higher minimum pay rates for certain additional Federal positions; to the Committee on Post Office and Civil Service.

By Mr. YOUNG of Illinois:

H.R. 6686. A bill to improve and implement procedures for fiscal controls in the U.S. Government, and for other purposes; to the Committee on Rules.

By Mr. ZWACH:

H.R. 6687. A bill to encourage earlier retirement by permitting Federal employees to purchase into the civil service retirement system benefits unduplicated in any other retirement system based on employment in Federal programs operated by State and local governments under Federal funding and supervision; to the Committee on Post Office and Civil Service.

By Mr. CASEY of Texas:

H.R. 6691. A bill making appropriations for the legislative branch for the fiscal year year ending June 30, 1974, and for other purposes.

By Mr. BIAGGI (for himself and Mr. WALDIE):

H.J. Res. 489. Joint resolution authorizing the Secretary of Health, Education, and Welfare to encourage and assist in the distribution of the "Patient's Bill of Rights" to patients in hospitals and other health care facilities; to the Committee on Interstate and Foreign Commerce.

By Mr. McCLOSKEY (for himself and Mr. BINGHAM):

H.J. Res. 490. Joint resolution to terminate American military activity in Laos and Cambodia; to the Committee on Foreign Affairs.

By Mr. MACDONALD:

H.J. Res. 491. Joint resolution proposing an amendment to the Constitution of the United States to provide that a citizen shall not be ineligible to the Office of the President by reason on not being native born if he has been a U.S. citizen for at least 12 years and a resident within the United States for 14 years; to the Committee on the Judiciary.

By Mr. HAYS:

H. Res. 342. Resolution authorizing additional office allowances for certain officials of the House of Representatives; to the Committee on House Administration.

By Mr. LEHMAN:

H. Res. 343. Resolution to establish a congressional internship program for secondary school teachers of government or social studies in honor of President Lyndon Baines Johnson; to the Committee on House Administration.

By Mr. PODELL:

H. Res. 344. Resolution creating a select committee on aging; to the Committee on Rules.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. BROYHILL of Virginia:

H.R. 6688. A bill for the relief of Patricia Christine Durso; to the Committee on the Judiciary.

H.R. 6689. A bill for the relief of Paul Stanislau Neumann; to the Committee on the Judiciary.

By Mr. YOUNG of Illinois:

H.R. 6690. A bill for the relief of Brush & Weaving Hair Manufacturing Co.; to the Committee on the Judiciary.

EXTENSIONS OF REMARKS

OUR NATION SALUTES OUR CITIZENS OF POLISH HERITAGE DURING THE COPERNICAN 500TH ANNIVERSARY YEAR

HON. ROBERT A. ROE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, April 4, 1973

Mr. ROE. Mr. Speaker, as scientists throughout the world await the detailed scientific data being collected by the Copernicus probing space satellite launched from the Kennedy Space Center in August 1972, all of us, and particularly our citizens of Polish heritage, take great pride during the Copernican Year—February 1973–74—in celebrating the 500th anniversary of the birth of the esteemed 16th century Polish scientist Nicolaus Copernicus—Mikolaj Kopernik—the founder of modern astronomy, for his oustanding contributions to all of mankind.

During the 92d Congress as a member of the Committee on Science and Astronautics I was especially pleased to join with my colleagues here in the Congress in hailng America's contribution to the Copernican anniversary celebration, dedicated to astronomers throughout the world, in commemorating NASA's orbiting astronomical observatory-C to the memory and honor of this famous Polish astronomer.

The Copernican spacecraft commenced its orbiting around the world for a period of 1 year to study the ultraviolet and X-ray emissions of celestial bodies which contain vital clues to the composition, density, and physical state of the matter from which these rays, which are blocked from the earth by the filtering effects of the atmosphere, originate. This global space venture is a climatic sequel to Copernicus' observations of the planets with the naked eye and his mathematical calculations which convinced him that the sun was the center of the universe and the earth and planets moved around it, a revolutionary theory during his lifetime, which has proven to be the nucleus for all astronomers and other scientists in their observations, calculations, and theoretical interpretations of our solar system.

In further tribute to this distinguished representative of Polish heritage, it gives me great pleasure to know that legislation I had joined with my colleagues here in the Congress in sponsoring during the 92d Congress seeking the issuance of a commemorative postage stamp in recognition and celebration of the 500th anniversary of the birth of Nicolaus Copernicus has been successful. On April 23, 1973, the U.S. Post Office will issue this commemorative postage stamp to released in concert with the opening of a conference on "The Nature of Scientific Discovery" being held in Washington by the National Academy of Sciences and the Smithsonian Institution who are jointly sponsoring the first-day ceremonies in tribute to Nicolaus Copernicus at the Smithsonian's Museum of History and Technology.

It is indeed a great privilege and honor for me to participate in the legislative processes of our Nation's Government and I would like to take this opportunity to call attention to some of the other bills I have sponsored here in the 93d Congress that may be of interest to Polish-Americans of my congressional district, the State of New Jersey, and our Nation, as follows:

H.R. 989, January 3, 1973—Commemorative medal honoring Nicolaus Copernicus: To provide for the striking of medals in commemoration of the 500th anniversary of the birth of Nicolaus Copernicus—Mikolaj Kopernik—the founder of modern astronomy.

H.R. 994, January 3, 1973—Opportunity to study the cultural heritages of the Nation's varied ethnic groups: To provide a program to improve the opportunity of students in elementary and secondary schools to study cultural heritages of the various ethnic groups in the Nation.

H.R. 1043, January 3, 1973—American veterans benefits for Polish aliens: To amend section 109 of title 38, United States Code, to provide benefits for members of the Armed Forces of nations allied with the United States in World War I and World War II.

House Concurrent Resolution 34, January 3, 1973—Congressional condemnation of antinationality films and broadcasts: Concurrent resolution expressing the sense of Congress relating to films and broadcasts which defame, stereotype, ridicule, demean or degrade ethnic, racial and religious groups.

House Resolution 75, January 3, 1973—Polish Constitution Day: Resolution designating May 3 as "Polish Constitution Day."

House Joint Resolution 304, February 6, 1973—Nicolaus Copernicus Week: Joint resolution requesting the President to issue a proclamation designating the week of April 23, 1973 as "Nicolaus Copernicus Week" marking the quinquecentennial of his birth.

H.R. 3917, February 7, 1973—Individual's freedom and right to emigrate to country of his choice: To prohibit most-favored nation treatment and commercial and guarantee agreements with respect to any nonmarket economy country which denies to its citizens the right to emigrate or which imposes more than nominal fees upon its citizens as a condition to emigration.

H.R. 5740, March 15, 1973—Right to vote for citizens with language barriers: To assure the right to vote to citizens whose primary language is other than English.

Mr. Speaker, to understand the present, we must understand the past; to understand the need for historical preservation, we must understand the present and future. We do indeed need for ourselves and future generations a chance to sit and reflect in beauty and culture and gain strength from our her-

itage. As I join with all of you today in saluting the universally famed scientist Copernicus, may I also take this opportunity to add the deep appreciation and gratitude of all Americans for the wealth of wisdom, standards of excellence, and culural enrichment that the people of Polish heritage have contributed to the quality of our way of life here in America.

"SHIELD" LAWS NO SOLUTION

HON. WILLIAM LLOYD SCOTT

OF VIRGINIA

IN THE SENATE OF THE UNITED STATES

Thursday, April 5, 1973

Mr. SCOTT of Virginia. Mr. President, since a recent Supreme Court decision regarding information received by newsmen, hearings have been held and a considerable amount of interest generated in a law to make communications between newsmen and their sources privileged. A few days ago, Herman J. Obermayer, editor and publisher of the Northern Virginia Sun, of Arlington, expressed an editor's viewpoint on this issue. I ask unanimous consent that the editorial be inserted in the RECORD for the information of my colleagues.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

"SHIELD" LAWS NO SOLUTION

This column has been gestating a long time. When my beliefs are contrary to those of the country's leading newspaper editors, all of the TV network heads and the deans of all the important journalism schools, I hesitate before committing them to print. But with the passage of time my conviction has firmed.

I believe most newspaper "shield" laws—laws to protect reporters from being compelled by a court or a legislature to disclose confidential news sources—are bad for both the country and newspapers. The "shield" bills currently before Congress would in the long run hamper, rather than enlarge, press freedom in the U.S.

Last June the Supreme Court decided that a grand jury looking into a Black Panther murder plot had the authority to force a New York Times reporter to divulge confidential information he had secured while doing a series on Panther activities in California. Following this decision the radio, TV, newspaper and magazine business joined forces to urge the passage of a Federal "shield" law which would make all communication between newsmen and their sources subpoena proof.

CONSTITUTIONAL CONFLICT

The current Congressional debate over "shield" laws has brought into focus a basic constitutional conflict between the right of the accused to secure all of the evidence he needs for his defense, and the newsman's obligation to protect his sources. The Sixth Amendment specifically gives a criminal defendant the right to use the authority of the courts (subpoena power) to obtain favorable witnesses. The accused must be able to get all pertinent testimony on the record. Both the public and the defendant should feel that justice is being administered on the basis of all available evidence. When a legislature knowingly compromises the right of the accused to defend himself in court all freedom is in jeopardy.

Determining exactly who a "shield" law should protect is difficult. On one hand, it is inconsistent with the First Amendment's general protection of free speech and press to say that only reporters for establishment newspapers would qualify. But profound problems are also posed by granting protection from subpoena to underground editors, unpublished authors, pornographers, newsletter writers and college researchers. The shield could even extend to sham newspapers established by members of the Mafia. The criminal underworld could keep its henchmen from testifying in criminal cases by making potential witnesses into reporters for privately circulated newsletters.

LICENSED REPORTERS?

A limited "shield" which covered certain parts of the press and excluded others might be tantamount to a press licensing law. Reporters in the U.S. are not licensed and no sensitive person suggests that they should be. But that could be one of the byproducts of the "shield" law the Fourth Estate is enthusiastically urging on the Congress.

For 200 years newspapers have been able to perform the role of the public's watchdog and conscience effectively. One reason America's press has been so free and independent is that it has never sought special privileges or unique class legislation from the Congress.

The news media, by asking Congress to grant its members immunity from the citizen's obligation to give his evidence when subpoenaed, are inviting it to interfere in their operations in the future. Congressional involvement in the gathering and disseminating of news over the long term, is a much greater potential threat than the right of courts and legislatures to probe the confidential relationship between the newsman and his source. What one Congress can give, another can take away.

A newsman "shield" law would not advance the cause of either freedom or justice. It would create more new problems than it would solve, and in the long run compromise the independence of America's press, which has been the freest history has ever known.

The First Amendment, with its simple statement, "Congress shall make no law . . . abridging the freedom . . . of speech, or of the press" has nurtured an independent and responsible press. Transitory legislation, however good its intent, can only dilute the clear intent of that declaratory statement.

THE FORT WORTH FIVE

HON. JONATHAN B. BINGHAM

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, April 4, 1973

Mr. BINGHAM. Mr. Speaker, the continued incarceration of five young Irishmen in Fort Worth, Texas., is a judicial outrage. This case of the "Fort Worth Five" reveals the Nixon administration's callous disregard of the rights of all U.S. residents to constitutional safeguards of freedom.

The case involves five Irish immigrants, all residents of the New York metropolitan area, who were hauled before a Federal grand jury in Fort Worth during its investigation of alleged gunrunning between the United States and Northern Ireland. None of the five had ever been in Texas before being summoned by the grand jury. The Justice Department offered them "immunity" from prosecution if they would tell what they supposedly knew about the gunrunning, but that offer of "immunity" was a hollow gesture, for it still left the men exposed to possible prosecution in Northern Ireland and extradition by the United States into the hands of British authorities. The five refused to answer the Government's questions. They were summarily jailed far from home, initially under primitive conditions, without bail, for civil contempt. The Justice Department has steadfastly refused to clarify its basis for calling the men as witnesses before the grand jury, and it appears that the "Fort Worth Five" will continue to languish in prison for the duration of the grand jury's term.

I am greatly disturbed by this imprisonment of five men who have never been convicted of a crime. Along with several other Members of Congress, I cosponsored a resolution of inquiry into the Justice Department's behavior. A hearing on the resolution, at which I testified before subcommittee No. 5 of the House Judiciary Committee, under the distinguished leadership of Subcommittee Chairman JOSHUA EILBERG, strengthened my belief that the treatment shown to these men by the Justice Department and the Federal District Court in Texas was a mockery of justice.

I shall continue to support the protest of the Fort Worth Five and to press for their release from prison. I am attaching an excellent commentary on the case by Pete Hamill which appeared in the New York Post, just before St. Patrick's Day of this year.

The commentary follows:

THE IRISH HEAVYWEIGHT

(By Pete Hamill)

They will go marching forth again on Saturday, with the old bold music of the pipes challenging the walls of Fifth Av., and the Irish tricolor unfurling in the breeze. They will again disperse across the city, erasing the night with the songs of old troubadours, those songs about men who challenged the might of the Castle with pikes and fists, men who became gunmen and exiles and martyrs because they hated slavery. And there will be men and women among them on Saturday who will remain true to that old spirit, that sacred duty of the Irish heart, and one of them will be Paul O'Dwyer.

"St. Patrick's Day symbolizes 1500 years of history," O'Dwyer said yesterday, at a press conference at the Irish Institute on W. 48th St. "The day represents Patrick's slavery some 25 miles from Belfast and it represents his escape from bondage. And through the years in the land in which he labored, it has come to represent peoples' fight for freedom and liberty."

O'Dwyer was there to remind people that on Saturday, when Nelson Rockefeller dons the green tie, and Richard Nixon accepts a hunk of Irish sod from some Dublin Tory, five good Irishmen will still be political prisoners in an American jail in Fort Worth, Texas. Those men are New Yorkers. They were taken to the other side of America, away from the wives and children, and chained—literally *chained*—as they were taken from a federal courtroom and stuck in cages.

"They haven't been charged with a crime," O'Dwyer said. "They just refuse to surrender their Constitutional rights. They refuse to take the offer of immunity, and so they've been sent to jail."

In short, the American government has

told these five New Yorkers—Kenneth Tierney, Thomas Laffey, Mathias Reilly, Paschal Morahan and Daniel Crawford—that to be accepted as Americans they must be prepared to rat. Last June, the men were subpenaed to appear before a federal grand jury investigating the possible shipment of guns to Northern Ireland. The "Fort Worth Five," as they came to be known, refused to testify despite the grant of "use" immunity and were jailed without bail for civil contempt.

For three months, they were in the Tarrant County Jail. During that time, they never saw sunlight and occasionally were even kept from going to mass. Last September, after three months in prison, they were granted bail pending an appeal to the Supreme Court. The man who released them was, of course, Justice Douglas, one of the few men on the court who seems to have bothered to read the Constitution.

The Supreme Court declined to hear the case and last January 29th they were again jailed. They will stay there until the grand jury expires on Nov. 2d. A new grand jury can then be reconvened, and they can be jailed again. Under this set-up, they can spend the rest of their lives in jail without ever being charged with a crime. Unless, of course, they become stool pigeons.

"The New York Congressmen have been great on this issue, and so has Teddy Kennedy," said O'Dwyer, who, with Frank Durkan, is representing the "Fort Worth Five." "But Jack Javits and (Sen. James) Buckley have been of no use at all. Rockefeller has said nothing. And Buckley answers queries by explaining why the men have been arrested."

But Buckley is a Tory and the men in jail are apparently not proper gentlemen: Tierney is a physical therapist, Laffey a real estate salesman, Reilly a busdriver, Morahan a carpenter and Crawford a housepainter. None has ever been in Texas. But all are Irish. And Buckley's leader, Nixon, has consistently sided with the British against the Irish.

But this isn't just an Irish issue. This is about all of us. If the federal government can keep these men in prison (they have now been transferred to a place where Japanese-Americans were interned at the start of World War Two) they can get any of us. They don't tell you what the crime is, they just tell you to talk. If you don't talk, you go away forever for contempt. Union leaders can go, newspapermen can go, Jews and blacks and Poles and Italians can go. Anybody the government wants to get can be gotten, using the star chamber proceedings of the grand jury to do the job. In this case the victims happen to be Irish. And as O'Dwyer said yesterday, when the American cops get away with this, the "memory of Sam Adams, Tom Paine, Thomas Jefferson and Benjamin Franklin will once more be sullied . . ."

