

Many communities formed schools to educate their children and attract more settlers to the area. The citizens could actually invest in the school and buy shares. The schools were expected to pay for themselves, and many hoped that it would actually turn a profit and pay dividends to the investors. A trustee board comprised of concerned citizens ran the operations of these schools. San Antonio even opened a free school before the Civil War. The town opened four schools; there were two schools on both sides of the river, and each side had a school for both boys and girls. The town council secured the funds for these schools from lands that the Mexican Congress had granted the town before independence. These schools taught students in all the basic subjects and even provided them with music lessons on the violin. Religious organizations, fraternal organizations (Free Masons), and the German communities also found ways to support education during this time of changing laws (Eby 1925, 127-130).

Texas was progressing steadily until the Civil War, which ultimately pushed education in a different direction than it had been heading. The war actually devastated the educational system in Texas for almost twenty years. The distribution of the per student fund ceased after the first year of the war, but the state support had not been that vital to education because no real public school system had been established. However,

the school fund was devastated by the war. The money had been loaned to railroad companies, and it was becoming clear that the companies were not going to pay the interest that was required by the loan. In order to pay for the war, government officials raided the fund; it was also damaged by a devalued currency, and it had dwindled down to almost nothing by the time the conflict was over. The legislature also repealed its 1858 law, which gave the funds gained from the selling of public land to education. The net result of all these actions was a complete loss of any means to support public education. The system would have to be completely rebuilt after the war (Eby 1925, 149-151).

Once the war was over and Texas was again part of the Union, a provisional government comprised of “carpet-baggers” from the North decided to make radical changes to the educational system that had been established by the earlier constitutions (Historical 2004). This group looked down on the southern culture and believed that they needed to be educated out of their ignorance; most of the new politicians agreed with the Northern policies and believed that free education should be offered to both blacks and whites. This group wrote a new state Constitution and passed laws that reflected the New England educational system; this system would be forced on the citizens of Texas (Eby 1925, 157).

The National Bureau of Education thought that the state of education in Texas was further behind than any other place in the United States. The newly imported radical portions of the state blamed the group that had supported private education. They pointed to the fact that there was only one schoolhouse that had been built for public education, and none of the schools were funded completely by the state. The group took

it upon themselves to rebuild the educational system and to restore the now defunct School Fund (Eby 1925, 157-158).

A new Constitution was written in 1869 and was used during the years of Reconstruction. It contained a highly organized and centralized educational system (History of Texas 2004). Schools would be established to provide a free education to all citizens between the ages of six and eighteen. The counties would once again be split into school districts, and they would be run at that level by a school board. The new government also required that school attendance would be compulsory, requiring students to attend for a minimum of four months every year (Historical 2004, Eby 1925, 158). This newly created system laid all the foundation required for the future school system and administration. These schools would be funded by the School Fund, which would be rebuilt, and all the lands that had been granted to the counties for educational purposes would be managed by the state to prevent any fraud or misuse. To make certain that the school fund would be permanent, the state required that all the funds gained from the selling of public lands go into the permanent school fund (Eby 1925, 158-159).

The School Law was passed in 1870 and complied with all areas of the Constitution. The law was unpopular in the state because the new government had created it, and many counties ignored its existence (Eby 1925, 159). The citizens did not approve of these radical new measures, so public sentiment towards the concept of public schools soured, which resulted in a lack of schools being built in the state (Historical 2004, Eby 1925, 159). The radicals in the government were infuriated, and they decided to pass a law on the counties that would force them to comply, so in 1871 they passed a new law; “the law of 1871 set up the most imperial system of education known to any

American state” (Eby 1925, 159). The lawmakers organized the school system like a military controlling every aspect. It created the state board of education, which would be chaired by the state superintendent, the governor, and the state’s attorney general. The board was given great authority over education, and they had the authority of the legislature in educational affairs. The new school board would make the regulations necessary to establish a public school system and would have control over the teachers and their curriculum. They also controlled local taxation for the schools and could tax their citizens up to one percent to pay for building the school and maintenance. They determined where the school would be located and made sure that the children were actually attending. The local citizens had no control over the system, and they were forced to pay taxes to support it (Eby 1925, 159,161).

The schools at the time still had only about fifty percent of the school-aged children attending, and there was a need for more school buildings. In order to pay for the school buildings, a school tax was created, which was unpopular and only a few districts were able to actually build schools based on its revenues. The citizens opposed this, and they opposed almost every aspect of the system. This resentment was not limited to the citizens, but state officers also neglected their constitutional duties. The resentment and neglect damaged the organization and control that the state had sought (Eby 1925, 162).

The main problem that most citizens had with the new laws was concerning the one percent property tax. The tax was levied on all property in the state and was to be used to build schools and maintain them once they were finished. After this took place, the legislature lowered the revenues reserved for school use that would come from the



state's revenue of yearly taxes. The state would use no more than twenty-five percent of this tax revenue for schools, and each county had the option of actually reducing the amount to a proportion that they saw fit. The state board of education tried to enforce the one percent property tax, but the citizens refused to pay. The matter eventually ended in a court battle, and after several years, the law was deemed illegal. The people had no desire to fund education through local taxes, and the laws questionable authority allowed them to avoid paying. They did not believe that individuals should be forced to pay for the education of children with whom they had no family relationship. In their minds, it violated the rights that they had fought to achieve and was nothing more than the state trying to legalize robbery. They also scoffed at the notion that they had to build all the schoolhouses for education in a year that had been preceded by war (Eby 1925, 162-164).

The citizens were also outraged by the concept of compulsory attendance. They did not believe that a law that required such action could be enacted in a free society; it was something that would be imposed on the peoples of Europe who lived under the authority of a King, but it should not be forced on the free living people of Texas. The state was perceived as trying to take the rights away from the parents and dictating how children should be raised. This was more than a simple right given by man; it was a right given by God for the parents to raise their children and guide them religiously in the manner that they saw best (Eby 1925, 164).

They also had an issue concerning how individuals in the schools were hired. Most of the employees from the superintendent and support staff to the teachers had been brought in from out of state. The parents had not known any of the individuals, and they viewed this as violating the justice and freedoms that peoples in a democratic society

should enjoy. They had raised their children, and they shouldn't be forced to give them over to strangers for educational purposes (Eby 1925, 164-165).

The people of Texas were troubled by the fact that the new superintendent and legislature were suggesting expenditures that far exceeded any revenue that would be brought into the state's coffers. In 1872-1873, the state proposed spending more than one million dollars, which was double the amount that they had previously possessed (Eby 1925, 165).

The superintendent and his supervisors were seen as having too much power, and the people resented the fact that they had no real voice in how the affairs of their children's schools were conducted such as the selection of teachers. The leases and the amounts paid for buildings were decided by the superintendent, and he was able to choose which texts would be utilized. Many of these books came from the north and had sentiments that were contrary to the southern culture. The people felt that the beliefs and culture they wanted their children to possess were being circumvented in the school system (Eby 1925, 166).

While the system forced the educational system on the citizens, it achieved the goal of opening free public schools in Texas. In the immediate aftermath of the return to power of the Democrats, much of the system was abolished, but many of the features would eventually return through the consent of the citizens (Eby 1925, 167).

The power was returned to the citizens in 1873, and the newly elected officials enacted a new school law. This new law removed many of the radical reforms. The power to oversee the schools was taken from the state superintendent and returned to the people. Parents no longer sent their children to the public schools and attendance reports

stopped being recorded. The system was returning to the condition it had been in prior to the war (Eby 1925, 168).

The Constitution was once again rewritten in 1875 after the change in power, and education was again a controversial subject. The views varied widely; some believed that public education would lead down the path of servitude, and others favored retaining the system that the reformers had created. Many supported the idea of just providing education to the poor and orphaned because education was the right of the parents to impart to their children (Eby 1925, 169). When reconstruction ended, the state took the Special School Fund that had been set up and changed it back to the Permanent School Fund, which would be used for public education. The modern idea of independent school districts did not come into being until 1875. The state replaced the Reconstruction Constitution with a Constitution that allocated 45 million acres for education (History of Texas 2004). The Permanent School Fund was to come from bonds placed on the 45 million acres of public land whose revenue was to be directed to supporting schools (History of Public 1998). The people did agree on the fact that the school fund should never again be depleted under any circumstance (Eby 1925, 170).

The final article in the Constitution was once again a compromise that did not satisfy the real needs of a school system. All features of the radical system were destroyed indiscriminately, and many of the good features that had once been favored were eliminated because of the harsh political backlash. The counties once again had control of the lands granted to them previously, the school age was shortened to 8-14 years of age, and the funds that the state would provide would be limited to less than twenty-five percent of the yearly tax revenue and occupational taxes collected. The

legislature was also charged with making a free public school, but there were no clear guidelines on how this would be achieved. The school fund was once again created and would consist of the monies gained from the selling or leasing of lands. This would be used by the state, and the counties still had the four leagues of land to use similarly (Eby 1925, 1970-1971). In 1876, Article VII, section 3 of the Constitution was amended to allow one-fourth of the General Revenue to be dedicated to education, and it also established a \$1 poll tax on individuals that were between the ages of 21-60 (Texas Constitution 2003). This new law made 52 million acres of land part of the school fund. The Constitution also changed the proportion of taxes that would go to schools from no less than 10 percent to no more than one-fourth of the taxes raised from occupations (Brief 2004).

Another school law was passed in 1876. This law reflected the edicts of the new Constitution and established the state board of education. The board had only limited powers and would oversee the schools and collect data about their usage. The new school system was very vague and simple. The parents were able to divide the communities into schools; the county no longer had districts. These communities would usually unite as many families as was necessary to benefit from the school fund that had been established. The parents would submit a list of students to the county judge, who would then appoint three trustees to oversee the school and hire a teacher. The process had to be repeated every year, and the state had no limits or minimum requirements as to how many children were needed to form a school. This system was favored due to its lax requirements, and it gave the parents control over their children's education while not imposing any local taxes on other citizens. The school system was flawed, but many

children voluntarily attended and received an education during a time when public education was reviled (Eby 1925, 171-173).

The new system created many concerns, and many of the schools only met for four months. The law failed to establish a fund that would provide for the building of schools, and most of the teachers were unprepared. All of these problems combined made people realize that the system needed to be reformed (Eby 1925, 174).

The Texans, in order to champion the causes of independence and infrastructure, had successfully used the idea of education. Texas was now a state that had started to build railroads to connect it with other areas of the United States. Commerce was growing and the state appeared to be in good shape, but education was ignored once these objectives were achieved. Many of the communities did not use the resources the government had granted them. It could be dismissed as unprofitable at the time, but the communities did not even bother to survey the lands that would be eventually used for education. Education was still mainly the business of families, and as long as there was not another goal to be achieved, the Texans would only make moderate changes to the system.

While the state had slowly moved from a majority that wanted the family to teach their children to a state that would rely more on the government to standardize the system, many Texans still relied on the family and believed that the state aid could be used to support established community and denominational schools. These were not state run institutions, but were often extensions of the communities and families. The community schools brought pride to the town in which they were located, and many of citizens desired to have schools in order to increase the prestige of their communities.

The state had guaranteed “free” education in the Constitution, but the framers and public believed this to mean that the education would be free only to those that could not afford to pay tuition and for the children that had been orphaned. It was seen as the state’s patriotic duty to educate the children of soldiers that had died in the revolution. The state was simply helping the community achieve the goals of educating those that were unable to pay for themselves, and it was important in a democratic society to have an educated populous. The families and communities were still involved in forming these schools, and they often decided who was qualified to teach their children. However, there was always a segment of the society that believed the state should be more involved in education. This group slowly grew over time, and the Radical Republicans aided them after the Civil War. Education was becoming more of a governmental institution, and parents were having less control of their children’s education. While these new laws would be changed in the immediate aftermath of Democrats returning to power, almost all of the state’s control would eventually be regained.

## **CHAPTER II**

The educational system in Texas has always been filled with inequities. The parents located in towns could tax the communities in order to build schools and pay for maintenance costs. They could create a board of trustees that would watch over the schools and its affairs. The towns had formed districts to educate their children, and as the state saw the benefits of this models, they instituted the system on a statewide basis. The state was slowly taking a more active role in education. Initially, the communities still possessed a large amount of local control, but it would slowly erode over time.

The state could afford to pay for a school system that would provide so fully for public education, so the citizens would be required to tax themselves if they wanted the system to work. The state once again saw education as a vehicle to achieve goals and reduce the ills of society. The United States had noted the illiteracy rates in Texas, and the state wanted to rectify the problem, but it was also seen as an opportunity to take delinquent children off the streets. If the children were in school, they could not cause problems in the local communities. A philanthropist also wanted to increase education in the south because he felt it was the only way to repair the relationship between the two sides that fought against each other in the Civil War. In these ways, education could be used to rectify the relationships in the country while curing the ills of society. As the ideas were presented to the citizens, attitudes slowly began to change, and the idea of a

state run educational system became more acceptable. The state run school could be used to teach ideas to children that might run contrary to the attitudes of the parents.

Towns in Texas had always been given more control than counties over their schools. The legislature allowed them to raise local taxes in order to secure adequate funds to build and maintain schools. The districts that were formed in the towns were independent from many of the laws and regulations that the legislature passed. While they were independent, they still were given the per student allocation of funds. These laws were reaffirmed by the new post-war, post-radical Constitution. Each town could vote on whether their school would be independent; if the school were independent, the town would determine the amount of taxes that would be collected to pay for this endeavor. They had two choices concerning oversight. They could have the city council manage the affairs of the school, or they could create a board of trustees. More towns took advantage of the laws, and it rapidly spread under the new Constitution. These schools would provide education to all children and not just those who were wealthy (Eby 1925, 178).

Town schools were greatly helped through the Peabody Fund, and these schools were in sharp contrast to the schools that were in the rural communities. The other areas had problems in almost every aspect of securing a good education for their children. They were limited to a fixed salary for teachers, while the towns were able to pay as much as was desired to secure a good teacher. The towns were also able to levy a tax of \$.50 per \$100 dollars worth of property, and this money would go directly to establishing and promoting education in the forms of building schoolhouses and the like. The community schools in the rural areas were not permitted to raise or even vote on a tax,



which made it impossible to build or support schools. The results of these differences were town schools operating for eight months a year, whereas the rural schools only met on average for three and a half months. The town schools also had established supervisors to run the schools; this was absent in the counties, who relied on county judges with no administrative experience (Eby 1925, 178-179).

These differences further separated the rural areas from the towns, and it was slowly realized that the district system needed to be incorporated by the entire state, and eventually a constitutional amendment was adopted to allow the counties to adopt the district system (Eby 1925, 178-179). Since 1909, the state has required all schools fall under the district system (History of Texas 2004).

The original founders of Texas wanted to avoid taxation, but it became apparent that the large tracks of land set aside for education would not be able to supply the needed funds. The general revenue of the state was the second method to pay for the additional costs, but that also proved insufficient, so another source of revenue was required; the state started looking for another source in 1879 when it essentially reduced the amount it would dedicate to schools from a guaranteed one tenth of the general revenue to no more than one sixth. The permanent school fund was also unable to meet the required funds. The student population was growing at ten percent while the fund was only growing at five percent. This would eventually mean that the schools would have to shorten its already limited school year (Eby 1925, 179-182).

The legislature had two possible recourses. They could either sell off more of the public lands to increase the permanent school fund, or they could allow the local communities to tax their citizens. Taxation was already taking place in many towns, so

this unpopular measure was finally considered as a remedy. The state authorities tried to create the support that would be needed to change the Constitution. The people had slowly become more open to the idea of providing for free education. The Federal Bureau of Education was formed during this time, and their annual reports revealed a problem with illiteracy. It was also becoming apparent that the state had a problem with delinquent children, and it was hoped that these problems could be combated with public education. It was also hoped that education would be able to help reconstruct the damaged economy and social structure of the South. Oddly enough, the assistance to achieve these goals came from the north. George Peabody, a wealthy New England merchant, provided two million dollars to the south because he believed that education was the only way to repair the damage between the two warring parties and create a better society. His fund helped the South achieve these goals more than any governmental agency (Eby 1925, 179-182).

The Fund helped to establish schools in towns that could be models for the rest of the state to follow. The Peabody foundation provided enough incentives for the towns to start building schools and allow taxes to be levied to continue the required maintenance. They would usually hire a superintendent for the town, and this would pique the citizens' interest in education. The schools would meet for nine or ten months, and they were now divided into grades up to eight. The superintendents had more responsibilities than would be expected today. They actually helped train the teachers on how to manage their classes and instruct their students because the state lacked higher institutions that would provide this knowledge. The members of the foundation also hired a speaker to go around to the towns and talk about the benefits of public education, and the fund finally

helped achieve an institute that would educate and train future teachers. The fund had been extremely successful in winning over the powerful citizens in Texas. Public education was still unpopular with many citizens because it reminded them of reconstruction days, but with the added influence and more qualified teachers being trained, the school system was finally starting to catch on. The towns were more willing to accept the charge to educate all children; they took local control over their school districts and agreed to pay a tax to maintain it and pay teachers (Eby 1925, 185-187).

Governor O. M. Roberts was integral in furthering the cause of education in the state. He was a key part of creating institutions of higher learning and training teachers. He helped to change the attitudes of the citizens in Texas; they had once hated the idea of free public education, and now many of them were avid supporters. He had been against the idea and favored private and religious education, but he was also responsible for cutting funding to the schools down from the one fourth they had been set at. After he refused to sign the budget, many complained that it was clear that the schools were too weak and needed help; he began to support the idea of free public education. He believed that the state should support the schools, which would allow for them to have the same organization and standards. It would also allow the masses to be educated at a common school, and those who wanted more education would be fewer and could attend academies followed by universities if they so desired. This three-tiered system did not mean everyone would progress through all levels. The governor envisioned millions attending common schools, thousands attending academies, and hundreds attending universities. This was not a revolutionary idea, but it was one that the founders of the

Republic had desired. The governor felt as if he was acting under the desires of the law and the Constitution (Eby 1925, 187-189).

Teachers who had their choice chose to teach in the public schools. The schools were more organized and more efficient than the private schools had been. They did not want to return to a system where the pay was not guaranteed, the students did not attend, and the parents interfered with school business (Eby 1925, 191-192).

The people of Texas still remembered the radical reforms of the educational system, which made them hesitant to reinstitute them. This began to change in the 1880s because the politicians no longer were against the measures, and with their backing, public sentiment would change. The people were now ready to support a public educational system, and a constitutional amendment would have to be added to allow for the necessary taxation (Eby 1925, 193-194). Article VII, section 3 was amended in 1883 in order to establish a state property tax, which would be set at \$.20 per \$100. It also allowed districts to be formed, and those districts would have limited powers to tax property that would not have an established tax cap (Texas Constitution 2003). The citizens would have the ability to vote for a tax if they so wished. The vote for the amendment was only separated by fewer than 9,000 votes; even with the close vote, it was a large step for Texans to approve of the new system in the wake of the reformers and their extravagant spending. The amendment had changed the way the schools could be funded, and it finally allowed peoples living outside of cites to form districts. The old system provided inadequate funding that would also vary from year to year based on the revenue collected; the system had too many uncertainties. It was also hampered by the fact that the legislature had no minimum that it had to provide for schools. The greatest

change came from the approval of a yearly tax that would be limited to twenty cents per \$100 worth of property a citizen in a local community owned. This tax was to be limited to adding the additional resources that the other funds fell short of. It would help support the schools, and it required that the schools be opened for at least six months out of the year (Eby 1925. 194-195).

The school law was also revised to mirror these changes. The law was rewritten in 1884 and would lay the basis for the system facing only minor changes in the future. The new law had five major changes. It would allow for a state superintendent to be elected. He would have supervision over all the public schools. Most of the counties were also divided into new districts. Some older counties were exempt from the law and remained on a community plan that reorganized every year. The local taxation of citizens was now permitted, but it required two-thirds of the citizens who owned property to vote in favor of the property tax. The law also allowed the state to invest the money from the permanent school fund into local bonds. It was hoped that this would allow the fund to grow at a steady rate (Eby 1925, 195).

The local tax had long been the sticking point over public schools, but the new amendment allowed all property to be taxed to achieve this end. Education was seen as a right that every child now had. It was no longer a private enterprise but a function of the state government. The people had slowly changed their position on an issue that they had fought so hard against. The new law would be slowly incorporated over many years. Education was seen as a necessary function of government to protect itself and its citizens from uneducated mobs that would hurt the entire state. The youths of the state would have an organized educational system that would no longer be contingent on parental or

church support, and the system steadily progressed through the turn of the century (Eby 1925, 195-197).

The new law was not perfect. It allowed the state to collect a property tax to maintain the schools for up to six months a year, but they never levied this tax; instead, almost all responsibility to provide for the schools fell to the local districts. This was a byproduct of the success that the towns had with their schools. Although it was problematic in places, they provided a model, which the state felt comfortable following (Eby 1925, 197).

The new laws did create a more favorable environment for education, but there remained the question about how much education was actually needed. Was it necessary to educate people beyond the ability to vote and perform the tasks that were necessary for them to work, or was the state responsible for providing an education that went further than simple math, reading, and writing in English. These attributes were all that were really required for voting and making business deals, but many in the state felt that more was needed; in 1876 a law was passed that “required the teaching of orthography, reading, writing, English grammar, composition, geography, and arithmetic” (Eby 1925, 198). In 1884, the law was slightly adjusted and required that the reading be done in English. This law was in response to many of the towns that were comprised of foreign immigrants who were teaching school in their native language. The law also allowed the state superintendent, who had come back into existence under a law in the same year, to add any required subjects that he deemed appropriate. There was also the opinion that the schools needed more supervision at the local level, but there was no clear idea of how to achieve it or how to keep it inexpensive. In 1887, a law was passed that created a

county superintendent, but it was not an automatic office for each county but depended on the county commissioners' court approving the need and setting up an election. These courts did not care about the progression of education, so many of them failed to act and make the county superintendent a reality. The law was eventually changed in 1907 to require all counties with over 2000 students to have a superintendent. This law made the office an elected official, which hindered it from retaining the services of professionals for any length of time (Eby 1925, 198-202).

