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Constitutional Law - Validity of the Local Property Tax for Financing Education

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Its reasoning, however, has informed us that four members of the Court are willing to expand the category of "suspect classification" to include sex. While the Court's future action is uncertain, increasing pressure on the judiciary to deal more effectively with sex-based classifications may induce the Court to adopt strict scrutiny as its standard in dealing with sex discrimination.

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CONSTITUTIONAL LAW—VALIDITY OF THE LOCAL PROPERTY TAX FOR FINANCING EDUCATION—The New Jersey Supreme Court has held that the local property tax system of financing education does not afford students the level of education mandated by the state constitution because it does not guarantee each student an adequate education.

Robinson v. Cahill, 62 N.J. 473, 303 A.2d 273 (1973).

This action was brought by residents, taxpayers, and various municipal officials, challenging the constitutionality of the New Jersey system of financing public education.[1] The New Jersey Superior Court determined that the use of the local property tax system for financing education discriminated against taxpayers and those students living in districts with low property ratables by imposing on them unequal tax burdens. Taxpayers living in different school districts were paying taxes at different rates in order to finance their school systems. The superior court held that the discrimination violated the equal protection provisions of the federal and state constitutions.[2] The superior court also held that the system violated state constitutional provisions related to education and the assessment of real property for taxation.[3] The defendants appealed this decision to the Supreme Court of New Jersey.

The New Jersey system of educational financing derives its funds from three major sources. The principle portion, 67 per cent of the state-wide total operating expenditures, is raised through the local ad valorem taxation of real property.[4] State financial aid which consists

1. Robinson v. Cahill, 118 N.J. Super. 223, 287 A.2d 187 (L. Div. 1972), *rev'd*, 62 N.J. 473, 303 A.2d 273 (1973).
2. 118 N.J. Super. at 275, 287 A.2d at 214.
3. *Id.* at 277, 287 A.2d at 215.
4. *Id.* at 229, 287 A.2d at 190.

primarily of "formula aid,"[5] transportation aid, school building aid, and lunch aid, provides another 28 per cent of the total operating expenditures.[6] The remaining 5 per cent of the operating budget is provided through federal aid programs.[7]

It was agreed that the districts, throughout the state, spent different amounts per pupil. It was also agreed that the tax base available was the taxable real property in each district. Another factor considered by the supreme court was that the available state aid did not operate to equalize the amount spent per pupil from district to district.[8] Finally, the supreme court proceeded on the presumption that the quality of educational opportunity depended substantially on the number of dollars invested.[9]

The supreme court reversed[10] the superior court on its determination that the educational financing system violated the equal protection provisions of the federal constitution. The plaintiffs had argued that the "compelling state interest test"[11] must be applied whenever a funda-

5. *Id.* "Formula Aid" is the amount that each school district receives from the state after several factors are considered. First, each district receives equalization aid of $400 per pupil less its "local fair share" and in any case not less than $75 per pupil. N.J. REV. STAT. § 18A:58-5 (1968). Cities with a population of over 100,000 receive an additional $27 per pupil. *Id.* § 18A:58-6.2. "Local fair share" is defined as the amount of revenue that can be raised by a district with a tax rate of $1.05 per $100 of equalized valuations. *Id.* § 18A:58-4. The purpose of using equalized valuations is to establish some uniformity in the distribution of state aid despite unequal assessing practices. Therefore under the program each district receives at least $100 per pupil plus the difference, if any, between $325 and the "local fair share." At the time of this action the average statewide expenditure per pupil was $1,009. *See* 118 N.J. Super. at 230, 287 A.2d at 189-90. The court also considered the Bateman Act N.J. REV. STAT. § 18A:58-1-67 (Supp. 1973), enacted October 26, 1970, effective July 1, 1971, which, when fully funded, will increase state aid for deprived districts and reduce disparities caused by district wealth variations. *Id.* The court considered the Bateman Act separately even though it did have an immediate effect on the above described statutory scheme. N.J. REV. STAT. §§ 18A:58-4, 58-5, were amended by the Bateman Act. Law of 1954, ch. 85, § 6 was repealed by the Bateman Act.