On still another St. Patrick's Day, we should celebrate the fact that Paul O'Dwyer is among us, still working with honor at his trade, defending a physical therapist, a real estate salesman, a busdriver, a carpenter and a housepainter. There are prosecutors and defenders, and I can't think of a prosecutor anywhere who could carry Paul's bag to the arena.

ENERGY AND THE ENVIRONMENT

HON. JAMES ABOUREZK

OF SOUTH DAKOTA

IN THE SENATE OF THE UNITED STATES

Thursday, April 5, 1973

Mr. ABOUREZK. Mr. President, the Nation's youngest attorney general, Kermit A. Sande, of South Dakota, has recently joined several other States as friend of the court in a case now pending before the U.S. Supreme Court, the Sierra Club against Ruckelshaus. Mr. Sande outlined the reasons why a clean-air State such as South Dakota has so much to lose unless the policy of the Environmental Protection Agency is reversed. In his speech, Mr. Sande referred to an editorial in the Sioux Falls Argus Leader. Because of their importance, I ask unanimous consent that the text of the speech and the content of the editorial be inserted at this point in the RECORD.

There being no objection, the speech and editorial were ordered to be printed in the RECORD, as follows:

SANDE JOINS FIGHT IN CLEAN AIR CASE

A distinguished observer of the world scene once remarked that we are all travelers on the spaceship earth. It is on a dangerous mission and at the present it is following a precarious course.

Our planet is confronted with a shortage of food which results in the death by starvation of 20 to 25 million children a year. Countless millions more have their physical and mental development retarded because of inadequate nutrition. We are in the midst of a grave energy crisis due to the shortage and abuse of fuels. This is of particular importance to us here in the United States because while we have only about 6 per cent of the population, we in the United States use around 35 per cent of the energy generated worldwide. It is clear that we as passengers on spaceship earth are in danger because the course is filled with perils.

As many of you know so well, there are many dangers to our environment which our nation could correct had we the heart and the will. Just recently, I was stunned when I learned that the children of the inner cities of our great urban centers are developing lead poisoning not only from the paint on the ghetto walls but by playing in the sand that collects on the side of the streets. This sand is heavily laden with lead from automotive exhaust. I say we can do something about this when we can easily justify additional billions each year for weapons of death and destruction and crude displays of national chauvinism such as the manned space program.

Tonight, however, I would like to limit my remarks to one topic, one that could easily have more significance than any other to the future of South Dakota's and the nation's environment and ecology and what I would like to call, our quality of life. That is the case of the Sierra Club vs. Ruckelshaus.

As I'm sure most of you know, Mr. Ruckelshaus is the administrator of the United States Environmental Protection Agency—better known as the EPA. You can get an idea of what kind of job he's doing at protecting the environment if the Sierra Club has sued him. And for a time, even that was a problem. You may recall that some time ago, the Justice Department resisted the Sierra Club's and other environmental organizations' right to sue. As far as the Justice Department was concerned, the environment was none of your business. On the other hand, the Justice Department has been strangely silent about so many of the tremendous giveaway programs the present administration has developed for the industrial giants such as the ITT and the grain trade.

But getting back to the subject, when the Clean Air Act of 1970 was passed, most people had the impression it was designed solely to combat the air pollution problems of our country's largest metropolitan centers. Little, if any, attention was focused on areas such as South Dakota where the air quality is better than the most stringent federal standards.

After a thorough research, of the Clean Air Act of 1970 and the Air Quality Act of 1967, I came to the same conclusion that other lawyers who had studied the law did, and what is more, what everyone else assumed the law to mean. That was simply that the pollution of so-called "clean air" areas such as South Dakota and our surrounding states would not be allowed to worsen. At the time this interpretation was pretty much of a common sense approach since both the 1967 and 1970 Acts said the first of four purposes was, and I quote from those Acts, "to protect and enhance the quality of the Nation's air resources . . .". It seemed impossible that the deterioration would "enhance and protect" the nation's air resources.

For a time, there was no dispute on the meaning of the 1967 and 1970 Acts. It was accepted by both the legislative and executive branches. In 1969, the National Air Pollution Control Administration of HEW told the states that the Act prohibited, in its words, "significant deterioration of air quality in any substantial portions of an air quality region." The then secretary of HEW Finch, told the House and Senate:

"One of the express purposes of the Clean Air Act is to protect and enhance the quality of the Nation's air resources. Accordingly, it has been and will continue to be our view that the implementation plans that would permit significant deterioration of air quality in any area would be in conflict with this provision of the Act. We shall continue to expect states to maintain air of good qaulity where it does not exist."

Several hearings conducted by both Senate and House Committees came to roughly the same conclusion of a Senate panel when it said: "determination of air quality should not be permitted except under circumstances where there is no avoidable intention" and the Senate group went on to say "with the various alternative means of preventing and controlling air pollution . . . deterioration need not occur." As late as April 30, 1972 issued its National Primary and Secondary Ambient Air Quality Standards which stated that the "standards shall not be considered in any manner to allow significant deterioration of existing air quality in any portion of any state."

However, there were straws in the wind in 1971. In issuing a document called "Requirements for Administration, Preparation, Adoption and Submittal of Implementation Plans" the EPA said:

"In any region where measured or estimated ambient levels of a pollutant are below the levels specified by an applicable secondary standard, the state implementation plan shall set forth a control strategy which shall be adequate to prevent such ambient pollution levels from exceeding such secondary standards."

What this meant was that the EPA wanted to allow the states to permit pollution levels in clean air areas to rise to the secondary standards. But, when it came to its own national standards, which, as you recall, specifically prohibited significant deterioration of air quality to remain in effect. However, soon after announcing its plan for the state, subcommittees of both the House and Senate denounced the EPA's policy as a violation of the Clean Air Act.

The Act required the EPA to approve or disapprove by May 31, 1972, all state plans.

Shortly before the May 31 deadline, the Sierra Club and three other organizations brought suit in the United States District Court in the District of Columbia to enjoin or prevent the EPA from approving of the state plans which did not prohibit and effectively prevent significant deterioration of air quality in clean air areas. On May 30, 1972,

the Court issued an Order calling the EPA to review within four months all the state plans to determine if they effectively prevented significant deterioration of air quality. The EPA was additionally ordered to disapprove all state plans which did not do so, and further, to issue its regulations during the subsequent two months to guarantee that significant deterioration could not take place. In effect, the EPA's approval or disapproval of state plans on May 31 were subject to the review of the Court.

Even though many of the states had plans and statutes which stated that significant deterioration of air quality was not permissible, not a single state had an effective program to prevent air quality deterioration from taking place. Consequently, the EPA rejected every state since they were in violation of the Act as construed by the federal district court.

The Court of Appeals upheld the lower court almost immediately after it was appealed by the EPA. In the meantime, the district court's deadline to the EPA had nearly run out. A delay was obtained from the United States Supreme Court which later decided to hear the case. It is expected to announce a decision in June of this year.

You should know that the EPA's position in this lawsuit is not that the language of the statute, or its legislative history or its administrative interpretation support the EPA's position, but simply that it is good public policy and is in the public interest.

However, the EPA is now claiming that there is legislative sanction for its position. The EPA argues, for instance, that because there is not prohibition of significant deterioration in the criteria for state plans, the guidelines should stand. Furthermore, the EPA contends that the authority the Congress gave it to establish Emission Controls and the provision of the act allowing states to set higher ambient air standards stricter than those adopted by the federal government are the only mechanisms that may be used to protect air quality in the clean air areas.

And, the EPA is saying that when the Congress wrote into the legislation the provisions preventing significant deterioration of clean air areas, it only applied to emission controls. The Sierra Club refutes this line of argument by pointing out that the ambient air standards are the Act's basic method for protecting air quality. The plaintiff says that emission standards are but one of several methods, although a very important one, to protect air quality.

The issues which the Supreme Court will decide are extremely important not only to the nation as a whole, but to every state separately. Not only involved in the case are the clean air areas, but every single area where the level of air pollution is better than the federal standards for any of the pollutants.

It is clear that if the EPA wins this suit, air quality will doubtless deteriorate over most of the large, clean air areas, including South Dakota.

Because South Dakota stands a good chance of losing the clean air most of the rest of the nation looks on us with envy. In my capacity as Attorney General of the state, I have entered the State of South Dakota as amicus curiae or a friend of the court brief which demonstrates the hazards to the low population, clean air states such as ours.

There are some other factors about this case I would like to go over, some more reasons why I think an attorney general should not be afraid or even reluctant to go before the highest court in the land when our environment is threatened.

The federal government has already slowly begun to pollute the clean air areas. It does this, for instance, by deliberatly placing major pollution sources in clean air areas. As a matter of fact, in a statement made to the Supreme Court, the EPA openly states that the air-pollution problems of our urban centers must be solved by relocating the pollution sources in areas where the air is presently clean.

It is quite clear by now that the federal government has plans to fight energy crisis by the construction of huge coal burning power plants in New Mexico, Arizona, Nevada, Colorado, Wyoming and Montana, all states with clean, very clean air.

Present plans for the construction of coal burning electric plants in Wyoming and Montana call for enough power to surpass the energy production of every nation in the world except the United States and the Soviet Union. Pollution from these plants will be greater than that of New York City and Los Angeles combined.

If the EPA wins, soon there will be a relatively equal level of air pollution across the nation, air in our cities will be somewhat improved, but we will increase the pollution level over large areas by as much as 2, 5, or even 10 times.

The result would indeed be catastrophic. The EPA claims that secondary standards are sound enough for health, property, visibility, and any important value.

This is nonsense.

EPA—on another matter, of course, warns that there is no point below which air pollution presents no health danger. Just the reverse is true. The EPA has earlier warned of the risk from pollution, particularly for the old, the very young and the sick. There are many more indications of the menace of pollution, not only by the EPA but from other highly regarded scientists. There are also damages from increased pollution below the secondary standards, particularly from the ravages of sulfur and nitrogen.

Regardless of what the so-called facts are, regardless of what the EPA is trying to palm off on us, it is beyond dispute that air pollution beyond secondary standards is a danger to public health, to the ecology and to the quality of life.

I think we all know out here what will happen if the position of the Sierra Club is not sustained. We are told by the North Central Power Study. It was financed by some of the large fuel companies. It reads like a science fiction horror story, but it is only too real.

It envisions 42 mammoth power plants. These plants would make the gigantic Four Corners power plant look like a popcorn stand. Many of the new plants would be fourteen times as large as that plant at Four Corners. The plants are so huge that they nearly defy description.

To give you an idea in terms easier to understand, Fort Randall produces 320 megawatts, Oahe 420 and Gavins Point 100.

Plans on the drawing board call for the production of 53,000 megawatts to be generated at 42 potential sites in Montana, Wyoming, North Dakota and South Dakota. There would be thirteen 10,000 megawatt plants; twelve 5,000 megawatt plants; three 3,000 megawatt plants and fourteen 1,000 megawatt plants. Ten of the big plants would be located in a 30 by 70 square mile area centered at Gillette, Wyoming.

These plants would produce more electricity than any other nation except the United States. These plants would devour 210 million tons of coal per year from our nation's last remaining reserve. And while the developers promise to fill in the huge ditches and pits left by strip mining, there is considerable doubt if this fragile semi-arid land could ever be reclaimed. 81% of the Tongue-Yellowstone-Powder River Complex would be tied up in dams. Thousands of additional persons would be attracted to the area and quickly become a drain on the already limited resources of that area.

The air pollution problem could easily be, as the saying goes "outa sight". If a non-degration principle is not incorporated, a coal powered generating complex producing 50,000 megawatts of energy could meet federal emission standards and still emit mind boggling amounts of pollution.

Taking the most optimistic outlook for this 50,000 megawatts, there would be 94,000 tons per year of fly-ash; 2,100,000 tons of sulfur dioxide; and 1,226 tons of nitric oxide.

By 1975, the pollution from these plants will be several times that of the Los Angeles Basin, the smog capital of the world—14 to 18 times the nitrogen oxides; 20 times the sulfur oxides and about 8 times the particulates.

And this is of special interest to us in South Dakota because we are right in the direction of the prevailing winds.

The Sioux Falls Argus Leader added considerable perspective to the whole situation when it said editorially September 10: "Why should the West sacrifice land, water, clear skies and other resources for new ugly blotches on the landscape? A better source of power is available. The country should resolve to develop more nuclear power under the proper safeguards."

In conclusion, let me say how proud I am to be the attorney of record for South Dakota in our role in support of the Sierra Club. Having worked as a legislative assistant in the U.S. Senate while in college, I quickly learned that while there are bigger lobbies, none could continually be counted on t present the best in committee testimony for or against the bill. Not everyone agreed then or agrees now with this point of view of the Sierra Club, but it is universally respected.

The current concern for the environment has certainly been one of a great challenge for those of us in public life. To those who say environmental reform will be too costly, I say it is as precious as the air we breathe.

[From the Sioux Falls (S. Dak.) Argus Leader, Sept. 10, 1972]

CLOSE LOOK NEEDED AT WYOMING PROJECT

The proposed North Central Power Project would put the U.S. Bureau of Reclamation and 35 private utilities into a combine to strip mine coal in northeast Wyoming, burn it to generate electricity and send it over 8,000 miles of transmission lines to such places as St. Louis and Minneapolis-St. Paul.

It would produce 50,000 megawatts—more electricity than is now produced in Japan, Germany or Great Britain.

The Environmental Defense Fund has urged the federal government to assess what it calls the "truly staggering" environmental impa~t of the proposed project. According to the fund, it would produce more nitrogen oxides, sulfur dioxides and particulate matter than from all sources in New York City and the Los Angeles Air Basin combined.

The power plants near Gillette, Wyo., would consume two-thirds as much coal as all the present power plants in the country. Aqueducts would bring more water than New York City uses and reduce the flow of the Yellowstone River by 81 per cent, the fund said. The project would involve strip mining an area more than half the size of Rhode Island, which has 1,214 square miles. The fund noted the Bureau of Reclamation predicts the population of the area would grow seven-fold.

We ask several questions;

(1) Why should the country tolerate coal-powered plants of this magnitude, when nuclear energy is the power source that can produce vastly more power with less impact on the environment than coal systems? Answer: the coal is available; also, probably because environmentalists have raised so much hell about nuclear plants.

(2) Will the West benefit by scarring the Wyoming landscape, and picking up an in-

crease in population? The wide open spaces of Wyoming have a lot of sagebrush and they're sparse on grass. But we don't like the idea of the earth being gouged to the extent that this project envisions.

(3) Like the adjacent corner of Wyoming, northwestern South Dakota is underlain with lignite. It has been touted as a resource of the future, which, when tapped, will bring new wealth to the state. If strip mining gouges out a big part of South Dakota's range country, will it be worth it? We don't think so. We'd rather see cattle and sheep on those grassy hills.

The call of the Environmental Defense Fund for a government study of the project in Wyoming is very much in order. Government and scientific experts should evaluate the impact of this project on the Wyoming environment. The coal power plants built in the southwestern desert area of Arizona and New Mexico in recent years have fouled the once clear skies there.

Why should the West sacrifice land, water, clear skies and other resources for new, ugly blotches on the landscape? A better source of power is available. The country should resolve to develop more nuclear power under proper safeguards.

JUDGE'S REMARKS ON INDIANAPOLIS LSO

HON. EARL F. LANDGREBE

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, April 4, 1973

Mr. LANDGREBE. Mr. Speaker, I would like to take this opportunity to present a few comments by Judge Joseph Myers, a director of the city-funded Indianapolis Legal Aid Society, concerning the OEO funded Legal Services Organization in Indianapolis.

These remarks give strong evidence to support the complete reevaluation of the entire legal services program as administered by OEO.

I am inserting Judge Myers' remarks in the RECORD, as follows:

JUDGE MYER'S REMARKS

In Saturday's Star there was an article indicating that L.S.O. has closed two offices "almost a month ago" and many of the clients there have been referred to the Legal Aid Society.

L.S.O. still has three offices open with a director, assistant director and about 17 attorneys plus 34 members of the staff—with a budget of around $400,000 for this year from OEO funds—($526,000 last year)—is referring cases to Legal Aid which has one office, a general counsel and three attorneys plus a staff of two—(two secretaries) and a budget of $80,000.00.