The new public schools were seen as an improvement on the past community schools, and more people were willing to send their children. This resulted in a decline in private schools, which were already hurt by the constitutional decree that no money would be spent on denominationalist schools (Eby 1925, 202-203).

The permanent school fund had been completely recovered by 1879. The fund contained just over 2.5 million dollars before the war and was mismanaged and misused. The new Constitution limited the state to investing this money in US and Texas bonds, which restricted the types of investment that could be made, but it would keep the money safe. An amendment was later added that made the state able to invest in county bonds as well. These were all secure, but they did not allow the fund to grow at a steady interest. The fund also benefited from the selling of the state lands. The state had 45,000,000 acres set aside to be sold for the benefit of schools. Under an 1876 law, this land was to be sold in 160-acre lots, and the person who purchased it was required to settle on the land. The legislature wanted to prevent speculators from buying the land and allowing it to sit until it became more valuable; instead, they wanted to insure a rapid growth and settling of the new areas. These restrictions prevented the lands from selling in any great

quantity. It was estimated that only 11,000 acres were sold a year. This created a problem because the student population was growing at a much faster rate than the lands were selling or the interest from the permanent school fund was increasing. As a result, the school funding would decrease every year while the demand increased. The state had to find another source of funding for the schools if it wanted to prevent the schools from suffering. The state decided that it would lift the restrictions on the lands, and “the lands should be sold more rapidly and the income from the accumulated fund added to the annual apportionment for the support of the schools” (Eby 1925, 205). The legislature modified the law in 1880, and individuals could buy smaller sections of land. There was no longer a requirement to settle on the land; as a result, the state sold over 300,000 acres in the first nine months after the law had been passed. This increased the fund, but it was not as rapid of an increase because the state agreed to sell the lands on long-term notes that carried low interest rates. The actual fund grew, but the funds available off the interest to the schools only increased modestly. The money also failed to be collected or gained in any stable fashion. Many of the individuals that purchased land were unable to make all the payments on a yearly basis, which prevented the steady income that the state had desired (Eby 1925, 204-206).

With every newly added increase in the available fund, the rate at which children entered into school increased even faster. The legislature was perpetually behind the growth of the population. The situation became dire in the late 1890s; the state could not pay the necessary allocations for the schools, and “the teachers were forced to sell their school warrants at a great discount” (Eby 1925, 206). The shortage was so great that even this measure was not enough, and the schools were required to shorten the year.



The per student allocation in the mid 90s was less than it had been in over the ten years since the new financing laws had been incorporated into the laws. The result of all the funding problems was an ever-fluctuating source of available funds. The permanent schools funds interest varied from year to year because of the unsteady collection of interest, and this created an unstable per student allotment. The schools never knew from year to year how much money would be available for them to run their schools with. The failure of purchasers to pay the required interest was only part of the problem; the other problem was created from the limited avenues that could be used to loan the money out. The demand for national, state, and county bonds was not sufficient enough to use the funds that were allocated to be loaned. This meant that the money was lying around unused and not collecting any interest for the schools (Eby 1925, 206).

Despite the slow progression of schools in the counties, the schools located in the towns and emerging cities were advancing steadily. These areas were creating more wealth, and their populations were growing. With these changes, the legislature continued to show favoritism to the urban schools; over the years, they passed laws that gave the cities greater control over the schools. They had already been permitted to vote on taxes and build schools, and in the following year, 1876, the towns were given complete control over the public schools that were located within the city limits. The citizens had to vote for these measure to be adopted in their town, but once they did the city council had control and could build the schools and maintain them. They were also responsible for collecting the taxes if the townspeople voted in their favor. A new law in 1879 limited the taxes to no more than fifty cents per one hundred dollars worth of property. The towns and cities were finally given the ability to issue school bonds to

build new schools in 1895. All of these laws gave the cities the ability to build and establish schools and the policies needed to regulate them; many cities took advantage of developing independent school districts (Eby 1925, 206-208).

While the cities enjoyed these abilities, the county schools still lacked the adequate leadership, and they were not as willing to pass the required taxes. This created a vast difference in the educational systems. The towns enjoyed long sessions, while the counties were limited to short terms. The cities continued to build more schools and collect ever-increasing revenue based on the local taxes. The cities had eight months of school a year, and they were able to retain better teachers because the tax base allowed them to pay higher wages (Eby 1925, 208-209).

The supervision of the schools eventually moved from the general city council to a specialized board that would be elected to oversee the schools. This removed the schools from any political agendas the council members might have had. The legislature saw the wisdom in this and eventually passed a law requiring most cities and towns to follow suit and form a board of trustees to run the schools. The boards would appoint a superintendent for the district, and he would oversee and run the schools (Eby 1925, 209-210).

In contrast to the increases made by the cities, the common schools at the county level lagged far behind. The law that had been passed in 1884, which was intended to close the gaps between the counties and towns, only achieved changing the authority from the state to the county. The law did not force the districts to establish a tax to pay for the school and the maintenance that would be required. It also failed to establish any regulated supervision. The people in the local communities had the responsibility to vote

for these measures, and the individuals in these areas were not as interested or involved in education as the inhabitants of cities had been (Eby 1925, 210).

It took until 1909 before the legislature forced all county communities to adopt the district plan. These communities also failed to build schools. It was hard to adequately spread the required amount equitably around the community, and at the turn of the century, the state only owned two-thirds of the school buildings in these districts. These schools also suffered from lack of books, and many families used the books they owned (Eby 1925, 211-213).

The turning of the century saw an increased interest in education. The state superintendent recommended that the state allow bonds to be purchased for the building of schools from the permanent school fund. The communities would purchase these bonds in the same manner that county and city bonds had been. This idea was passed as a law in 1901, and it allowed the independent districts to rapidly grow. Bonds for this purpose had been offered since 1891, but they were hard to sell due to the low level of return; the new law would allow these bonds to be sold to the state using the permanent school fund, and the communities would not have to pay any interest when they eventually repaid the bonds. This new measure greatly increased the yearly amount of money spent on building schools. This law also increased the amount of school districts because many communities were willing to take advantage of the bonds to build better schools. The amount of communities willing to be taxed also increased after the law was enacted (Eby 1925, 214-216).

Even with all these improvements, there was still a major difference between the city schools and the rural schools. The cities spent almost double the amount per student,

and they owned better buildings. The education received in the cities was on par with the best education in the nation; the education received in the counties was amongst the poorest in the nation. There were more students in the rural schools, so the funds were insufficient, and the year could not last as long. The salaries of the teachers were also different, and those in the cities were paid almost double the amount. Looking at the funds spent just on buildings, the cities invested eight times as much money per child as the rural districts. The towns had organized professional leadership to run schools, and the counties were still relying on the county judge for supervision. These inequities had been perpetuated by the laws and the Constitution of the state (Eby 1925, 216-217).

One of the major underlying problems to the state funding of schools was the belief that the permanent school fund was large enough to cover the cost of education. This made people reluctant to raise taxes. The citizens thought that education was being adequately taken care of, so they paid little attention to its advancement. In order to circumvent the lies that had been perpetuated by the state's politicians, school leaders conducted a comparison study between Texas and other states (Eby 1925, 218).

The first of these studies was conducted in 1900, and they revealed the real state of the educational system. While Texas had the largest school fund and a high ranking in taxes collected by the state for education, it was ranked among the lowest in local taxation and the amount spent on each student (Eby 1925, 218-220).

In response to the low standards, a Conference for Education was formed and met in 1907. They came together to discuss improving education in the state. The committee helped bring the poor educational system to the public's attention, and they were able to get two constitutional amendments passed. The two amendments were passed in 1908

and 1909, and the Conference slowly stopped meeting. The state department of education slowly assumed the responsibilities and causes that the Conference championed (Eby 1925, 220-222).

The new amendment allowed schools to use the tax revenue to purchase items and equipment that the schools needed. It also reduced the needed votes to pass a tax from two-thirds to a simple majority of property owners. It further helped schools by increasing the tax rate to fifty cents. The Second amendment simply allowed the formation of school districts that would be in two or more separate counties (Eby 1925, 223).

The lowering of the tax vote to a simple majority greatly expanded the amounts of districts that adopted a tax. The most rapid improvement was in the rural schools where landlords had been reluctant to raise property taxes. These schools were also granted the ability to vote for bonds to build schools. A new law was passed, and it gave “the state board of education [the ability] to invest the permanent school fund in common school district schoolhouse bonds, which had been done for independent school districts eight years earlier” (Eby 1925, 226). These two abilities combined allowed for the rural areas to build schools for their children, and it finally removed the barriers that had prevented the community schools from realizing the potential that had been achieved in cities (Eby 1925, 225-226).

The district system had seemed to be the fix to many of the problems that had hindered schools and the structure they needed, but some districts were becoming too small, and there was once again a lack of organization and forward progress. Slowly these small schools started to consolidate together (Eby 1925, 228-229).

School attendance once again became compulsory in 1916. A 1915 law required that all children between the ages of 8-14 attend school for at least 60 days a year. The number of days increased to 100 two years later (Eby 1925, 230).

The Constitution was amended once again in 1918. This new amendment allowed the state to collect a tax, which would be used to provide free textbooks. The yearly taxes the state could collect were raised to thirty-five cents per one hundred dollars worth of property owned. A maximum of fifteen cents could be used for textbooks, and any of the funds that were not used would be placed in the available funds (Eby 1925, 233).

The schools received further support from a 1920 amendment (Eby 1925, 233). Article VII, section 3 was once again amended; the new amendment allowed the independent school districts and common districts to raise their property taxes without limits (Texas Constitution 2003). This was in response to the burden education placed on the state during World War One. The state felt it was taking on too much responsibility, and it now shifted the burden to the local districts and communities. The legislatures believed that the districts should at least take on an equal responsibility for education (Eby 1925, 233).

All of the new laws and amendments increased the burden on the office of the state superintendent, which had mainly filed reports. More employees were authorized to fulfill the state's mandates, and eventually the state department of education was formed (Eby 1925, 236-237).

Texas had distributed funds to schools on a per student basis until the legislature changed the law in 1903. They now authorized incentives for school to form new

programs. The legislature in 1917 added incentive for rural schools. They would award schools with money that had achieved a set standard for buildings, teachers, equipment, and attendance (Eby 1925, 237-238). In 1917, the state passed a law that increased the aid provided to rural schools; the state would help pay for teachers, which helped to improve the quality of education to children who lived on the farms and ranches (History of Public 2004).

Politics had long been an issue with school officials at all levels, so the state superintendent recommended making a non-political state board of education. The board members would include the governor, comptroller, secretary of state, and the state superintendent would remain the secretary. A new constitutional amendment was added in 1928 to make the board. The details were finally worked out by the legislature the following year, and the State Board of Education was formed; it would have a nine-member body that would serve for six-year terms. The terms of the members would be staggered so the board would not be completely replaced every six years. This board was responsible for assessing the monetary needs of schools, and it was required to cut waste and duplicate spending (Evans 1955, 128-129).

There had been a stronger emphasis placed on equalizing the education children received throughout the state, and the “equalization appropriation bill of 1947-1948 included salary aid, tuition, transportation, audio-visual education, and the expenses of the legislative committee and the Board of Control” (Evans 1955, 133).

Even before the 1900s, the idea of equalizing the funds that schools received had been contemplated. The goal was to spread out the burdens of education, and the Cubberley study in 1905 revealed that state funds were not being distributed on an

equitable basis. In Texas, different counties and common school districts had per student spending ranging from \$600 to \$7,000. The majority of the schools had less than a \$1,000 worth of property per student; the same trends held for the independent school districts, so in 1915, the first equalization law was passed. In 1931 a law was passed that allowed schools to contract out their students and transfer them to another school district that could provide them with a better education. By the 1950s, the state was apportioning over \$60 per student enrolled in a school. The Equalization Aid Program in Texas lasted until the 1948-49 school year (Evans 1955, 180-182,184).

The equalization laws were inefficient, and there were recommendations to change the system and address the areas it had failed. The main concept behind the equalization laws was to transfer the money from wealthy areas to areas that had too many students to adequately meet their needs. There was even the belief that all areas of life should be taxed to meet this goal. The citizens of the state should have their property and their income taxed (Evans 1955, 184).

The main problem with the taxes based on property value was that it did not take into account that this would require some counties to tax their citizens at a rate that would be ten times higher than other districts to make just one dollar per student. The assessed property values in the state varied too much to produce similar educational systems in each district. The state was allocating a set amount per student, and the schools were expected to tax the local citizens to increase the funds to the level required for the minimum necessary to operate (Evans 1955, 186-187).

With the problems associated with giving a set allotment per student, the state needed a more effective system. The Gilmer-Aikin law was passed in 1949, and it



established the Texas Education Agency (TEA) and the State Board of Education. The TEA took control of the educational system in 1950. It also changed the way that the schools would be financed because it “guaranteed every school district a Minimum Foundation School Program” (Evans 1955, 135). The law would use an economic index that would allow the state official to determine how much the district could practically pay. It was hoped that this would help equalize education throughout the state. The index focused on three factors. The county’s property values would make up twenty points on the scale, the amount of students in the county would make up eight points, and the income that the county could expect from the resources they possessed would account for the remaining seventy-two points. The state would recalculate the index every four years. In the first year the act was instituted, the average salary of teachers increased, the number of teachers employed increased, and the classroom sizes decreased (Evans 1955, 9, 135-136, 189-190,242).

The Minimum Foundation School Program was established to provide children with an equal opportunity to receive an education regardless of where they lived (Evans 1955, 137). It placed the burden of providing school funds on both the state and the local citizens. This usually required the local districts to collect property taxes to pay for education, which created a system of drastic disparities based on the wealth of the local communities; these disparities have led to lawsuits in many states, and in almost every case, the state has lost (Texas Joint Select Committee on Public School Finance Report [TJSCPSFR] 2004, 2). Under the new system, children would be guaranteed access to education for twelve years, and during each of these years, they could attend school for nine months, which accounted for 175 actual classroom instructional days every year.

Senate Bill 116 had been passed in order to provide better education and to bring more children into the classroom. It also provided the use of school buses to transport children to schools and raised the standards and pay for teachers. Any school district that had the funds could pay teachers more than the required minimums. The Bill also established the base pay for all other professionals in a district including librarians, principals, superintendents, and counselors. The salaries would be based on the amount of training the individual possessed. It also set the amount the state would pay based on the amount of teacher classrooms a district required. If they had fewer than seventy-four classrooms, the state would give the district four hundred dollars per class; the groups that had seventy-five to eighty-four would receive \$29,700 from the state. The districts that exceeded this amount of classrooms would be granted \$350 per class (Evans 1955, 240).

Senate Bill 117 established the funding for the Minimum Foundation School Program. It allowed the state to transfer money into the Foundation School Fund, and it established a committee to manage the fund, which would be headed by “the state commissioner of education, the state auditor, and the state comptroller of public accounts” (Evans 1955, 240-241). The individuals who made up the Foundation School Fund Budget Committee would be responsible for the budget (Evans 1955, 240). This system of school finance would last until the 1980’s, but it would no longer carry the Gilmer-Aikin name; in 1975, the program’s name was changed, and it would be referred to as the Foundation School Program (Rocha 1993, 13).

With the new name, the program increased its design. It no longer concentrated solely on providing education to all children in the state, but it turned to the issue of school funding and eliminating the disparities that had existed since before the turn of the

century. The issue had arisen when the larger cities instituted property taxes. The taxes that they collected far out gained what smaller cities could collect; this resulted in the children in the larger areas getting more resources and often better educations (Rocha 1993, 13).

While the state used education to further its goals in society, the process of moving to a state run system was slow in advancing. It was greatly helped by the reconstruction government and by the individuals who lived in towns and taxed themselves before it became wide spread. They provided an example of what could be achieved through local taxes. These schools still represented the wishes of the communities, but control was slowly being given to the state. The transition to statewide districts helped establish a more comprehensive educational system, but it started to erode the influence that parents had in their children's education. As time has progressed, the state has taken a more active role in education, and parents have begun to rely on the institutions to provide an education that was once deemed as the sole right and responsibility of the family.

The resistance to the taxes had finally fallen, and even the teachers desired to work in a state run system. It allowed for less parental involvement, and the state was now the primary giver of education. The government had hindered private and denominational schools when it prohibited the use of state funds on such institutions. This quickly made the quality of education in public schools superior. The parents sacrificed their control for a better-funded and more comprehensive system.

While the control shifted from the state to the county, the government was still heavily involved. Teachers were becoming professional educators, and they were

replacing the education that the family had traditionally supplied. This in itself is not a negative because the teachers could educate students in far more subjects than could have been taught in the home, but the family eventually gave too much control to the state and neglected their role in education.

During this time, the state shifted the burden to pay for education back to the county and district level because it was simply too expensive for the state to maintain. Local control was also more responsive to the needs of the community, but the citizens would eventually rely on the TEA to determine how their schools were run, and they would want the state to increase its role in education.

### **CHAPTER III**

The authority to educate has slowly been moved from the family to the government. This has placed the responsibility on the government to create a program that will meet the needs of the communities and society. Texas is unable to achieve these goals easily because the system that was established was inequitable, and there is no easy remedy that can be used by the government to ensure equality, which the state is constitutionally required to maintain. The awkward and slow shift from a family oriented system to a state system has created an equality dilemma. Due to this conflict, the educational system has faced its second revolutionary change; ones that are brought by the court instead of a radical government.

The courts have now taken an active role in the system, and they seek to create a truly equal system. This issue would not exist if the parents still controlled the schools, but the state is prohibited by the Constitution from maintaining an inequitable system. If inequalities exist, the courts will deem the laws unconstitutional.

Even though the state is responsible for the broken system it created, parents are more than willing to turn to the government to correct the problems. They are no longer willing to be involved in the educational process beyond demanding the government fix the problems. By demanding the courts intervene and demand the state find a solution, the parents have allowed the courts to rule that education is in fact the sole duty of the

state to provide. It should no longer be seen as a community's affair, but the entire state should be regarded as the community for education. While some parents and districts still fight for local authority, the power has been greatly diminished. Even the Edgewood plaintiffs claim to want more local control, but they turned to the courts and have desired the faulting of all funds until an equal system could be created. Their vary actions contradict any true meaningful local control. The role of education has turned into a state bureaucracy that citizens now clamor to believing that they can still have local and parental control.

Citizens no longer have the choice to pay tuition as the only cost of education. They now support the governmental program whether they use it or not. If they desire more control, they can teach at home or send their children to a private school, but they will still be forced to pay for the public system.

The citizens have created an entirely new problem by taking the case to the courts because the Constitution calls for two conflicting principles; Article 1 section 3 calls for equality by the state, while Article 7 section 1 demands an efficient school system. These two ideas are contrary to one another. Efficient systems are rarely equitable, and equitable systems are not efficient. This has created a situation where no room exists for compromise under the current Constitution; while the property poor districts demand equality, the property rich districts and citizens demand an efficient system. The courts have tried to alleviate the tension, but the result has been the filing of continuous lawsuits by both sides.

Once again, the state and the citizens refused to look at the problems of school funding alone. It is always connected to a larger concern. This round it has been tied to

the need to improve communities and attract more businesses into a community. If the schools are nice, individuals and companies will be willing to move into the location; if they are not, new economic developments will be curtailed and the area will remain stagnant or decline due to the low property values and poor performing schools.

The state also compounded the problem because they once again tied schools to taxes. The system could not be reformed because it became a discussion about taxes. Both Clements and Richards were unwilling to sign legislation that would raise the taxes to the amounts needed to pay for education.

The school systems have moved from the Gilmer-Aikin bills to the Foundation School Program. The transition to the new system has resulted in court cases challenging the equity and constitutionality of the system (Texas 2001, 1). The Foundation School Program (FSP) would have minor changes made to it over the years, but this program would also fail (Rocha 1993, 13). The Foundation School Program attempts to provide each school with the funds to provide a basic education; the method for distributing these funds is very complex, but the funds ultimately do not even provide the resources needed to meet the state's accreditation standards. The fund also neglects to dedicate specific funds for facility maintenance and construction (Mauzy 1989). Its failure did not come about by new constitutional amendments or a new School Law; instead, it was challenged in the Supreme Court and was found to be unconstitutional (Rocha 1993, 13).

The program had been built around funding the schools with state resources. The money would be given to the schools in two different levels (Rocha 1993, 13). Tier one funding is the base level of funding for the Foundation School Program, and it begins with the Basic Allotment; the base level for each student is determined by the average

daily attendance. A cost of education index is used to adjust the allocated funds to reflect higher costs related to circumstances beyond a district's control, such as percentage of low income students. These adjustments make up the Adjusted Allotment, which is then weighted depending on students and educational needs of a district. The actual amount a district receives is based on the wealth of the district; wealthy districts get less support from the state. This is supposed to produce similar tax revenues between the districts while they are taxing at similar rates (Texas 2001, 2-4, 8). The first distribution of funds was inadequate to actually support even the bare minimum required in education. In addition, local property taxes would support the schools and the FSP. The property tax rates were established by the state so a certain amount of revenue would be collected, but the wealthier districts were able to tax their citizens at a lower rate and meet the requirements because the law was worded in such away to establish a minimum, which could be ignored if the taxes could "meet or exceed the basic allotment" (Rocha 1993, 13). The state would cover the difference between the basic allotment and the revenue collected in the districts that were taxing at the minimum but could not raise enough revenue to meet the requirements. In this manner, the state attempted in a very anemic manner to equalize the funds that schools received by providing additional funds to the poorer districts (Rocha 1993, 13).

