

# IN THE SUPREME COURT OF TEXAS

=====  
No. D-0378  
=====

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL.

v.

WILLIAM N. KIRBY, ET AL.

=====  
ON DIRECT APPEAL FROM A JUDGMENT OF THE 250TH DISTRICT COURT AND  
ON APPLICATION FOR ENFORCEMENT OF MANDATE  
=====

## OPINION

We have previously held in this case that the state public school finance system violates article VII, section 1 of the Texas Constitution. 777 S.W.2d 391 ("*Edgewood I*"). Now we decide whether this violation remains following enactment of Senate Bill 1 by the 71st Legislature.<sup>1</sup> We hold that it does.

### I

This action commenced in May 1984 when numerous school districts and individuals sought a judicial declaration that the state public school finance system was unconstitutional. After trial on the merits in 1987, the district court found that the system violated the Texas Constitution in several respects and enjoined the State from funding it after September 1, 1989, unless the Legislature repaired the constitutional defects by that date. The court of appeals reversed the district court's judgment in December 1988. 761 S.W.2d 859. On October 2, 1989, this Court in *Edgewood I* reversed the judgment of the court of appeals and reinstated the

---

<sup>1</sup> Act of June 7, 1990, 71st Leg., 6th C.S., ch. 1, 1990 Tex. Gen. Laws 1.

injunction issued by the district court, but postponed its effect until May 1, 1990. On that date, state funding of public schools was to cease unless the Legislature conformed the system to the requirements of the Constitution. 777 S.W.2d 391.

The district court extended the May 1 deadline<sup>2</sup> to allow the Legislature to complete its work on what became Senate Bill 1, which the Governor signed into law June 7, 1990.<sup>3</sup> Once Senate Bill 1 became law, plaintiffs returned to the district court seeking both a declaration that the system remained unconstitutional and an order enforcing the injunction affirmed by this Court in *Edgewood I*. After a lengthy hearing, the district court found that despite the changes in Senate Bill 1, the school finance system remained unconstitutional. Nevertheless, the district court vacated our injunction and denied any other injunctive relief or enforcement of this Court's mandate. The district court stated in its judgment that it would not entertain requests for further relief until it became apparent that the Legislature would not adopt a constitutional school funding system to be implemented beginning September 1, 1991.

Plaintiffs now seek relief from this judgment, arguing in substance that the district court exceeded its authority by vacating this Court's injunction and postponing consideration of further injunctive relief. Defendant state officials also complain by cross-appeal that the district court erred in finding that the school finance system continues to violate the Constitution after

---

<sup>2</sup> The parties did not complain to this Court of the district court's extension of our May 1, 1990 deadline, and we should not be viewed as approving this action.

<sup>3</sup> We noted when we issued our opinion in *Edgewood I* that the Governor had called the Legislature into special session beginning November 14, 1989. 777 S.W.2d at 399 n.8. The school funding system was not included in the call, however, until the third special session of the Legislature, which began February 27, 1990. That session adjourned without adopting corrective legislation, as did the fourth special session, which immediately followed and adjourned on May 1, 1990. At the fifth special session, which began May 2, 1990, a school finance bill was passed by both houses of the Legislature but was vetoed by the Governor on May 22, 1990. Tex. S.B. 1, S.J. OF TEX., 71st Leg., 5th C.S. 145 (1990). Senate Bill 1 was enacted during the sixth special session.

enactment of Senate Bill 1. Defendant-intervenor school districts challenge the Court's jurisdiction to consider any of these contentions.<sup>4</sup>

## II

At the outset we must determine whether our jurisdiction has been properly invoked. Plaintiffs, plaintiff-intervenor and defendant state officials all assert that they are entitled to appeal the district court's judgment directly to this Court, based upon article V, section 3-b of the Constitution<sup>5</sup> and section 22.001(c) of the Government Code.<sup>6</sup> Defendant-intervenor counter that the district court's judgment is not one from which a direct appeal is authorized by these constitutional and statutory provisions. We need not pass on these contentions because we conclude that the parties are properly before us for other reasons.

By our judgment in *Edgewood I*, the injunction originally issued by the district court and affirmed as modified by this Court became an order of both this Court and the district court. *See State v. Walker*, 679 S.W.2d 484, 485 (Tex. 1984); *City of Tyler v. St. Louis Southwestern Ry.*, 405 S.W.2d 330, 332 (Tex. 1966). As the district court recognized, it was obliged to observe and enforce our judgment as rendered in the absence of changed conditions. *Id.* It is

---

<sup>4</sup> Plaintiffs also complain that the district court erred in refusing to award them the entire amount of attorney fees requested. This complaint has nothing to do with the enforcement of our mandate. Moreover, on the record before us, the issue is not one over which we will exercise direct appeal jurisdiction. See TEX. R. APP. P. 140(b). Plaintiffs' appeal on this issue is therefore dismissed, without prejudice to seeking review in the court of appeals in accordance with appellate rules. See TEX. R. APP. P. 140(e).