6. 118 N.J. Super. at 231, 287 A.2d at 191.

7. *Id.* at 245 n.13, 287 A.2d at 198 n.13.

8. 62 N.J. at 481, 303 A.2d at 277.

9. *Id.* The superior court opinion discusses this correlation at length. 118 N.J. Super. at 246, 287 A.2d at 199.

10. 62. N.J. at 481, 303 A.2d at 277.

11. U.S. CONST. amend. XIV, § 1. When a state law is challenged as being violative of this provision the courts usually look to the reasonableness of the statutory classifications involved. *See* Weber v. Aetna Cas. & Sur. Co., 406 U.S. 164, 172 (1972). However, when the involved classification infringes on a fundamental right, such as the right to vote, or is based on a suspect criteria, such as race or wealth, a more demanding standard is used. The involved classification must not only meet the traditional test of reasonableness but it must be necessary to promote a compelling state interest. *See* Goosby v. Osser, 409 U.S. 512, 519-20 (1973). In *Robinson*, the plaintiffs argued that wealth in and of itself is a suspect criteria and in the alternative that education is a fundamental right. The Supreme Court, however, has never held that wealth standing alone was a suspect criterion. The only time that wealth has been deemed to be suspect is when it was used as the basis for the exercise of a fundamental right. *See* San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 29 (1973).

mental right was allegedly violated or when a statutory classification was based on a suspect criterion such as wealth. The New Jersey Supreme Court relied on *San Antonio Independent School District v. Rodriguez*[12] in deciding to reject the plaintiffs' argument. With respect to a classification based on wealth, the United States Supreme Court held that there was no identifiable class against whom the statutory classification discriminated.[13] The *Rodriguez* Court also determined that there is no fundamental right to education[14] and further determined that to allow the equal protection argument would abrogate the entire tax base of local government.[15] The Supreme Court reasoned that if the system of local taxation was to be an unconstitutional means of providing for public education then it might be an equally unconstitutional means to provide other services that are similarly financed. The conclusion that one must draw is that education is no more fundamental than police and fire protection, public health and hospitals, and various public utilities. The United States Supreme Court in dealing with this question was also influenced by the concept of federalism.[16] If the Court had decided that using the local property tax system for financing education created a statutory classification based on wealth which violated the fourteenth amendment, the effect would have been as widespread as *Brown v. Board of Education*.[17] At the time of the *Rodriguez* decision there were forty-nine states using the local property tax system for financing education.[18]

After applying *Rodriguez*, the New Jersey Supreme Court dealt with the plaintiffs' contention that the statutory scheme violated the equal protection provisions of the state constitution.[19] The supreme court first recognized that the state constitution could be more demanding than the federal; but, it refused to apply this concept to the question of educational financing.[20] The court held that there was no classification based on wealth primarily because educational expenditures

12. 411 U.S. 1 (1973). This case involved an attack on the Texas system of educational financing. Plaintiffs argued that there was a classification based on wealth and that education was a fundamental right, necessitating the use of the compelling state interest test.
13. *Id.* at 25.
14. *Id.* at 18. There was a dissenting opinion by Justice Marshall that education should be deemed a fundamental right because it plays a role essential to the intelligent exercise of first amendment freedoms and the right to vote. *Id.* at 70.
15. *Id.* at 44.
16. *Id.*
17. 347 U.S. 483 (1954).
18. 62 N.J. at 499 n.6a, 303 A.2d at 286 n.6a.
19. *Id.* at 492, 303 A.2d at 283.
20. *Id.* at 490-91, 303 A.2d at 282.