The first level of funding was based on the basic allotment, which had been the only source of school financing until 1989. In this year, the state added the "guaranteed yield" program, which was created to help equalize funding to schools that were taxing above the rate required to meet the inadequate basic allotment. This was yet another attempt by the state to equalize the budgets of the schools so every student would receive



an equitable education. This law had serious shortcomings because most of the poorer districts were already taxing beyond the limit that the guaranteed yield would match. The ceiling was set at 70 cents in 1989, and the state would give the revenue required to meet the guaranteed yield up to that point; when the district had to tax more than the 70 cents, the state would not meet the minimum for the added revenue. In practice, the state would make sure that the 2000 dollar per student point was met on the funds between the 34 cents and the 70 cents tax rates, but if the district was only collecting 1300 per student with every penny increase, the state would not add anything to the revenue collected from the 71 cent and higher tax rate (Rocha 1993, 13-14).

The FSP had drastically different results for different districts. Poorer districts were taxing their citizens at a higher rate, but some would receive almost two-thirds of their per student allotment from the state. In contrast, a wealthy district could tax less and still fund over eighty percent of their school's allotment (Rocha 1993, 14). Property poor districts must use a large proportion of their funds to pay the loans on their buildings; this proportion is greatly reduced in the wealthy districts, so they can dedicate more funds to enrichment programs (Mauzy 1989).

The inadequate funding and lack of any true equalization in school financing has been an issue that has been debated by the citizens in Texas. The San Antonio area districts have led many campaigns in order to rectify the perceived inequities. The area has been responsible for two major court cases involving school financing. The first of these cases, *San Antonio Independent School District v. Rodriguez*, took place before the United States Supreme Court in 1973. The Texas Supreme Court heard the second major case, *Edgewood v. Kirby*, in 1989. The Edgewood case is a reflection on the state laws

that had produced a system that was over-reliant on community money, which would fluctuate under different conditions producing inadequate resources to provide children with an appropriate education. The citizens in the district did not feel that the legislature was willing or able to fix the problems, so they circumvented the legislative process and brought a case before the courts in hopes of improving the educational standards in their districts (Rocha 1993, 17).

Once again, education had to be tied to other incentives to bring it to the forefront. The role of having quality schools once again revolves around more than education. Transportation and the railroads had influenced the state in the past; in the present, the prospect of luring high quality businesses influences communities. In return, the schools will provide incentives and a well-educated employee pool. Quality schools are also important to individuals who are moving into an area. They often settle around areas that have high performing schools, which increases the standard of living for the entire community. As important as these institutions can be for a city or town, the state actually has the largest influence. They are the ones that are responsible for education, and they took control away from the counties and gave it to an independent school district. The independent school districts were created by law and resemble a small government. They have an elected body that oversees the educational standards in a community. The trustees on the board can raise the local property taxes in order to support and maintain the schools in their district. Even if all the governmental funding were added together, it would fall short of the actual costs of education. This creates a reliance on the districts, which can have vastly differing revenue sources. The poorer districts are unable to produce an adequate revenue stream that will provide schools of comparable quality to

those located in the wealthy districts. The system was created to provide quality education, but it has been hindered by the citizens' desire to keep the government small and taxes limited (Rocha 1993, 14,17-18).

The increasing reliance on property taxes for education has created a shift from the independent school districts being created for education to a place for individuals to protect their property from high taxes. Individuals would form ISDs around their communities that were relatively small and had few students; this would create a district that could thrive on limited resources and prevent the levying of high taxes (Rocha 1993, 19).

The Gilmer-Aikin law required that these districts consolidate, but the system was fundamentally flawed because these districts had been formed when education was supported heavily by the state especially in the common ISDs. However, the districts now pay much of the costs of education; the districts were not originally designed to equalize wealth, which has created the vast disparities that presently exist (Rocha 1993, 19).

An example of the changing school district can be seen in Edgewood ISD, which first started as a common school district outside of San Antonio. The area was rural, and the citizens desired a school for their children. The area changed as San Antonio spread and the once rural farmland became a busy community that had military bases located near by. The district was heavily minority because of segregation laws within the city. While the population increased in the area, those moving there were poor, and this prevented the value of the property from rising to a level that would adequately fund education. At the time of World War II, the military presence in the area grew. This

seemingly good fortune did not produce the desired results for the schools. The military created more wealth in the area. They were unable to tax the property that the military base now occupied. The base had provided more jobs, but its greatest asset, the property value, was taken from the district. The population had boomed, but the tax revenue was so limited that the district could not afford the classrooms necessary to fit all of the children (Rocha 1993, 19-20).

The Gilmer-Aikin laws would eventually provide the area with more state funds, but this did not solve all of the problems. The Edgewood district was unable to consolidate with the San Antonio district or any others because it had no benefits for those districts. The only alternative was for the common school district to become its own independent school district. There was no relief for the poor property values, so the district remained one of the poorest in the entire state. The ever-increasing student population and low property values kept the district in a perpetual state of inadequate funding. The district was spending only half of what the state average was for each student. The state was averaging over \$500 per student, but Edgewood was spending only \$332 (Rocha 1993, 20-21).

The heavily minority district eventually formed groups to address the issues. The groups allied themselves together and hoped to influence legislation that would give the communities more control over the school and its financing. They were unhappy with the quality of educators in the district and the facilities or lack thereof (Rocha 1993, 21-22).

The parents were concerned for their children, and it was believed that the state had created the situation that was made worse by the reluctance of any surrounding

district to incorporate the Edgewood ISD. The parents including the Rodriguez family filed suit in federal court. The defendants included the San Antonio ISD and the State Board of Education. The case appeared as *Rodriguez et al v. San Antonio ISD et al*, but ultimately, the defendant was the state. The San Antonio ISD, which was also property poor, helped the plaintiff in the case before the United States Supreme Court (Rocha 1993, 22-23).

In 1971, the case finally went before a panel of three Federal judges instead of the usual one because it was challenging the constitutionality of a law. The Judges ruled that the school financing system was unconstitutional; it was deemed that the system did not allow for the equal protection under the law that the Fourteenth Amendment guaranteed. The courts ruled the system was unfair because it favored the wealthy and created a system that required the poor to tax more and receive fewer funds. The court ordered the system to be changed in the next two years to accommodate the poorer districts and equalize education on the state's wealth instead of the communities' wealth (Rocha 1993, 23-24).

The state filed an appeal with the United States Supreme Court. The court agreed to hear the case because the verdict would require drastic changes to a system that might be difficult to implement, and the verdict might have greater influence than just in the state of Texas. Since the case was filed on an appeal, it was called *San Antonio ISD v. Rodriguez*. In 1973, the Court handed down the ruling in a five to four decision that the system of school financing did not violate the Constitution or the Fourteenth Amendment. The Supreme Court's majority opinion stated that states treat people differently, and that alone does not violate the amendment. The court had concluded that

the law did not act against any one easily identifiable group because poor individuals could live in wealthy districts, and wealthy individuals could live in poor districts. The fact also remained that the individuals “in the poor districts were not being denied all access to education, but instead Texas was attempting to provide an adequate basic education to all” (Rocha 1993, 25). The Supreme Court also noted that education might be a guaranteed right under the Texas Constitution, but it was not guaranteed under the U.S. Constitution (Rocha 1993, 24-25).

The issues concerning the problems with the educational funding system were brought to light by the court case, and the legislature attempted to make changes in the law that would help the property poor districts. The Foundation School Program was one such change. The legislature changed the law again in 1977 and 1979 in order to provide even more funding to the poorer districts. The state was now taking funds that would have gone to the wealthy districts and giving it to the poorer districts. The poorer schools in the 1970s after the laws had been passed were receiving a larger percentage of the state fund. The wealthier districts received fewer funds from the state, and a wealthy district near Edgewood received only 32 percent of their funding from the state, while Edgewood received over 67 percent. The FSP gave more aid to the poorer districts, but the larger percentages can be deceiving because the poor districts with low property values were unable to raise any substantial funding. Edgewood was only contributing about 10 percent of the school’s funding through local property taxes. They would contribute \$139 for every student in their district, while the wealthy districts would contribute over \$1,000 per student in the 1978-79 school year. The statewide average funding from all sources for the school year had been almost \$2,000 per student, but in Edgewood the

district only spent slightly over \$1400 per student. The FSP had help raise more revenue, but it still did not provide adequate funding for education or funding comparable to the wealthy districts. The problems presented by low property value were still present in the new system (Rocha 1993, 26-27).

During the 1980s, the individuals running the Edgewood schools still felt that the district needed more funds if it was to produce a quality educational program. They turned to the Mexican American Legal Defense and Education Fund, which had been established as an NAACP for individuals of Mexican descent, for help in representing the school district in a new case. The attorneys decided that they would challenge the constitutionality of the school financing system under the State Constitution and not the Federal Constitution (Rocha 1993, 27-28). Edgewood ISD, 77 districts, students, and student's parents all joined the suit against the state in 1984 (Mauzy 1989, Rocha 1993, 28).

The plaintiffs agreed to withdraw the suit while the legislature met in a special session, but the reforms that were made did not change the financing system to the degree that the poorer districts had desired. The plaintiffs once again filed their suit in 1985, and they would have to wait two more years before the court would make a final ruling (Rocha 1993, 28).

On October 3, 1989, the court handed down a ruling that said the educational funding system in the state was unconstitutional and had to be changed. The case was filed as *Edgewood v. Kirby*; Kirby had been the Commissioner of Education at the time. The case was first tried in District Court, where the law was deemed unconstitutional. The state had until September 1, 1989, to solve the problems with school financing; if the

legislature could not complete an adequate plan by that time, the “funds could no longer be distributed by the state to the school districts” (Rocha 1993, 32). The judge’s deadline could not be met because the complete legal challenge was still ongoing. The court of appeals overturned the judge’s decision, but the case was appealed to the Texas Supreme Court where it was once again deemed unconstitutional (Rocha 1993, 31-32).

The original judge had found the system unconstitutional because, in his opinion, the State Constitution guaranteed children an education, and since this was a right, it had to be offered to everyone equally (Rocha 1993, 32- 33). He ruled that the system violated Article I, which prohibits the state from treating individuals differently unless there is a rational reason for the treatment, and in the case of school children, there was no rational reason (Mauzy 1989, Rocha 32, 33). The judge also noted that the Constitution, Article VII, section 1, mandated an efficient system of public school finance, and he deemed the system to be ineffective (Rocha 1993, 32, 33).

The Judge used the financing from the 1985-86 school year. He noted that the state paid, on average, 42 percent of the educational costs per district, and the districts paid 49 percent. The taxes that were collected by the districts did not have the same property base to tax. The wealthy districts had 2.5 times as much property wealth to tax as the poor districts, and the poorest districts only had three percent of the property wealth that the state possessed. In many cases, the disparity was between two districts that bordered each other, and the property had become more valuable in one district and not the other. The poor school districts were located throughout the state, so it was not a centralized problem. The richest schools spent two-thirds more money per student than the poor districts, and the court saw this as a substantial difference that would change the



quality of education a student would receive. The poorer districts were taxing their citizens at a higher rate to make the same money that the wealthy districts collected (Rocha 1993, 35). Even with the higher tax rate, the district only raised about \$3,000, but the wealthy district collected over \$7,000 per student (Rocha 1993, 35, Mauzy 1989).

The vast differences in the funds raised were not due to the refusal of the poorer districts to be taxed at a higher rate, but came from the distribution of property wealth per district. The Judge believed that the reduced resources would limit the educational opportunities that the poorer districts could offer, and this would hurt the quality of education that a student would receive. The advantages of the wealthy included an increased variety of courses offered, larger libraries, more technology, more counselors, more programs that encouraged students to stay in school, reduced class sizes, and better buildings. The district could also pay more to retain their principals and teachers. The poorer districts did not have these luxuries, and they needed more resources because their students came from poor minority families. These poor districts cannot raise the money in the property value tax to support an adequate quality education for their children. The state funds were always supposed to be supplemented by the local taxes to reach the minimal amount needed to support the educational needs of the community, but even with the higher tax rates, the poorer districts were not meeting the monetary threshold required. The shortcomings of the state's system of financing public education were creating the inequalities in education (Rocha 1993, 36).

The Judge also noted that the districts had not been formed around communities but were haphazardly laid about over cities and counties. The boundaries did not divide the tax base to benefit all the schools, and there was no real pattern to their existence.

Under these circumstances, there was no reason to allow an inequitable system to continue. The school systems were under local control by name only. The State Board of Education was really responsible for all the policy that schools were required to meet. Because of this, the local taxes could not be legitimized as part of a completely locally controlled system. If the local districts had complete autonomy, the Judge might have ruled that the taxes were legal because the inequalities were simply a matter of different local communities. As it was, the system was providing different individuals unequal access to a right the state guaranteed (Rocha 1993, 37-38). The judge ordered the state to make a school financing system “so that ‘each district has available, either through property wealth within its boundaries or state appropriations, the same ability to raise and spend equal amounts per student’” (Rocha 1993, 39-40).

The Texas Supreme Court took the case after the 250<sup>th</sup> Judicial District Court in Travis County declared the state’s school financing system unconstitutional. The value of the property in different school districts varied as much as 700 to 1, which represented per student spending varying as widely as \$2,112 to \$19,333 (Mauzy 1989). In 1989, the court handed down the ruling that the state financing of schools was unconstitutional. The opinion was unanimous. The court did not believe that the constitutional mandates of providing an efficient school system had been established (Rocha 1993, 43). Under the Constitution, the legislature must make suitable provisions to establish an efficient school system. These terms are not precise, but the courts can use them to determine if the state has met the requirements; if they have not, it is the duty of the court to rule that the legislature has not lived up to its constitutional mandates (Mauzy 1989). They believed the framers of the Constitution desired an equal diffusion of knowledge to every student

in the state, which would mean that the funds given to each student would be the same. In their eyes, efficiency and equality were required for the system to meet the demands, and since the system was inefficient, it was unconstitutional (Rocha 1993, 45). They found that poor districts are trapped in a cycle because they must maintain higher taxes to meet even the lowest accreditation standards; these high taxes prevent new businesses from entering the districts, which prevents the tax base from growing and producing more resources for education. If all districts were required to tax at least the minimum under the current system, the state would have over \$200 million more dollars to spend on education (Mauzy 1989). This meant that the District Court's ruling stood, and the state would have to make changes to the system. The judge ordered the state to reform the system so that all the students would have equal access to revenues while the communities were being taxed at the equitable rates (Rocha 1993, 46).

Efficiency could be achieved without the state returning to a per student distribution, but the new system could not allow there to be large concentrations of wealth in a select few districts. While the public might have a stake in the process, and the state has placed a large burden on local taxation for education, it is ultimately the sole constitutional responsibility of the state to provide the educational system and necessary funding. Since the Court ruled that the law did not meet the "efficiency" standards of the Constitution, they did not rule on the other aspects of the case (Mauzy 1989).

The legislature had seven months to reach an alternative school financing system that they could pass. This issue was extremely controversial as it had been since the state was founded, but the court insisted that the issue be resolved before the 1990 school year began. The limits on the legislature meeting set forth in the Constitution prohibited them

from even meeting until five months of the seven had passed. The legislature's next constitutionally directed session would not happen until a year after the decision was required. The legislature could have been called into special session, but the power to call these sessions rests with the governor. The session lasts for 30 days, and the legislature can only discuss the issues for which the governor called the session (50). If they fail to finish in the thirty-day window, only the governor can allow them to continue to meet by calling another session. This gave great power to Governor Bill Clements in deciding when the legislature would meet (Rocha 1993, 49-50).

The legislature did not try to amend the Constitution to permit the inequitable system to continue because they did not believe they could acquire the two-thirds vote they would need in both the house and the senate. The members all wanted a system that would be fair and give each student an equal opportunity to a quality education. The problem arose on the issue of how to fund and provide these services. The citizens in the wealthy communities believed that their tax dollars should be spent on the children in their local communities. The legislature had always defined the community as the local districts, but the court system wanted the community to encompass the entire state. The judge had already noted that the district boundaries often divided cities, and even though the legislature had given local control to the district communities, the Constitution made education the responsibility of the state (Rocha 1993, 50-51).

In order to solve the funding problems, the state was going to have to look at school financing as a statewide issue instead of a community issue. The law had focused on creating a system that would be fair to the poor districts, but this would require being unfair to the wealthy districts that would have to give up their standard of education.

This would create a situation of reducing education across the state and “dumbing down” the education level to achieve a sense of equality (Rocha 1993, 51).

The legislature looked for an alternative to lowering the educational standards in the wealthier districts. The state would add supplemental funds to those that the poor districts were already receiving, and the increased funding would raise those districts’ allocation to an equitable level. If the state were to avoid stealing the money away from the wealthy districts, it would have to spend more on education than it ever had in the past. In order to achieve this goal, taxes would have to be raised, which could hurt the local economies and could be politically disastrous. It was also unclear whether throwing an increased amount of money at the poor districts would actually have the desired effect of raising their performance, and before committing political suicide by raising taxes, many legislators wanted to make sure that the achievement level in the poor districts would actually increase from the added funding (Rocha 1993, 51).

Governor Clements was opposed to the idea of increasing taxes. He had been the governor for two terms, and he had promised that he would not raise taxes. He had already been forced to deviate from this promise when the debt exceeded a reasonable limit, and he was forced to raise taxes, but he wasn’t going to do it again. The governor did not call a special session to discuss this matter until February 1990. By giving the legislature such limited time, the governor had hoped that they would follow his desires of not increasing taxes. The legislature would only have two months to make the changes needed to the system. The legislature would have to keep in mind the governor’s position of no new taxes because he had to sign the bill, and he would veto any bill that hinted at raising the state’s tax rate. To make matters worse, the session took place in an election

year, and raising taxes could have been the end of many politicians' careers. All of these barriers that were placed in front of the legislature made them unwilling to increase the taxes. If they had, the governor would have vetoed the bill, and they would have been very vulnerable to their opponent's campaigns. The option to raise taxes was simply taken off the table by the governor's political movements (Rocha 1993, 51-52).

During the Special session, the debates focused on increasing taxes instead of reforming the educational system. Different proposals ranged from an increase of funding from \$234 million to \$1.1 billion, but all the legislature could use without raising taxes was \$200 million. The Lieutenant Governor Bill Hobby proposed increasing the taxes on cigarettes. An increase of 14 cents per pack would be sufficient to increase the available educational funds by \$150 million. While this would have generated much of the required money, the governor stood by his statements that he would not raise any taxes (Rocha 1993, 53-54).

By the time the members could relax about their victories in the primary elections, there were only two weeks remaining in the session. The Senate voted for a bill that increased the state spending on education to \$1.2 billion. The plan relied on taking a portion of all the property taxes throughout the state and increasing the allotment given per student. The funds would have been drawn from the wealthy and poor districts. The plan would have equalized the funds received by most of the students in the state; however, the wealthiest districts would still have more than the other schools. The Senate could not propose an increase in taxes because that was the duty of the House, and it was also seen as pointless until the members could agree on the amount of money that would be needed (Rocha 1993, 54).

There seemed to be no clear compromise. The House had to act because the Senate passed an unrealistic bill, and the governor had promised to veto any tax increases. The House presented a plan that would require less money and would restructure how schools were financed. The Democratic side of the House had already rejected the governor's school task force's plan, which did not require a tax increase. Time was now of the essence, but the House was still divided. There seemed to be no ground to compromise within the branches of the government much less between them. With all the disagreements and arguing still raging on, the first session ended with no new financing system in sight (Rocha 1993, 54).

The governor was forced to call a second special session, which would start on April 2. The new session left the legislature only a month to form a completely new financing system. The Senate passed the same bill as they had in the first session. The House finally passed a bill a week later; the minority legislators and the Republicans did not like the bill, but they all knew that they had to get a primary agreement so that the differences between the Senate and House bills could be resolved. Even though both had now passed a bill, they still had vast differences that would be difficult to resolve. The two bills were over \$500 million apart, and both of them would still require a tax increase (Rocha 1993, 55).

The House and Senate formed a conference committee to work out a compromised bill that could be passed by both chambers. The debate centered on taxes and not education. The House passed a one-half cent sales tax increase, but this would have made the sales tax in Texas the second highest in the nation; it was clear that the governor would veto this increase, but the conference committee took this new

information and calculated the money they would now have for education. With the budget cuts and the tax increase, they figured the state could spend \$555 million for the coming school year. These funds would be equally allocated to all but the wealthiest five percent of schools. Both the House and the Senate passed the new bill (Rocha 1993, 55-56).

The governor had made it known that he would only sign a bill that had no tax increases and had suggested that the legislature pay for education by making cuts or finding a way to increase revenues such as by a state lottery. There were pleas from teachers for the governor to pass the new bill, but he decided that it would be too costly for the state to raise taxes on a plan that might not produce different results in education; on the first day of May, he vetoed the bill. This made the Attorney General file for an extension because it appeared the state would not meet the deadline (Rocha 1993, 56-57).