<sup>5</sup> "The Legislature shall have the power to provide by law, for an appeal direct to the Supreme Court of this State from an order of any trial court granting or denying an interlocutory or permanent injunction on the grounds of the constitutionality or unconstitutionality of any statute of this State, or on the validity or invalidity of any administrative order issued by any state agency under any statute of this State."

<sup>6</sup> "An appeal may be taken directly to the supreme court from an order of a trial court granting or denying an interlocutory or permanent injunction on the ground of the constitutionality of a statute of this state. It is the duty of the supreme court to prescribe the necessary rules of procedure to be followed in perfecting the appeal."

not for us to ascertain in the first instance whether conditions have changed since *Edgewood I*; that determination must be made by the district court, which can hear evidence, subpoena witnesses and make findings. *Id.* The district court's decision is reviewable on appeal. *Id.* However, we also have the power to enforce our mandate by mandamus if we can determine, without resolving factual disputes, that conditions have not changed and that the district court abused its discretion. *See Walker*, 679 S.W.2d at 485; *see also Texas Aeronautics Comm'n v. Bets*, 469 S.W.2d 394, 399 (Tex. 1971); *Conley v. Anderson*, 164 S.W. 985, 986 (Tex. 1913); *Wells v. Littlefield*, 62 Tex. 29, 30-31 (1884). As we said in *City of Tyler*: "in the absence of changed conditions it is the duty of the trial court to enforce the judgment [of this Court] as entered; and, if necessary, this Court can compel its enforcement." 405 S.W.2d at 332.

The district court concluded as a matter of law that Senate Bill 1 does not change the school finance system condemned in *Edgewood I*, and thus that the Legislature had not met its constitutional obligations. In this regard, the district court found no change in conditions since *Edgewood I*. The district court vacated our injunction, however, on the equitable grounds of deference to the Legislature and avoidance of disruption to public education. These equitable considerations are not changed conditions. They have been present throughout this litigation, and this Court was fully mindful of them in *Edgewood I*. Only this Court, not the courts below, may decide that for policy reasons our mandate should be modified or vacated. *Conley*, 164 S.W. at 986.

Plaintiffs request this Court to enforce its mandate. We have not only the power but the duty to enforce our mandate upon the request of a party if we determine that the district court acted improperly. *See Wells*, 62 Tex. at 30-31. We therefore treat this proceeding as being in

the nature of an original mandamus proceeding to direct the district court to reinstate our injunction. If as a matter of law the district court was correct in its determination that the constitutional violation in the school finance system which we found in *Edgewood I* continues, then it clearly abused its discretion in vacating our injunction. Accordingly, we consider whether the school finance system remains unconstitutional following Senate Bill 1.

### III

Senate Bill 1 does make certain improvements in public school finance. It attempts to realize the long-articulated objective of assuring school districts substantially similar educational revenue for similar levels of local tax effort<sup>7</sup> by providing for a wide array of biennial studies to detect deviations from fiscal neutrality and inform senior policy makers when increased state funding is required.<sup>8</sup> These policy makers then recommend to the Legislature the amount of funds that should be allocated for public education for the succeeding biennium. Thus, for the first time, the system contains a mandate for biennial adjustment, based upon information from a battery of studies, with the intention of preventing the opportunity gap between poor and rich districts from re-widening each time legislative action narrows it.

However, Senate Bill 1 leaves essentially intact the same funding system with the same deficiencies we reviewed in *Edgewood I*. Senate Bill 1 maintains the basic two-tiered education

---

<sup>7</sup> Senate Bill 1 amends section 16.001(c)(1) of the Education Code to read: "the yield of state and local educational program revenue per pupil per cent of effective tax effort shall not be statistically significantly related to local taxable wealth per student for at least those districts in which 95 percent of students attend school." The concept of similar yield for similar rates of taxation has been termed "fiscal neutrality."