are provided for in the same manner as many other essential services.[21] They all depend on the amount the local districts are willing to spend, and though the amounts spent are limited by the tax base of each district, the decision to use real property as a tax base has been one made by the local districts. The legislature has not mandated that current expenditures be limited to the amount of taxable real property in each district.[22] The court also refused to accept the argument that education is a fundamental right.[23] The plaintiffs had argued that *Brown* had classified education as a fundamental right. The supreme court said that this was not the case in *Brown* because the issue there was the invidious classification based on race, and not whether education was a fundamental right.[24] The plaintiffs further argued that if the state decides that a service shall be furnished it should be deemed a fundamental right. The court rejected this contention because all services catagorized as governmental are provided pursuant to a state obligation.[25] The power to tax rests in the state and since municipalities have no inherent power to tax they do so pursuant to a states' delegation of its authority.[26] To uphold the plaintiffs' argument would mean that all services provided by local governments would be deemed fundamental, and the effect would be to drastically change the character of local government. Since the issue before the court did not involve whether local government as an institution denies equal protection, the court refused to apply an equal protection analysis only to educational financing.[27]

The supreme court did, however, concur with the superior court in its holding that the system of educational financing violated the state constitution. The New Jersey constitution provides:

> The legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all children in this State between the ages of five and eighteen years.[28]

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21. *Id.* at 493, 303 A.2d at 283.
22. *Id.*
23. *Id.* at 494, 303 A.2d at 284.
24. The New Jersey Supreme Court cited the United States Supreme Court in *Brown* when it said that the issue was: "Does the segregation of children in public schools, solely on the basis of race, even though the physical facilities and other 'tangible' factors may be equal, deprive the children of the minority group of equal educational opportunities?" *Id., citing* 347 U.S. at 493.
25. 62 N.J. at 496, 303 A.2d at 285.
26. *Id.*
27. *Id.*
28. N.J. CONST. art. 8, § 4.

The supreme court interpreted this section of the constitution to mean two things. First, it requires that public education be free; and second, it places the ultimate responsibility of providing a "thorough and efficient" system of education upon the state.[29] The plaintiffs argued that this provision required equality among taxpayers in the form of a state-wide tax. The supreme court denied this contention, by pointing out that the state constitution was amended in 1958 to vest fiscal responsibility in the local school districts.[30] In the alternative, the plaintiffs had argued that the provision insures equality among the students in the state and that this equality cannot be achieved by the present system of taxation that relies heavily on the local tax base for its revenues. The supreme court qualifiedly agreed.[31]

Relying on *Landis v. Ashworth*,[32] decided in 1895, the court held that the legislature had intended that there be an equal educational opportunity for each child within the intended range of a "thorough and efficient" system of schools.[33] In *Landis*, the court had defined this range to be a system, "capable of affording to every child such instruction as is necessary to fit it for the ordinary duties of citizenship."[34] The present court defined this standard to be:

> . . . that educational opportunity which is needed in the contemporary setting to equip a child for his role as a citizen and as a competitor in the labor market.[35]

Neither one of these two definitions is a clear, concrete statement of what the educational system should provide. In *Landis*, the court was dealing with a complaint that some of the districts were providing secondary school education, while others were not. In 1895 the court felt that a secondary school education was not necessary in order to provide a "thorough and efficient" system of schools, and therefore it was not necessary that each district provide such an education. Today such a standard could hardly be considered viable. In fact, secondary school education is part of the free public school system in every state. Consequently, the supreme court's definition of what a "thorough and efficient" system means must necessarily be directed at the quality of

29. 62 N.J. at 508-09, 303 A.2d at 291.
30. *Id.* at 513, 303 A.2d at 294.
31. *Id.* at 513-14, 303 A.2d at 294-95.
32. 57 N.J.L. 509, 31 A. 1017 (Sup. Ct. 1895).
33. 62 N.J. at 514, 303 A.2d at 294-95.
34. 57 N.J.L. at 512, 31 A. at 1018.
35. 62 N.J. at 515, 303 A.2d at 295.

the education received rather than the amount of education received. The issue in this case did not turn on how much education was provided in terms of the number of years; rather it was that the quality of education received depended upon the district in which one resided.