The idea of a deadline extension did not please the plaintiffs of the Edgewood case. They believed that the courts should produce a solution if the legislature could not come to an agreement by the deadline. They wanted all funding to be stopped until a new system was implemented. Judge McCown now presided over the case because the original district judge had resigned. He granted the state the extension, but it was short. He pushed the deadline back a month to June 1. He also assigned a court master to the case; the court master was to create a system of equitable school funding that would be implemented if the legislature and the governor could not come to an agreement by the new deadline. The court could not force the legislature to raise the taxes, so any solution that it created would involve simply redistributing the funds that were already available (Rocha 1993, 57-58).



The Lieutenant Governor feared that this plan would hurt the large urban districts and the overall education of all the property rich districts, which placed even more pressure on the legislature to create a system that they could control (Rocha 1993, 58).

The governor finally presented a plan that he would approve. His plan called for an additional \$250 million to be allocated towards education; instead of relying on new taxes, this money would be taken from the wealthier districts and given to the poorer and would not require a tax increase. Many of the Republicans opposed this measure because it meant their constituents' schools would lose money. They were stuck between not wanting a tax increase and lowering the funding for their schools. The Senate took little heed of the court's threat or the governor's actions and passed a bill that was almost the same as the one that had been vetoed at the end of the second session. The House considered the governor's proposal but ultimately passed a bill that was similar to that which the Senate had passed. Once again, a conference committee was formed to work out a proposal that would be acceptable to both houses (Rocha 1993, 59).

The governor felt the bill would represent an increase in spending that would be so large that it was paving the way for a state income tax because existing revenues would be unable to meet the higher level. It was clear to him that he would have to veto any bill that would have the potential to hurt the citizens of Texas. The governor would not give any ground on the issue of taxing. Even with this knowledge, the House and Senate voted for the bill that came out of the committee, which was very similar to the one the governor vetoed in the last session. He vetoed the new bill as well, but the legislature was still in the special session. This allowed them to try to override the veto (Rocha 1993, 59-60).

In the end, some Republicans voted against the governor, but some Democrats sided with him; this resulted in the governor's veto standing by a vote of 92-55 eight short of the needed 100. The differing sides fought over the issue of whether additional money would improve academics. The fiscal conservative did not feel that the increased funding would have the desired impact, so they would not vote for a tax increase. With the failed override, there was limited time remaining in the session to work on another bill. All sides of the issue wanted better educational standards, but the legislature did not want to improve the quality for the poor and decrease the quality that the wealthy had become accustomed to (Rocha 1993, 61).

The Court received the plan it had ordered from the court master on the day of the deadline. It would redistribute the wealth from the wealthy districts to the poor districts. The plan would have taken almost three hundred million dollars from the combined funds of the urban districts located in Dallas, Houston, and Austin. This would devastate the school districts and was the reason that the representatives in these areas had opposed redistributing the resources. A revised version was to be ruled on at the end of June (Rocha 1993, 61-62).

The legislature and governor finally ended their stand off and decided that a compromise would be better than the court imposed financing system. The compromised bill included an increase of \$528 million to the budget for school funding for the coming year; the additional funds would be raised by increasing the sales tax. The governor had compromised on the taxes, but he required that the bill fall short of guaranteeing the future amount of allocations, which he believed would have led to an income tax (Rocha 1993, 62).

With a compromise reached, a fourth special session was called in June to vote on all the measures. Both the tax bills and education bills passed quickly; before the court could approve the revised proposal, the governor signed them into law. Many felt that the law did not change the system sufficiently to make it constitutional, and they feared that it would be placed before the courts in a future suit (Rocha 1993, 62-63).

The newly formed laws were deemed unconstitutional only seven months after they were passed. The ruling of the Supreme Court in this matter was referred to as *Edgewood II*. The major focus of the sessions was not important to the court; they were only interested in constitutional school financing and not law changes or taxes. Under the new law, the legislature would have spent 5.5 billion dollars on education for the 1990-1991 school year. The legislature had not made a new system but simply created more funding for the poor districts that were already taxing their citizens at a high rate (Rocha 1993, 65-66).

The lawmakers had hoped that by making the additional state funds available to these districts that they would be able to raise their educational level to the point that it would meet the constitutional requirements. In many ways, the system resembled the Foundation School Program. The state would give additional funding through a second tier; the first tier funding went to every school, but for schools who were taxing at high rates and not meeting the minimal funding required for education, the state would make up the difference. In 1990-91, the tax rate had been set at 54 cents per \$100 worth of property, and the per student allocation was raised to \$1,919; the following year the allotment increased to \$2,128 (Rocha 1993, 66).

Under the first tier of the system, all schools that were taxing at the 54-cent rate would be guaranteed the respective allocation. If the tax would not generate sufficient revenue to meet this allocation, the state would provide the additional funds. If the districts choose to tax over the 54-cent rate, the state would ensure through the Guaranteed Yield Program that for every penny increase the district would receive a set amount per student. If the tax increase did not meet this minimum, the state would send the additional funds that were necessary. These funds were guaranteed only to a certain rate; Senate Bill 1 raised the maximum tax rate for the Guaranteed Yield Program, the tax rate for the allocations, and the per student allocation (Rocha 1993, 66).

By the 1994-95 school year, the state was willing to ensure funding up to \$1.18 under the Guaranteed Yield Program. The maximum was set because the state viewed any money collected beyond this point to be superfluous for an adequate education. The extra money was seen as being used to fund athletic fields and extras, which the legislature did not believe necessary for education. The higher tax rate, in 1994-95 anything over the \$1.18, would not be supplemented by the state, so districts would only collect what their property value would allow. The legislature wanted to ensure that 95 percent of the schools had access to an equable amount of funds for schools (Rocha 1993, 66-67). The wealthy districts may not receive any benefits from the state's Tier 2 funding because their taxes would surpass the state's guaranteed yield (Phillips 1991).

The Texas Supreme Court had made it clear that the system needed to be completely recreated because additional funding under the current inefficient system would be nothing more than a temporary fix (Rocha 1993, 67). Senate Bill 1 attempted to make the same resources available to districts who were taxing at similar rates. The new

law would allow for the funding levels to be studied and changed during regular sessions, and the bill would have made the system essentially equitable to all but the wealthiest five percent. Even with the improvements, the system was essentially the same as it was before Edgewood I (Philips 1991).

The court assumed that the new legislation was constitutional, but the District Court agreed to listen to any argument that challenged that assumption. The Edgewood plaintiffs did not believe the law to be constitutional, so they challenged the law. This time their argument focused on the tax rates that would exceed those under the Guaranteed Yield Program. They felt that wealthier districts still had access to substantially more money because they could easily tax over the limit and quickly out gain any tax that the property poor districts could collect (Rocha 1993, 68).

There was also the issue regarding the wealthiest five percent of schools; the legislature had willingly allowed these schools to operate at a higher funding, which clearly violated equality in the plaintiff's eyes. Taking these two facts into consideration, the plaintiffs believed that the legislature had failed to reform the system and make it constitutional (Rocha 1993, 68). Senate Bill 1, that had taken the legislature six special sessions, was passed in June 1990, but by September 1990, the District Court had ruled it unconstitutional (Rocha 1993, 68, Finet 1998, Phillips 1991). The judge ruled that it was fundamentally the same system as before, and that it still relied too heavily on the property wealth of the districts. This over reliance placed children who lived in property poor districts at a disadvantage. The Bill had also failed because it ignored the wealthiest five percent, which accounted for fifteen percent of the state's property wealth; on top of this, the maximum tax level under the Guaranteed Yield Program was seen as

intentionally creating disparities. The judge noted that, “equalization is provided up to some proposed level of adequacy rather than up to what the property-rich districts actually spend” (Rocha 1993, 69). To the judge, the Constitution did not require an adequate system of education but an equitable one even if it included the Astroturf football field and other luxuries (Rocha 1993, 68-69).

The new legislation did not seem to qualify as an efficient educational system, which is what the Constitution required; the new system guaranteed minimums to each student, but it failed to fix the system that had already been deemed unconstitutional (Phillips 1991). The District Court allowed the system to continue and provided an opportunity for the legislature to correct the shortcomings (Phillips 1991, Rocha 1993,70). They would have another year to solve the problems because the new school year had already started, and until that time Senate Bill 1 would be used to fund education. The state challenged this ruling, and the case was once again sent to the Supreme Court. The plaintiffs also challenged the ruling because it gave the state another year, and they felt this was too much time to fix a system that should have already been repaired (Rocha 1993, 70).

The Supreme Court agreed to hear the case that was brought out of the 250<sup>th</sup> Judicial District Court in Travis County; they ruled the new public financing system created after Edgewood I unconstitutional (Phillips 1991). The Court ruled in January of 1991 that the law was still unconstitutional. Even though it provided a more equitable system, it did not fix the main problem of inequitable funding through an over reliance on property taxes (Rocha 1993, 70). The law failed to create an efficient system because it did not create new ways to distribute the wealth or create new districts. The law was

fundamentally and constitutionally flawed in its basic system. The system did not address the fact that many counties have multiple districts, and some districts have as few as two students; in a system that permits duplicate administrative costs and an ineffective use of property value, it is impossible for it to be deemed efficient (Phillips 1991). The wealthier districts still had the ability to raise more money at a lower rate than the poor districts. This system could not be considered efficient as long as tax rates were substantially different throughout the state (Rocha 1993, 70).

The Supreme Court ordered a new deadline and ordered Judge McCown not to change it. The new deadline was set for April Fool's Day. For decades the system had been worked on, now the legislature once again had a matter of months to correct all the past ills. The Court had overridden the desires of the voters and the legislature, who saw it as important to maintain the highest level of education that some districts enjoyed while not enforcing a tax on the citizens that could hurt the state. The court ignored these issues in order to pursue an equitable system (Rocha 1993, 72).

The legislature was now in regular session, and they no longer had a republican governor that would oppose tax increases. Ann Richards was the new governor, and the Lieutenant governor was now Bob Bullock. The Democrats controlled all the important positions in the government. The court had ruled that education was a state responsibility, so the state had to come up with an adequate financing system that would no longer place a heavy burden on property taxes. The wealthier communities had enjoyed the system and looked at it as a system that allowed them to provide for the community's children, but the court had ruled that the community should not be a district but the entire state. To remedy the situation, the state would have to create a new system

that would draw funds from a different source; they had to find a way that would allow the educational funds to help education on a statewide instead of a local basis. This seemed like an insurmountable task because the wealthy districts and their legislators had grown accustomed to the limited local control they had over the taxes and how they were spent. The new governor was still opposed to taxes, but she would be easier to work with because she felt education was important (Rocha 1993, 73-74).

The committees went to work within days of the court's ruling. There were several different proposals that were discussed. The issue of eliminating local property taxes in favor of a statewide property tax was discussed. The initial tax would be set at a dollar per 100 assessed value, and the funds would go into a central pool that would then be distributed equally per student to the districts. The districts could tax over the limit to add to their local funds, but this amount would be limited to an additional twenty-five cents. The state had used a statewide tax in 1918 to pay for textbooks, but it had been small and later became unconstitutional under a 1982 amendment that prohibited a statewide property tax. Due to this amendment, the state would now have to pass another amendment in order to enact this new proposal. The state worried that a popular vote would be almost impossible to achieve, but they had planned to call for the vote in May, which was after the deadline. Before this could take place, the plan was dismissed because of the almost impossible tasks that it would have to accomplish. The local school boards also opposed the plan because they feared that it would further weaken local control of schools, and the parents in wealthy districts would not have supported the measure; they would have paid higher taxes while their schools received fewer funds.



There were simply too many hurdles in the path for the proposal to be successful (Rocha 1993, 74-75).

The next serious proposal was to find a way to redistribute the funds from one school district to another. This proposal faced the problem that was created by a 1931 Texas Supreme Court ruling, which stated that under the Constitution the local property taxes could not be spent outside their district of origin. This measure would also require a constitutional amendment. If the amendment passed, the local districts would be required to tax at or above a set rate, and some of the funds would be redistributed from the wealthier districts to the poorer ones. The same group also proposed an additional amendment that would end the requirement of giving a certain per student allocation to each school district from the Permanent School Fund. This amendment would have allowed for unequal distribution of the fund and allowed the state to give more to the poorer districts (Rocha 1993, 75-76).

In lieu of the constitutional amendments, the Senate also proposed a plan that would go into effect if the amendments failed. The state would collapse all the districts and form new ones. The twenty newly consolidated districts would place wealthy and poor districts together to achieve the same goals as redistributing the funds. The districts would all be responsible to tax at a minimum rate, which would be higher than many of the wealthy districts were presently accustomed (Rocha 1993, 76).

Both of these were “Robin Hood” plans in that they would steal from the wealthy districts and give to the poor districts in any manner that they could legally achieve whether by amendment or new districts. These new proposals would expand the meaning of community into the statewide group that the Supreme Court desired. The wealthy

districts and many school boards opposed this measure because it would effectively end local control, but their protests were insufficient from keeping the Senate from passing the bill. The House looked more closely at the concept of consolidating the districts into twenty new statewide districts. The House's plan that came out of the educational committee called for the creation of 195 new districts; the plan had support and it was also believed that the two could compromise in a conference committee to pass the bill (Rocha 1993, 76).

During the conference committee, the school districts that had supported Edgewood filed a motion for rehearing the case in the Supreme Court. This is a practice usually done by the party that lost the case, but the plaintiff-interveners wanted a point clarified by the court. They specifically wanted to know if the district's property taxes could be consolidated. The court offered a non-binding opinion on the matter; the judges decided that the Constitution did not prevent the legislature from consolidating the tax base. (Rocha 1993, 76-77). The lower court ruled that it would violate *Love v. Dallas*, but the Supreme Court did not note the same problem. It stated the Constitution had given the legislature the ability to make and consolidate districts, so it did not prevent them from consolidating the tax base (Phillips 1991). The court stated that it was not changing the original intent or overruling the previous case, but the case did not prevent the state from creating new districts. They also stated that the districts could raise more money than the state had set as the minimum for the betterment of the district schools. This system, which had been deemed unconstitutional in the previous ruling, was considered acceptable by the justices as long as an efficient school system was located in every district. This would allow for higher property taxes to help local schools under a new

system, but the real problem was still resolving what was considered an efficient system. The court seemed to want the state to move away from the heavy local property tax burden that was creating unequal funding. With the new opinion, the court seemed to be advising the legislature how to conduct its affairs, which violated the normal practice of the court. The court even released its opinion early so the House would see it before they voted on the bill that was on the floor (Rocha 1993, 77-78).

The House now had to reconsider its bill. The Court had said that the districts could be consolidated, but the funds from those newly formed districts could not be sent to other districts. The concept that the system did not have to be totally equitable seemed contrary to the preceding two cases, but the Court was now made up of more Republican members (Rocha 1993, 78-79).

With the new information in hand, the representatives from the wealthy and poor districts formed a coalition and passed a house plan. They hoped that this move would allow a conference committee to meet and create a compromised bill between the House and Senate that would actually be constitutional and pass. The bill still contained the 195 new tax district plan as well as the idea of making a minimum property tax per district; the tax from each district would be collected and shared equally throughout the taxing district. The school districts could always tax above these amounts to enrich their own schools. The new tax districts would be composed of the old Independent School Districts, and the old districts would be the ones guaranteed a certain amount for every penny they taxed over the minimum; passed a pre-established point, the local districts would receive most of the money collected from the increased tax rate. The poor districts would gain revenue under this system that they had not had access to in the past, and the

wealthier districts would still be able to retain the quality of education to which they were accustomed (Rocha 1993, 79).

The committee began its work three weeks before the deadline. The plans were very similar, and both consolidated large tax bases. The main differences between the bills were the number of tax districts. The House bill also allowed the wealthier districts to tax at higher rates than the minimum, so they could enrich their schools beyond the state mandated amount. The committee agreed to establish the 195 districts based on county lines, but the real issue was at what rate could the local districts begin to keep the money they were raising through the higher tax rate. The Edgewood plaintiffs told the legislature they would sue once again if the House version was accepted because it allowed for too much inequity; they said that they would accept the Senate's version because it did not allow for the local enrichment. They would also accept a similar measure that had substantially less local enrichment inequities (Rocha 1993, 79-80).

The committee's final plan created 183 taxing districts, and set a minimum property tax that would be applied to every district; the tax revenue gained from the minimum would be shared, and half of the money gained from higher tax rates would be shared through out the tax district (Rocha 1993, 80).

This bill was undesirable to many of the legislators, but they felt it was the only constitutional bill they could pass. The school board association did not back the bill; more importantly, poorer districts once again said they would sue. The members felt that this bill created too much of a burden on taxes and property taxes for the citizens of the state, but they feared that any court created measure would severely hurt education in the wealthy districts. In the end, the Senate passed the bill, but the House Republicans and

thirty-three Democrats could not tolerate the compromises. They refused to pass the bill even if it might be better than a court solution, so the bill failed. It had not been worth saddling the people of Texas with higher taxes for a system that might decrease the quality of education. The deadline would once again pass without a new system in place (Rocha 1993, 80-81).

Dan Morales, the Attorney General, asked for an extension. This enraged the plaintiffs because they felt that the state should withhold funds from school districts after the April 1 deadline; the funds from the local property taxes should also be frozen until a new system was in place. If they got their wish, the schools would either have to borrow money or cut back their spending drastically to finish the school year. Judge McCown would rule on the matter on April 15, and would have the court masters report on redistributing the funds presented again at that time. The Supreme Court's ruling had already frozen the state funding, but the next distribution would not be released until the end of the month, so the school did not feel a sudden impact. The delayed ruling would give the state additional time to create a new compromise (Rocha 1993, 81).

The legislators knew that the court's plan would destroy the education of the children in wealthy districts and especially the quality of education in the large urban areas. The lieutenant governor decided to bring up the House bill in the Senate; if the bill passed the Senate, all it would need was the governor's signature. The plaintiffs viewed this bill as inequitable, but Bob Bullock felt it would be better than nothing. This frustrated the House members because they had approved the bill in order to work out a compromise in the conference committee, but the original House Bill would stand if the Senate passed it. These issues resulted in the House reconsidering the compromised bill.

The conference committee was still working on another bill as well, and their new proposed bill would consolidate the property taxes into the 188 taxing districts. These districts would be County Education Districts, and they would all have a property tax rate that would start at 72 cents and grow to \$1.00 in the next three years; the funds would be pooled per County Education District and redistributed within the county on an equal per student basis. The wealthy school districts under the new county district would share their wealth with the poorer schools, so this too was a “Robin Hood” plan. The independent school districts would be able to raise the tax rate by an additional 45 cents, and this money would stay in the local district to enrich their schools. The bill also established an amount that it would guarantee the districts per student for every penny increase over the minimum that had been collected; initially, it would be \$21.50 and grow in the coming years to \$28 per student. This measure would create an equitable system for the poorer districts and allow the wealthy districts to raise their own money. The bill’s saving grace in the eyes of the Republicans and wealthy district representatives was the fact that the schools could keep all revenue generated from tax rates that were higher than the state’s minimum for local enrichment. In light of the impending court decision, the imperfect bill was reluctantly passed. Ann Richards signed Senate Bill 351 into law on the day the District court was to meet and hand down its decision (Rocha 1993, 82-83). It was enacted in April 1991, and it consolidated the tax base of districts into County Education Districts (Finet 2004).

The bill raised educational standards in poor schools, but the wealthy districts could not maintain the amounts they had been spending on education. The districts were actually paying a higher tax rate while receiving fewer funds. The wealthy districts were

dissatisfied with the fact that the educational quality was going to decrease while taxes increased, so they too looked to the court system (Rocha 1993, 85-86).

The new law resulted in an overall 11 percent property tax increase statewide; the average the preceding year had been \$1.04, and it was now \$1.16 per \$100 worth of property. The majority of districts raised their taxes from ten to twenty cents, while only 14 of the over 500 districts lowered their rates. The minimum tax rate was to be applied to all property in an area, and the revenue calculated for the 1991 year; if the taxes on the nonexempt property, elderly homeowners or large business, did not equal this amount, the tax rate would be increased until the revenue generated equaled the amount. This resulted in higher taxes in areas that had lost property value; the owners who paid taxes were also responsible for the shortfall created by delinquent individuals and those who refused to pay. This created a heavy tax burden on the paying and responsible citizens in the community. The Bill did not resolve the issue that most concerned the Supreme Court; the state was still relying on local property taxes to provide the majority of school funding. The state contributed \$6.2 billion to education, but the local districts were contributing \$8 billion (Rocha 1993, 87-89).

For all their complaining, it appeared that both sides would settle for Senate Bill 351, but it would require school districts to make some changes. The districts would have to increase their taxes over the minimum, and money would still be tight; even the property poor districts would be unable to raise the salaries of their employees (Rocha 1993, 91).

It was now the parents and students in the property wealthy districts who were protesting the state's new system. All the schools were dealing with concerns and

problems relating to the new system. To further complicate the issue, districts could not be certain the system would last (Rocha 1993, 93).

The constitutionality of the new law was once again challenged in the court system. It was brought before District Judge McCown in August of 1991; it had only taken about four months for the law to be challenged. The case was brought by the defendant-interveners because both the plaintiff and the defendant were willing to work under the new law. The plaintiffs still had concerns, but they were willing to see if the Legislature appropriated enough money to actually make the system efficient in their opinion. The law was being challenged by the property wealthy districts, which now felt alienated from the state because it had settled for the new law. They did not believe the method was constitutional (Rocha 1993, 93-94).