<sup>8</sup> The senior policy makers are those who serve on the Legislative Education Board (LEB), the Legislative Budget Board (LBB), and Foundation School Fund Budget Committee (FSFBC). The LEB and the LBB are charged by Senate Bill 1 with the duty of carrying out the various studies. The LEB reports to the FSFBC regarding the funding levels indicated by the studies. The FSFBC, comprised of the Governor, Lieutenant Governor and Comptroller, ultimately makes funding recommendations to the legislature.

finance structure known as the Foundation School Program. The first tier is a basic allotment designed to enable all districts to provide a basic education to all pupils. Each district that taxes itself at or above a minimum level is guaranteed a certain base level of funding, composed of state and local revenue, per weighted student in average daily attendance.<sup>9</sup> The second tier is the guaranteed yield or equalized enrichment tier, which is designed to equalize the ability of school districts to raise revenue to supplement their basic allotment. At this tier, all districts receive a guaranteed revenue per weighted student for each cent of local tax effort above the tier one minimum level. The State funds the difference between the guaranteed revenue and the amount each cent of local tax effort generates. If a district is so wealthy that each cent of tax effort generates more than the guaranteed revenue per weighted student, it receives no tier two revenue from the State.<sup>10</sup> To maximize their entitlement to state funding under tiers one and two, Senate Bill 1 contains incentives for most school districts to set their effective local tax rates at or above a state-designated minimum level.<sup>11</sup>

The State asserts that as districts respond to these incentives and as it shifts more of its funds to lower wealth districts, Senate Bill 1 will achieve substantial equity among the districts that educate 95% of our students. The State maintains that excluding the districts with the

---

<sup>9</sup> Because certain pupils, such as those needing bilingual instruction or participating in special education programs, are more expensive to educate than others, most educational revenue is distributed according to complex formulas that assign "weights" to students with different needs.

<sup>10</sup> However, under the current system, all districts receive about \$300 per student from the Available School Fund established by article VII, section 5(a) of the Constitution. The Constitution does not require this distribution, stating only that "the available fund herein provided shall be distributed to the several counties according to their scholastic population and applied in such manner as may be provided by law." The manner of distribution is provided by statute. TEX. EDUC. CODE § 15.10.

<sup>11</sup> The district court also described a third tier, consisting of further local supplementation of the public school finance system. The question of local enrichment continues to be controlled by this Court's opinion in Edgewood I, 777 S.W.2d at 397-98.

wealthiest 5% of the students is reasonable and within the *Edgewood I* requirement of "substantially equal access to similar revenues per pupil at similar levels of tax effort." 777 S.W.2d at 397. It argues that the annual cost of equalizing all districts to the revenue levels attainable by the richest districts would be approximately four times the annual cost of operating the entire state government. Even if the incentives in the new law do not produce the anticipated results, the State contends that the newly mandated studies will lead to increased state funding, which will in turn produce equity. Plaintiffs complain of both the manner in which the State has attempted to achieve fiscal neutrality and the State's decision to exclude the wealthiest districts from the equalization formula.

We need not address the conflicting prognostications of the parties about whether Senate Bill 1 can or will be implemented to achieve efficiency among 95% of students. Although the parties presented much evidence about what may or may not happen in the future, the issue before us is whether present conditions have changed in such a way that the injunction ordered by this Court should not be enforced. The only material changes in the system since *Edgewood I* are those made by Senate Bill 1. The question we address is whether there is any evidence that those changes remove the constitutional violation.

In analyzing the constitutionality of the system after Senate Bill 1, we begin with the following conclusion in *Edgewood I*, grounded on the Texas Constitution:

The legislature's recent efforts have focused primarily on increasing the state's contributions. More money allocated under the present system would reduce some of the existing disparities between districts but would at best only postpone the reform that is necessary to make the system efficient. A Band-Aid will not suffice; the system itself must be changed.

777 S.W.2d at 397. Even if the approach of Senate Bill 1 produces a more equitable utilization of state educational dollars, it does not remedy the major causes of the wide opportunity gaps between rich and poor districts. It does not change the boundaries of any of the current 1052 school districts, the wealthiest of which continues to draw funds from a tax base roughly 450 times greater per weighted pupil than the poorest district. It does not change the basic funding allocation, with approximately half of all education funds coming from local property taxes rather than state revenue. And it makes no attempt to equalize access to funds among all districts. By limiting the funding formula to districts in which 95% of the students attend school, the Legislature excluded 132 districts which educate approximately 170,000 students and harbor about 15% of the property wealth in the state. A third of our students attend school in the poorest districts which also have about 15% of the property wealth in the state. Consequently, after Senate Bill 1, the 170,000 students in the wealthiest districts are still supported by local revenues drawn from the same tax base as the 1,000,000 students in the poorest districts.