After defining the constitutional mandate, the supreme court concluded that the existing statutory system for financing education did not provide a "thorough and efficient" system of schools.[36] The court determined this on the basis of dollar discrepancies in the input per student in the various school districts. The lowest current expense budget in the state provided $561 per pupil,[37] while at the same time there were districts whose current expense budgets reflected expenditures of more than $1500 per pupil, per year.[38] The court reasoned that the existing statutory system could only be meeting the constitutional mandate if the amount spent by the lowest district was enough to provide a "thorough and efficient" education and that any amounts spent above that figure were products of a purely voluntary local decision. This, the court said, was highly unlikely in view of the fact that the legislature had never determined what constituted a "thorough and efficient" system of education.[39] Without such a determination the local districts were trying to attain an illusory goal.[40] Because of the emphasis placed by both the superior and supreme courts on dollars spent, one can conclude that in the future the court is going to analyze the quality of education received by the amount of dollars spent per pupil.

That a state can constitutionally delegate its responsibility to provide education was not questioned by the court.[41] The court did question whether the state, by delegating its responsibility to the local districts, could in fact provide an educational system that would meet the requirements of the constitutional mandate. In answering this question the supreme court said that any system of local taxation would

36. *Id.*
37. 118 N.J. Super. at 246, 287 A.2d at 199.
38. *Id.* at 242, 287 A.2d at 197.
39. 62 N.J. at 516, 303 A.2d at 295.
40. Dr. Edward Kilpatrick, Assistant Commissioner in charge of the Division of Administration and finance, State Department of Education, testified: ". . . that $1200 per pupil would fund a fine educational program looking at dollars alone." 118 N.J. Super. at 246, 287 A.2d at 199. The superior court found that only 21 per cent of all school districts, containing 17 per cent of the total statewide enrollment, have current expense budgets of $1200 or more. *Id.*
41. 62 N.J. at 519, 303 A.2d at 297.

most likely fail because of the disparities that would inevitably arise from district to district due to the varying size of each district's tax base.[42] The court, however, did not go so far as to say that the expenditures in each district must be equal. After the state has provided for the minimum education necessary to fulfill the constitutional requirements the districts are free to raise additional revenues in order to provide an even higher standard of education.[43]

Robinson is the first state court decision since the United States Supreme Court decided *Rodriguez* to invalidate a state educational financing system. Prior to *Rodriguez* the trend had been to challenge educational financing systems on the ground that they violated the equal protection provisions of the federal constitution,[44] or through the vehicle of state equal protection provisions which, since the *Rodriguez* decision, would have to be construed as more demanding than the fourteenth amendment.[45] The *Rodriguez* decision would seem to preclude a fourteenth amendment attack on educational financing systems in the future. The New Jersey Supreme Court chose not to use the approach of construing state equal protection provisions as being stricter than those of the federal constitution.[46] Instead it used a state constitutional provision dealing with education, and declared that there was a certain minimum standard of education guaranteed to every child in the state. Then, by deciding that certain districts could not possibly be meeting that standard, the court ordered the state legislature to guarantee to each child in the state that standard of education defined as being "thorough and efficient." Furthermore, by not requiring equalized expenditures throughout the state, the court recognized that many of the districts have already achieved this

42. *Id.* at 520, 303 A.2d at 297.

43. *Id.*, 303 A.2d at 298.

44. *See* Serrano v. Priest, 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971). This case dealt with an attack, similar to that of the principal case, on the California system of educational financing. The California Supreme Court decided that the financing system violated the equal protection provisions of the fourteenth amendment and that equality of dollar input was necessary.

45. *See* Miliken v. Green, 389 Mich. 1, 203 N.W.2d 457 (1972). This case involved an attack on the local property tax as a means of financing education. The court in dealing with a constitutional provision similar to that of New Jersey determined that the financing system violated the equal protection provisions of both the federal and state constitutions. The court said that the financing system failed even under the rational basis test. However, in light of the Supreme Court's decision in *Rodriguez*, the Michigan Supreme Court's rationale as to the fourteenth amendment cannot stand. Therefore, the only basis upon which the *Miliken* decision can stand is on the court's determination of the state issues. This would mean that the state equal protection provision would be more demanding than the fourteenth amendment.