In spite of L.S.O.'s pleas to the effect that they spend the majority of their time on clients and not causes, it is felt that their attitude was well stated at a recent meeting when one of their high officials questioned as to what would happen if they did not receive the $202,000.00 additional funding from the City-County Council answered that "we will just have to close up some neighborhood offices, cut back on services to the poor and direct our efforts to impact litigation."

FISCAL FIGURES

Last year (1972) L.S.O. with 19 attorneys actually handled 3,213 cases—that's 169 cases per lawyer at a cost of $163.70 per case based on an L.S.O. budget of $526,000.00.

Last year Legal Aid Society with four attorneys handled 5,455 cases—that's 1,364 cases per lawyer at a cost of $14.60 per case based on a budget of $80,000.00.

The Circuit Court plus all seven Superior Courts in 1972 operated on a total budget of $350,000.00.

In 1972 the 15 Marion County Municipal Courts operating 14 courtrooms handled 220,000 traffic and misdemeanor cases plus 8,000 civil cases affecting approximately 195,000 people plus operating a Probation Department, a traffic school and a bail project with a total of approximately 120 personnel from judges to support personnel on a budegt of approximately $900,000.00.

TEXT OF SUPREME COURT DECISION IN THE HISTORIC RODRIGUEZ SCHOOL FINANCE CASE

HON. ORVAL HANSEN

OF IDAHO

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 5, 1973

Mr. HANSEN of Idaho. Mr. Speaker, on March 21, 1973, the Supreme Court of the United States announced its final decision in the landmark school finance case, San Antonio Independent School District et al. against Rodriguez et al. Because of its far-reaching impact on education policy at the Federal, State, and local level, this is undoubtedly the most significant Supreme Court decision involving public education issues in nearly two decades. Unfortunately, the complete text of the Court's opinions in the case is not available to the Congress, school officials, or the general public. Only a very limited number of copies of the opinions were distributed when the decision was announced. Because of its implications for Federal legislation now under consideration to assist elementary and secondary schools and because of the direct effect it will have on State and local school finance policy, I am inserting in the RECORD the text of the opinions of the Court in this historic case:

[In the Supreme Court of the United States, No. 71–1332. Argued Oct. 12, 1972; decided Mar. 21, 1973]

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

SYLLABUS

San Antonio Independent School District et al. *v.* Rodriquez et al.

The financing of public elementary and secondary schools in Texas is a product of state and local participation. Almost half of the revenues are derived from a largely state-funded program designed to provide a basic minimum educational offering in every school. Each district supplements state aid through an ad valorem tax on property within its jurisdiction. Appellees brought this class action on behalf of school children said to be members of poor families who reside in school districts having a low property tax base, making the claim that the Texas system's reliance on local property taxation favors the more affluent and violates equal protection requirements because of substantial interdistrict disparities in per-pupil expenditures resulting primarily from differences in the value of assessable property among the districts. The District Court, finding that wealth is a "suspect" classification and that education is a "fundamental" right, concluded that the system could be upheld only upon a showing, which appellants failed to make, that there was a compelling state interest for the system. The court also concluded that appellants failed even to demonstrate a reasonable or rational basis for the State's system.

Held:

1. This is not a proper case in which to examine a State's laws under standards of strict judicial scrutiny, since that test is reserved for cases involving laws that operate to the disadvantage of suspect classes or interfere with the exercise of fundamental rights and liberties explicitly or implicitly protected by the Constitution. Pp. 14–40.

(a) The Texas system does not disadvantage any suspect class. It has not been shown to discriminate against any definable class of "poor" people or to occasion discriminations depending on the relative wealth of the families in any district. And, insofar as the financing system disadvantages those who, disregarding their individual income characteristics, reside in comparatively poor school districts, the resulting class cannot be said to be suspect. Pp. 14–24.

(b) Nor does the Texas school-financing system impermissibly interfere with the exercise of a "fundamental" right or liberty. Though education is one of the most important services performed by the State, it is not within the limited category of rights recognized by this Court as guaranteed by the Constitution. Even if some identifiable quantum of education is arguably entitled to constitutional protection to make meaningful the exercise of other constitutional rights, here there is no showing that the Texas system fails to provide the basic minimal skills necessary for that purpose. Pp. 25–35.

(c) Moreover, this is an inappropriate case in which to invoke strict scrutiny since it involves the most delicate and difficult questions of local taxation, fiscal planning, educational policy, and federalism, considerations counseling a more restrained form of review. Pp. 35–40.

2. The Texas system does not violate the Equal Protection Clause of the Fourteenth Amendment. Though concededly imperfect, the system bears a rational relationship to a legitimate state purpose. While assuring basic education for every child in the State, it permits and encourages participation in and significant control of each district's schools at the local level. Pp. 40–49.

337 F. Supp. 280, reversed.

POWELL, J., delivered the opinion of the Court, in which BURGER, C. J., and STEWART, BLACKMUN, and REHNQUIST, JJ., joined. STEWART, J., filed a concurring opinion. BRENNAN, J., filed a dissenting opinion. WHITE, J., filed a dissenting opinion, in which DOUGLAS and BRENNAN, JJ., joined. MARSHALL, J., filed a dissenting opinion, in which DOUGLAS, J., joined.

[Supreme Court of the United States, No. 71–1332, Mar. 21, 1973]

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

San Antonio Independent School District et al., Appellants, *v.* Demetrio P. Rodriguez et al.

MR. JUSTICE POWELL delivered the opinion of the Court.

This suit attacking the Texas system of financing public education was initiated by Mexican-American parents whose children attend the elementary and secondary schools in the Edgewood Independent School District, an urban school district in San Antonio, Texas.[1] They brought a class action on behalf of school children throughout the State who are members of minority groups or who are poor and reside in school districts having a low property tax base. Named as defendants[2] were the State Board of Education, the Commissioner of Education, the State Attorney General, and the Bexar

Footnotes at end of article.

County (San Antonio) Board of Trustees. The complaint was filed in the summer of 1968 and a three-judge court was impaneled in January 1969.[3] In December 1974 [4] the panel rendered its judgment in a *per curiam* opinion holding the Texas school finance system unconstitutional under the Equal Protection Clause of the Fourteenth Amendment.[5] The State appealed, and we noted probable jurisdiction to consider the far-reaching constitutional questions presented. 406 U.S. 966 (1972). For the reasons stated in this opinion we reverse the decision of the District Court.

I

The first Texas Constitution, promulgated upon Texas' entry into the Union in 1845, provided for the establishment of a system of free schools.[6] Early in its history, Texas adopted a dual approach to the financing of its schools, relying on mutual participation by the local school districts and the State. As early as 1883 the state constitution was amended to provide for the creation of local school districts empowered to levy *ad valorem* taxes with the consent of local taxpayers for the "erection of school buildings" and for the "further maintenance of public free schools." [7]

Such local funds as were raised were supplemented by funds distributed to each district from the State's Permanent and Available School Funds.[8] The Permanent School Fund, established in 1854,[9] was endowed with millions of acres of public land set aside to assure a continued source of income for school support.[10] The Available School Fund, which received income from the Permanent School Fund as well as from a state *ad valorem* property tax and other designated taxes,[11] served as the disbursing arm for most state educational funds throughout the late 1800's and first half of this century. Additionally, in 1918 an increase in state property taxes was used to finance a program providing free textbooks throughout the State.[12]

Until recent times Texas was a predominantly rural State and its population and property wealth were spread relatively evenly across the State.[13] Sizable differences in the value of assessable property between local school districts became increasingly evident as the State became more industrialized and as rural-to-urban population shifts became more pronounced.[14] The location of commercial and industrial property began to play a significant role in determining the amount of tax resources available to each school district. These growing disparities in population and taxable property between districts were responsible in part for increasingly notable differences in levels of local expenditure for education.[15]

In due time it became apparent to those concerned with financing public education that contributions from the Available School Fund were not sufficient to ameliorate these disparities.[16] Prior to 1939 the Available School Fund contributed money to every school district at a rate of $17.50 per school-age child.[17] Although the amount was increased several times in the early 1940's,[18] the Fund was providing only $46 per student by 1945." [19]

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

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

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

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

The school district in which appellees reside, the Edgewood Independent School District, has been compared throughout this litigation with the Alamo Heights Independent School District. This comparison between the least and most affluent districts in the San Antonio area serves to illustrate the manner in which the dual system of finance operates and to indicate the extent to which substantial disparities exist despite the State's impressive progress in recent years. Edgewood is one of seven public school districts in the metropolitan area. Approximately 22,000 students are enrolled in its 25 elementary and secondary schools. The district is situated in the core-city sector of San Antonio in a residential neighborhood that has little commercial or industrial property. The residents are predominantly of Mexican-American descent: approximately 90% of the student population is Mexican-American and over 6% is Negro. The average assessed property value per pupil is $5,960—the lowest in the metropolitan area—and the median family income ($4,686) is also the lowest.[30] At an equalized tax rate of $1.05 per $100 of assessed property—the highest in the metropolitan area—the district contributed $26 to the education of each child for the 1967–1968 school year above its Local Fund Assignment for the Minimum Foundation Program. The Foundation Program contributed $222 per pupil for a state-local total of $258.[31] Federal funds added another $108 for a total of $356 per pupil.[32]

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

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

Despite these recent increases, substantial interdistrict disparities in school expenditures found by the District Court to prevail in San Antonio and in varying degrees throughout the State [38] still exist. And it was these disparities, largely attributable to differences in the amounts of money collected through local property taxation, that led the District Court to conclude that Texas' dual system of public school finance violated the Equal Protection Clause. The District Court held that the Texas system discriminates on the basis of wealth in the manner in which education is provided for its people. 337 F. Supp., at 282. Finding that wealth is a "suspect" classification and that education is a "fundamental" interest, the District Court held that the Texas system could be sustained only if the State could show that it was premised upon some compelling state interest. *Id.*, at 282–284. On this issue the court concluded that "[n]ot only are defendants unable to demonstrate compelling state interests . . . they fail even to establish a reasonable basis for these classifications." *Id.*, at 284.

Texas virtually concedes that its historically rooted dual system of financing education could not withstand the strict judicial scrutiny that this Court has found appropriate in reviewing legislative judgments that interfere with fundamental constitutional rights [39] or that involve suspect classifications.[40] If, as previous decisions have indi-

Footnotes at end of article.

cated, strict scrutiny means that the State's system is not entitled to the usual presumption of validity, that the State rather than the complainants must carry a "heavy burden of justification," that the State must demonstrate that its educational system has been structured with "precision" and is "tailored" narrowly to serve legitimate objectives and that it has selected the "least drastic means" for effectuating its objectives.[41] the Texas financing system and its counterpart in virtually every other State will not pass muster. The State candidly admits that "[n]o one familiar with the Texas system would contend that it has yet achieved perfection." [42] Apart from its concession that educational finance in Texas has "defects" [43] and "imperfections," [44] the State defends the system's rationality with vigor and disputes the District Court's finding that it lacks a "reasonable basis."

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

II

The District Court's opinion does not reflect the novelty and complexity of the constitutional questions posed by appellees' challenge to Texas' system of school finance. In concluding that strict judicial scrutiny was required, that court relied on decisions dealing with the rights of indigents to equal treatment in the criminal trial and appellate processes,[45] and on cases disapproving wealth restrictions on the right to vote.[46] Those cases, the District Court concluded, established wealth as a suspect classification. Finding that the local property tax system discriminated on the basis of wealth, it regarded those precedents as controlling. It then reasoned, based on decisions of this Court affirming the undeniable importance of education,[47] that there is a fundamental right to education and that, absent some compelling state justification, the Texas system could not stand.

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

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

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

The precedents of this Court provide the proper starting point. The individuals or groups of individuals who constituted the class discriminated against in our prior cases shared two distinguishing characteristics: because of their impecunity they were completely unable to pay for some desired benefit, and as a consequence, they sustained an absolute deprivation of a meaningful opportunity to enjoy that benefit. In *Griffin* v. *Illinois*, 351 U.S. 12 (1956), and its progeny,[52] the Court invalidated state laws that prevented an indigent criminal defendant from acquiring a transcript, or an adequate substitute for a transcript, for use at several stages of the trial and appeal process. The payment requirements in each case were found to occasion *de facto* discrimination against those who, because of their indigency, were totally unable to pay for transcripts. And, the Court in each case emphasized that no constitutional violation would have been shown if the State had provided some "adequate substitute" for a full stenographic transcript. *Britt* v. *North Carolina*, 404 U.S. 226, 228 (1971); *Gardner* v. *California*, 393 U.S. 367 (1967); *Draper* v. *Washington*, 372 U.S. 487 (1963); *Erskine* v. *Washington Prison Board*, 357 U.S. 214 (1958).

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

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

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

Only appellees' first possible basis for describing the class disadvantaged by the Texas school finance system—discrimination against a class of definably "poor" persons—might arguably meet the criteria established in these piror cases. Even a cursory examination, however, demonstrates that neither of the two distinguishing characteristics of wealth classifications can be found here. First, in support of their charge that the system discriminates against the "poor," appellees have made no effort to demonstrate that it operates to the peculiar disadvantage of any class fairly definable as indigent, or as composed of persons whose incomes are beneath any designated poverty level. Indeed, there is reason to believe that the poorest families are not necessarily clustered in the poorest property districts. A recent and exhaustive study of school districts in Connecticut concluded that "[i]t is clearly incorrect . . . to contend that the 'poor' live in 'poor' districts . . . . Thus, the major factual assumption of *Serrano*—that the educational finance system discriminates against the 'poor'—is simply false in Connecticut" [53] Defining "poor" families as those below the Bureau of the Census "poverty level," [54] the Connecticut study found, not surprisingly, that the poor were clustered around commercial and industrial areas—those same areas that provide the most attractive sources of property tax income for school districts. [55] Whether a similar pattern would be discovered in Texas is not known, but there is no basis on the record in this case for assuming that the poorest people—defined by reference to any level of absolute impecunity—are concentrated in the poorest districts.

Second, neither appellees nor the District Court addressed the fact that, unlike each of the foregoing cases, lack of personal resources has not occasioned an absoulte deprivation of the desired benefit. The argument here is not that the children in districts having relatively low assessable property values are receiving no public education; rather, it is that they are receiving a proper quality education than that available to children in districts having more assessable wealth. Apart from the unsettled and disputed question whether the quality of education may be determined by the amount of money expended for it,[56] a sufficient answer to appellees' argument is that at least where wealth is involved the Equal Protection Clause does not require absolute equality or precisely equal advantages.[57] Nor, indeed, in view of the infinite variables affecting the educational process, can any system assure equal quality of education except in the most relative sense. Texas asserts that the Minimum Foundation Program provides an "adequate" education for all children in the State. By providing 12 years of free public school education, and by assuring teachers, books, transportation and operating funds, the Texas Legislature has endeavored to "guarantee, for the welfare of the state as a whole, that all people shall have at least an adequate program of education. This is what is meant by 'A Minimum Foundation Program of Education.' " [58] The State repeatedly asserted in its briefs in this Court that it has fulfilled this desire and that it now assures

Footnotes at end of article.

"every child in every school district an adequate education." [59] No proof was offered at trial persuasively discrediting or refuting the State's assertion.