These factors compel the conclusion as a matter of law that the State has made an unconstitutionally inefficient use of its resources. The fundamental flaw of Senate Bill 1 lies not in any particular provisions but in its overall failure to restructure the system. Most property owners must bear a heavier tax burden to provide a less expensive education for students in their districts, while property owners in a few districts bear a much lighter burden to provide more

funds for their students.<sup>12</sup> Thus, Senate Bill 1 fails to provide "a direct and close correlation between a district's tax effort and the educational resources available to it." 777 S.W.2d at 397.

To be efficient, a funding system that is so dependent on local ad valorem property taxes must draw revenue from all property at a substantially similar rate. The present system does not do so. For example, if the Glen Rose ISD in Somerville County maintained its 1989-90 tax rate of 25.3 cents per one hundred dollars of valuation, it would generate over \$9500 this year for each of its 1170 students. If the property within Glen Rose were taxed at the same 91 cent rate that districts must impose this year under Senate Bill 1 to maximize the funding they receive from the State, that property would generate an additional \$28 million. Similarly, if the property within Highland Park ISD in Dallas County were taxed at that level, it would generate an additional \$18 million this year. The property within Iraan-Sheffield ISD in Pecos County would generate an extra \$14 million. These examples illustrate the degree to which the current system insulates concentrated areas of property wealth from being taxed to support the public schools. The result is that substantial revenue is lost to the system. If the property in these and similar districts were taxed at substantially the same rate as the rest of the property in the state, the system could have hundreds of millions of additional dollars at its disposal. Whether this additional revenue were used to increase the attainable equalized funding level, ease the State's

---

<sup>12</sup> As explained in the Governor's message vetoing the predecessor to Senate Bill 1, which had a substantially similar funding approach:

It is the finance system itself which is at the heart of the Texas Supreme Court holding that our education system violates the Constitution. The current system is not fair, and it is not equitable. Yet, S.B. 1 would basically continue the current system of subsidizing wealthier school districts at the expense of property poor school districts. . . . This bill places an unfair burden on local property taxpayers to support an inequitable system.

S.J. OF TEX., 71st Leg., 5th C.S. 145 (1990).

burden, or lower the tax rate each district must impose, the system would be made more efficient simply by utilizing the resources in the wealthy districts to the same extent that the remainder of the state's resources are utilized.

There are vast inefficiencies in the structure of the current system. With 1052 school districts, some having as few as two students, and with up to twenty districts within a single county, duplicative administrative costs are unavoidable.<sup>13</sup> Consolidation of school districts is one available avenue toward greater efficiency in our school finance system.

Another approach to efficiency is tax base consolidation. Senate Bill 1 expressly provides that future legislatures may use other methods to achieve fiscal neutrality, including "redefining the tax base." TEX. EDUC. CODE § 16.001(d). We disagree with the district court's observation that this option "appears to run afoul of certain constitutional provisions related to taxation." The district court was apparently concerned that consolidation of tax bases violated this Court's opinion in *Love v. City of Dallas*, 120 Tex. 351, 40 S.W.2d 20 (1931). In that case, we held that the City of Dallas could not be compelled to educate high school students who resided outside of the school district, which the city then operated. The decision rested in part upon our interpretation of article VII, section 3 of the Constitution, which we said "contemplates that districts shall be organized and taxes levied for the education of scholastics *within the districts*." *Id.* at 367, 40 S.W.2d at 27 (emphasis added). We also said that "the necessary implication from the constitutional provision is that the Legislature cannot compel one district to construct buildings and *levy taxes for the education of nonresident pupils*." *Id.* (emphasis added).

---

<sup>13</sup> Allamoore CSD and Juno CSD have two students each, and Harris County contains twenty independent school districts. Moreover, Bexar, Dallas, Hidalgo, McLennan and Tarrant Counties each contain fifteen or more school districts.

Article VII of the Constitution accords the Legislature broad discretion to create school districts and define their taxing authority.<sup>14</sup> The Constitution does not present a barrier to the general concept of tax base consolidation, and nothing in *Love* prevents creation of school districts along county or other lines for the purpose of collecting tax revenue and distributing it to other school districts within their boundaries.<sup>15</sup> While consolidating tax bases may not alone assure substantially equal access to similar revenues, the district court erred in concluding that it is constitutionally prohibited.