46. 62 N.J. at 491, 303 A.2d at 282.

standard, and some have even surpassed it. By not stating that a system of uniform expenditures was necessary the court allowed the legislature the opportunity to maintain the higher standards achieved by some districts. If the court had ruled that equal educational expenditures were necessary, it would have been saying that unless the dollars spent by the highest districts provided the minimum standard required by the constitution those districts with higher spending would have to lower their standards in order to achieve statewide uniformity. What the court seems to be attempting to achieve is to raise the quality of education received throughout the state to some adequate minimum standard, without, at the same time, lowering the higher quality of education achieved by some of the districts.

The approach used to decide this case can be analogized to the approach used by the United States Supreme Court in establishing the right to counsel in criminal cases.[47] The Supreme Court in *Gideon v. Wainwright*,[48] established that indigent defendants had a right to counsel in state criminal proceedings. In *Escobedo v. Illinois*,[49] the Court held that any confessions or incriminating statements obtained from a criminal suspect without advising him of his right to counsel, and affording him counsel on request, must be excluded from evidence. Finally, the Supreme Court ruled in *Miranda v. Arizona*,[50] that the criminal suspect has the right to counsel when taken into custody, and that he must be advised of that right at that time. The Supreme Court decided all of these cases using the due process clause of the fourteenth amendment.[51] The Court saw this as a question of fundamental rights at the various stages of the criminal process. The Supreme Court decisions in this area cannot be interpreted to mean that there is a right to equal counsel, but rather, they must be interpreted to mean that there exists an equal right to adequate counsel at the various stages of the criminal process. In essence, the New Jersey Supreme Court is using the same approach in attempting to solve the problem of educational financing. It is saying that as a matter of right, under the state constitution, every child between the ages of five and eighteen is entitled to and must receive that education which is necessary for "func-

47. *See* Kurland, *Equal Educational Opportunity: The Limits of Constitutional Jurisprudence Undefined*, 35 U. CHI. L. REV. 583 (1966) [hereinafter cited as Kurland].
48. 372 U.S. 335 (1963).
49. 378 U.S. 478 (1964).
50. 384 U.S. 436 (1966).
51. U.S. CONST. amend. XIV, § 1.

tioning in a contemporary society."[52] The court is not saying that there is a right to an equal education, but rather, that there is an equal right to an adequate education.

The New Jersey Supreme Court has left the final decision as to what type of financing system to institute in the hands of the legislature. At the same time it is forcing the legislature to take some type of action. One of the arguments advanced by the defendants was that the court should defer judgment on this question to the legislature.[53] Educational financing is a very complex area, and presumbaly the legislature has greater access to the information necessary to make this type of decision. Obviously, both the supreme and superior courts have rejected this argument, but it would seem that the argument did have an effect on the supreme court's decision. The court placed almost no restrictions on the type of schemes available to the legislature in an attempt to meet the constitutional mandate, other than to say that a system based on the local property tax is unlikely to meet the criteria of a "thorough and efficient" system of public schools.[54] Similarly the United States Supreme Court in *Rodriguez* ended its decision by emphasizing that the legislature is the proper forum to make this type of decision.[55]

By granting the legislature such latitude, the court is recognizing that a system of equalized expenditures may not take into account the differences in area costs nor provide the additional dollars necessary to educate disadvantaged children.[56] There are many variables that enter into a determination of what the costs of a particular school district will be. For example, the area of a district will affect the cost of transportation.[57] The number of students in a district may have a significant impact on the per pupil costs. As the number of students increases the cost per pupil will decrease until a point of diminishing