For these two reasons—the absense of any evidence that the financing system discriminates against any definable category of "poor" people or that it results in the absolute deprivation of education—the disadvantaged class is not susceptible to identification in traditional terms.[60]

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

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

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

Professor Berke's affidavit is based on a survey of approximately 10% of the school districts in Texas. His findings, set out in the margin,[63] show only that the wealthiest few districts in the sample have the highest median family incomes and spend the most on education, and that the several poorest districts have the lowest family incomes and devote the least amount of money to education. For the remainder of the districts—96 districts comprising almost 90% of the sample the correlation is inverted, *i.e.*, the districts that spend next to the most money on education are pouplated by families having next to the lowest median family incomes while the districts spending the least have the highest median family incomes. It is evident that, even if the conceptual questions were answered favorably to appellees, no factual basis exists upon which to found a claim of comparative wealth discrimination.[64]

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

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

We thus conclude that the Texas system does not operate to the peculiar disadvantage of any suspect class. But in recognition of the fact that this Court has never heretofore held that wealth discrimination alone provides an adequate basis for invoking strict scrutiny, appellees have not relied solely on this contention.[67] They also assert that the State's system impermissibly interferes with the exercise of a "fundamental" right and that accordingly the prior decisions of this Court require the application of the strict standard of judicial review. *Graham* v. *Richardson*, 403 U.S. 365, 375–376 (1971); *Kramer* v. *Union Free School District*, 935 U.S. 621 (1969); *Shapiro* v. *Thompson*, 394 U.S. 618 (1969). It is this question—whether education is a fundamental right, in the sense that it is among the rights and liberties protected by the Constitution—which has so consumed the attention of courts and commentators in recent years.[68]

B

In *Brown* v. *Board of Education*, 347 U.S. 483 (1954), a unanimous Court recognized that "education is perhaps the most important function of state and local governments." *Id.*, at 493. What was said there in the context of racial discrimination has lost none of its vitality with the passage of time: "Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms." *Ibid.*

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

Nothing this Court holds today in any way detracts from our historic dedication to public education. We are in complete agreement with the conclusion of the three-judge panel below that "the grave significance of education both to the individual and to our society" cannot be doubted.[69] But the importance of a service performed by the State does not determine whether it must be regarded as fundamental for purposes of examination under the Equal Protection Clause. Mr. Justice Harlan, dissenting from the Court's application of strict scrutiny to a law impinging upon the right of interstate travel, admonished that "[v]irtually every state statute affects important rights" *Shapiro* v. *Thompson*, 394 U.S. 618, 655, 661 (1969). In his view, if the degree of judicial scrutiny of state legislation fluctuated depending on a majority's view of the importance of the interest affected, we would have gone "far toward making this Court a 'superlegislature.'" *Ibid.* We would indeed then be assuming a legislative role and one for which the Court lacks both authority and competence. But Mr. JUSTICE STEWART's response in *Shapiro* to Mr. Justice Harlan's concern correctly articulates the limits of the fundamental rights rationale employed in the Court's equal protection decisions:

"The Court today does *not* 'pick out particular human activities, characterize them as "fundamental," and give them added protection. . . .' To the contrary, the Court simply recognizes, as it must, an established constitutional right, and gives to that right no less protection than the Constitution itself demands." 394 U.S., at 642. (Emphasis from original.)

MR. JUSTICE STEWART's statement serves to underline what the opinion of the Court in *Shapiro* makes clear. In subjecting to strict judicial scrutiny state welfare eligibility statutes that imposed a one-year durational residency requirement as a precondition to receiving AFDC benefits, the Court explained: "in moving from State to State . . . appellees were exercising a constitutional right, and any classification which serves to penalize the exercise of that right, unless shown to be necessary to promote a *compelling* governmental interest, is unconstitutional." *Id.*, at 634. (Emphasis from original.) The right to interstate travel had long been recognized as a right of constitutional significance,[70] and the Court's decision therefore did not require an *ad hoc* determination as to the social or economic importance of that right.[71]

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

"We do not denigrate the importance of decent, safe, and sanitary housing. But the Constitution does not provide judicial remedies for every social and economic ill. We are unable to perceive in that document any constitutional guarantee of access to dwellings of a particular quality or any recognition of the right of a tenant to occupy the real property of his landlord beyond the term of his lease, without the payment of rent. . . . *Absent constitutional mandate*, the assurance of adequate housing and the definition of landlord-tenant relationships are legislative, not judicial, functions." *Id.*, at 74. (Emphasis supplied.)

Footnotes at end of article.

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

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

Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected. As we have said, the undisputed importance of education will not alone cause this Court to depart from the usual standard for reviewing a State's social and economic legislation. It is appellees' contention, however, that education is distinguishable from other services and benefits provided by the State because it bears a peculiarly close relationship to other rights and liberties accorded protection under the Constitution. Specifically, they insist that education is itself a fundamental personal right because it is essential to the effective exercise of First Amendment freedoms and to intelligent utilization of the right to vote. In asserting a nexus between speech and education, appellees urge that the right to speak is meaningless unless the speaker is capable of articulating his thoughts intelligently and persuasively. The "marketplace of ideas" is an empty forum for those lacking basic communicative tools. Likewise, they argue that the corollary right to receive information[77] becomes little more than a hollow privilege when the recipient has not been taught to read, assimilate, and utilize available knowledge.

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

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

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

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

We have carefully considered each of the arguments supportive of the District Court's finding that education is a fundamental right or liberty and have found those arguments unpersuasive. In one further respect we find this a particularly inappropriate case in which to subject state action to strict judicial scrutiny. The present case, in another basic sense, is significantly different from any of the cases in which the Court has applied strict scrutiny to state or federal legislation touching upon constitutionally protected rights. Each of our prior cases involved legislation which "deprived," "infringed," or "interfered" with the free exercise of some such fundamental personal right or liberty. See *Skinner* v. *Oklahoma, supra*, at 536; *Shapiro* v. *Thompson, supra*, at 634; *Dunn* v. *Blumstein, supra*, at 338–343. A critical distinction between those cases and the one now before us lies in what Texas is endeavoring to do with respect to education. MR. JUSTICE BRENAN, writing for the Court in *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966), expresses well the salient point: [81]

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

"[The federal law in question] does not restrict or deny the franchise but in effect extends the franchise to persons who otherwise would be denied it by state law. . . . We need decide only whether the challenged limitation on the relief effected . . . was permissible. In deciding that question, the principle that calls for the closest scrutiny of distinctions in laws *denying* fundamental rights . . . is inapplicable; for the distinction challenged by appellees is presented only as a limitation on a reform measure aimed at eliminating an existing barrier to the exercise of the franchise. Rather, in deciding the constitutional propriety of the limitations in such a reform measure we are guided by the familiar principles that a 'statute is not invalid under the Constitution because it might have gone further than it did,' . . . that a legislature need not 'strike at all evils at the same time,' and that 'reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind. . . .' " *Id.*, at 656–657. (Emphasis from original.)

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

C

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

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

"The broad discretion as to classification possessed by a legislature in the field of taxation has long been recognized. . . . [T]he passage of time has only served to underscore the wisdom of that recognition of the large area of discretion which is needed by a legislature in formulating sound tax policies. . . . It has . . . been pointed out that in taxation, even more than in other fields, legislatures possess the greatest freedom in classification. Since the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes. . . ." *Madden* v. *Kentucky*, 309 U.S. 83, 87–88 (1940).

See also *Lehnhausen* v. *Lake Shore Auto Parts Co.*, —— U.S. —— (1973); *Wisconsin* v. *J. C. Penney Co.*, 311 U.S. 435, 445 (1940).

Thus we stand on familiar ground when we continue to acknowledge that the Justices of this Court lack both the expertise and the familiarity with local problems so necessary to the making of wise decisions with respect to the raising and disposition of public revenues. Yet we are urged to direct the States either to alter drastically the present system or to throw out the property tax altogether in favor of some other form of taxation. No scheme of taxation, whether the tax is imposed on property, income, or purchases of goods and services, has yet been devised which is free of all discriminatory

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impact. In such a complex arena in which no perfect alternatives exist, the Court does well not to impose too rigorous a standard of scrutiny lest all local fiscal schemes become subjects of criticism under the Equal Protection Clause.[85]

In addition to matters of fiscal policy, this case also involves the most persistent and difficult questions of educational policy, another area in which this Court's lack of specialized knowledge and experience counsels against premature interference with the informed judgments made at the state and local levels. Education, perhaps even more than welfare assistance, presents a myriad of "intractable economic, social, and even philosophical problems." *Dandridge* v. *Williams*, 397 U.S., at 487. The very complexity of the problems of financing and managing a statewide public school system suggest that "there will be more than one constitutionally permissible method of solving them," and that, within the limits of rationality, "the legislature's efforts to tackle the problems" should be entitled to respect. *Jefferson* v. *Hackney*, 406 U.S. 535, 546–547 (1972). On even the most basic questions in this area the scholars and educational experts are divided. Indeed, one of the hottest sources of controversy concerns the extent to which there is a demonstrable correlation between educational expenditures and the quality of education [86]—an assumed correlation underlying virtually every legal conclusion drawn by the District Court in this case.

Related to the questioned relationship between cost and quality is the equally unsettled controversy as to the proper goals of a system of public education.[87] And the question regarding the most effective relationship between state boards of education and local school boards, in terms of their respective responsibilities and degrees of control, is now undergoing searching re-examination. The ultimate wisdom as to these and related problems of education is not likely to be divined for all time even by the scholars who now so earnestly debate the issues. In such circumstances the judiciary is well advised to refrain from interposing on the States inflexible constitutional restraints that could circumscribe or handicap the continued research and experimentation so vital to finding even partial solutions to educational problems and to keeping abreast of ever changing conditions.

It must be remembered also that every claim arising under the Equal Protection Clause has implications for the relationship between national and state power under our federal system. Questions of federalism are always inherent in the process of determining whether a State's laws are to be accorded the traditional presumption of constitutionality, or are to be subjected instead to rigorous judicial scrutiny. While "[t]he maintenance of the principles of federalism is a foremost consideration in interpreting any of the pertinent provisions under which this Court examines state action,"[88] it would be difficult to imagine a case having a greater potential impact on our federal system than the one now before us, in which we are urged to abrogate systems of financing public education presently in existence in virtually every State.

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

III

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

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

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

By virtue of the obligation to fulfill its local Fund Assignment, every district must impose an *ad valorem* tax on property located within its borders. The Fund Assignment was designed to remain sufficiently low to assure that each district would have some ability to provide a more enriched educational program.[99] Every district supplements its foundation grant in this manner. In some districts the local property tax contribution is insubstantial, as in Edgewood where the supplement was only $26 per pupil in 1967. In other districts the local share may far exceed even the total Foundation grant. In part, local differences are attributable to differences in the rates of taxation or in the degree to which the market value for any category of property varies from its assessed value.[100] The greatest interdistrict disparities, however, are attributable to differences in the amount of assessable property available within any district. Those districts that have more property, or more valuable property, have a greater capability for supplementing state funds. In large measure, these additional local revenues are devoted to paying higher salaries to more teachers. Therefore, the primary distinguishing attributes of schools in property-affluent districts are lower pupil-teacher ratios and higher salary schedules.[101]

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

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

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

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

The Texas system of school finance is responsive to these two forces. While assuring a basic education for every child in the State, it permits and encourages a large measure of participation in and control of each district's schools at the local level. In an era that has witnessed a consistent trend toward centralization of the functions of government, local sharing of responsibility for public education has survived. The merit of local control was recognized last Term in both the majority and dissenting opinions in *Wright* v. *Council of the City of Emporia*, 407 U.S. 451 (1972). MR. JUSTICE STEWART stated there that "[d]irect control over decisions vitally affecting the education of one's children is a need that is strongly felt in our society." *Id.*, at 469 THE CHIEF JUSTICE in his dissent, agreed that "[l]ocal control is not only vital to continued public support of the schools, but it is of overriding importance from an educational standpoint as well." *Id.*, at 478.

The persistence of attachment to government at the lowest level where education is concerned reflects the depth of commitment of its supporters. In part, local control means, as Professor Coleman suggests, the freedom to devote more money to the education of one's children. Equally important, however, is the opportunity it offers for participation in the decision-making process that determines how those local tax dollars will be spent. Each locality is free to tailor local programs to local needs. Pluralism also affords some opportunity for experimentation, innovation, and a healthy competition for educational excellence. An analogy to the Nation-State relationship in our federal system seems uniquely appropriate. Mr. Justice Brandeis identified as one of the peculiar strengths of our form of government each State's freedom to "serve as a laboratory . . . and try novel social and economic experiments." [106] No area of social concern stands to profit more from a multiplicity of viewpoints and from a diversity of approaches than does public education.

Appellees do not question the propriety of Texas' dedication to local control of education. To the contrary, they attack the school finance system precisely because, in their view, it does not provide the same level of local control and fiscal flexibility in all districts. Appellees suggest that local control could be preserved and promoted under other financing systems that resulted in more equality in educational expenditures. While it is no doubt true that reliance on local property taxation for school revenues provides less freedom of choice with respect to expenditures for some districts than for others,[107] the existence of "some inequality" in the manner in which the State's rationale is achieved is not alone a sufficient basis for striking down the entire system. *McGowan* v. *Maryland*, 366 U. S. 420, 425–426 (1961).

It may not be condemned simply because it imperfectly effectuates the State's goals. *Dandridge* v. *Williams*, 397 U.S., at 485. Nor

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must the financing system fail because, as appellees suggest, other methods of satisfying the State's interest, which occasion "less drastic" disparities in expenditures, might be conceived. Only where state action impinges on the exercise of fundamental constitutional rights or liberties must it be found to have chosen the least restrictive alternative. *Cf. Dunn* v. *Blumstein*, 405 U.S. 330, 343 (1972); *Shelton* v. *Tucker*, 364 U.S. 479, 488 (1960). It is also well to remember that even those districts that have reduced ability to make free decisions with respect to how much they spend on education still retain under the present system a large measure of authority as to how available funds will be allocated. They further enjoy the power to make numerous other decisions with respect to the operation of the schools.[108] The people of Texas may be justified in believing that other systems of school finance, which place more of the financial responsibility in the hands of the State, will result in a comparable lessening of desired local autonomy. That is, they may believe that along with increased control of the purse strings at the state level will go increased control over local policies.[109]

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

Moreover, if local taxation for local expenditure is an unconstitutional method of providing for education then it may be an equally impermissible means of providing other necessary services customarily financed largely from local property taxes, including local police and fire protection, public health and hospitals, and public utility facilities of various kinds. We perceive no justification for such a severe denegration of local property taxation and control as would follow from appellees' contentions. It has simply never been within the constitutional prerogative of this Court to nullify statewide measures for financing public services merely because the burdens or benefits thereof fall unevenly depending upon the relative wealth of the political subdivisions in which citizens live.

In sum, to the extent that the Texas system of school finance results in unequal expenditures between children who happen to reside in different districts, we cannot say that such disparities are the product of a system that are so irrational as to be invidiously discriminatory. Texas has acknowledged its shortcomings and has persistently endeavored—not without some success—to ameliorate the differences in level of expenditures without sacrificing the benefits of local participation. The Texas plan is not the result of hurried, ill-conceived legislation. It certainly is not the product of purposeful discrimination against any group or class. On the contrary, it is rooted in decades of experience in Texas and elsewhere, and in major part is the product of responsible studies by qualified people. In giving substance to the presumption of validity to which the Texas system is entitled, *Lindsey* v. *National Carbonic Gas Co.*, 220 U. S. 61, 78 (1911), it is important to remember that at every stage of its development it has constituted a "rough accommodation" of interests in an effort to arrive at practical and workable solutions. *Metropolis Theatre Co.* v. *City of Chicago*, 228 U. S. 69–70 (1913). One also must remember that the system here challenged is not peculiar to Texas or to any other State. In its essential characteristics the Texas plan for financing public education reflects what many educators for a half century have thought was an enlightened approach to a problem for which there is no perfect solution. We are unwilling to assume for ourselves a level of wisdom superior to that of legislators, scholars, and educational authorities in 49 States, especially where the alternatives proposed are only recently conceived and nowhere yet tested. The constitutional standard under the Equal Protection Clause is whether the challenged state action rationally furthers a legitimate state purpose or interest. *McGinnis* v. *Royster*, — U.S.—, —(1973). We hold that the Texas plan abundantly satisfies this standard.

IV

In light of the considerable attention that has focused on the District Court opinion in this case and on its California predecessor, *Serrano* v. *Priest*, 96 Cal. Rptr. 601, 487 P. 2d 1241, 5 Cal. 3d 584 (1971), a cautionary postscript seems appropriate. It cannot be questioned that the constitutional judgment reached by the District Court and approved by our dissenting brothers today would occasion in Texas and elsewhere an unprecented upheaval in public education. Some commentators have concluded that, whatever the contours of the alternative financing programs that might be devised and approved, the result could not avoid being a beneficial one. But, just as there is nothing simple about the constitutional issues involved in these cases, there is nothing simple or certain about predicting the consequences of massive change in the financing and control of public education. Those who have devoted the most thoughtful attention to the practical ramifications of these cases have found no clear or dependable answers and their scholarship reflects no such unqualified confidence in the desirability of completely uprooting the existing system.