We do not undertake lightly to strike down an act of the Legislature. We are mindful of the very serious practical and historical difficulties which attend the Legislature in devising an efficient system, and we recognize the efforts of the legislative and executive departments to achieve this goal. We do not prescribe the means which the Legislature must employ in fulfilling its duty. Nor do we suggest that an efficient funding system will, by itself, solve all of the many challenges facing public education in Texas today. Nevertheless, our duty is plain: we must measure the public school finance system by the standard of efficiency ordained by the people in our Constitution. The test for whether a system meets that standard is set forth in our opinion in *Edgewood I.* 777 S.W.2d at 397-98. Under that standard, we therefore hold as a matter of

---

<sup>14</sup> Since this constitutional grant of power does not specify the details of statutory implementation, a number of alternatives are available to the Legislature. One such method, already in place, allows voters to "create an additional countywide school district which may exercise in and for the entire territory of the county the taxing power conferred on school districts by Article VII, Section 3, of the Texas Constitution." TEX. EDUC. CODE § 18.01. The voters are permitted to implement such a taxing scheme "without affecting the operation of any existing school district within the county." *Id.* Chapter 18 of the Education Code is also consistent with counties' constitutional role in distributing educational resources. See TEX. CONST. art. VII, § 5.

<sup>15</sup> Article VII, section 3 of the Constitution expressly authorizes the Legislature to provide for school districts "composed of territory wholly within a county or in parts of two or more counties." Many school districts, such as Nueces Canyon ISD, Uvalde Consolidated ISD and Sands ISD, currently encompass parts of several counties.

law that the public school finance system continues to violate article VII, section 1 of the Constitution.

While we share the district court's desire to avoid disruption of the educational process, we must heed our duty to ensure Texas students the efficient education system guaranteed them by the Constitution. *See Morton v. Gordon*, Dallam 396, 397-98 (Tex. 1841). If the educational process is to be disrupted, it will be because the demands of the Constitution cannot be further postponed.

#### IV

The district court correctly concluded that conditions have not changed since *Edgewood I* because the public school finance system has not been altered to comply with article VII, section 1 of the Texas Constitution. The district court clearly abused its discretion in refusing to enforce the mandate of this Court issued in *Edgewood I*.

We therefore direct the district court to vacate that portion of its judgment which vacates the injunction affirmed by this Court in *Edgewood I*.<sup>16</sup> Because the deadlines set by that

---

<sup>16</sup> The injunction originally issued by the district court was as follows:

#### INJUNCTION

It is hereby ORDERED that William N. Kirby, Commissioner of Education, the Texas State Board of Education, and Robert Bullock, Comptroller of the State of Texas and their successors, and each of them, be and are hereby enjoined from giving any force and effect to the sections of the Texas Education Code relating to the financing of education, including the Foundation School Program Act (Chapter 16 of the Texas Education Code); specifically said Defendants are hereby enjoined from distributing any money under the current Texas School Financing System (Texas Education Code § 16.01, *et seq.*, implemented in conjunction with local school district boundaries that contain unequal taxable property wealth for the financing of public education).

It is further ORDERED, that this injunction shall in no way be construed as enjoining Defendants, their agents, successors, employees, attorneys, and persons acting in concert with them or under their direction, from enforcing or otherwise implementing any other provisions of the Texas Education Code.

injunction have passed, we must modify those deadlines. However, the need for an efficient system remains as compelling today as it was when we last visited this issue, at which time we stated: "A remedy is long overdue. The legislature must take immediate action." 777 S.W.2d at 399. Balancing the need for immediate action against the realities of the legislative process, and desiring to avoid or minimize disruption of the educational process, we stay the effect of the injunction until April 1, 1991.<sup>17</sup> The district court is directed not to extend this deadline or to modify this injunction.

We trust the district court will promptly comply, and we will withhold issuance of our writ unless it fails to do so.

  
THOMAS R. PHILLIPS  
CHIEF JUSTICE

OPINION DELIVERED: January 22, 1991

RECEIVED  
THE CLERK OF THE COURT  
AT DALLAS TEXAS

JAN 23 1991

CLERK OF THE COURT

1000

In order to allow Defendants to pursue their appeal, and should this decree be upheld on appeal, to allow sufficient time to enact a constitutionally sufficient plan for funding public education, this injunction is stayed until September 1, 1989. It is further ORDERED that in the event the legislature enacts a constitutionally sufficient plan by September 1, 1989, this injunction is further stayed until September 1, 1990, in recognition that any modified funding system may require a period of time for implementation. This requirement that the modified system be in place by September 1, 1990, is not intended to require that said modified system be fully implemented by September 1, 1990.

<sup>17</sup> Specifically, we modify the injunction by extending the date September 1, 1989, to April 1, 1991, and the date September 1, 1990, to September 1, 1991.