52. 62 N.J. at 515, 303 A.2d at 295.
53. 118 N.J. Super. at 229, 287 A.2d at 190.
54. 62 N.J. at 520, 303 A.2d at 297.
55. 411 U.S. at 58. The Court in *Rodriguez* ended its decision by saying:
The need is apparent for reform in tax systems which may well have relied too long and too heavily on the local property tax . . . . These matters merit the continued attention of the scholars who already have contributed much by their challenges. But the ultimate solutions must come from the lawmakers and the democratic pressures of those who elect them.
Id.
56. 62 N.J. at 520, 303 A.2d at 297.
57. 118 N.J. Super. at 237, 287 A.2d at 194. The superior court compared the areas covered by two school districts. Greater Egg Harbor Regional High School District covers over 339 square miles while the Victoria Gardens District is only 0.14 square miles in area.

returns is reached.[58] Increasing the number of students will promote greater efficiency until an optimum level of efficiency is reached. An additional consideration is the location of a district, which can have a definite effect on teachers' salaries. Teachers have to be provided in order to teach in some areas; for those areas teacher costs are likely to be higher. A system of financing education that required each district to spend the same number of dollars per pupil may not be flexible enough to include the above mentioned criteria.

There is one important assumption underlying the *Robinson* decision. The court accepts the proposition that increased expenditures will result in an increase in the educational quality of the school districts. This may well be true, but there are educators who believe that there is a point beyond which added dollars will not significantly increase the educational quality of schools.[59] There may be other factors such as environment, family, and social habitat, which play a role in determining the educational quality of a school district. Racial desegregation in and of itself may be a substantial factor in increasing the educational achievements of students. If all this proves to be the case, more funds may not be the solution to raising the standard of education in a particular deficient district.[60]

Since the United States Supreme Court decided *Rodriguez*, the use of the equal protection clause of the fourteenth amendment is generally not available as a means of judicially overturning local property tax systems for financing education. This leaves state judiciaries with two possible approaches to the problem.

First, the state courts can construe the equal protection provisions of their state constitutions as being more demanding than those contained in the federal constitution.[61] Any use of equal protection, how-

58. As the number of pupils is increased the cost per pupil decreases. The reason for this is that the increased number of pupils will be absorbed in the form of larger class size, and the only additional costs involved will be in the form of materials. However, once the class size reaches a point beyond which teaching becomes immeasurably more difficult, the cost per pupil will begin to increase because, in addition to materials, more teachers and more capital expenditures will be required in order to provide the additional class space that will be necessary. *See* R. SLESINGER, BASIC ECONOMICS PROBLEMS PRINCIPLES POLICY 202-09 (1972).

59. The Coleman Report, J.S. COLEMAN, EQUALITY OF EDUCATIONAL OPPORTUNITY 325 (1966), concluded that family background and social composition of the student body are the primary determinants of achievement in school.

60. *See* Moynihan, *Solving the Equal Educational Opportunity Dilema: Equal Dollars is not Equal Educational Opportunity*, 1972 U. ILL. L.F. 259.

61. The highest court of any state is the final judge of what a state statute or constitution requires. *See* West Virginia v. Sims, 341 U.S. 22 (1951).

ever, does raise certain issues. As pointed out by the *Rodriguez* Court, if the local property tax is an impermissible means of financing education, then it may well be an equally impermissible means of providing other essential services. Furthermore, local communities have no inherent power to tax. That power rests in the state, and the state delegates it to the municipalities. Because of this, all taxes are state taxes, and if the equal protection argument is to prevail, every important service and tax would have to be provided equally on a statewide basis. Education is important, but, is it more important than health services or police and fire protection?[62] The application of an equal protection analysis might severely limit the control exercised by local communities over their own affairs. The control of these services and expenditures would be removed to the state legislatures, far from the local districts. Finally, the use of an equalized system of expenditures may have an undesirable social effect. There are three ways in which the expenditures could be equalized. The state could designate the amounts spent by the lowest district as being the desirable level of education, and lower the spending of all school districts to that level. Another approach would be to raise all district spending to what is currently being spent by the highest spending district in the state. The approach most likely to be used would be somewhere in the middle, and would have the effect of raising the educational standards of some at the expense of others. On the average, this might raise the educational level of the entire system, but to those whose level of education is lowered, it would be a system based on mediocrity.[63]