The complexity of these problems is demonstrated by the lack of consensus with respect to whether it may be said with any assurance that the poor, the racial minorities, or the children in overburdened corecity school districts would be benefitted by abrogation of traditional modes of financing education. Unless there is to be a substantial increase in state expenditures on education across the board—an event the likelihood of which is open to considerable question [111]—these groups stand to realize gains in terms of increased per pupil expenditures only if they reside in districts that presently spend at relatively low levels, *i.e.*, in those districts that would benefit from the redistribution of existing resources.

Yet recent studies have indicated that the poorest families are not invariably clustered in the most impecunious school districts.[112] Nor does it now appear that there is any more than random chance that racial minorities are concentrated in property-poor districts.[113] Additionally, several research projects have concluded that any financing alternative designed to achieve a greater equality of expenditures is likely to lead to higher taxation and lower educational expenditures in the major urban centers,[114] a result that would exacerbate rather than ameliorate existing conditions in those areas.

These practical considerations, of course, play no role in the adjudication of the constitutional issues presented here. But they serve to highlight the wisdom of the traditional limitations on this Court's function. The consideration and initiation of fundamental reforms with respect to state taxation and education are matters reserved for the legislative processes of the various States, and we do no violence to the values of federalism and separation of powers by staying our hand. We hardly need add that this Court's action today is not to be viewed as placing its judicial imprimatur on the status quo. The need is apparent for reform in tax systems which may well have relied too long and too heavily on the local property tax. And certainly innovative new thinking as to public education, its methods and its funding, is necessary to assure both a higher level of quality and greater uniformity of opportunity. These matters merit the continued attention of the scholars who already have contributed much by their challenges. But the ultimate solutions must come from the lawmakers and from the democratic pressures of those who elect them.

Reversed.

FOOTNOTES

[1] Not all of the children of these complainants attend public school. One family's children are enrolled in private school "because of the condition of the schools in the Edgewood Independent School District." Third Amended Complaint, App., at 14.

[2] The San Antonio Independent School District, whose name this case still bears, was one of seven school districts in the San Antonio metropolitan area that were originally named as party defendants. After a pretrial conference, the District Court issued an order dismissing the school districts from the case. Subsequently, the San Antonio Independent School District has joined in the plaintiffs' challenge to the State's school finance system and has filed an *amicus curiae* brief in support of that position in this Court.

[3] A three-judge court was properly convened and there are no questions as to the District Court's jurisdiction or the direct appealability of its judgment. 28 U.S.C. §§ 2281, 1253.

[4] The trial was delayed for two years to permit extensive pretrial discovery and to allow completion of a pending Texas legislative investigation concerning the need for reform of its public school finance system. 337 F. Supp. 280, 285 n. 11 (WD Tex. 1971).

[5] 337 F. Supp. 280. The District Court stayed its mandate for two years to provide Texas an opportunity to remedy the inequities found in its financing program. The court, however, retained jurisdiction to fashion its own remedial order if the State failed to offer an acceptable plan. *Id.*, at 286.

[6] Tex. Const., Art. X, § 1 (1845):

"A general diffusion of knowledge being essential to the preservation of the rights and liberties of the people, it shall be the duty of the Legislature of this State to make suitable provision for the support and maintenance of public schools."

Id., § 2:

"The Legislature shall as early as practicable establish free schools throughout the State, and shall furnish means for their support, by taxation on property. . . ."

[7] Tex. Const. 1876, Art. 7, § 3, as amended, Aug. 14, 1883.

[8] Tex. Const., Art. 7, §§ 3, 4, 5.

[9] Gammel's Laws of Texas, p. 1178. See Tex. Const., Art. 7, §§ 1, 2 (interpretive commentaries); I Report of Governor's Committee on Public School Education, The Challenge and the Chance 27 (1969) (hereinafter Governor's Committee Report).

[10] Tex. Const., Art. 7, § 5 (see also the interpretive commentary); V Governor's Committee Report, at 11–12.

[11] The various sources of revenue for the Available School Fund are cataloged in Texas State Bd. of Educ., Texas Statewide School Adequacy Survey 7–15 (1938).

[12] Tex. Const., Art. 7, § 3, as amended, Nov. 5, 1918 (see interpretive commentary).

[13] I Governor's Committee Report, at 35; Texas State Bd. of Educ., *supra*, n. 11, at 5–7; J. Coons, W. Clune, S. Sugarman, Private Wealth and Public Education 48–49 (1970); E. Cubberley, School Funds and Their Apportionment 21–27 (1905).

[14] By 1940 one-half of the State's population was clustered in its metropolitan centers. I Governor's Committee Report, at 35.

[15] Gilmer-Aiken Committee, To Have What We Must 13 (1948).

[16] R. Still, The Gilmer-Aiken Bills 11–12 (1950); Texas State Bd. of Educ., *supra*, n. 11.

[17] R. Still, *supra*, n. 16, at 12. It should be noted that during this period the median per pupil expenditure for all schools with an enrollment of more than 200 was approximately $50 per year. During this same period a survey conducted by the State Board of Education concluded that "in Texas the best educational advantages offered by the State at present may be had for the median cost of $52.67 per year per pupil in average daily attendance." Texas State Bd. of Educ., *supra*, n. 11, at 56.

[18] 1 General Laws of Texas, 46th Legis., Reg. Sess. 1939, at 274 ($22.50 per student); General & Spec. Laws of Texas, 48th Legis., Reg. Sess. 1943, c. 161, at 262 ($25.00 per student).

[19] General & Spec. Laws of Texas, 49th Legis,. Reg. Sess. 1945, c. 53, at 75.

[20] For a complete history of the adoption in Texas of a foundation program, see R. Silas, *supra*, n. 16. See also V Governor's Committee Report, at 14; Texas Research League, Public School Finance Problems in Texas 9 (Interim Report 1972).

[21] For the 1970–1971 school year this state aid program accounted for 48.0% of all public school funds. Local taxation contributed 41.1% and 10.9% was provided in federal funds. Texas Research League, *supra*, n. 20, at 9.

[22] V Governor's Committee Report, at 44–48.

[23] At present there are 1,161 school districts in Texas. Texas Research League, *supra*, n. 20, at 12.

[24] In 1948 the Gilmer-Aiken Committee found that some school districts were not levying any local tax to support education. Gilmer-Aiken Committee, *supra*, n. 15, at 16. The Texas State Board of Education Survey found that over 400 common and independent school districts were levying no local property tax in 1935–1936. Texas State Bd. of Educ., *supra* n. 11, at 39–42.

[25] Gilmer-Aiken Committee, *supra*, n. 15, at 15.

[26] I Governor's Committee Report, at 51–53.

[27] Texas Research League, *supra*, n. 20, at 2.

[28] In the years between 1949 and 1967 the average per pupil expenditure for all current operating expenses increased from $206 to $493. In that same period capital expenditures increased from $44 to $102 per pupil. I Governor's Committee Report, at 53–54.

[29] III Governor's Committee Report, at 113–146; Berke, Carnevale, Morgan & White, The Texas School Finance Case: A Wrong in Search of a Remedy, 1 J. of L. & Educ. 659, 681–682 (1972).

[30] The family income figures are based on 1960 census statistics.

[31] The Available School Fund, technically, provides a second source of state money. That Fund has continued as in years past (see text accompanying nn. 16–19, *supra*) to distribute uniform per pupil grants to every district in the State. In 1968 this Fund allotted $98 per pupil. However, because the Available School Fund contribution is always subtracted from a district's entitlement under the Foundation Program, it plays no significant role, in educational finance today.

[32] While federal assistance has an ameliorating effect on the difference in school budgets between wealthy and poor districts, the District Court rejected an argument made by the State in that court that it should consider the effect of the federal grant in assessing the discrimination claim. 337 F. Supp., at 284. The State has not renewed that contention here.

[33] A map of Bexar County included in the record shows that Edgewood and Alamo Heights are among the smallest districts in the county and are of approximately equal size. Yet, as the figures above indicate, Edgewood's student population is more than four times that of Alamo Heights. This factor obviously accounts for a significant percentage of the differences between the two districts in per pupil property values and expenditures. If Alamo Heights had as many students to educate as Edgewood does (22,000) its per pupil assessed property value would be approximately $11,100 rather than $49,000, and its per pupil expenditures would therefore have been considerably lower.

[34] The figures quoted above vary slightly from those utilized in the District Court opinion. 337 F. Supp., at 282. These trivial differences are apparently a product of that court's reliance on slightly different statistical data than we have relied upon.

[35] Although the Foundation Program has made significantly greater contributions to both school districts over the last several years, it is apparent that Alamo Heights has enjoyed a larger gain. The sizable difference between the Alamo Heights and Edgewood grants is due to the emphasis in the State's allocation formula on the guaranteed minimum salaries for teachers. Higher salaries are guaranteed to teachers having more years of experience and possessing more advanced degrees. Therefore, Alamo Heights, which has a greater percentage of experienced personnel with advanced degrees, receives more State support. In this regard the Texas Program is not unlike that presently in existence in a number of other States. C. Coons, W. Clune, S. Sugarman, *supra*, n. 13, at 63–125. Because more dollars have been given to districts that already spend more per pupil, such Foundation formulas have been described as "anti-equalizing." *Ibid.* The formula, however, is anti-equalizing only if viewed in absolute terms. The percentage disparity between the two Texas districts is diminished substantially by State aid. Alamo Heights derived in 1967–1968 almost 13 times as much money from local taxes as Edgewood did. The State aid grants to each district in 1970–1971 lowered the ratio to approximately two to one, *i.e.*, Alamo Heights had a little more than twice as much money to spend per pupil from its combined State and local resources.

[36] Texas Research League, *supra*, n. 20, at 13.

[37] The Economic Index, which determines each county's share of the total Local Fund Assignment, is based on a complex formula conceived in 1949 when the Foundation Program was instituted. See text, at pp. 5–6 *supra*. It has frequently been suggested by Texas researchers that the formula be altered in several respects to provide a more accurate reflection of local taxpaying ability, especially of urban school districts. V Governor's Committee Report, at 48; Texas Research League, Texas Public School Finance; A Majority of Exceptions 31–32 (2d Interim Report 1972); Berke, Carnevale, Morgan & White, *supra*, n. 29, at 680–681.

[38] The District Court relied on the findings presented in an affidavit submitted by Professor Berke of Syracuse. His sampling of 110 Texas school districts demonstrated a direct correlation between the amount of a district's taxable property and its level of per pupil expenditure. But his study found only a partial correlation between a district's median family income and per pupil expenditures. The study also shows, in the relatively few districts at the extremes, an inverse correlation between percentage of minorities and expenditures.

CATEGORIZED BY EQUALIZED PROPERTY VALUES, MEDIAN FAMILY INCOME, AND STATE-LOCAL REVENUE

Market value of taxable property per pupil	Median family income from 1960	Percent minority pupils	State and local revenues per pupil
Above $100,000 (10 districts)	$5,900	8	$815
$100,000–$50,000 (26 districts)	4,425	32	544
$50,000–$30,000 (30 districts)	4,900	23	483
$30,000–$10,000 (40 districts)	5,050	31	462
Below $10,000 (4 districts)	3,325	79	305

Although the correlations with respect to family income and race appear only to exist at the extremes, and although the affiant's methodology has been questioned (see Goldstein, Interdistrict Inequalities in School Financing: A Critical Analysis of *Serrano* v. *Priest* and its Progeny, 120 U. Pa. L. Rev. 504, 523–525 nn. 67 & 71 (1972)), insofar as any of these correlations is relevant to the constitutional thesis presented in this case we may accept its basic thrust. But see pp. 21–23 *infra*. For a defense of the reliability of the affidavit, see Berke, Carnevale, Morgan & White, *supra*, n. 29.

[39] *E. g., Police Dept. of the City of Chicago* v. *Mosley*, 408 U.S. 92 (1972); *Dunn* v. *Blumstein*, 405 U. S. 330 (1972); *Shapiro* v. *Thompson*, 394 U. S. 618 (1969).

[40] *E. g., Graham* v. *Richardson*, 403 U. S. 365 (1971); *Loving* v. *Virginia*, 388 U. S. 1 (1967); *McLaughlin* v. *Florida*, 379 U. S. 184 (1964).

[41] See *Dunn* v. *Blumstein*, 405 U. S. 330, 343 (1972), and the cases collected therein.

[42] Appellants' Brief, at 11.

[43] *Ibid.*

[44] Tr. of Oral Arg., at 3; Appellants' Reply Brief, at 2.

[45] *E. g., Griffin* v. *Illinois*, 351 U. S. 12 (1956); *Douglas* v. *California*, 372 U. S. 353 (1963).

[46] *Harper* v. *Bd. of Elections*, 383 U. S. 663 (1966); *McDonald* v. *Bd. of Election Comm'rs*, 394 U. S. 802 (1969); *Bullock* v. *Carter*, 405 U. S. 134 (1972); *Goosby* v. *Osser*, — U. S. — (1973).

[47] See cases cited in text, at 25–26, *infra*.

[48] *Serrano* v. *Priest*, 96 Cal. Rptr. 487 P. 2d 1241, 5 Cal. 3d 584 (1971); *Van Dusartz* v. *Hatfield*, 334 F. Supp. 870 (Minn. 1971); *Robinson* v. *Cahill*, 118 N.J. Super. 223, 287 A. 2d 187 (1972); *Milliken* v. *Green*, No. 54,-809 (Mich. S.C., Jan. —, 1973)

[49] In their complaint, appellees purported to represent a class composed of persons who are "poor" and who reside in school districts having a "low value of . . . property." Third Amended Complaint, App., at 15. Yet appellees have not defined the term "poor" with reference to any absolute or functional level of impecunity. See text, at 18–19, *infra*. See also Appellees' Brief, at 1, 3; Tr. of Oral Arg., at 20–21.

[50] Appellees' proof at trial focused on comparative differences in family incomes between residents of wealthy and poor districts. They endeavored, apparently, to show that there exists a direct correlation between personal family income and educational expenditures. See text, at 20–23, *infra*. The District Court may have been relying on this notion of relative discrimination based on family wealth. Citing appellees' statistical proof, the court emphasized that "those districts most rich in property also have the highest median family income . . . while the poor property districts are poor in income. . . ." 337 F. Supp., at 282.

[51] At oral argument and in their brief, appellees suggest that description of the per-

sonal status of the residents in districts that spend less on education is not critical to their case. In their view, the Texas system is impermissibly discriminatory even if relatively poor districts do not contain poor people. Appellees' Brief, at 43–44; Tr. of Oral Arg., at 20–21. There are indications in the District Court opinion that it adopted this theory of district discrimination. The opinion repeatedly emphasizes the comparative financial status of districts and early in the opinion it describes appellees' class as being composed of "all . . . children throughout Texas who live in school districts with low property valuations." 337 F. Supp., at 281.

[52] *Mayer* v. *City of Chicago*, 404 U.S. 189 (1971); *Williams* v. *Oklahoma City*, 395 U.S. 458 (1969); *Gardner* v. *California*, 393 U.S. 367 (1969); *Roberts* v. *LaVallee*, 389 U.S. 40 (1967); *Long* v. *District Court of Iowa*, 385 U.S. 192 (1966); *Draper* v. *Washington*, 372 U.S. 487 (1963); *Erskine* v. *Washington Prison Board*, 357 U.S. 214 (1958).

[53] Note, A Statistical Analysis of the School Finance Decisions: On Winning Battles and Losing Wars, 81 Yale L. J. 1303, 1328–1329 (1972).

[54] *Id.*, at 1324 and n. 102.

[55] *Id.*, at 1328.

[56] Each of appellees' possible theories of wealth discrimination is founded on the assumption that the quality of education varies directly with the amount of funds expended on it and that, therefore, the difference in quality between two schools can be determined simplistically by looking at the difference in per pupil expenditures. This is a matter of considerable dispute among educators and commentators. See nn. 86 and 101, *infra*.

[57] *E. g.*, *Bullock* v. *Carter*, 405 U.S. 134, 137, 149 (1972); *Mayer* v. *City of Chicago*, 404 U.S. 189, 194 (1971); *Draper* v. *Washington*, 372 U.S. 487, 495–496 (1963); *Douglas* v. *California*, 372 U.S. 353, 357 (1963).

[58] Gilmer-Aiken Committee, *supra*, n. 15. at 13. Indeed, even though local funding has long been a significant aspect of educational funding, the State has always viewed providing an acceptable education as one of its primary functions. See Texas State Bd. of Educ., *supra*, n. 11, at 1, 7.