They argued that the state could not share property taxes because the ruling in *Love v. City of Dallas* prevented such actions. The judge hearing the case ruled that the state could make the districts as they saw fit, so the new tax districts were constitutional because the money collected in each tax district was used only in that district. The judge also deemed their argument that the Texas Constitution required a vote by the citizens regarding property tax increases to be without merit; the Constitution only required citizens to vote for increases above the state mandated minimum because the state had control over taxing citizens to provide for education. The final failed argument rested on a 1982 amendment to the Constitution, which made it illegal for the state to institute a statewide property tax. The judge's ruling on this issue was based on a very legalistic look at the taxes. He ruled that the state had set the required amount that was to be collected from each district; since the districts could exempt certain types of properties if



they wished, the tax was local. This meant that the tax rate set by the state to meet these limits would be changed at the district level to account for uncollected taxes or changes in property values. The money required was based on 1990 figures, and the new taxes ranged from 52 cents to 99 cents under the new system, so the state had not instituted a statewide tax. The judge failed to deem the law unconstitutional, so for the time the law stood (Rocha 1993, 94-96).

The property wealthy districts appealed to the Supreme Court; the court agreed to hear the case, which was filed as *Carrollton-Farmers Branch Independent School District et al. V. Edgewood Independent School District, et al.* but referred to as *Edgewood III*. If the district was facing heavy tax increases, it still might fall twenty percent short of the preceding year's budget if the tax was raised to \$1.19. The citizens were losing funds while paying tax rates that were significantly higher (Rocha 1993, 96-97).

The case started in November 1991, and a ruling was handed down in January 1992. The ruling was not unanimous this time, but the results were the same. The majority of the court ruled the new law unconstitutional in a 7-2 decision. The ruling did not strike the law down on the issue of equity because the legislature had finally produced a law that gave each district roughly equal access to funds; this time the matter revolved around the constitutional status of the new taxing districts and whether the tax was constitutional. The court deemed the law unconstitutional because it effectively created a statewide property tax and violated the section that required a citizens' vote. While the state did not set the exact tax rate, it required the tax districts to raise a certain amount of funds; the CEDs could not tax above this amount, which effectively made the

system into a statewide tax. For the taxes to be constitutional, the voters in the tax districts would have to approve (Rocha 1993, 97,99).

The CED system of providing for an efficient educational structure had failed, but the tax had already been paid by the citizens. The court felt that it had to allow the taxes collected to be used for education because refunding the unconstitutional taxes would have severely damaged education; since there was no constitutional alternative at the time, the taxes would be collected for the year to provide for the costs of educating the children in Texas. In a 5-4 decision, the court set a new deadline for the legislature to create another school financing system. This time the legislature would be given more time to resolve the issue; they would have until June 1993, which was well over a year away (Rocha 1993, 99-100).

Senate Bill 1 and Senate Bill 351 had both failed to create a constitutional solution to school financing. The legislature felt that they could only consolidate the districts to satisfy all the constitutional requirements, but this measure would not have popular support because it would decrease local control. With the limited options that now faced the legislators, they turned to the idea of creating a constitutional amendment to change the requirements in the Constitution (Rocha 1993, 105).

Like the proceeding governor, Ann Richards would play a large part in any legislation passed because a special session would be required. She wanted a discussion of how to achieve equality and efficiency, what these words actually meant, and how much money would be required to reach these goals. She went as far as producing her own plan (Rocha 1993, 106).

Ann Richards hoped to gain fast approval of the measures and present them to the voters on the 1992 presidential ballot. The proposal ran into the same problems that had faced all the previous discussions. It required the property poor districts to accept fewer funds, and it called for a statewide property tax that would limit the amount of local control. It was also likely that some schools in the property rich districts would have fewer funds than they had in previous years (Rocha 1993, 107).

This was a unique year in that every one was up for re-election in the House and Senate due to recent redistricting, so the governor decided to delay calling a special session. She decided to call the session in November, which would allow her to take advantage of the lame-duck session. She hoped that the defeated and retiring members would be willing to address the issues. Thirty-four legislators and eight senators were not returning for the next session, and the remaining members would not face re-election for at least two years. This meant that the issues could be resolved and any controversy would pass before the members would face a vote (Rocha 1993, 107-108).

While negotiations took place for the remainder of the special session, they were never close to passing any amendment. The legislators and the citizens were unwilling to release their control over the tax rates at the local level; the people did not want to create a strong centralized government, but this hindered the efforts to provide equal educational opportunities to all the children in Texas. The special session was a failure, so the attention to beat the courts deadline turned to the upcoming regular session (Rocha 1993, 114-115).

The 1993 session began in January and would last for 140 days. There was a new Speaker of the House and new committee chairs on the education committee in both the

House and Senate. The Senate took the lead, and went back to the CED system that had passed but failed to meet constitutional criteria. There would be an amendment passed that would allow the CED system to be constitutional. The proposed amendment quickly passed the Senate, but the House was more reluctant to approve any measure that would involve revenue sharing from local property taxes (Rocha 1993, 115-117).

The house had three choices. It could create a new tax to collect at the state level and would bring the poor districts to the same monetary level as the wealthy, but this plan was financially infeasible. The second option was to pass the proposed Senate amendment to make Senate Bill 351 constitutional, but this would have consolidated the districts and weakened local control. The alternative that the House committee presented was an amendment that would allow the state to take property taxes and redistribute them statewide; there would be a cap placed on the amount that could be removed from a district. There was a compromise and the amendment passed; there would be a second amendment that would allow local school districts to ignore any state mandated program that was not funded by the state. This second amendment appeased those who feared local control would be lost. The Senate voted and passed the legislature's amendment because the two had passed slightly different amendments, and the senate did not want to rely on another vote taking place in the House. With the Senate's vote, the new proposed amendment was ready for a popular election (Rocha 1993, 117-118).

The voters had three propositions on the ballot. The first was the amendment that would allow Senate Bill 351 to stand; the second proposition was the compromise that allowed schools to ignore unfunded state mandates; the third was a plan to sell \$750 million in state bonds to provide money for new building construction, which would be

dedicated primarily to the poorer districts. Proposition 1 would allow the state to redistribute wealth along the lines of the CED program or by simply creating a new system that would redistribute wealth statewide (Rocha 1993, 118-119).

The state was unwilling to raise any of its taxes, so property taxes would have to be raised if current levels of educational financing were to be sustained. Citizens feared that the state would take their ability to control property taxes away from the local level, and the more people learned about the proposition the less they supported it. The citizens went to the polling places and overwhelmingly rejected the measure. People did not like the idea of a "Robin Hood" plan, and they were against any form of tax increase (Rocha 1993, 121).

The legislature had once again pushed the issue to the wire, and they only had a month to create a new system of school financing. There was no clear plan or direction for the lawmakers to take. The education committees held joint meetings to discuss the issues. The opposition proposed collecting the \$400 million that would have been gained under the beaten system from alternative sources; they suggested taking the money from the new lottery. If this was not possible, the state could use a portion of the revenue generated from gas or sales taxes to generate the money. These plans would not work because the proposed money was already spent on different projects. The lottery had been passed and the state had decided to place the generated revenue into the general fund instead of dedicating it solely to education, which was what had been done in other states. The state had spent forty percent of the lottery's earnings on education, but it could not use any more without cutting other programs. Even if the state had raised the money, it would not have been sufficient because it did not lower the funds that the

wealthy districts received, which was the key component of the proposition. It would have allowed the state to increase the funding in poor districts and decrease it in wealthy districts; the two combined would have resulted in the equal access to educational funding (Rocha 1993, 123-124).

The legislature could raise taxes, but the governor would never pass such a measure, so they had to revisit the idea of consolidating the districts. The new consolidation plan would leave most of the districts as they were, but 109 of the wealthy districts would have merged with 130 of the poor districts. The plan was unpopular to the schools that would have been affected because it would mean the loss of local control (Rocha 1993, 125).

The Senate was also working on a plan. It would effectively move business property from a wealthy district to a poor district, and the local districts would remain unchanged. Most of the disparity in wealth was based on business property, so this method would bring the school funds under an efficient and equitable system. The plan would transfer commercial property from the rich districts to the poor; the initial proposal would have removed \$60 billion worth of property from the 109 wealthiest and given it to the tax rolls of the poor districts. The bill gained the support of the wealthy districts and the poor, and it passed the Senate. The House was not as thrilled because some of the wealthier districts did not have enough commercial property to lower their funding to an equal level. They feared that the one percent that would not be equalized would be case for the Supreme Court to rule the new law unconstitutional (Rocha 1993, 125-126).

The House introduced a new proposal that would require the 109 wealthiest districts to chose how they would equalize their wealth; they would have to choose to

give up their commercial property to another poor district, they could consolidate with a poorer district, they could contract out services to educate children in property poor districts, they could merge their property tax base with another district such as had been done under the CEDs, or they could send funds to the state. If they sent money to the state, the state would redistribute it to the poor districts; if they did not choose any of these options, the state would force them to consolidate with a poorer district. The House was only constitutionally able to consolidate a district, but the districts could choose to send their money to a different school. In this way, the House had gotten around the constitutional issue of taking property taxes from one district. It was a threat to the school districts that if their citizens did not vote for one of the options the legislature would simply use its powers and consolidate their district with a poor district (Rocha 1993, 126).

Both bills had passed, but the consolidation issue in the House bill concerned the Senators because it was unpopular with their constituents. The concern was too great, so the Senate voted against the House bill. It was now the duty of a conference committee to work together and create a compromise bill. The compromised bill mirrored the option bill of the House, but it removed the threat of consolidation. Instead, the district would have some of its commercial property removed from its tax roll and given to a poor district if it did not chose to accept any of the options it could vote on. The districts that had too little commercial property would be forced to consolidate if they did not choose an option because the state could not equalize them by removing commercial property. The compromised bill was passed by the House and the Senate. Governor Ann

Richards signed the bill into law the day before the court's deadline (Rocha 1993, 126-127).

The new Senate Bill 7 did not change the method for collecting school funds; it still relied heavily on local property taxes. The poorer schools would get their increased funding from the wealthy districts, and the wealthy districts would lose their funding, which would create an equalized state. In principle, the new bill was the same as the CEDs and the proposition that had been defeated by two-thirds popular vote. The Bill established the maximum level of property value per student (Rocha 1993, 127-128). The initial level was set at \$280,000, and the cap was increased to \$300,000 in 2002 and \$305,000 in 2003 (Texas 2001: 8). This level was higher than the effective level of the raised values after redistribution, so the wealthy districts would still have more property value per student than the poor districts (Rocha 1993, 128).

No previous system had gone as far in reducing the money that the wealthy districts had received; this system pulled them down the furthest. The other systems had allowed for increasing local taxes above the state mandated minimum, but this system had neglected to implement any such measure. It would make the schools equal by pulling the wealthy districts down to a lower level (Rocha 1993, 128-129).

The schools rejected the notion of consolidation because this would have given up local control. The businesses favored the transfer of their commercial property value to the poorer school districts. However, the previous systems had all been deemed unconstitutional, so the districts choose the easiest and safest measures. Many of the districts simply sent the revenue to the state, and others favored helping a neighboring



district. The districts had to have their citizens approve one of these measure, or the state would take the commercial property (Rocha 1993, 129).

As the bill was examined, it became clear that the money collected would fall short of the amount the poorer districts had been given under the funding that was ruled unconstitutional the previous year. The new law guaranteed each district \$2,300 per student with a minimum tax rate of 86 cents to qualify. If the districts taxed above the amount, they would be guaranteed an additional \$20.55 per student per penny over the minimum. This guaranteed money was less than the schools were promised the preceding year. The poor districts would not have the same funding even with the wealth redistribution, but the wealthy districts did not receive any added benefit either. The state did not guarantee enough money for the wealthy to keep their same funding because they were losing so much property wealth. The wealthy districts would lose as much as \$2600 per student, which was more than the basic allotment guaranteed. The bill effectively made every district poorer than it had been the previous year. It dumbed down the schools more than any measure had thought of doing in the past, and it created the \$280,000 barrier that prevented local districts from funding their schools at a higher level (Rocha 1993, 129-130).

The new bill would produce fewer funds for 80 percent of the school districts if they did not raise their local property taxes; the main reason for this was the lack of state aid, and the politician's unwillingness to raise taxes. The burden was always placed on local citizens to maintain the funding of their community's educational system. The burden would even be worse this time because there was no increased homestead exemption in Senate Bill 7. Senate Bill 351 had raised the exemption level, so the

increased taxes went to businesses in the past; under the current bill, the homeowner would have to pay these taxes. School boards would not want to take this option, so they would be forced to cut the budget to make up for the reduced funding (Rocha 1993, 131-132).

Neither side was satisfied, the poorer districts wanted Judge McCown to rule the new law unconstitutional, but he declined the option for a speedy trial; this meant that the case would not be heard quickly, and he told the school districts to assume that the new law was constitutional. The rich school systems were not happy about the ruling either, and the same school district, Carrollton-Farmers Branch, that had challenged Senate Bill 351 was now challenging the new law (Rocha 1993, 132-133).

While schools have slowly moved away from parental control to a state run system, there has always been resistance to the change. Individuals are faced with competing interests. They desire local control and a state that will help out in the increasing costs of education, but once the government gained more control, it was only a matter of time before they took more control of the schools. The citizens still possess a small amount of control, but it is quickly eroding. The system has become larger with each attempt by citizens to make the system more equal.

Instead of the court equalizing the system, they have only set the precedence that the responsibility now resides at the state level instead of the community level. Even though the attempts might have been to get better local education, the results have been in a more controlling system that still uses education as a means to an end.

## **CHAPTER IV**

The state now had more control over education than it had possessed at any time in the past. The government was essentially collecting money raised from local taxes and using them to provide for education in other areas of the state. Even though the Constitution did not allow for these measures, the legislature had found a manipulative measure that would allow them to exist. The local citizens had long been willing to give the government more control, and now they had given them more control than many felt they should have. Even Supreme Court judges have felt that the methods to equalize education have gone too far.

Unfortunately for the citizens that want more control, the state has shown that they are unwilling to even discuss giving districts and parents more control. The system has become part of the state, and they now view it as an institution under their responsibility. Parents may have the ability to home school or send their children to private institutions, but the state will still require them to pay taxes for the public educational system.

Ultimately, the challenges to Senate Bill 7 were heard, and the Edgewood plaintiff's appeal to the Supreme Court was the first. The Court was heavily split in its ruling. Justice Cornyn wrote the court's opinion, and three justices wrote dissenting opinions against part four of the ruling. Justice Spector wrote a dissenting opinion against

the entire ruling. The Court was ruling to see if the new Senate Bill 7 satisfied the requirements of article VII, section 1 of the Texas Constitution; the justices ruled that the new law was constitutional. While this was a victory for the state, the court was quick to note that the ruling was based on a lack of evidence presented by the appellants. Since it is the court's standard practice to assume constitutionality until it can be proven otherwise, the justices wanted to let the appellants and state know that this was not the end to challenges that could be brought. Edgewood simply failed to prove that the system had an "inadequate provision for facilities" (Cornyn 1995). The District Court had already ruled that the consolidation system was constitutional, but there had not been an adequate system established to help schools build and maintain facilities. The District Court ordered a halt to the issuing of bonds until the system could be deemed efficient, but this was overturned by the Supreme Court (Cornyn 1995).

The Court's opinion also included a scathing statement on the current system. The state was to provide an efficient school system for all the children of the state, but they had shirked their responsibility and created a system that had redundancies in the bureaucracies at every district level. It relied too heavily on local property taxes and was more of a "crisis management" system than the efficient system that was required. The system is too confusing and complex to be seen as efficient in any real sense, but it has been considered to be the bare minimum that is acceptable under the Constitution based on its acceptance throughout the state's history and not on objective reality. The court believed that the state could make a better system that would be worthy of the children in the state (Cornyn 1995).

The Foundation School Program system comprised of two separate tiers of financing schools was still the fundamental base for Senate Bill 7. The amounts guaranteed were different, but the system was the same. The judges noted that this was the same system but it now had a cap of \$280,000 in property per student. If tax appraisers reported that a district exceeded the amount, the citizens would have to choose one of the five options the state provided. The cap would be phased in over a three-year period to reduce the shock of fewer funds in the wealthiest districts. The districts were permitted to keep enough property to maintain the funding that they had for the 1992-1993 levels. They could tax at a rate of \$1.375 in 1993-1994 and increase the amount to \$1.50 in the 1995 and 1996 school years to maintain the desired levels (Cornyn 1995).

Edgewood I had determined that all districts must have equal access to equitable funding per student to maintain an efficient system, but it did not rule that all the districts had to have the same amount of funding over the determined efficient level. The funds would have to be collected at comparable tax rates. Edgewood II confirmed that the supplemented funds drawn from local property taxes to enrich local schools did not have to be equal from district to district. The ruling showed the state that the funding did not have to be completely equitable to fulfill the constitutional requirement of efficiency. If the court required all schools to be equally funded, it would require the school systems to lower their standards instead of increasing the state's educational system. If they were allowed to lower the standards, the legislature could simply cap the funding at a level that could easily be met by every district. A lower level of education would be supplied, but it would be equal. However, this would not be an option because the lack of funds would

violate the constitutional charge of supplying a “general diffusion of knowledge” (Cornyn 1995).

Senate Bill 7 also established a system of accountability that requires schools to meet accreditation standards or be consolidated into different districts. This showed that the Senate was also aware of the constitutional requirement. Under these circumstances, the court ruled that the inequalities that existed under the Bill were not enough to make it unconstitutional because it was financially efficient. The tax rate ratio was not as drastic as it had been before Edgewood I, and the poorer school districts were better off than they had been. Even though the second tier funding may not be equal, the state had set the limit of local taxes at \$1.50, which prevented any third tier funding that would result in vast differences. The second tier range would be the guaranteed minimum of \$20.55 per student in poor districts to \$28.00 in the wealthiest districts, and the issue of third tier funding, which were funds above the state’s guaranteed matching limit, would not be allowed except to pay off debts that had been in place before April 1, 1991. The court also stated that the law would not be unconstitutional if the state had allowed taxing above the \$1.50 that would not be supplemented and guaranteed to generate a certain rate; this would have left the poorer districts with \$0.95 per student per penny over \$1.50 while the wealthiest would still be generating the \$28.00 per student. It would not be unconstitutional for the districts to supplement their schools because the system was deemed to be efficient (Cornyn 1995).

The judges cautioned that any district that supplemented their school to any great degree could render the system inefficient. They cautioned that money considered to be supplemental under today’s standards might be required in the future to provide for the

diffusion of knowledge. It seems as if the court is telling the districts that the current system could become unconstitutional if the levels of funding do not increase (Cornyn 1995).

Most of the Justices had agreed with the assessment of the new law up to this point, but the next ruling caused several to write dissenting opinions on part IV of the ruling. This was the section that the property-rich districts were challenging. They believed that the system that the state was using to achieve its goal of efficiency was unconstitutional. The state had established the \$280,000 cap under the constitutional authority given to them in article VII, section 3, which allows the state to create districts. The property-rich argued that the state had failed to create a system that did not rely heavily on the local taxpayer, but the court had already ruled that a reliance on these taxes was not unconstitutional because the Constitution did not require the revenue to come solely from the state. The districts still argued their case pointing to the fact that the local taxes now accounted for 57 percent of total school expenditures, which was more than the 54 percent that existed before the Edgewood III ruling. The wealthy districts did not believe that the state's 43 percent provided enough resources to meet the constitutional requirement of making suitable provisions for education. The court ruled that it was the legislature's responsibility and charge to determine what percentage of the fund came from the varying sources as long as it created an efficient system (Cornyn 1995).

The second complaint brought by the wealthy districts was based on the prohibition of a statewide property tax. The court had ruled in Edgewood III that a tax would be considered a statewide tax if it was mandated by the state or so controlled by

the state that it effectively removed any discretion on the local level. This would make the line difficult to assess, but in this case the districts had to tax at \$0.87 to get aid from the Foundation School Fund; they could also have the discretion to tax up to \$1.50 if the voters desired. Taking these two issues into consideration, the court deemed the law to be constitutional because the districts had some discretion. The districts disagreed and felt that the state had set a minimum and maximum rate, which would require many districts to tax at the highest rate to maintain the level of education they desired. The justices disagreed and ruled it constitutional based on the discretion that was created by giving a range, which could actually be increased to \$2.00 under certain provisions in the law. The state is not requiring any district to maintain the highest level, but it is the districts themselves that want to maintain the level of education to which their citizens have grown accustomed. However, the court also stated that eventually the cost of education would continue to rise in the state and the \$1.50 limit would become the bare minimum to provide for education; if it was still the limit at that time, the law would in fact be a statewide property tax and unconstitutional (Cornyn 1995).

The next obstacle the Supreme Court had to address was the issue raised by *Love v. City of Dallas*. The wealthy districts still contended that the state could not require them to send their money outside of the districts. The districts believed that the previous court had established that the Constitution permitted the spending of locally raised taxes solely in the community in which they were collected. However, the court did not agree with the assertion that Senate Bill 7 required schools to send money to students outside the district; Love had established that a district could accept non-residential students and receive compensation from the state in the form of the per student distribution, so a



district could accept new students from outside the community if the board deemed it acceptable. If the state forced the district to take a student without compensation, the law would be unconstitutional. The situation that was created under Senate Bill 7 did not force a district to take students into their district without receiving state aide, so Love did not apply directly to the case. The options presented to the school district kept the court from ruling that the new law compelled a district to pay for non-district students because they could consolidate, remove property from their tax roll, or create a similar taxing district that was under the CED system. If the district rejected these options, it did not mean they were forced to send their money out of the district. If they refused to choose, the state would force consolidation, which did not result in sending money outside the district; the community would just have a larger district than they were previously under. Both the Constitution and the ruling in Love recognized the state's right to reorganize districts as they saw fit (Cornyn 1995).