State courts, however, do have an alternative to the equal protection approach. Like the New Jersey Supreme Court, other jurisdictions[64] could use specific state constitutional provisions and determine if their present system of educational financing meets the standards imposed by the state constitution. The flexibility provided by this approach allows for changes to be made where they are most necessary. Thus,

62. The California court, in deciding *Serrano*, did distinguish these services from education on the basis that: (1) education is "universally relevant" while every person does not necessarily use police and fire protection; (2) education is essential for the preservation of "free enterprise democracy"; and (3) education plays an important role in molding the youth of society. 5 Cal. 3d at 610, 487 P.2d at 1258-59, 96 Cal. Rptr. at 618-19.

63. *See* Kurland, *supra* note 47.

64. At least seven other states have a constitutional provision relating to education similar to New Jersey's. They are: Delaware, DEL. CONST. art. X, § 1; Georgia, GA. CONST. art. VIII, ch. 2-6401; Ohio, OHIO CONST. art. VI, § 2; Pennsylvania, PA. CONST. art. III, § 14; Texas, TEX. CONST. art. VII, § 1; Virginia, VA. CONST. art. VIII, § 1; West Virginia, W. VA. CONST. art. XII, § 1.

the task of the state legislature in this area becomes one of raising the educational standards of those receiving substandard educations to a level where they will be adequately educated, while at the same time not appreciably lowering the higher educational standards achieved by others.

Vasilis C. Katsafanas

CONSTITUTIONAL LAW—FREEDOM OF SPEECH—COMMERCIAL SPEECH DOCTRINE—USE OF SEX-DESIGNATED CLASSIFIED ADVERTISING COLUMN HEADINGS— The Supreme Court has held that a municipal ordinance construed to forbid sex-designated classified advertising column headings does not violate newspaper publisher's first amendment rights.

Pittsburgh Press Co. v. Pittsburgh Commission on Human Relations, 413 U.S. 376 (1973).

On October 9, 1969, the National Organization for Women, Inc. filed a complaint with the Pittsburgh Commission on Human Relations alleging that the Pittsburgh Press Company had violated the Pittsburgh Human Relations Ordinance[1] by the use of sex-designated classified advertising column headings.[2] After conducting public hearings,[3] the Commission found the ordinance had been violated by this practice and issued a cease and desist order.[4] On appeal, the commonwealth court affirmed a modified order.[5] The Pennsylvania Supreme Court denied review, and the Supreme Court of the United States granted certiorari.[6]

1. Pittsburgh, Pa., Ordinance No. 75 § 8(j), Feb. 27, 1967, *as amended*, Ordinance 395, July 3, 1969, which states:
It shall be an unlawful employment practice . . . . [f]or any person, whether or not an employer, employment agency, or labor organization, to aid . . . or participate in the doing of any act declared to be an unlawful employment practice of this ordinance . . . or to attempt to directly or indirectly commit any act declared by this ordinance to be an unlawful employment practice.
2. Prior to October, 1969, the Pittsburgh Press headed its classified advertising columns, "Help Wanted Male," "Help Wanted Female," and "Male-Female Help Wanted." After the complaint was filed, but prior to judgment, it adopted the designations "Jobs-Male Interest," "Jobs-Female Interest," "Male-Female." *See* Pittsburgh Press Co. v. Pittsburgh Comm'n on Human Relations, 413 U.S. 376, 379-80 (1973).
3. After a complaint is filed with the Commission, public hearings are held pursuant to Pittsburgh, Pa., Ordinance No. 75 §§ 13(g), (h), (i) Feb. 27, 1967, in order to determine if the ordinance has been violated.
4. Order of Pittsburgh Commission on Human Relations, July 23, 1970.
5. Pittsburgh Press Co. v. Pittsburgh Comm'n on Human Relations, 4 Pa. Cmwlth. 448, 287 A.2d 161 (1972). The commonwealth court limited the order of the Commission to advertising for employment which was not exempt or excluded from the ordinance.
6. 409 U.S. 1036 (1972).