[59] Appellants' Brief, at 35; Reply Brief, at 1.

[60] An educational finance system might be hypothesized, however, in which the analogy to the wealth discrimination cases would be considerably closer. If elementary and secondary education were made available by the State only to those able to pay a tuition assessed against each pupil, there would be a clearly defined class of "poor" people—definable in terms of their inability to pay the prescribed sum—who would be absolutely precluded from receiving an education. That case would present a far more compelling set of circumstances for judicial assistance than the case before us today. After all, Texas has undertaken to do a good deal more than provide an education to those who can afford it. It has provided what it considers to be an adequate base education for all children and has attempted, though imperfectly, to ameliorate by state funding and by the local assessment program the disparities in local tax resources.

[61] Also, it should be recognized that median income statistics may not define with any precision the status of individual families within any given district. A more dependable showing of comparative wealth discrimination would also examine factors such as the average income, the mode, and the concentration of poor families in any district.

[62] Cf. *Jefferson* v. *Hackney*, 406 U.S. 535, 547–549 (1972); Ely, Legislative and Administrative Motivation in Constitutional Law, 79 Yale L. J. 1205, 1258–1259 (1970); Simon, The School Finance Decisions: Collective Bargaining and Future Finance Systems, 82 Yale L. J. 409, 439–440 (1973).

[63] See table below:

Market value of taxable property per pupil	Median family income in 1960	State and local expenditures per pupil
Above $100,000 (10 districts)	$5,900	$815
$100,000–$50,000 (26 districts)	4,425	544
$50,000–$30,000 (30 districts)	4,900	483
$30,000–$10,000 (40 districts)	5,050	462
Below $10,000 (4 districts)	3,325	305

[64] Studies in other States have also questioned the existence of any dependable correlation between a district's wealth measured in terms of assessable property and the collective wealth of families residing in the district measured in terms of median family income. Ridenour & Ridenour, *Serrano* v. *Priest:* Wealth and Kansas School Finance, 20 Kan. L. 213, 225 (1972) ("it can be argued that there exists in Kansas almost an inverse correlation: districts with highest income per pupil have low assessed value per pupil, and districts with high assessed value per pupil have low income per pupil"); Davis, Taxpaying Ability: A study of the Relationship Between Wealth and Income in California Counties, in The Challenge of Change in School Finance, 10th Nat'l Educational Assn. Conf. on School Finance 199 (1967). Note, 81 Yale L. J., *supra*, n. 53. See also Goldstein, *supra*, n. 38, at 522–527.

[65] Indeed, this precisely tells how the plaintiffs in *Serrano* v. *Priest* defined the class they purported to represent: "Plaintiff children claim to represent a class consisting of all public school pupils in California, except children in that school district . . . which . . . affords the greatest educational opportunity of all school districts within California.'" 96 Cal Rptr., at 604, 487 P. 2d, at 1244, 5 Cal. 3d, at 589. See also *Van Dusartz* v. *Hatfield*, 334 F. Supp., at 873.

[66] Appellees, however, have avoided describing the Texas system as one resulting merely in discrimination between districts *per se* since this Court has never questioned the State's power to draw reasonable distinctions between political subdivisions within its borders. *Griffin* v. *County School Board of Prince Edward County*, 377 U.S. 218, 230–231 (1964); *McGowan* v. *Maryland*, 366 U.S. 420, 427 (1961); *Salsburg* v. *Maryland*, 346 U.S. 545 552 (1954).

[67] *E. g.*, *Harper* v. *Virginia Bd. of Elections*, 383 U.S. 663 (1966); *United States* v. *Kras*, —— U.S. —— (1972). See MR. JUSTICE MARSHALL'S dissenting opinion, *post*, pp. ———.

[68] See *Serrano* v. *Priest*, 96 Cal. Rptr. 601, 487 P. 2d 1241, 5 Cal. 3d 584 (1971); *Van Dusartz* v. *Hatfield*, 344 F. Supp. 870 (Minn. 1971); *Robinson* v. *Cahill*, 118 N.J. Super. 223, 287 A. 2d 187 (1972); J. Coons, W. Clune, and S. Sugarman, *supra*, n. 13, at 339–394; Goldstein, *supra*, n. 38, at 534–541; Vieira, Unequal Educational Expenditures: Some Minority Views on *Serrano* v. *Priest*, 37 Mo. L Rev. 617, 618–624 (1972); Comment, Educational Financing, Equal Protection of the Laws, and the Supreme Court, 70 Mich. L. Rev. 1324, 1335–1342 (1972); Note, The Public School Financing Cases: Interdistrict Inequalities and Wealth Discrimination, 14 Ariz. L. Rev. 88, 120–124 (1972).

[69] 337 F. Supp., at 283.

[70] *E.g.*, *United States* v. *Guest*, 383 U.S. 745, 757–759 (1966); *Oregon* v. *Mitchell*, 400 U.S. 112, 229, 237–238 (1970) (opinion of JUSTICES BRENNAN, WHITE, and MARSHALL).

[71] After *Dandridge* v. *Williams*, 397 U.S. 471 (1970), there could be no lingering question about the constitutional foundation for the Court's holding in *Shapiro*. In *Dandridge* the Court applied the rational basis test in reviewing Maryland's maximum family grant provision under its AFDC program. A federal district court held the provision unconstitutional, applying a stricter standard of review. In the course of reversing the lower court, the Court distinguished *Shapiro* properly on the ground that in that case "the Court found state interference with the constitutionally protected freedom of interstate travel." *Id.*, at 484 n. 16.

[72] The Court refused to apply the strict scrutiny test despite its contemporaneous recognition in *Goldberg* v. *Kelly* 397 U.S. 254, 264 (1970) that "welfare provides the means to obtain essential food, clothing, housing, and medical care."

[73] In *Eisenstadt*, the Court struck down a Massachusetts statute that prohibited the distribution of contraceptive devices, finding that the law failed "to satisfy even the more lenient equal protection standard." *Id.*, at 447 n. 7. Nevertheless, in *dictum*, the Court recited the correct form of equal protection analysis: "if we were to conclude that the Massachusetts statute impinges upon fundamental freedoms under *Griswold* [v. *Connecticut*, 381 U.S. 479 (1965)], the statutory classification would have to be not merely *rationally related* to a valid public purpose but *necessary* to the achievement of a *compelling* state interest." *Ibid.* (emphasis from original).

[74] *Dunn* fully canvasses this Court's voting rights cases and explains that "this Court has made clear that a citizen has a *constitutionally protected right* to participate in elections on an equal basis with other citizens in the jurisdiction." *Id.*, at 336 (emphasis supplied). The constitutional underpinnings of the right to equal treatment in the voting process can no longer be doubted even though, as the Court noted in *Harper* v. *Virginia Bd. of Elections*, 383 U.S. 663, 665 (1966), "the right to vote in state elections is nowhere expressly mentioned." See *Oregon* v. *Mitchell*, 400 U.S. 112, 135, 138–144 (MR. JUSTICE DOUGLAS), 229 241–242 (Opinion of JUSTICES BRENNAN, WHITE, and MARSHALL) (1970); *Bullock* v. *Carter*, 405 U.S. 134, 140–144 (1972); *Kramer* v. *Union Free School District*, 395 U.S. 621, 625–630 (1969); *Williams* v. *Rhodes*, 393 U.S. 23, 29, 30–31 (1968); *Reynolds* v. *Sims*, 377 U.S. 533, 554–562 (1964): *Gray* v. *Sanders*, 372 U.S. 368, 379–381 (1963).

[75] In *Mosley*, the Court struck down a Chicago antipicketing ordinance that exempted labor picketing from its prohibitions. The ordinance was held invalid under the Equal Protection Clause after subjecting it to careful scrutiny and finding that the ordinance was not narrowly drawn. The stricter standard of review was appropriately applied since the ordinance was one "affecting First Amendment interests." *Id.*, at 101.

[76] *Skinner* applied the standard of close scrutiny to a state law permitting forced sterilization of "habitual criminals." Implicit in the Court's opinion is the recognition that the right of procreation is among the rights of personal privacy protected under the Constitution. See *Roe* v. *Wade*.— U.S.—, — (1973).

[77] See, *e.g.*, *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367, 389–390 (1969); *Stanley* v. *Georgia*, 35 U.S. 557, 564 (1969); *Lamont* v. *Postmaster General*, 381 U.S. 301, 306–307 (1965).

[78] Since the right to vote, *per se*, is not a constitutionally protected right, we assume that appellees' references to that right are simply shorthand references to the protected right, implicit in our constitutional system, to participate in state elections on an equal basis with other qualified voters whenever the State has adopted an elective process for determining who will represent any segment of the State's population. See n. 74, *supra*.

[79] The States have often pursued their entirely legitimate interest in assuring "intelligent exercise of the franchise," *Katzenbach* v. *Morgan*, 384 U.S. 641, 655 (1966), through such devices as literacy tests and age restrictions on the right to vote. See *ibid.*; *Oregon* v. *Mitchell*, 400 U.S. 112 (1970). And, where those restrictions have been found to promote intelligent use of the ballot without

discriminating against those racial and ethnic minorities previously deprived of an equal educational opportunity, this Court has upheld their use. Compare *Lassiter* v. *Northampton County Bd. of Elections*, 360 U.S. 45 (1959), with *Oregon* v. *Mitchell*, 400 U.S., at 133 (Mr. Justice Black), 135, 144–147 (Mr. Justice Douglas), 152, 216–217 (Mr. Justice Harlan), 229, 231–236 (Opinion of Justices Brennan, White, and Marshall), 281, 282–284 (Mr. Justice Stewart), and *Gaston County* v. *United States*, 395 U.S. 285 (1969).

[80] See Schoettle, The Equal Protection Clause in Public Education, 71 Col. L. Rev. 1355, 1389–1390 (1971); Vieira, *supra*, n. 68, at 622–623; Comment, Tenant Interest Representation: Proposal for a National Tenants' Association, 47 Tex. L. Rev. 1160, 1172–1173 n. 61 (1969).

[81] *Katzenbach* v. *Morgan* involved a challenge by registered voters in New York City to a provision of the Voting Rights Act of 1965 that prohibited enforcement of a state law calling for English literacy tests for voting. The law was suspended as to residents from Puerto Rico who had completed at least six years of education at an "American-flag" school in that country even though the language of instruction was other than English. This Court upheld the questioned provision of the 1965 Act over the claim that it discriminated against those with a sixth grade education obtained in non-English-speaking schools other than the ones designated by the federal legislation.

[82] Cf. *Meyer* v. *Nebraska*, 262 U.S. 390 (1923); *Pierce* v. *Society of Sisters*, 268 U.S. 510 (1925); *Hargrove* v. *Kirk*, 313 F. Supp. 944 (MD Fla. 1970), vacated, 401 U.S. 476 (1971).

[83] See *Schilb* v. *Kuebel*, 404 U.S. 357 (1971); *McDonald* v. *Bd. of Election Comm'rs*, 394 U.S. 802 (1969).

[84] See, *e.g.*, *Bell's Gap R. Co.* v. *Pennsylvania*, 134 U.S. 232 (1890); *Carmichael* v. *Southern Coal & Coke Co.*, 301 U.S. 495, 508–509 (1937); *Allied Stores of Ohio, Inc.* v. *Bowers*, 358 U.S. 522 (1959).

[85] Those who urge that the present system be invalidated offer little guidance as to what type of school financing should replace it. The most likely result of rejection of the existing system would be statewide financing of all public education with funds derived from taxation of property or from the adoption or expansion of sales and income taxes. See *Simon*, *supra*, n. 62. The authors of Private Wealth and Public Education, *supra*, n. 13, at 201–242, suggest an alternative scheme, known as "direct power equalizing." In simplest terms, the State would guarantee that at any particular rate of property taxation the district would receive a stated number of dollars regardless of the district's tax base. To finance the subsidies to "poorer" districts, funds would be taken away from the "wealthier" districts that, because of their higher property values, collect more than the stated amount at any given rate. This is not the place to weigh the arguments for and against "district power equalizing," beyond noting that commentators are in disagreement as to whether it is feasible, how it would violate the equal protection theory underlying appellees' case. President's Comm'n on School Finance, Schools, People & Money 32–33 (1972); Bateman & Brown. Some Reflections on *Serrano* v. *Priest*, 49 J. Urban L. 701, 706–708 (1972); Brest, Book Review, 23 Stan. L. Rev. 591, 594–596 (1971); Goldstein, *supra*, n. 38, at 542–543; Wise, School Finance Equalization Lawsuits: A Model Legislative Response, 2 Yale Rev. of L. & Soc. Action 123, 125 (1971); Silard & White, Intrastate Inequalities in Public Education: The Case for Judicial Relief Under the Equal Protection Clause, 1970 Wis. L. Rev. 7, 29–30.

[86] The quality-cost controversy has received considerable attention. Among the notable authorities on both sides are the following: C. Jencks, Inequality (1972); C. Silberman, Crisis in the Classroom (1970); Office of Education, Equality of Educational Opportunity (1966) (The Coleman Report); On Equality of Educational Opportunity (1972) (Moynihan & Mosteller eds.); J. Guthrie, G. Kleindorfer, H. Levin, & R. Stout, Schools and Inequality (1969); President's Comm'n on School Finance, *supra*, n. 85; Swanson, The Cost-Quality Relationship, in The Challenge of Change in School Finance, 10th Nat'l Educational Assn. Conf. on School Finance 151 (1967).

[87] See the results of the Texas Governor's Committee's statewide survey on the goals of education in that State. I Governor's Committee Report, at 59–68. See also Goldstein, *supra*, n. 38, at 519–522; Schoettle, *supra*, n. 80; authorities cited in n. 86, *supra*.

[88] *Allied Stores of Ohio, Inc.* v. *Bowers*, 358 U.S. 522, 530, 532 (1959) (MR. JUSTICE BRENNAN, concurring); *Katzenbach* v. *Morgan*, 384 U.S. 641, 659, 661 (1966) (Mr. Justice Harlan, dissenting).

[89] In 1970 Texas expended approximately 2.1 billion dollars for education and a little over one billion came from the Minimum Foundation Program. Texas Research League, *supra*, n. 20, at 2.

[90] Tex. Educ. Code § 16.13 (1972).

[91] *Id.*, § 16.18.

[92] *Id.*, § 16.15.

[93] *Id.*, §§ 16.16, 16.17, 16.19.

[94] *Id.*, §§ 16.45, 16.51–16.63.

[95] *Id.*, §§ 12.01–12.04.

[96] *Id.*, § 11.26 (5).

[97] *Id.*, § 16.301 *et seq.*

[98] See *ante*, at 9–10.

[99] Gilmer-Aiken Committee, *supra*, n. 15, at 15.

[100] There is no uniform statewide assessment practice in Texas. Commercial property, for example, might be taxed at 30% of market value in one county and at 50% in another. V Governor's Committee Report, at 25–26; Berke, Carnevale, Morgan & White, *supra*, n. 29, at 666–667 n. 16.

[101] Texas Research League, *supra*, n. 20, at 18. Texas, in this regard, is not unlike most other States. One commentator has observed that "disparities in expenditures appear to be largely explained by variations in teacher salaries." Simon, *supra*, n. 62, at 413.

As previously noted, text accompanying n. 86, *supra*, the extent to which the quality of education varies with expenditure per pupil is debated inconclusively by the most thoughtful students of public education. While all would agree that there is a correlation up to the point of providing the recognized essentials in facilities and academic opportunities, the issues of greatest disagreement include the effect on the quality of education of pupil-teacher ratios and of higher teacher salary schedules. *E.g.*, Office of Education, *supra*, n. 86 at 316–319. The state funding in Texas is designed to assure, on the average, one teacher for every 25 students, which is considered to be a favorable ratio by most standards. Whether the minimum salary of $6,000 per year is sufficient in Texas to attract qualified teachers may be more debatable, depending in major part upon the location of the school district. But there appears to be little empirical data that supports the advantage of any particular pupil-teacher ratio or that documents the existence of a dependable correlation between the level of public school teachers' salaries and the quality of their classroom instruction. An intractable problem in dealing with teachers' salaries is the absence, up to this time, of satisfactory techniques for judging their ability or performance. Relatively few school systems have merit plans of any kind, with the result that teachers' salaries are usually increased across the board in a way which tends to reward the least deserving on the same basis as the most deserving. Salaries are usually raised automatically on the basis of length of service and according to predetermined "steps," extending over 10-to-12 year periods.