The wealthy districts argued that all the options were undesirable, so the options did not give the taxpayers a choice other than sending money out of the district. The lack of a true desirable option forced the citizens to violate the rights that were guaranteed under Love. The court rejected this because the Constitution did not create a right to fund schools in this manner, but it simply allowed the state to decide whether it would use local funds for education or not; the legislature could create a district and give it the power to raise taxes if it desired. The Constitution never granted the rights directly to the local taxpayer or district. Since the state gave the right to tax, it could set the limit, which is what it had done by establishing the \$280,000 cap. Ultimately, "there is clearly some tension between school districts' interest in retaining locally-generated funds and the

Legislature's interest in fulfilling its constitutional duty to establish an efficient system of public schools through local taxation. That tension must be resolved, though, in a manner that allows the legislature to fulfill its obligation" (Cornyn 1995). Since the state is required to make an efficient system under the Constitution, it cannot be prohibited from using the large areas of wealth that are concentrated in only a few districts. In light of this, Senate Bill 7 provides the legislature with the ability to access these funds and does not violate Love (Cornyn 1995).

The wealthy districts argued that the new law violated separation of powers by giving too much power to the Education Commissioner, and the new law also prevented judicial review because it did not allow the Commissioner's decisions on consolidation to be blocked by a court while it was under review. The Court did not feel that the delegation of power violated the Constitution, and since the commissioner had not consolidated any districts, the court could not rule on any aspects of a law that had not been used. All of the attempts to prove the new law was unconstitutional were rejected by the Court. The options that the state provided prevented any of the measures being deemed mandatory, and the court would not rule on any aspect of an option that had not been exercised by a district; the law may seem to be unconstitutional, but the court could not rule on an action that had not taken place (Cornyn 1995).

The main conclusion of the court in deeming the law constitutional was the fact that there had not been enough time to provide those bringing the suit with enough practical evidence for the court to rule in any other manner (Cornyn). The Bill had the potential to violate the Constitution if all aspects were taken to their logical conclusion, but as of the time of the case, many of the aspects of the law had not taken place

(Cornyn). The poorer districts might not have adequate and equal funds to pay for new facilities, but there was no proof presented to the court of this taking place (Cornyn). The districts were not taxing at the \$1.50 limit, so there was room for them to raise any additional funds that would be needed to maintain the schools. The funding under tier 2 is adequate to provide every district with new facilities if the local area believes it necessary. Under these provisions, the court could not rule on evidence that was just speculation of what might occur under the new law. If the future proves that the funds available do not provide districts with the resources to maintain and diffuse knowledge, the state will not have met its constitutional requirements and the law would be unconstitutional (Cornyn 1995).

Several justices disagreed with the majority opinion. Justice Hecht feels that Senate Bill 7 is extremely complex when compared to other state laws. Each district does not have to have access to similar supplemental funds for the law to be deemed constitutional (Hecht 1995).

The provisions and choices given to schools under Senate Bill 7 actually coerce districts into giving money to other districts. School districts will not choose to lose their tax base or be consolidated, and the legislature was aware of this fact when they passed the law; this makes the law coercive; even if it were not, the state still lacks the ability to allow a district to act against the Constitution and give its money to other districts. The Senate argues that it has compensated the districts by not consolidating them, but this is simply an unjust practice and borders on extortion. *Love* requires the legislature to provide just compensation if the funds are used outside the district, and the promise not to consolidate a district is not just compensation. He felt that the court should not tolerate the

constitutional defect in Senate Bill 7, which would ultimately result in a statewide property tax. He also believed that the state had violated Article VII, 3 of the Texas Constitution, which prohibits the state from capturing and using property taxes in districts from which they were not collected (Hecht 1995). According to Justice Spector, Senate Bill 7 does not give each district equal access to revenue sources at equal tax efforts. The wealthy schools that tax over the \$1.50 cap will collect twenty-eight times more funds than the poorer districts. The wealthy districts will produce approximately \$6,000 per student while the poorest will produce only \$3,600 per penny. At the \$1.50 maximum, the wealthiest districts produce \$4,400; the poorer districts would have to tax at \$3.00 to even earn \$4,300 (Spector 1995). Justice Enoch believed the state has failed to meet its constitutional requirement to fund public education, and in its place they have made a system that is over-reliant on property taxes. In so doing, the state has effectively created a statewide ad valorem tax (Enoch 1995). “A general diffusion of knowledge being essential to the preservation of the liberties and the rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.”(Texas 2003) Originally, the Constitution mandated that the state pay for education, and it did not allow for local municipalities to levy taxes. This method did not provide adequate resources, so the state amended the Constitution in 1883; the new amendment allowed the districts to levy property taxes that were to be used to provide additional resources. The state has used this amendment to reduce its burden and shirk its constitutional obligations onto the individual districts; the over reliance has created a system with vast disparities, yet the legislature refuses to create a new equitable system and resume the responsibility it was

given. The state does not presently adequately provide for education; it provides each school with Tier 1 funding that amounts to only a per student \$2,300 basic allotment, which will not fund a program that meets the state's accreditation standards (Enoch). The state tries to hide its deficiencies by recapturing the money collected from the local property taxes; the funds are used in the place of state resources, and in the eyes of the dissenting justice, the over-reliance on these funds should make the law unconstitutional. The state has created a minimum educational requirement, but it has not provided adequate funds to each school to meet the requirements; instead, it has relied on the system of Tier 1 funding supplemented by local property taxes. The state even requires each district to tax at a minimum amount before it will provide funding; they are required to "levy a Tier 1 tax of at least \$.86 to attempt to raise the basic allotment of \$2,300 per weighted student" (Enoch 1995).

The state essentially requires each district to tax and spend its local taxes to meet the basic allotment, and if they are unable to produce these funds, the state will supplement the additional amount; the state is charged with providing for education, but if a district can raise more money at the \$.86 limit than \$2,300, the state will not give them any money at the Tier 1 level. Tier 1 is intended to meet accreditation standards, but it is estimated that districts need at least \$3,000 per student to meet these requirements. This results in most schools taxing over the minimum and using what should be supplemental Tier 2 funds to meet the state's accreditation levels (Enoch 1995).

The way the state currently funds education is completely opposite from what the Constitution mandates; the local districts provide the initial costs of education, and the

state provides a supplemental fund. This system does not resemble what was envisioned in Article VII, 1; the state has not fulfilled its duties, but has simply placed the responsibilities on the local citizens. The court has chosen to accept a system that would have been seen as an unconstitutional statewide property tax in its previous rulings (Enoch). There is no evidence to support any other conclusion, but it seems as if the court has simply given up on the state repairing a broken system (Enoch 1995).

The school districts did not agree with the majority ruling, and they filed another lawsuit in 2001 when more evidence was available. The Supreme Court agreed to hear the case after it had been through the District Court; the case was finally argued in March of 2003 (Hecht West). The ruling was split eight to one. The districts were now filing suit on the contention that the tax rate had finally become a state wide tax; the Supreme Court had warned the state that the Senate Bill 7 would be seen as a state wide property tax if the districts were all taxing at the cap because there would no longer be any discretion left to the local school boards concerning the tax rates. Since the Texas Constitution forbids an ad valorem state property tax, the schools felt that the law would finally be deemed unconstitutional because the caveat that as long as the districts had some discretion on the tax rate the tax was legal was now gone. The four districts who brought the case were all taxing at the \$1.50 cap, so they argued that they no longer had the discretion or the resources needed to supply their communities with an adequate education; they contended that the taxes are now “indistinguishable from a state ad valorem tax prohibited by article VIII, section 1-e” (Hecht 2003).

The District Court had noted that the majority of districts were still under the \$1.50 limit, so the law could not be considered a statewide property tax and was not

unconstitutional. The districts appealed this ruling to the court of appeals, and they affirmed the constitutionality of the law; they focused on whether the schools that were taxing at the high rates had to do so to achieve that mandated state minimums for education. Since the schools did not have to tax at the highest rates to provide for an adequate education, the court of appeals ruled the case to not have sufficient merit to make the law unconstitutional because it was the district and not the state that had raised the tax to the highest level. However, the Supreme Court disagreed with both of the courts and reversed the opinions; the case would be remanded back to the lower courts for more hearings (Hecht 2003).

The court reviewed its previous rulings in the opinion it handed down. The Available School Fund was used in conjunction with the two tiered system created by the Foundation School Program, and it provided each district with about \$300 per student every year. The local taxes were still responsible for over half the amount required to fund schools every year. The taxes collected by each district were now being shared to try and equalize the amount each district was allocated per student. The sharing of local property taxes had only started in the 1990s, and prevented the vast disparities that had occurred under previous laws. The disparities alone were not unconstitutional, but the inability of property-poor districts to meet state required minimums in education required the system to be changed to provide all students in the state with equal access to educational resources; once the minimums were reached, the local district could supplement the student allotment to enrich the district. The previous Bills failed to provide all the students in the state with access to the wealth the state possessed, so they

were deemed unconstitutional because they failed to restructure a system that was too dependent on local taxes (Hecht 2003).

The current system provides students to an equal access of wealth. It has placed a cap on wealth per student to equalize the distribution and funding; while it has not created complete equality, it has created an efficient system to diffuse knowledge to the students in the state. The cap was originally set at \$280,000 per student, and it has now risen to \$305,000. Any district that has more wealth than the cap allows allocates the money collected on the value over the limit to be used under the option the voters put in place. The system has recaptured and distributed over one billion dollars from the wealthy districts to the poor districts. The system has eliminated many of the disparities that existed before the Edgewood case (Hecht 2003).

The system created under Senate Bill 7, or any other bill, will always face problems. The Court has ruled that the unequal funding or supplemental funding is constitutional as long as other districts do not require the supplemental amount to meet the accreditation standards. The loosely phrased ruling that can be interpreted as meaning that “this is simply another way of saying the that the State’s provision for a general diffusion of knowledge must reflect changing times, needs, and public expectations” will prevent almost all systems from standing the test of time (Hecht 2003). What is required to be taught under the current system might become outdated, and important new technologies might be required to teach new classes or trades; the cost prohibitive nature will prevent poorer districts from teaching these classes, which would then make the system unconstitutional again. The legislature has been placed in a situation that cannot be easily rectified if at all. Under Senate Bill 7, the courts put the



state under another deadline. The state would have to change the system before all the districts reached the \$1.50 limit, and that is what was alleged in the West Orange-Cove case. It had only taken six years for the ever-increasing cost of education to reach the cap in the four filing districts. The districts are now cutting positions or increasing the sizes of classes to maintain operations under the established cap. While these schools argued that the cap was hurting the quality of education in the districts they represented, the District Court ruled that the system must be addressed on a statewide basis and not on a district basis; if it were applied only to districts, the law would be both constitutional and unconstitutional depending on the district. The districts filing would also have to prove that they could not meet the state's accreditation standards if they taxed only at the \$1.49 level. The District Court believed that the previous Supreme Court rulings had established that in order for the tax to be seen as a state tax there must be around half the districts taxing at the highest level; these districts will be required to tax at this level to meet the minimum accreditation standards established by the state. If they tax at this level for supplemental purposes, the law will fail to be seen as unconstitutional. At the time of the District Court hearing, fewer than twenty percent of the districts were taxing at the highest rate (Hecht 2003).

The Appellate Court ruled the law was constitutional, but they ruled that it did not matter how many districts fell under the maximum rate; it was simply the state's involvement in how the taxes were levied that determined if it was a statewide tax. The state's requirements for education did not force the districts to tax at the highest levels, so the law could not be deemed unconstitutional. The districts failed to prove that the level of taxation was required to provide for a general diffusion of knowledge (Hecht 2003).

The Supreme Court agreed to review the two rulings. The Court reaffirmed the fact that if there is no meaningful control that a tax becomes a state tax; this meant that the District Court's ruling was incorrect because the law prohibited any state ad valorem tax even if the tax is on a select number of properties. The Constitution did not require the entire state be subjected to a tax before it was deemed to be a state imposed tax. The state cannot set rates for any type of district from hospital districts to junior college districts. These districts do not encompass the entire state, but that does not make it legal for the state to control the tax rate, which is the argument the lower courts had accepted. It does not matter how many areas are directly affected by the tax; the only factor that is relevant in determining the constitutionality of the law is the state's control of the tax. If the tax is imposed by the state, it is unconstitutional (Hecht 2003).

The state contended that they did not force any district to tax at the highest levels, but each district could do so at its own discretion. The state argued that it is their responsibility to provide the children of the state with an adequate education system; the local districts are one tool that the state has allowed to operate to fulfill the constitutional guarantee of free education. The districts are used as a tool of the legislature to achieve this goal, so it is not their responsibility to determine what level of education is required to produce an efficient system that diffuses knowledge. They are not forced by the state to maintain the level that they currently operate under, but it is their choice to operate their schools at a higher level than is necessary for accreditation. The state may approve of the higher standards, but it does not force the districts to maintain the higher level. The argument would mean that the tax would never be seen as an ad valorem tax as long as the state maintained that the districts could tax at a lower level and still meet the

accreditation level. However, the Supreme Court did not agree with this assessment of the taxes. The state could impose a statewide tax that was not under their absolute control, and it would still be a statewide ad valorem tax; the main problem in assessing the type of tax was in the degree the state had control. If the state mandated a tax, it would be considered a statewide property tax, and on the other extreme was the ability of the local districts to choose if they were going to tax and how much they were going to tax. The difficulty came in determining the level of state control that would make the tax unconstitutional. Unfortunately, the Court cannot address every possible scenario, so they would have to determine the constitutionality of the laws as they were passed. The main test is whether or not the authority that taxes has any discretion to determine the rate at which it will tax. If the court determines that the taxing authority had meaningful discretion, the law will be found to be constitutional under article VIII, section 1-e (Hecht 2003).

The state only requires schools to maintain a high enough level of education to maintain the accreditation standards it had established. The districts can maintain the accreditation level without taxing at the highest levels, and the districts that are taxing at the cap are doing so to supply additional educational opportunities to their students. The Court of Appeals agreed with this argument made by the state, but the Supreme Court believed that the assertion was flawed. The legislature has given each district discretion in regards to supplying what standards of education it provides. The districts are required to maintain the accreditation standards, and they are assessed on their ability to meet these standards. The standards will change over time, and it cannot be the sole responsibility of the legislature to determine the minimum standards, or they could

simply choose to establish low standards as to avoid future court cases and rulings. The court has found that the accreditation standards might not meet the general diffusion of knowledge that is required by the Constitution; the two may be the same, or one may be satisfied while the other is not. Since these standards change and are not always the same, the district can claim that it must tax at the highest rate to maintain the general diffusion of knowledge even though it could maintain the accreditation standards at a lower level of taxation. If this is the case, the tax could be considered a state ad valorem tax (Hecht 2003).

The courts cannot suggest policy or what would be required to provide for the general diffusion of knowledge, but it can rule on the laws and requirements once they have been established by the legislature. This keeps the separation of powers and allows for judicial review to make sure the state has satisfied the constitutional requirement. In this case, the districts cannot provide the court with the actual costs of an accredited program since it has yet to be established. If the accreditation standards require even one district to tax at the highest levels, the tax can be ruled in violation of article VIII, section 1-e. The Court also ruled that if a school district offers homestead exemptions they do not have to remove them before claiming it has to tax at the highest levels; if this is the case, then any meaningful discretion might be absent for the taxing authorities because local citizens will expect the exemptions, and they will not be able to grant any relief (Hecht 2003).

The Court also ruled that a district did not need to raise its tax rate to the \$1.50 maximum just to become a plaintiff in the case. A district might no longer have the ability to meet the accreditation standards while taxing at a rate just below the cap. If

increasing the taxes to the cap would not result in meeting the standards, there is no reason for the district to be forced to increase taxes. With this in mind, the court determined the lower courts decision and requirement was incorrect (Hecht 2003).

The plaintiffs argued that they could not meet the accreditation standards or the general diffusion of knowledge required by the Constitution unless they taxed at the highest rate. The districts will need to prove that they have to tax at this level to meet the requirement. With this in mind, the Court remanded the case back to the lower levels to be heard again (Hecht 2003).

The dissenting opinion in the case claimed that the districts had no standing to sue, but the eight judges in the majority opinion disagreed with this assertion because it would limit many of the cases that had been brought before the Court concerning education. While the districts might not have a constitutional guarantee to meaningful discretion, it did not prevent them from asking the court to hear a case to determine if the maximum rate at which they taxed resulted in the law being unconstitutional because of section VIII, section 1-e (Hecht 2003).

The West Orange-Cove case was sent back to the lower courts and has yet to be resolved. In the meantime, the legislature has decided to revisit the issue and prevent the court from ruling against the state yet again. Governor Rick Perry is considering calling a special session at the end of March 2004 to address the concerns over the school financing system.

While the courts may have become more conservative and less active in the recent cases, the discussion over schools is no longer about local and parental involvement; instead it focuses primarily in the state and reforms they must make to current system.

The parents have been removed from the system, and the government is now responsible to educate children without any real support. They can demand money, but they cannot make parents actively participate in their child's learning. The family used to consider this an obligation that they willingly accepted, but over time the responsibility has been placed on the government, which is ill suited to handle measures that are so closely tied to the family.

## CHAPTER V

Since the family has to a large extent been removed from the educational process, the government is forced to consider how to repair a system that is still considered to be inequitable and is approaching the unconstitutional status of establishing a statewide property tax. The legislators are finally addressing the problem of what actually is required to ensure that every child receives an adequate education; while this may produce an efficient system, it appears that it will not produce an equal system.

The government is trying to legislate on matters that would make all children equal, but this is an impossibility. There are natural differences that exist between the children attending the schools that will prevent them from receiving the same quality of education. While some parents willingly gave the government this responsibility, others did so reluctantly. In the end, the state is faced with making a system that cannot exist. They cannot make a system that is both equitable and equal.

Due to these factors, the legislature is forced to examine the problem the only way they know possible. They view the very personal responsibility to educate children as impersonally as possible. They view it as a statistical problem that can be presented and solved, but the members cannot reach any real solutions because they are not suited for the vast differences that exist in the student body. They attempt to weight the money to achieve these goals, but every individual is different. The state cannot rectify the

multiple desires that exist. Whereas individuals can choose what is best for their children, the state is presented with an infinite amount of possibilities, which fiscally can never be reached. The state has now placed itself in a position that it cannot effectively work its way out of.

The legislature knew that the cap would eventually be reached, and the Supreme Court has ordered a review of the Orange-Cove case. While the courts are working on the matter, the legislature has been looking for solutions to the problem. Legislators have long been aware of the shortcomings of the Robin Hood plan, and it was never intended to be a permanent fix. There is also growing resentment to the current system.

In 2002, the Aransas County ISD was required to give the state \$1.8 million under chapter 41 provisions. The district was forced to cut staff positions because of the lost revenue; twenty jobs were cut district wide including classroom teachers. These cuts are not happening in a district that is full of advantaged children; almost seventy percent of the students currently in elementary school are poor, but this has not prevented the state from taking funds away from the district. The hap hazardous way the state has taken money from poor schools in property wealthy districts has created a sentiment in parents that other districts need to pay for their own children and not rely on the taxes of individuals that are underprivileged; individual parents do not view the state as the community but feel that each district should pay for their own children and not place the burden unfairly on perceived wealthy districts (Powell 2002). On the other side, individuals have become so frustrated by the disparities that they are willing to relinquish local control to the state as long as an equitable per student financing system was created (Windham 2003).



Texas is not the only state facing financing problems; since 1971, no fewer than 16 states have had their school financing systems challenged in court. These cases have reduced the amount of inequitable funding in the states, and many of the cases have caused states to increase the funding in the poor districts while keeping the funding in wealthy districts unchanged. All of these cases are the result of the US Supreme Court's 1971 ruling in *Serrano v. Priest* (Murray 1998, 789). They ruled that the ability of a school to adequately educate children could not be solely dependent on the wealth of the district (The History 2004).

Delaware has had similar problems associated with school financing, and they have approached the issue by trying to create a system that would be wealth neutral on a per student level, but this could only be accomplished through a drastic overhaul of the entire school funding system. The process of achieving such a goal is neigh impossible because of the different levels of wealth between the districts. The state would be forced to provide the poorer districts with funding and grants to bring them to the level that wealthy districts can achieve without any state aid (Link 1981, 260-261).

These are not the only problems facing the states. Since the 1970s, taxpayers have been less willing to increase taxes for educational spending; some have even termed this phenomenon as a "taxpayer revolt" (Boss 1976, 75). As the costs of education have increased, the desire of the community to demand a higher quality has decreased (Boss 1976, 78). Texas has experienced its own defeats in educational amendments, but the situation might be changing. The State Teachers Association conducted a poll and found that most of the citizens in Texas believe that the state should increase its funding on education; while the increased funding may be a positive for schools, it has concerned

many city officials. The cities may be impacted if the state decides to take a larger proportion of the sales tax or property taxes; both of these taxes are split and send different percentages to the state, city, and school district. Since these taxes fund many different aspects of local governments, any change in them by the state could hurt municipalities. While the city receives only 15 percent of the property taxes, the lost revenue still concerns officials (Christian 2004).

While many states have attempted to make the necessary changes, the courts have prevented any real progress because they refuse to provide the states with any framework on what would be considered reaching the level of legal equity (Link 1981, 260-261).

Past committees have suggested raising the \$1.50 cap to pay for education; they have also proposed splitting the tax base, creating an income tax, limiting exemptions, charging fees for professional licenses, and reforming the current recapture system (Texas 2002, 4).