[102] President's Comm'n on School Finance, *supra*, n. 85, at 9. Until recently, Hawaii was the only State that maintained a purely state-funded educational program. In 1968, however, that State amended its educational finance statute to permit counties to collect additional funds locally and spend those amounts on its schools. The rationale for that recent legislative choice is instructive on the question before the Court today:

"Under existing law, counties are precluded from doing anything in this area, even to spend their own funds if they so desire. This corrective legislation is urgently needed in order to allow counties to go above and beyond the State's standards and provide educational facilities as good as the people of the counties want and are willing to pay for. Allowing local communities to go above and beyond established minimums provided for their people encourages the best features of democratic government." Haw. Sess. Laws, Art. 38, § 1 (1968).

[103] See text accompanying n. 7, *supra*.

[104] G. Strayer & R. Haig, The Financing of Education in the State of New York (1923). For a thorough analysis of the contribution of these reformers and of the prior and subsequent history of educational finance, see J. Coons, W. Clune & S. Sugarman, *supra*, n. 13, at 39–95.

[105] J. Coons, W. Clune & S. Sugarman, *supra*, n. 13, Foreword by James S. Coleman, at vii.

[106] *New State Ice Co.* v. *Leibmann*, 285 U.S. 262, 280, 311 (1932).

[107] MR. JUSTICE WHITE suggests in his dissent that the Texas system violates the Equal Protection Clause because the means it has selected to effectuate its interest in local autonomy fail to guarantee complete freedom of choice to every district. He places special emphasis on the statutory provision that establishes a maximum rate of $1.50 per $100 valuation at which a local school district may tax for school maintenance. Tex. Educ. Code § 20.04(d) (1972). The maintenance rate in Edgewood when this case was litigated in the District Court was $.55 per $100, barely one-third of the allowable rate. (The tax rate of $1.05 per $100, see p. 7, *supra*, is the equalized rate for maintenance and for the retirement of bonds.) Appellees do not claim that the ceiling presently bars desired tax increases in Edgewood or in any other Texas district. Therefore, the constitutionality of that statutory provision is not before us and must await litigation in a case in which it is properly presented. Cf. *Hargrave* v. *Kirk*, 313 F. Supp. 944 (MD Fla. 1970), vacated, 401 U.S. 476 (1971).

[108] MR. JUSTICE MARSHALL states in his dissenting opinion that the State's asserted interest in local control is a "mere sham," *post*, p. 60, and that it has been offered not as a legitimate justification but "as an excuse . . . for interdistrict inequity." *Id.*, at 56. In addition to asserting that local control would be preserved and possibly better served under other systems—a consideration that we find irrelevant for purpose of deciding whether the system may be said to be supported by a legitimate and reasonable basis—the dissent suggests that Texas' lack of good faith may be demonstrated by examining the extent to which the State already maintains considerable control. The State, we are told, regulates "the most minute details of local public education," *ibid.*, including textbook selection, teacher qualifications, and the length of the school day. This assertion, that genuine local control does not exist in Texas, simply cannot be supported. It is abundantly refuted by the elaborate statutory division of responsibilities set out in the Texas Education Code. Although policy decision-making and supervision in certain areas are reserved to the State, the day-to-day authority over the "management and control" of all public elementary and secondary schools is squarely placed on the local school boards. Tex. Educ.

Code §§ 17.01, 23.36 (1972). Among the innumerable specific powers of the local school authorities are the following; the power of eminent domain to acquire land for the construction of school facilities, *id.*, §§ 17.26, 23.26; the power to hire and terminate teachers and other personnel, *id.*, §§ 13.101–13.103; the power to designate conditions of teacher employment and to establish certain standards of educational policy, *id.*, § 13.901; the power to maintain order and discipline, *id.*, § 21.305, including the prerogative to suspend students for disciplinary reasons, *id.*, § 21.301; the power to decide whether to offer a kindergarten program, *id.*, §§ 21.131–21.135, or a vocational training program, *id.*, § 21.111, or a program of special education for the handicapped, *id.*, § 11.16; the power to control the assignment and transfer of students, *id.*, §§ 21.074–21.080; and the power to operate and maintain a school bus program, *id.*, § 16.52. See also *Pervis* v. *LaMarque Ind. School Dist.*, 328 F. Supp. 638, 642–643 (SD Tex. 1971), reversed, 466 F. 2d 1054 (CA5 1972); *Nichols* v. *Aldine Ind. School Dist.*, 356 S. W. 2d 182 (Tex. Civ. App. 1962). Local school boards also determine attendance zones, location of new schools, closing of old ones, school attendance hours (within limits), grading and promotion policies subject to general guidelines, recreational and athletic policies, and a myriad of other matters in the routine of school administration. It cannot be seriously doubted that in Texas education remains largely a local function, and that the preponderating bulk of all decisions affecting the schools are made and executed at the local level, guaranteeing the greatest participation by those most directly concerned.

[109] This theme—that greater state control over funding will lead to greater state power with respect to local educational programs and policies—is a recurrent one in the literature on financing public education. Professor Simon, in his thoughtful analysis of the political ramifications of this case, states that one of the most likely consequences of the District Court's decision would be an increase in the centralization of school finance and an increase in the extent of collective bargaining by teacher unions at the state level. He suggests that the subjects for bargaining may include many "non-salary" items, such as teaching loads, class size, curricular and program choices, questions of student discipline, and selection of administrative personnel—matters traditionally decided heretofore at the local level. Simon, *supra*, n. 62, at 434–436. See, *e.g.*, Coleman, The Struggle for Control of Education, in Education and Social Policy: Local Control of Education 64, 77–79 (Bowers, Housego & Dyke ed. 1970); J. Conant, The Child, The Parent, and The State 27 (1959) ("Unless a local community, through its school board, has some control over the purse, there can be little real feeling in the community that schools are in fact local schools. . . ."); Howe, Anatomy of a Revolution, in Sat. Rev. 84, 88 (Nov. 20, 1971) ("It is an axiom of American politics that control and power follow money. . . ."); Hutchinson, State-Administered Locally-Shared Taxes 21 (1931) ("[S]tate administration of taxation is the first step toward state control of the functions supported by these taxes. . . ."). Irrespective of whether one regards such prospects as detrimental, or whether he agrees that the consequence is inevitable, it certainly cannot be doubted that there is a rational basis for this concern on the part of parents, educators, and legislators.

[110] This Court has never doubted the propriety of maintaining political subdivisions within the States and has never found in the Equal Protection Clause any *per se* rule of "territorial uniformity." *McGowan* v. *Maryland*, 366 U.S. 420, 427 (1961). See also *Griffin* v. *County School Board of Prince Edward County*, 377 U.S. 218, 230–231 (1964); *Salsburg* v. *Maryland*, 346 U.S. 545 (1954). Cf. *Board of Education of Muskogee* v. *Oklahoma*, 409 F. 2d 665, 668 (CA10 1969).

[111] Any alternative that calls for significant increases in expenditures for education, whether financed through increases in property taxation or through other sources of tax dollars such as income and sales taxes, is certain to encounter political barriers. At a time when nearly every State and locality is suffering from fiscal undernourishment, and with demands for services of all kinds burgeoning and with weary taxpayers already resisting tax increases, there is considerable reason to question whether a decision of this Court nullifying present state taxing systems would result in a marked increase in the financial commitment to education. See Senate Select Comm. on Equal Educational Opportunity, 22d Cong., 2d Sess., Toward Equal Educational Opportunity 339–345 (Comm. Print 1972); Berke & Callahan, *Serrano* v. *Priest*: Milestone or Millstone for School Finance, 21 J. Pub. L. 23, 25–26 (1972); Simon, *supra*, n. 62, at 420–421. In Texas it has been calculated that $2.4 billion of additional school funds would be required to bring all schools in that State up to the present level of expenditure of all but the wealthiest districts—an amount more than double that currently being spent on education. Texas Research League, *supra*, n. 20, at 16–18. An *amicus curiae* brief filed on behalf of almost 30 States, focusing on these practical consequences, claims with some justification that "each of the undersigned states . . . would suffer severe financial stringency." Brief of *Amici Curiae* in Support of Appellants, at 2 (filed by Atty. Gen. of Md. et al.).

[112] See Note, *supra*, n. 53. See also authorities cited n. 114, *infra*.

[113] See Goldstein, *supra*, n. 38, at 526; C. Jencks, *supra*, n. 86, at 27; U.S. Comm'n on Civil Rights, Inequality in School Financing: The Role of the Law 37 (1972). J. Coons, W. Clune & S. Sugarman, *supra*, n. 13, at 356–357 n. 47, have noted that in California, for example, "59% of minority students live in districts above the median average valuation per pupil." In Bexar County by far the largest district—the San Antonio Independent School District—is above the local average in both the amount of taxable wealth per pupil and in median family income. Yet 72% of its students are Mexican-Americans. And, in 1967–1968 it spent only a very few dollars less per pupil than the North East and North Side Independent School Districts, which have only 7% and 18% Mexican-American enrollment respectively. Berke, Carnevale, Morgan & White, *supra*, n. 29, at 673.

[114] See Senate Select Comm. on Equal Educational Opportunity, 92d Cong., 2d Sess., Issues in School Finance 129 (Comm. Print 1972) (monograph entitled "Inequities in School Finance" prepared by Professors Berke and Callahan); U.S. Office of Education, Finances of Large-City School Systems: A Comparative Analysis (1972) (HEW publication); U.S. Comm'n on Civil Rights, *supra*, n. 113, at 33–36; Simon, *supra*, n. 62, at 410–411, 418.

[Supreme Court of the United States, No. 71–1332, Mar. 21, 1973]

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

San Antonio Independent School District et al., Appellants, *v.* Demetrio P. Rodrigez et al.

Mr. JUSTICE STEWART, concurring.

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

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

There is hardly a law on the books that does not affect some people differently from others. But the basic concern of the Equal Protection Clause is with state legislation whose purpose or effect is to create discrete and objectively identifiable classes.[3] And with respect to such legislation, it has long been settled that the Equal Protection Clause is offended only by laws that are invidiously discriminatory—only by classifications that are wholly arbitrary or capricious. See, *e. g.*, *Rinaldi* v. *Yeager*, 384 U. S. 305. This settled principle of constitutional law was compendiously stated in Mr. Chief Justice Warren's opinion for the Court in *McGowan* v. *Maryland*, 366 U. S. 420, 425–426, in the following words:

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

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

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

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

In refusing to invalidate the Texas system of financing its public schools, the Court today applies with thoughtfulness and understanding the basic principles I have so sketchily summarized. First, as the Court

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points out, the Texas system has hardly created the kind of objectively identifiable classes that are cognizable under the Equal Protection Clause.[9] Second, even assuming the existence of such discernible categories, the classifications are in no sense based upon constitutionally "suspect" criteria. Third, the Texas system does not rest "on grounds wholly irrelevant to the achievement of the State's objective." Finally, the Texas system impinges upon no substantive constitutional rights or liberties. It follows, therefore, under the established principle reaffirmed in Mr. Chief Justice Warren's opinion for the Court in *McGowan* v. *Maryland*, *supra*, that the judgment of the District Court must be reversed.

FOOTNOTES

[1] See New York Times, March 11, 1973, p. 1, col. 1.

[2] There is one notable exception to the above statement: It has been established in recent years that the Equal Protection Clause confers the substantive right to participate on an equal basis with other qualified voters whenever the State has adopted an electoral process for determining who will represent any segment of the State's population. See, *e. g.*, *Reynolds* v. *Sims*, 377 U.S. 533; *Kramer* v. *Union School District*, 395 U.S. 621; *Dunn* v. *Blumstein*, 405 U.S. 330, 336. But there is no constitutional right to vote, as such. *Minor* v. *Happersett*, 88 U.S. 162. If there were such a right, both the Fifteenth Amendment and the Nineteenth Amendment would have been wholly unecessary.

[3] But see *Bullock* v. *Carter*, 405 U.S. 134.

[4] See *Oyama* v. *California*, 332 U.S. 633, 644–646.

[5] See *Graham* v. *Richardson*, 403 U.S. 365, 372.

[6] See *Griffin* v. *Illinois*, 351 U.S. 12. "Indigency" means actual or functional indigency; it does not mean comparative poverty *vis-à-vis* comparative affluence. See *James* v. *Valtierra*, 402 U.S. 137.

[7] See *Gomez* v. *Perez*, — U.S. —; *Weber* v. *Aetna Casualty & Surety Co.*, 406 U.S. 164.

[8] See, *e.g.*, *Mosley* v. *Police Dept. of City of Chicago*, 408 U.S. 92 (free speech); *Shapiro* v. *Thompson*, 394 U.S. 618 (freedom of interstate travel); *Williams* v. *Rhodes*, 393 U.S. 23 (freedom of association); *Skinner* v. *Oklahoma*, 316 U.S. 535 ("liberty" conditionally protected by Due Process Clause of Fourteenth Amendment).

[9] See *Katzenbach* v. *Morgan*, 384 U.S. 641, at 660 (Harlan, J., dissenting).

[Supreme Court of the United States, No. 71–1332, March 21, 1973]

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

San Antonio Independent School District et al., Appellants, *v.* Demetrio P. Rodriguez et al.

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

The Texas public schools are financed through a combination of state funding, local property tax revenue, and some federal funds.[1] Concededly, the system yields wide disparity in per-pupil revenue among the various districts. In a typical year, for example, the Alamo Heights district had total revenues of $594 per pupil, while the Edgewood district had only $356 per student.[2] The majority and the State concede, as they must, the existence of major disparities in spendable funds. But the State contends that the disparities do not invidiously discriminate against children and families in districts such as Edgewood, because the Texas scheme is designed "to provide an adequate education for all, with local autonomy to go beyond that as individual school districts desire and are able. . . . It leaves to the people of each district the choice whether to go beyond the minimum and, if so, by how much."[3] The majority advances this rationalization: "While assuring a basic education for every child in the State, it permits and encourages a large measure of participation and control of each district's schools at the local level."

I cannot disagree with the proposition that local control and local decisionmaking play an important part in our democratic system of government. Cf. *James* v. *Valtierra*, 402 U.S. 137 (1971). Much may be left to local option, and this case would be quite different if it were true that the Texas system, while insuring minimum educational expenditures in every district through state funding, extends a meaningful option to all local districts to increase their per-pupil expenditures and so to improve their children's education to the extent that increased funding will achieve that goal. The system would then arguably provide a rational and sensible method of achieving the stated aim of preserving an area for local initiative and decision.

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

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

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

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

Plainly, were Alamo Heights or North East to apply the Edgewood tax rate to its tax base, it would yield far greater revenues than Edgewood is able to yield applying those same rates to its base. Conversely, were Edgewood to apply the Alamo Heights or North East rates to its base, the yield would be far smaller than the Alamo Heights or North East yields. The disparity is, therefore, currently operative and it's impact on Edgewood is undeniably serious. It is evident from statistics in the record that show that, applying an equalized tax rate of 85¢ per $100 assessed valuation, Alamo Heights was able to provide approximately $330 per pupil in local revenues over and above the Local Fund Assignment. In Edgewood, on the other hand, with an equalized tax rate of $1.05 per $100 of asessed valuation, $26 per pupil was raised beyond the Local Fund Assignment.[4] In Alamo Heights, total per-pupil revenues from local, state, and federal funds was $594 per pupil, in Edgewood $356.[5]

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

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

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

Neither Texas nor the majority heeds this rule. If the State aims at maximizing local initiative and local choice, by permitting school districts to resort to the real property tax if they choose to do so, it utterly fails in achieving its purpose in districts with property tax bases so low that there is little if any opportunity for interested parents, rich or poor, to augment school district revenues. Requiring the State to establish only that unequal treatment is in furtherance of a permissible goal, without also requiring the State to show that the means chosen to effectuate that goal are rationally related to its achievement, makes equal protection analysis no more than an empty gesture.[6] In my view, the parents and children in Edgewood, and in like districts, suffer from an invidious discrimination violative of the Equal Protection Clause.