To reform the current system, the current committee wants to address the amount of funding that would be required to fulfill the constitutional requirement of an efficient educational system; they needed to determine how much it would cost per student to meet the state's accreditation standards.

The process of determining the exact amount of money needed to operate a school at the accreditation level is more complex than simply looking at the courses required for graduation. Studies have been conducted by varying interest groups and states to determine the costs related to providing an adequate education to students. The different organizations have approached the matter from different perspectives and with different methodologies. Researchers have used the average cost associated with running a school

that has been deemed to meet or exceed all the state standards; the costs of several of these schools are observed to determine what amount was required for them to reach the goal. Other studies have tried to determine what resources including buildings and teachers would be needed to supply the state's minimum standards of education, and the costs of these resources are calculated; a panel of teachers and policymakers usually determine what the required resources would be, or a researcher can choose to look at a school that has met these standards. The final research method used is a statistical analysis that determines the costs required to meet the standards. This method allows the researcher to extrapolate the data out to see how much it would cost to produce similar results under differing conditions (TJSCPSF Report 2004, 27).

It would seem that the different surveys would provide similar results, but they do not. The studies have produced estimates for an adequate education ranging from \$3,675 to \$8,674 per student. When the researchers look at what has worked in other schools, they tend to have lower estimated costs. Whether they use professional's opinions or look at working schools, the procedures that look at education in the abstract or statistical analysis produce a higher cost per student. The studies have also looked at the differing demographics of an area and how they impact the amount needed for education; the studies have produced varying results, and for some smaller areas the costs can be almost forty percent more than the average minimum. Unfortunately, each of these methods has shortcomings along with their strengths. The limited areas observed under the successful school studies hinder the results; it is not easy to apply the findings to other schools that have vastly different communities. The studies that involve statistical analysis can be used more universally, but they will always contain some error and can be difficult to

explain to the citizens. They also fail to provide a blueprint for unsuccessful schools to follow ((TJSCPSF Report 2004, 28-29).

The research conducted in different states has relied on looking at successful schools, and some have partnered that research with statistical analysis to account for differing variables throughout the state. While these other states have relied on looking at schools that are producing results, New York has created an ongoing system of analysis using a cost function study; they have labeled their effort the “Educational Finance Research Consortium” (Taylor 2004, 10). On top of these studies, different interest groups have also conducted their own research using different methods than the state sponsored studies. Instead of successful school research, most of the policymakers prefer using results from studies that rely on professional judgment and evidence based research. While the successful school models produce lower costs, they cannot account for all the variables that exist between the schools (Taylor 2004, 10-11,15).

Even though states have conducted these studies, they have not acted on the information. The Courts have not trusted the results that have been produced in the successful schools research, but they prefer looking at the studies that analyze the cost of resources needed to fund education. Many of the legislators wanted to use the other research because it cost less, but, as was the case in Wyoming, the courts ordered more research and virtually guided the legislation. Ultimately the research that has been conducted based on the resources needed to produce high quality schools may lead policymakers to implement the ideas that were in the models. Texas can benefit from the research that others have conducted in these areas (Taylor 2004, 17).

The large area and diverse districts in Texas hinder the amount of accurate information that can be drawn from some of the studies unless a scale is used to analysis the differences that are created from the economy, the size of a school district, and differing salaries required to attract competent teachers and administrators. With all the diversity, it would be best for the state to use a statistical approach because it can account for the differing demographics in the different regions and districts (TJSCPSF Report 2004, 30-31).

The legislature had a study conducted that used a cost function approach through statistical models to determine what the minimum costs would be to educate the children. The statistical approach can address all of the variations that exist in the state. Texas will be the first state “to commission a cost function analysis to inform its policy deliberations about how to align its school finance system with the state’s educational goals” (TJSCPSF Report 2004, 32). The study has produced some key findings. It found that the state needed to produce a per student allocation of about \$6,200 to achieve its educational goals; this amount is under the average projected per student amount of \$6,500 under the current system. Since this is just an average, the state will have to supplement some districts with about a quarter of a billion dollars to half a billion dollars to reach the desired performance levels. This amount would also keep the state in compliance with the new federal standards of education. The study also revealed that the costs associated with supplying education to relatively few children are greater than supply education to districts that over a thousand students. It also indicated that urban districts have to pay teachers higher salaries; it is also more expensive to provide education in districts that have high concentrations of high school students, poor students,

limited English proficiency students, and special education students (TJSCPSF Report 2004, 32-34).

Under the statistical model most districts had more money than was required. This made some schools seemingly inefficient in their use of resources because of the excessive spending, but the model did not account for programs that were not under the state's accreditation standards. Districts that provide programs that go beyond the requirements for music programs or athletics have higher costs; however, some of the inefficiency was actually due to mismanagement (TJSCPSF Report 2004, 34).

The levels produced in the study represent the minimum standards, so the state would want to allow for local enrichment. The \$6,000 amount is also an average, so some districts would require more support; these issues can all be addressed by the legislature, and they can allow for different spending levels. One of the major differences will be in compensating schools for higher educator costs (TJSCPSF Report 2004, 34-38).

Since the cost of education at the minimum standards has been addressed, Representative Hill has asked the researchers to provide the costs of education at higher levels (Texas Joint Select Committee on Public School Financing [TJSCPSF] Committee meeting 2004). While further research is conducted on these numbers, the committee members are looking at proposal to restructure the school finance system. The Joint Select Committee on Public School Financing is considering several revisions that range from adjusting the existing tax system to a complete overhaul (TJSCPSF Report 2004, 39).

The committee has goals that they want to achieve. They want to lower property taxes by at least \$0.50 and at most \$0.75 while keeping the system fair. They also want the new school system to be easily understood by any citizen that has questions and concerns; past laws have been convoluted and difficult to interpret, and the lawmakers want to avoid another confusing system. The reforms that are suggested to the tax base must be able to fit the criteria that they are "stable, predictable, and broadly based" (TJSCPSF Report 2004, 2). The tax reforms will not only be stable and simplified, but they will also replace the "Robin Hood" plan with a system that is constitutional, equitable, and will have the ability to grow as inflation increases and the economy changes. The new system will not be over reliant on local property taxes, but the state will be responsible for more of the burden (TJSCPSF Report 2004, 2). The state will only provide 36 percent of the funds required to operate schools this year, so it is important to find a system that will demand more state funding (Schlomach 2004, 3). The reforms proposed will not only help the schools, but they are also geared to help businesses, the economy, and the job market (TJSCPSF Report 2004, 2).

The legislators also are looking at some new incentives that will actually increase the cost of education for the state. It has been suggested that an Educational Excellence Fund be created, and it will reward teachers for the performance of their students. The state hopes that it will encourage each teacher to instruct individuals instead of using one method to reach every child. The system will reward both high performing campuses and teachers with monetary incentives. They hope that they will be able to move the best teachers to the most challenging schools. Unfortunately, there are unforeseen problems with this proposal. The program will encourage good teachers to stay at good schools.

With the monetary incentives, honors teachers will stay in high achieving classrooms instead of taking more challenging assignments. Once individuals are accustomed to a certain level of pay, it is very difficult for them to take, in effect, a pay cut to teach lower performing students. The system will reward honors teachers and punish regular education teachers; the state intends on creating a monetary incentive to counteract this effect. The teachers would be assessed on a value-added component that would be comprised of students' TAKS score and other measures; teachers and districts could opt out of the program if they desired (TJSCPSF Report 2004, 2,7).

The highest determinant for how a district will perform on standardized tests and their graduation rates is the scores and amount that they have achieved in prior years. The second highest was the economic status of the district, but if the funds for the district were increased, it did not have a positive effect on performance. In some districts, scores and performance were worse when the district received additional funding. Overall, increasing the expenditures in districts lowered the SAT and ACT scores. However, if they increased the amount spent on instruction, the students improved their performances; the same trends did not hold for lowering class size, increasing teacher's pay, or increasing the administration. The amount of experience teachers had also did not increase the students' performances (Jaggia 2004, 3-4).

The committee has also proposed expanding Advanced Placement programs, rewarding schools who have students graduate with more difficult degree plans such as the International Baccalaureate program. All of these programs might help schools reach higher levels of achievement, but they also increase the cost of education. The state wants to fully fund SAT and ACT test as well, which will further increase expenditures



(Jaggia 2004, 5,7). Schools and politicians use the SAT and ACT to compare the educational systems between districts and states. If the scores are falling compared to other states, the legislature is more willing to make drastic changes to the educational system. All of these causes may be noble, but the legislature should first fix the current system before they propose spending at higher levels (Mintrom 1998,135).

In the direction of reforming the current system, the committee also wants to change the system to giving schools an Accreditation Allotment and abolish the Basic Allotment system that currently exists. These funds will not be based on attendance, but will be based off the final analysis of the costs associated with educating a child, which is currently believed to be \$6,200. The cost of educating children varies according to grade level, so the system will no longer allot the same amount per student, but it will progressively increase as the child gets into high school. Students with special needs would also receive a higher dollar amount than the average student, and all students would be funded at a level so they could complete the requirements to receive an accredited high school education. The system would also adjust the allotment to reflect the differing costs associated with the size of the schools since it is more expensive to provide for the education of students that attend smaller schools (TJSCPSF Report 2004, 2-3).

The system will also satisfy the individuals in wealthy districts by giving local control to voter approved enrichment funds; it will provide for local control and different levels of educational funding on a district-by-district basis. Satisfying the schools that are joined in the Orange-Cove lawsuit, the "Robin Hood" system of recapturing funds would be eliminated. This might concern the property poor districts, but they will hold harmless

provisions that will make sure that all districts maintain the funding levels that are to exist in the 2005 year. These provisions will ultimately be phased out, but the schools will all receive the amount needed to provide their students with a state accredited education. The proposals also take into account the lawsuit brought by the Edgewood plaintiffs concerning facilities; it will provide the districts that experience fast growth with relief. While older features will be maintained, it will prohibit state funds from being used to build facilities that are not associated with education (TJSCPSF Report 2004, 3).

The legislature is faced with establishing new funding that allows the state to reduce property taxes; for every cent that the tax is reduced, the state will have to provide \$100 million in additional funding. If the tax is only lowered by \$0.23, the state will have to provide an additional \$2.6 billion. In order to accomplish these goals, the state will need to increase the sales tax, expand the sales tax base and allow fewer exemptions, or create a business activity tax. Since the property taxes are to be lowered, the state has to find additional sources of revenue. If they wish to supplement the system, they can seek an amendment that would allow the state to operate video lottery terminals in select locations. They can also increase so called "sin taxes" on liquor and cigarettes. If the committee wants to completely reform the system to bring in the new sources of revenue, they will consider the options of a statewide property tax, which would require a constitutional amendment, or they can split the tax rolls. The proposals also include the ability for each district to consolidate services between districts. The districts will be able to come together to provide "transportation, special education, personnel and human resources, food services, and business management" (TJSCPSF Report 2004, 6). These

features will allow districts to reduce their administration costs, but they will still have to comply with any federal laws that pertain to mainstreaming special education students (TJSCPSF Report 2004, 4,6,9).

The sweeping changes to the school financing system and proposals have not been looked at haphazardly, but research and observations have been presented on their impact (TJSCPSF Report 2004, 39). Even though recapture has benefited eighty percent of the school districts, the main goal of these reforms is to eliminate the redistribution created under “Robin Hood” and to establish a system that will produce an efficient system that provides for the general diffusion of knowledge (TJSCPSF Committee 2004 1:58, TJSCPSF Report 2004, 39). Each of these proposals would drastically change the current system and move the state away from the heavy reliance on local property taxes. The state would be responsible for the majority of the funding, and under some proposals, this would include projects that increase the level of educational funding that currently exists. In effect, all of the proposals heard by the committee will increase the burden of educational funding for which the state is responsible (TJSCPSF Report 2004, 39).

The new tax systems are to follow the guidelines of a good tax system. The new taxes should be able to grow and expand and maintain the ability to support schools without having to be continuously updated as the economy changes. This has been the problem that has plagued the current system; as the real estate values change, the state has been forced to increase the tax cap. For the system to actually be valuable, it needs to be adequate, which simply means it needs to account for growth by growing and being able to maintain its expected performance as times change. The tax must also be stable, which is the ability to maintain funding expenditures required by the schools even as the

business cycle fluctuates under different economic conditions. Inherent in any system is the necessity to create a fair system that does not over burden the poor or normal taxpayer. The tax can be considered to be fair if the tax actually is used to supply the taxpayers with some governmental benefit that matches and legitimizes the burden. These taxes are levied to provide a particular governmental service and are known as "benefit taxes" (Washington 2004).

The research conducted for the legislature advises them to make use of benefit taxes to produce additional revenue (TJSCPSF Report 2004, 40). Benefit taxes are very useful because they tend to be reliable and efficient (TJSCPSF Committee 2004, 1:02). The state is encouraged to pursue benefit taxes before it uses gross receipts because they create a hidden tax that hurts efficiency and places a burden on small businesses and citizens (TJSCPSF Report 2004, 41). Gross receipts essentially tax at every stage of the process of development of an item, and the additional costs are ultimately passed onto the consumer (TJSCPSF Committee 2004, 1:05). It is also unlikely that the state will employ any type of income tax because the state has traditionally opposed any form of progressive tax system (TJSCPSF Report 2004, 40).

The governor has already claimed that he wants to reduce property taxes. This will help to reduce the burden on the businesses, and it will also encourage businesses to come to the state because it limits the tax on the capital a business owns. The property tax break will help individual homeowners, but it may fail to help renters. In this regard, it will actually provide little relief to the poor renters. The businesses will also be able to deduct these taxes as a business expense. If the state were to raise sales taxes to equalize the differences, the citizen would absorb most of the cost with little benefit (TJSCPSF

Committee 2004, 37,40). If the state changes the proportion of sales tax and property taxes used for education, the new policy may have a negative impact on the oil and gas industry. This is a result of the government trying to keep any new policy tax neutral, which means the state will just redistribute the current tax burden; the proportions will be shifted to different areas (Breux 2003).

The federal government has removed the sales tax as a deductible tax, so the citizens would have reduced deductible property taxes and increased non-deductible sales taxes. It is also likely that the businesses will pass on any added cost to the customer, so either way it is ultimately placed on the citizens of Texas. In an odd way, the reduced tax would actually increase the Federal income tax for certain individuals who file itemized returns. This could result in upwards of a billion dollars being sent to the federal government, which would remove the money from the state; it would have been collected in the property taxes, but now it cannot be collected even in the sales tax. The law change would not have the same impact if the US government had not changed the tax laws in 1986, but during that year they removed sales taxes from the deductible list. This has the effect of the federal government influencing state's efforts to tax; the state can use any tax, but the deductions increase the incentives for an income tax (TJSCPSF Committee 2004, 40,46,49,52,1:01).

Since an income tax is seen as political suicide in Texas, the legislature needs to look at other alternatives. Even Governor Perry has stated that all options concerning changing the school financing system are being considered with the exception of a state income tax (Associated Press Report 2004). While the property tax is not the ideal solution, there are reforms that can be made to the existing system. The state could

refrain from taxing the square footage of a business location and just tax the actual property itself; this would prevent businesses from leaving the state because it would not increase the burden drastically (TJSCPSF Committee 2004, 1:43).

All of these plans might fix issues that have haunted the legislature in the past, but the members want to know the impact of changing the current system. The current system uses the state sales tax, excise taxes, franchise taxes, and revenues generated from the lottery. If they want to tweak the current system, the legislature could expand the base of sales tax and limit items that are exempted; it could be expanded to tax more consumer goods and services. To avoid placing too much of a burden on the poor, the state could expand the use of the Lone Star Card program, which in effect would allow the items to remain tax free for the poor (TJSCPSF Report 2004, 41). The state could also lower the current rate because the increased base would create more revenue. Medicine could also be taxed; if the reason for not presently taxing it is to keep it affordable for the poor, a system similar to the Lone Star Card could be used to prevent the poor from paying the new tax. However, if it is not taxed due to social and political issues, it will continue to remain untaxed. While the discussion of these taxes is interesting to discuss, Representative Hill stated that the measures would never pass the Legislature. Although, it was recognized that more and more food was being taxed because the tax exemption only applies to food that will be prepared and consumed in the home, and many Americans are consuming their meals from restaurants, which are taxed (TJSCPSF Committee 2004, 1:12, 1:15-1:16, 1:18). Expanding the sales tax base is a more viable option than trying to tax services (TJSCPSF Report 2004, 41). Even if the legislature would pass it, there are several problems with this proposal because sales

taxes do not grow with the economy. This actually makes the use of sales taxes as a revenue base unstable (TJSCPSF Committee 2004, 1:00).

One of the proposals coming out of the committee is to start including services as taxable goods; the tax would now collect revenue from services such as haircuts and legal representation (Castro 2004). Taxing services is a more difficult proposition because it would actually be a gross receipts tax, which is a less desirable form of taxation. The tax would also be hard to moderate and would create administrative problems (TJSCPSF Report 2004, 41). Consumer service taxes tend to penalize the average consumer instead of businesses; if the individual uses a legal service to sue or defend himself or herself, he or she is using a final product (good), which would be taxed. The service tax fails to tax business services, which are mid-stage products such as advising businesses on legal issues. This results in the same legal profession being taxed in some situation while not in others, which is confusing to consumers of the service. This tax would ultimately be too difficult to collect, so Representative Hill determined that it should be removed from consideration. It also fails to have a successful precedence because it was used in Florida and was eventually abandoned (TJSCPSF Committee 2004, 1:07,1:11,1:19).

The state could also increase its excise taxes, which include taxes on gasoline, cigarettes, and alcohol. They could tax at rates that would be comparable to states that are more aggressive in their taxation of these items. This would generate more capital, but the tax is actually regressive, which places the additional burden on poorer citizens (TJSCPSF Report 2004, 41-42). While the demand for these taxes may be inelastic, it does not grow and the taxes are not deductible, which prevents the state from gaining any money from the added deductions (TJSCPSF Committee 2004, 1:20).

The current tax on cigarettes is \$0.41, so the new tax would raise the tax rate to \$1.41. The tax might seem lucrative for the state, but it has many practical limitations; it is always problematic to switch from one inadequate source to another that is declining. The population of Texas is increasing faster than the national average, which means that the costs associated with education will also increase as enrollments grow. While the population is exploding, the cigarette consumption is decreasing. In the recent past, the tax revenues from cigarette sales fell by twenty-eight percent while the population increased by fifty percent. The state is already lowering the expected revenue for the first year of the tax; the estimate is \$850 million, which accounts for only seventy-eight percent of current sales. If both of these trends continue, the state will quickly realize a budget deficit for educational funding. The tax also has the potential to hurt businesses in the state, and it may even create smuggling rings. Smuggling is a problem because it is actually more lucrative than selling drugs. The state will lose revenue to cross-boarder sales, which happened in Michigan when they passed a similar law. This ultimately hurts the state and convenience stores, whose cigarette sales account for thirty-five percent of in-store transactions (Orzechowski 2003, 1-6).

The next option proposed is the use of Video Lottery Terminals (VLTs). The new education plan will raise revenues from VLTs placed at horse tracks and greyhound tracks (Associated Press Report 2004). VLTs typically include video poker machines, and in other states they have been placed at racetracks. Under the state lottery in some states, businesses have attempted to also place slot machines on their premises. States that border other states that have legalized gambling are forced to consider legalizing the activity because they are losing a large source of tax revenue (Eadington 1999, 176).



In 1988, the US Congress passed the Indian Gaming Regulatory Act, which defined the relationship between the state and the tribes concerning gaming on reservations. After the act was passed, twenty states had Indian casinos open (Eadington 1999, 176). The law allows Indian tribes to open casinos that contain slots if they are legalized in the state (Associated Press Report 2004).

The Texas tribes are already suing the state because it shut down tribal casinos while running the lottery and racetracks; the tribes believe they have the right to operate their own casinos because of these state sanctioned businesses. If the state allows VLTs, it will be impossible for them to prevent the tribes from opening casinos with similar devices. Because of this, the tribes are lobbying the state to allow the terminals to be used at racetracks (Associated Press Report 2004).

The Governor's office has already discussed the issues concerning gambling with the Kickapoo, Alabama-Coushatta, and Tigua tribes, but at this point no formal plan has been released to the public. If the reservations were permitted to create Video Lottery Terminals, school districts would receive a portion of the profits. The comptroller had recently suggested using VLTs at racetracks that offer betting on dogs and horses, and the Indian groups want their communities to have the right to offer the same gaming opportunities on their reservations. Currently, the state loses between \$1 to \$2 billion to other states in gambling revenues, but Texans will have to amend the Constitution if they want to allow VLTs in the state (Perry's 2003).

However, the introduction of more lottery games encounters the same problems as the excise tax. While it will be a potential source of increased revenue, it is a regressive tax. Regressive taxes can be instituted on a smaller scale, but they should not be the main

source of revenue (TJSCPSF Report 2004, 42). The revenue is also rather unstable, but it actually increases during downward trends in the economy. It can be a good source of supplemental revenue for the state as long as it is used only in this manner. The issue of expanding these taxes once again is a social and political concern and not a tax economic concern; if they are expanded, they might be able to produce an annual \$600 million. The social issues also arise out of the concept of casinos (TJSCPSF Committee 2004, 1:28,1:31). However, individuals no longer associate gambling with the seedy part of society, but since regulations have been relaxed, citizens now see it as another form of recreation. The casinos are now publicly traded, and there is no longer the tie to organized crime that traditionally existed in Las Vegas. Over the past thirty years, casinos have been growing across the US. In 1978, only Las Vegas permitted gambling, but by 2000, twenty-six other states had started to allow some form of casinos or gambling to take place. With the increase in casinos and gambling, the profits are also increasing; in the 1970s, the casinos only produced \$540 million in profits, and now they generate \$25 billion in profits (Eadington 1999, 173,176).

Other states are also interested in the outcome of the current proposal; Louisiana could potentially lose a large portion of its casino earnings from Texans that now visit the state to gamble (Associated Press Report 2004). Some of the committee members want to consider it and leave the option on the table, but Representative Hill is unwilling to pass any such measure (TJSCPSF Committee 2004, 1:31).

While the above measures are small changes to the existing taxing system, there are more fundamental changes that can also be made. The system can reform the existing sales tax while keeping the other taxes. The new tax would be a pure consumption tax

and would take business-to-business transactions out of the equation. The reformed sales tax would tax all consumables and services that the legislature approved (TJSCPSF Report 2004, 42).

While most of the suggestions are tax revisions and reforms to the current tax system, the state also has the option of introducing new forms of taxation. The state could propose an income tax, which would be simplistic and deductible on federal taxes. It also has the benefit of being a progressive tax, so the state could easily exempt the poor. Besides the reluctance of citizens to accept such a tax, the tax may also have the effect of driving wealthier citizens out of the state (TJSCPSF Report 2004, 43). While the tax may initially sound like a negative, it actually is not that different in its total cost to taxpayers over a lifetime from the sales tax (TJSCPSF Committee 2004, 56). While this may seem like there is no need to transfer from the current system to an income tax, the new tax would be more efficient and allow for poor exemptions. Although, the state gets the benefit from non-reported income when it uses a sales tax.

The state could also institute a statewide sales tax on commercial property; this would be considered a non-benefit tax, but it would allow the state to tax at the same level statewide instead of relying on local districts to set arbitrary tax rates on these properties (TJSCPSF Report 43). The state could also split the tax base and allow the legislature to set and collect the taxes on business properties, and the local districts would be able to set and collect taxes on residential properties in the district. The business property is almost half of all property in the state, and it could fund the current level of educational financing at a level of \$1.32 if no exemptions were given; the local property taxes would supply the other half. The system would be more efficient than the current

system because the property would be used to its fullest potential; businesses would all be taxed at the same level, and those located in lower residential tax districts will provide a greater yield than they did in the past. Unfortunately for the businesses, the profits gained by a company would be lowered if the taxes were increased over the district level. Under the present system, businesses can shop around different districts to find the best abatement offers. School districts can offer tax exemptions to a business for up to eight years as long as the business is involved in manufacturing or research and development; they can also exempt a company that using electric generation or renewable energy. The abatements are used to entice businesses to the state, but it effectively pits community against community for new businesses. The state would now give out abatements to encourage business growth, and the business could build in the community that it desired. Businesses tend to oppose these taxes because they fear that the state will be more politically willing to increase these taxes instead of the taxes their constituents pay. If measures were not put in place to prevent this activity, the businesses would be responsible for most of the taxes when they were increased. To avoid the problems, Texas could impose a system that resembles that of Minnesota. Minnesota has created a classification system of different types of property. The tax is progressive, and higher rates are assigned to more valuable property; the properties are also split in to eight different categories and include different residential types, agriculture and resorts. Texas could create a similar system, but divide the property into residential and business property classes (Schlomach 2004, 4-6,8).

These benefits might only be minor, but the state would control 48 percent of the taxable property in the state (TJSCPSF Report 9, 43). The main concern with any

business tax is that if the tax is too high businesses will leave the state; if this were the result of any new tax, the new system would be counterproductive because the tax burden would once again be placed on the individual citizens. Due to these concerns, it would be advisable to keep business taxes to a minimal level (TJSCPSF Committee 2004, 1:04).

The final form of reform would be to create a value-added tax (VAT). This is a very efficient consumption based tax, and it encourages business growth because it does not place the tax burden on business (Zodrow 2004, 70). The tax proposed in Texas would be a Business Activity Tax, which is a form of VAT. These impose a tax at every level of the production of an item or good; they tax the “net increase of the output as compared to the value of the inputs” (Vedder 2004, 4). Since it is a tax on the increase, the item will not be taxed more than once on each value added component (Vedder 2004, 4). The BAT would eliminate franchise taxes, which only tax a select few businesses; the larger tax base would allow the state to collect more money at a lower rate. The tax would eliminate the incorporation loophole that many companies now use, which prevents taxes from being collected if the business is incorporated in another state. Overall, the tax is seen as being better because all businesses that earn more than \$250,000 will now be taxed (Castro 2004). The tax would supply the state with an estimated \$4 billion per one percentage point worth of tax; this would be very lucrative for the state (Vedder 2004, 4). If the current estimates are accurate, the BAT tax would generate \$4.9 billion for every one percent; the comptroller’s office has estimated \$3.2 billion because of exemptions and other factors (Hartman Correcting 2003).

The legislature would most likely levy the BAT at a maximum rate of three percent. The amount could be adjusted on a biennial bases to maintain adequate funding

for the Foundation School Fund; the tax would also create enough revenue to make improvements to buildings in districts as was required. The actual BAT tax would not be a supplemental tax but would be tax neutral for the entire tax system; it will actually replace two-thirds of the existing ad valorem property taxes. At the three percent level, the districts could tax up to \$0.60 for dedicated local enrichment funds (Hartman Correcting 2003). The tax would allow the state to remove the heavy burden that is now placed on property owners, but it would not be as stable as the property tax during downward cycles of the economy (Vedder 2004, 16). However, property taxes are an unstable form of taxation as well because it does not grow at the same rate as the economy. These taxes have historically increased, but there are better forms such as the BAT that will respond and grow with the economy. In the past two decades, property taxes have increased by 72%, but other forms such as the BAT would have increased over 250%. During the 1990s, tax revenues from property taxes actually decreased, so the rates had to be raised to account for the drop in revenue; if the BAT had been used, the increases would not have been required (Perryman 2003, 3).

The BAT tax would also allow the state to abolish its current business tax structure; the state can use the new tax in a more equitable way that will not target the oil industry, utilities, and property taxes on business inventories. The tax could reach all businesses, which would expand the current base; this would allow the rates to remain lower than they have been in the past, but more revenue would be collected because everyone would pay. The state would no longer depend on heavy taxes on companies, manufactures, or local property owners (Hartman Texas 2003). The BAT tax would collect equal rates of revenue from businesses and would not distinguish between

companies that had high capital investments and high labor investments. This would actually be beneficial to the state's economy because businesses have been moving from manufacturing to services; the service oriented companies would be taxed under the system in a more effective manner than other taxes can achieve. As the economy evolves into services industries, the tax will adjust to future changes and automatically tax the new sectors (Perryman 2003, 8-9).

The ability to raise such large amounts of revenue will also mean that the tax could result in the state raising them at a faster rate than property taxes have been raised in the past. This would effectively increase the tax burden of the businesses, which would be damaging to the economy of Texas (Vedder 2004, 6). The taxes have also failed in Michigan and New Hampshire because the citizens have been reluctant to accept the tax system (TJSCPSF Committee 2004, 1:51). Michigan's business tax is to be completely phased out by the end of 2009. The Michigan tax was flawed because it did not account for a business' ability to actually pay the tax; the business could experience a loss while actually being charged a heavy tax burden. The tax would basically be on the labor a company had in a given year instead of the actual value added to any product (Reynolds 2003). The situation is odd because almost every European state has instituted a VAT tax, but the idea has not been accepted in the United States (TJSCPSF Committee 2004, 1:51). The tax has also failed to have a positive effect on the European economies, which have been stagnant for many years. The tax would also require the government to grow because it would have to be regulated and administered; this would also cost businesses because they would have to hire staff to account for the new tax. Other than the additional costs to the state and businesses, the tax might actually have a

negative effect on education; studies have shown that the more a community spends on education the better the students of the community perform in school. The same trend does not hold true for additional funds provided by the state; it is dependent on the community providing the additional resources for education. This might be due to the fact that local citizens can pressure local superintendents and school board members when performances slip; the same control does not exist at the state level. The BAT tax would remove the over reliance on local funding from districts, and it would account for an average thirty-percentage point drop per district. If past trends hold true after the transition, school districts could expect to see their performance drop (Vedder 2004, 7,10,12).

Since the state likes to look at what Michigan has accomplished in its tax reforms, it is also important to observe their educational reforms. Michigan reformed their school financing system in 1994, and the state increased the proportion that was furnished by sales taxes and reduced the reliance on property taxes. The voters did not really have any other choice but to approve the measure because the state would have raised income taxes if the measure were rejected (Associated Press How 2004). This measure was similar to the coercive nature that districts in Texas had to approve of recapturing funds or losing its tax base.

The state passed Proposal A, which authorized a two percent increase in the sales tax from four to six percent; the citizens received a property tax break as well, and their taxes dropped almost forty-five percent. The new system also tripled taxes on cigarettes, and each pack would be taxed \$.75 instead of a quarter (Associated Press How 2004).



Property assessments in the state of Michigan have been capped at a five percent increase maximum for each year. It also took into account inflation, but the assessment could only increase by the smaller of the two measures. If the property was sold, the state collected a tax of .75 percent. All of the measures implemented in Michigan have increased the per student funding levels in the state; before the new law, the students received only \$4,200, and now they receive \$6,700 (Associated Press How 2004).

All of the Texas proposals have limits and difficulties, but the legislature needs a taxing structure that will grow as the economy grows; this is not the case with excise and real estate taxes. The new tax would have to be diversified into different sectors and apply to every business and citizen. If this were achieved, the tax would also grow as a portion of each sector grew. It does not seem that any of the goals can be accomplished because it would require large tax reforms. The state could broaden the tax base, but there are too many social and political issues that will prevent these proposals from passing. If the state relies on the current system and just raises the existing taxes, the results to the economy will be negative. The sales tax fails to accomplish the desired goal because it is not a true consumption tax, but it is more of a business tax; it creates problems for business interactions, and has too narrow of a base to be effective in raising the revenues that are needed to fund schools (TJSCPSF Committee 2004, 2:07,2:11,2:16).

Unfortunately, there is no real consensus concerning how the school financing issue should be resolved. Even the options that the committee presented in their final report brought dissension in the group; three of the committee members refused to sign and endorse the proposal. The group of three all represents districts in the South of

Texas, and they are concerned that equal funding will not be maintained if the new proposal actually passes (Associated Press Texas 2004). Senator Lucio is concerned that his Brownsville constituents might be hurt if Robin Hood is eliminated with no safeguards in place to ensure equitable funding (Castro 2004). However, the chair of the committee defends the proposal and points to the fact that it expressly states that the system will be equitable (Associated Press Texas 2004). Senator Ogden eventually noted that none of these options alone would solve the school finance dilemma, so there might be the need to create a constitutional amendment to ultimately repair and reform the system, which brings the suggestions back to where they have been in the past (TJSCPSF Committee 2004, 1:36). In an interesting study, a relationship was found between the proportion of local funding and state funding for education (Mintrom 1998, 135). If the state pays the largest percentage of the cost of education, the more likely they are to propose drastic changes in the school finance system (Associated Press Texas 2004, Mintrom 1998, 135). They actually are more receptive to the idea of vouchers at these higher levels (Associated Press Texas 2004, Mintrom 1998, 135).

There is still hope for a reformed system because the committee offered only a proposal, which is short of any real recommendations on what the final system should include. The final decisions on the new system will be left to the legislators and senators when the special session is eventually called (Castro 2004).

They have also ignored some very significant research because it is politically unpopular. There is no clear relationship between the amount of money spent on education and results. The problem with changing any school performance structure is that the results are slow to develop; learning is a process that builds on itself over time,

and in districts that have developed good policies and have families that enjoy a higher socioeconomic status, students have traditionally been more successful. The background from which a student comes has a strong influence on their future performances, which are increased by their educational and economic status. It is important to note that past performance is the strongest predictor of future performance. Spending more money on schools is not the answer; research has shown that there is no correlation between increased spending and increased performance. In fact, increased spending has actually caused performances to decrease in certain districts. In Texas, there has been no indication that total expenditures influence TAKS scores. Therefore, it would be more beneficial to use the existing resources in a manner that would focus on instruction instead of increasing educational funding and overall expenditures (Jaggia 2004, 5-6,8,1016).

If the schools want to improve, they must devote more of their budget to instruction and less on administration and total expenditures. Paying teachers more does not increase scores in most grades, and there is no relationship between experience and education levels of teachers and student performance (Jaggia 2004, 10).

While the state considers the alternatives to educational funding, the discussion has essentially been framed once again as something other than education. It is now about reducing the burden placed on property owners. There has been the call to reduce property taxes while maintaining a good business climate in the state.

The social institution of education has been willingly accepted and controlled by the government, but the lawmakers are not able to meet its needs. It is an institution that relies heavily on the family; in the same manner as the state has shifted the burden to pay

for education on the homeowner, the parent has shifted the responsibility of education onto the state. Neither of these institutions is capable of providing society with what it desires. Ultimately, there has to be more responsibility placed back on the family.

Unfortunately, there is no easily provided solution to once again have families involved in education. In today's society, many parents are too busy with their own careers, or there is only one parent in the house. This makes it difficult for the parents to be involved with their children. There seems to be an exception to the lack of involvement, and it usually comes during sporting events. Parents can see the benefit of children playing athletics. There are riches available to the families and children. The child in a sense becomes a commodity, and his or her abilities can be watched and improved upon. If the family is lucky enough, the child can become a professional athlete.

Schools could rely on this same principle. They could actually reward students for performing well. In this way, poor families could see education as a job that would bring money into the family. The incentives could be tied to advanced placement tests or other standardized tests; they could even be tied to class grade point averages. The money could be used to pay for college or trade schools, or it could go directly to the family. It is unfortunate, but it seems that society now demands some reward for participating in activities that once were seen as obligations that went with having children.

Funding for these incentives could come from a scaled back TEA and fewer standardized tests. The money could also come out of the funds that the schools collect from vending machine sales. If the program actually worked, the money could be found.

It would be nice to believe that school vouchers would provide the incentives, but most parents who want their children in these programs are already involved in the educational process. These are not the parents that view schools as an inconvenience, and they are not the real problem. It is still important to provide these individuals with increased opportunities to be involved with their children. To get them more involved, the school's PTA programs and campus advisory councils could be given more control and influence in the schools. They could have meeting with the superintendent, or there could even be an arbitration situation established to allow members to negotiate changes in the school and the quality of education. This might even make it easier for schools to release teachers that are known to be inefficient.

While these changes would not change the problems that are endemic in society, it might create more parental involvement in their children's education. The slow progression might encourage more involvement, and the pendulum might slowly begin to swing back in the direction from which it came.

## CONCLUSION

The state of Texas has been fighting over the educational system since it was still part of Mexico. The arguments today are not new, but they are simply the continuation of a century long fight. Texas schools have always been under funded by the state, but many of the citizens did not mind in the past. The early settlers believed that it was the right and the duty of the parents to educate their own children. When the times finally changed and more support for public education increased, there were still arguments over the nature of a free school. Many individuals felt that this simply meant that the state would provide the children with buildings to use. Others felt that the state should provide for the education of the poor and orphaned children, and a minority felt that a free school system should be available to all Texans. As times changed and the attitude against the state became less harsh, a broader form of free education was adopted. Cities could tax and pay for education, but even these taxes did not cover the entire costs; many parents would have to add supplemental tuition costs to ensure that the best teachers would be in their schools. County school eventually gained the right to tax property as well, and districts formed around the state.

The state had been willing to use its resources to provide a Permanent School Fund for education. The interest collected from the fund would be distributed to the schools on a per student basis, but the fund never completely covered the costs of

education; for the most part, the state had engaged in these activities in order to further varying causes. The first cause was to gain independence from Mexico; the second cause was to provide the state with a means to achieve its desire to create a railroad system. More recently, districts have used education to attract businesses to their communities. Education is almost always tied to another goal, or it is tied to a tax increase that will never be passed. Rarely in state's history has there been a time when education was considered an end in itself. The rhetoric has often been there, but the actions have failed to support any coherent system.

Not until the United State Supreme Court ruled that education could not rely solely on the wealth that a district possessed did the states start to change the system. The Texas Supreme Court eventually declared the over reliance on property taxes and the disparities it created as unconstitutional. The Court ordered the system to be changed, but it has taken the Legislature over a decade to replace the inequitable system. The process has frustrated the court and property poor districts, but it should be expected in a state like Texas and in a democracy. Democracies tend to be slow in their governmental procedures, and Texas is no exception. In fact, the process is actually slower because the government only meets ever other year. This was intended to keep the government small and inactive.

Because the governor has the ability to call a special session, these are controlled and directed by him or her, which changes the overall complexion. The governors have been reluctant to make the whole sales tax changes that would be required to remove the burden from the local property tax payer to the state. The staunchest opponent to these

measures was Governor Clements, but even he was willing to compromise to keep the courts from imposing their version of the law.

The struggle between the courts and the legislature epitomizes the very nature of the struggle over the Texas school system. It is an issue that revolves around power and has too often been polarized by the different parties. The legislature passed law after law that did not change the structure of the system, and even before they were passed the plaintiffs were informing the state they were going to sue. The courts quickly obliged the individuals and ruled law after law unconstitutional. The courts were willing to rule on these cases before the system could actually complete an entire school year.

Unfortunately for the wealthy districts, the courts stopped this practice for the current system, which is one that they have warned would eventually become unconstitutional.

The children are the ones that have really suffered under this scenario. The children in the perceived property wealthy districts have seen their schools suffer, and as the United States Supreme Court noted, not all of these children are wealthy. In most of the districts that have fallen under chapter 41, the poorer schools suffer the most. The wealthy parents can supplement the education of their children at the school level. The poor children are the ones punished by the property poor plaintiffs, who seem more than willing to bring every school down to their level. At one point, even the Texas Supreme Court was bordering on this attitude. This has become a struggle of rich versus poor, and this has been a stronger sentiment than even the relationship to parties. Both Ann Richards and Rick Perry have wanted to define what would satisfy the definition of an efficient system, but their efforts have been destroyed so far because individuals fear that



this will allow a baseline that can be crossed for local enrichment. Even with the vitriolic attitude that exists between the wealthy and poor, the issue is not that simply explained.

Many of the problems that exist today can be traced to the past. The Constitution can now be used to defend the court's rulings, but it may be the case that individuals are once again misconstruing the original intent. When the Constitution was written, schools were far from being equal. The rural areas had been resistant to giving control of schools to the state, and laws that prevented them from creating a tax base would later hinder them. The same problem did not exist in the cities; they could collect property taxes and had a larger population to pull from. This should not mean that they should have been limited to a one-room schoolhouse, which is the argument that is being made today.

The state and individuals love to demand equality. While this goal is admirable, it cannot be realistically obtained. Not all schools should be forced to offer the same curriculum. Some schools need to focus on trades, while others need to focus on academics. Unfortunately, we now live in a society that believes everyone should attend college and all children should be taught under the same system but individually. These things are simply impossible to achieve. The schools should not be the testing ground for socialistic programs that demand everyone be equal. There will always be the athlete who can jump higher and run faster than other students; it does not matter if he runs on a dirt track or in a stadium. The same principle stands for intelligent students; they will advance regardless of environment if they have the desire. While culture may hinder some children, individuals in the past overcame such obstacles. Unfortunately, we are teaching these children that obstacles are not to be overcome through perseverance and hard work, but we are teaching them to sue and bring everyone down to an equal level.

The state could achieve equal funding for schools, and there have been many proposals that would have worked. The split tax base would accomplish the goal, and so would passing a constitutional amendment that would remove the per student allotment and allow the state to spend disproportionately on the poorer districts. However, the property poor districts rejected these ideas because they still allowed for unequal local enrichment. It is unlikely that these individuals would be making the same complaints if their children were attending the property wealthy schools. Besides these issues, there is no reason for the state to throw money at schools when research has shown that increased funding does not result in increased achievement levels. The state is caught in a no win situation; they are constantly accused of wasting money and not adequately looking and conducting research before they implement a program. However, in this case, they have conducted the research, but the results are not what the people wanted to hear; individuals would rather the state equalize the money and ignore the facts. This will produce higher taxes for almost every individual in the state, but this is not important because the property poor districts will have been placated. People always want the government to act responsibly until it conflicts with their desires. They demand the legislators to make an efficient system, but inhibit it from being realized by also demanding it be equal.

It is almost as if America has lost itself in the pursuit of the elusive and unreachable equality. There was a time, which may be nothing more than myth or lore in the history of the country, when individuals wanted to make their families better off than they were when they were growing up. The individuals would work hard to advance their positions in society to allow their children to have more than they could have ever

dreamt possible. It now seems that society no longer believes in these sacrifices because the courts can simply elevate an individual to these positions.

There is no longer a sense of personal responsibility. This may have been caused by the slow progression of schools from the family to the state. The family and the community are well suited to educate the children that they know. They can assess the needs of the area and make a system that is able to accomplish their desired goals; however, the state has taken on this responsibility and is ill prepared to make the sacrifices needed to produce an effective system. They are pulled in too many directions to actually address the needs that exist in certain communities. While many have pushed for the current system, it might benefit education to be supported by the government only as much as a community actually needs. The government has the duty to help out citizens when it is needed, but their help can actually interfere in the process if they are not careful. The family and the community should be responsible for educating the children, and the state should be willing to place that control back in their hands.

Unfortunately, society has progressed to the point that individuals rely on the state, and the court has determined that the government is responsible for education. The educational system may have reached a breaking point where there is simply no room to compromise on how to educate children. They are ill suited for the job, but they have been forced to take on the role.

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