This does not, of course, mean that local control may not be a legitimate goal of a school financing system. Nor does it mean that the State must guarantee each district an equal per-pupil revenue from the state

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school financing system. Nor does it mean, as the majority appears to believe, that, by affirming the decision below, this Court would be "interposing on the States inflexible constitutional restraints that could circumscribe or handicap the continued research and experimentation so vital to finding even partial solutions to educational problems and to keeping abreast of ever changing conditions." On the contrary, it would merely mean that the State must fashion a financing scheme which provides a rational basis for the maximization of local control, if local control is to remain a goal of the system, and not a scheme with "different treatment be[ing] accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute." *Reed* v. *Reed*, 404 U.S. 71, 75–76 (1971).

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

There is no difficulty in identifying the class that is subject to the alleged discrimination and that is entitled to the benefits of the Equal Protection Clause. I need go no farther than the parents and children in the Edgewood district, who are plaintiffs here and who assert that they are entitled to the same choice as Alamo Heights to augment local expenditures for schools but are denied that choice by state law. This group constitutes a class sufficiently definite to invoke the protection of the Constitution. They are as entitled to the protection of the Equal Protection Clause as were the voters in allegedly unrepresented counties in the reapportionment cases. See, *e.g.*, *Baker* v. *Carr*, 369 U.S. 186, 204–208 (1962); *Gray* v. *Sanders*, 372 U.S. 368, 375 (1963); *Reynolds* v. *Sims*, 377 U.S. 533, 554–556 (1964). And in *Bullock* v. *Carter*, 405 U.S. 134 (1972), where a challenge to the Texas candidate filing fee on equal protection grounds was upheld, we noted that the victims of alleged discrimination wrought by the filing fee "cannot be described by reference to discrete and precisely defined segments of the community as is typical of inequities challenged under the Equal Protection Clause," but concluded that "we would ignore reality were we not to recognize that this system falls with unequal weight on voters, as well as candidates, according to economic status." *Id.*, at 144. Similarly, in the present case we would blink reality to ignore the fact that school districts, and students in the end, are differentially affected by the Texas school financing scheme with respect to their capability to supplement the Minimum Foundation School Program. At the very least, the law discriminates against those children and their parents who live in districts where the per-pupil tax base is sufficiently low to make impossible the provision of comparable school revenues by resort to the real property tax which is the only device the State extends for this purpose.

FOOTNOTES

[1] The heart of the Texas system is embodied in an intricate series of statutory provisions which make up Chapter 16 of the Texas Education Code, V. T. C. A., Education Code § 16.01 *et seq.* See also V. T. C. A., Education Code § 15.01 *et seq.*, and § 20.10 *et seq.*

[2] The figures discussed are from Plaintiffs' Exhibits 7, 8, and 12. The figures are from the 1967–1968 school year. Because the various exhibits relied upon different attendance totals, the per pupil results do not precisely correspond to the gross figures quoted. The disparity between districts, rather than the actual figures, is the important factor.

[3] Brief for Appellants, pp. 11–13, 35.

[4] Variable assessment practices are also revealed in this record. Apellants do not, however, contend that this factor accounts, even to a small extent, for the interdistrict disparities.

[5] The per pupil funds received from state, federal, and other sources, while not precisely equal, do not account for the large differential and are not directly attacked in the present case.

[6] The State of Texas appears to concede that the choice of whether or not to go beyond the state-provided minimum "is easier for some districts than for others. Those districts with large amounts of taxable property can produce more revenue at a lower tax rate and will provide their children with more expensive education." Brief for Appellants, p. 35. The State nevertheless insists that districts have a choice and that the people in each district have exercised that choice by providing some real property tax money over and above the minimum funds guaranteed by the State. Like the majority, however, the State fails to explain why the Equal Protection Clause is not violated or how its goal of providing local government with realistic choices as to how much money should be expended on education is implemented where the system makes it much more difficult for some than for others to provide additional educational funds and where as a practical and legal matter it is impossible for some districts to provide the educational budgets that other districts can make available from real property tax revenues.

[Supreme Court of the United States, No. 71–1332, Mar. 21, 1973]

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

San Antonio Independent School District et al., Appellants, *v.* Demetrio P. Rodriguez et al.

Mr. JUSTICE BRENNAN, dissenting.

Although I agree with my Brother WHITE that the Texas stautory scheme is devoid of any rational basis, and for that reason is violative of the Equal Protection Clause, I also record my disagreement with the Court's rather distressing assertion that a right may be deemed "fundamental" for the purposes of equal protection analysis only if it is "explicitly or implicitly guaranteed by the Constitution." *Ante*, at ——. As my Brother MARSHALL convincingly demonstrates, our prior cases stand for the proposition that "fundamentality" is, in large measure, a function of the right's importance in terms of the effectuation of those rights which are in fact constitutionally guaranteed. Thus, "[a]s the nexus between the specific constitutional guarantee and the nonconstitutional interest draws closer, the nonconstitutional interest becomes more fundamental and the degree of judicial scrutiny applied when the interest is infringed on a discriminatory basis must be adjusted accordingly." *Post*, at ——.

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

[Supreme Court of the United States, No. 71–1332, March 21, 1973]

SAN ANTONIO INDEPENDENT SCHOOL DISTRICT ET AL., APPELLANTS, V. DEMETRIO P. RODRIGUEZ ET AL. ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

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

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

In my judgment, the right of every American to an equal start in life, so far as the provision of a state service as important as education is concerned, is far too vital to permit state discrimination on grounds as tenuous as those presented by this record. Nor can I accept the notion that it is sufficient to remit these appellees to the vagaries of the political process which, contrary to the majority's suggestion, has proven singularly unsuited to the task of providing a remedy for this discrimination.[2] I, for one, am unsatisfied with the hope of an ultimate "political" solution sometime in the indefinite future while, in the meantime, countless children unjustifiably receive inferior educations that "may affect their hearts and minds in a way unlikely ever to be undone." *Brown* v. *Board of Education*, 347 U.S. 483, 494 (1954). I must therefore respectfully dissent.

I

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

A

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

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

Footnotes at end of article.

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

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

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

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

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

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

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

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

Despite these facts, the majority continually emphasizes how much state aid has, in recent years, been given to property poor Texas school districts. What the Court fails to emphasize is the cruel irony of how much more state aid is being given to property rich Texas school districts on top of their already substantial local property tax revenues.[38] Under any view, then, it is apparent that the state aid provided by the Foundation School Program fails to compensate for the large funding variations attributable to the local property tax element of the Texas financing scheme. And it is these stark differences in the treatment of Texas school districts and school children inherent in the Texas financing scheme, not the absolute amount of state aid provided to any particular school district, that are the crux of this case. There can, moreover, be no escaping the conclusion that the local property tax which is dependent upon taxable district property wealth is an essential feature of the Texas scheme for financing public education.[39]

B

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

In my view, though, even an unadorned restatement of this contention is sufficient to reveal its absurdity. Authorities concerned with educational quality no doubt disagree as to the significance of variations in per pupil spending.[40] Indeed, conflicting expert testimony was presented to the District Court in this case concerning the effect of spending variations on educational achievement.[41] We sit, however, not to resolve disputes over educational theory but to enforce our Constitution. It is an inescapable fact that if one district has more funds available per pupil than another district, the former will have greater choice in educational planning than will the latter. In this regard, I believe the question of discrimination in educational quality must be deemed to be an objective one that looks to what the State provides its children, not to what the children are able to do with what they receive. That a child forced to attend an underfunded school with poorer physical facilities,

Footnotes at end of article.

less experienced teachers, larger classes, and a narrower range of courses than a school with substantially more funds—and thus with greater choice in educational planning—may nevertheless excel is to the credit of the child, not the State, cf. *Missouri ex rel. Gianes* v. *Canada*, 305 U.S. 337, 349 (1938). Indeed, who can ever measure for such a child the opportunities lost and the talents wasted for want of a broader, more enriched education? Discrimination in the opportunity to learn that is afforded a child must be our standard.

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

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

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

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

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

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

The suggestion may be that the state aid received via the Foundation Program sufficiently improves the position of property poor districts *vis-à-vis* property rich districts—in terms of educational funds—to eliminate any claim of interdistrict discrimination in available educational resources which might otherwise exist if educational funding were dependent solely upon local property taxation. Certainly the Court has recognized that to demand precise equality of treatment is normally unrealistic, and thus minor differences inherent in any practical context usually will not make out a substantial equal protection claim. *See e. g., Mayer* v. *City of Chicago*, 404 U.S. 189, 194–195 (1971); *Draper v. Washington*, 372 U.S. 487, 495–496 (1963); *Bain Peanut Co.* v. *Pinson*, 282 U.S. 499, 501 (1931). But as has already been seen, we are hardly presented here with some *de minimis* claim of discrimination resulting from the "play" necessary in any functioning system; to the contrary, it is clear that the Foundation Program utterly fails to ameliorate the seriously discriminatory effects of the local property tax.[49]

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

"The equality at which the 'equal protection' clause aims is not a disembodied equality. The Fourteenth Amendment enjoins 'the equal protection of the laws,' and laws are not abstract propositions. . . . The Constitution does not require things which are different in fact or opinion to be treated in law as though they were the same." *Tigner* v. *Texas*, 310 U.S. 141, 147 (1940).

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

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

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

C

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

Appellants contend, however, that in constitutional terms this case involves nothing more than discrimination against local school districts, not against individuals, since on its face the state scheme is concerned only with the provision of funds to local districts. The result of the Texas financing scheme, appellants suggest, is merely that some local districts have more available revenues for education; others have less. In that respect, they point out, the States have broad discretion in drawing reasonable distinctions between their po-

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litical subdivisions. See *Griffin* v. *County School Board of Prince Edward County*, 337 U.S. 218, 231 (1964); *McGowan* v. *Maryland*, 366 U.S. 420, 427 (1961); *Salsburg* v. *Maryland*, 346 U.S. 545, 500–554 (1954).

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

In my Brother STEWART'S view, however, such a description of the discrimination inherent in this case is apparently not sufficient, for it fails to define the "kind of objectively identifiable classes" that he evidently perceives to be necessary for a claim to be "cognizable under the Equal Protection Clause," *ante*, at——. He asserts that this is also the view of the majority, but he is unable to cite, nor have I been able to find, any portion of the Court's opinion which remotely suggests that there is no objectively identifiable or definable class in this case. In any case, if he means to suggest that an essential predicate to equal protection analysis is the precise identification of the particular individuals who comprise the disadvantaged class, I fail to find the source from which he derives such a requirement. Certainly such precision is not analytically necessary. So long as the basis of the discrimination is clearly identified, it is possible to test it against the State's purpose for such discrimination—whatever the standard of equal protection analysis employed.[54] This is clear from our decision only last Term in *Bullock* v. *Carter*, 405 U.S. 134 (1972), where the Court, in striking down Texas' primary filing fees as violative of equal protection, found no impediment to equal protection analysis in the fact that the members of the disadvantaged class could not be readily identified. The Court recognized that the filing fee system tended "to deny some voters the opportunity to vote for the candidate of their choosing; at the same time it gives the affluent power to place on the ballot their own names or the names of persons they favor." *Id.*, at 144. The Court also recognized that "[t]his disparity in voting power based on wealth cannot be described by reference to discrete and precisely defined segments of the community as is typical of inequities challenged under the Equal Protection Clause . . . " Ibid. Nevertheless, it concluded that "we would ignore reality were we not to recognize that this system falls with unequal weight on voters . . . according to their economic status." *Ibid.* The nature of the classification in *Bullock* was clear, although the precise membership of the disadvantaged class was not. This was enough in *Bullock* for purposes of equal protection analysis. It is enough here.

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

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

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

II

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

This Court has repeatedly held that state discrimination which either adversely affects a "fundamental interest," see, *e.g.*, *Dunn* v. *Blumstein*, 405 U.S. 330, 336–342 (1972); *Shapiro* v. *Thompson*, 394 U.S. 618, 629–631 (1969), or is based on a distinction of a suspect character, see, *e.g.*, *Graham* v. *Richardson*, 403 U.S. 365, 372 (1971); *McLaughlin* v. *Florida*, 379 U.S. 184, 191–192 (1964), must be carefully scrutinized to ensure that the scheme is necessary to promote a substantial legitimate state interest. See, *e.g.*, *Dunn* v. *Blumstein*, 405 U.S., at 342–343; *Shapiro* v. *Thompson*, 394 U.S., at 634. The majority today concludes, however, that the Texas scheme is not subject to such a strict standard of review under the Equal Protection Clause. Instead, in its view, the Texas scheme must be tested by nothing more than that lenient standard of rationality which we have traditionally applied to discriminatory state action in the context of economic and commercial matters. See *e.g.*, *McGowan* v. *Maryland*, 366 U.S. 420, 425–426 (1961); *Morey* v. *Doud*, 354 U.S. 457, 465–466 (1957); *F. S. Royster Guano Co.* v. *Virginia*, 253 U.S. 412, 415 (1920); *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U.S. 61, 78–79 (1911). By so doing the Court avoids the telling task of searching for a substantial state interest which the Texas financing scheme, with its variations in taxable district property wealth, is necessary to further. I cannot accept such an emasculation of the Equal Protection Clause in the context of this case.

A

To begin with, I must once more voice my disagreement with the Court's rigidified approach to equal protection analysis. See *Dandridge* v. *Williams*, 397 U.S. 471, 519–521 (1970) (dissenting opinion); *Richardson* v. *Belcher*, 404 U.S. 78, 90 (1971) (dissenting opinion). The Court apparently seeks to establish today that equal protection cases fall into one of two neat categories which dictate the appropriate standard of review—strict scrutiny or mere rationality. But this Court's decisions in the field of equal protection defy such easy categorization. A principled reading of what this Court has done reveals that it has applied a spectrum of standards in reviewing discrimination allegedly violative of the Equal Protection Clause. This spectrum clearly comprehends variations in the degree of care with which the Court will scrutinize particular classifications, depending, I believe, on the constitutional and societal importance of the interest adversely affected and the recognized invidiousness of the basis upon which the particular classification is drawn. I find in fact that many of the Court's recent decisions embody the very sort of reasoned approach to equal protection analysis for which I previously argued—that is an approach in which "concentration [is] placed upon the character of the classification in question, the relative importance to the individuals in the class discriminated against of the governmental benefits they do not receive, and the asserted state interests in support of the classification." *Dandridge* v. *Williams*, 397 U.S., at 520–521 (dissenting opinion).

I therefore cannot accept the majority's labored efforts to demonstrate that fundamental interests, which call for strict scrutiny of the challenged classification, encompass only established rights which we are somehow bound to recognize from the

Footnotes at end of article.

text of the Constitution itself. To be sure, some interests which the Court has deemed to be fundamental for purposes of equal protection analysis are themselves constitutionally protected rights. Thus, discrimination against the guaranteed right of freedom of speech has called for strict judicial scrutiny. See *Police Department of the City of Chicago* v. *Mosley*, 408 U.S. 92 (1972). Further, every citizen's right to travel interstate, although nowhere expressly mentioned in the Constitution, has long been recognized as implicit in the premises underlying the Document: the right "was conceived from the beginning to be a concomitant of the stronger Union the Constitution created." *United States* v. *Guest*, 383 U.S. 745, 758 (1966). See also *Crandall* v. *Nevada*, 6 Wall. 35, 48 (1867). Consequently, the Court has required that a state classification affecting the constitutionally protected right to travel must be "shown to be necessary to promote a *compelling* governmental interest." *Shapiro* v. *Thompson*, 394 U.S. 618, 634 (1969). But it will not do to suggest that the "answer" to whether an interest is fundamental for purposes of equal protection analysis is *always* determined by whether that interest "is a right . . . explicitly or implicitly guaranteed by the Constitution," *ante*, at ——.[59]

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

Thus, in *Buck* v. *Bell*, 274 U.S. 200 (1927), the Court refused to recognize a substantive constitutional guarantee of the right to procreate. Nevertheless, in *Skinner* v. *Oklahoma ex rel. Williamson*, 316 U.S., at 541, the Court, without impugning the continuing vality of *Buck* v. *Bell*, held that "strict scrutiny" of state discrimination affecting procreation "is essential," for "[m]arriage and procreation are fundamental to the very existence and survival of the race." Recently, in *Roe* v. *Wade*, — U.S. —, — (1973), the importance of procreation has indeed been explained on the basis of its intimate relationship with the constitutional right of privacy which we have recognized. Yet the limited stature thereby accorded any "right" to procreate is evident from the fact that at the same time the Court reaffirmed its initial decision in *Buck* v. *Bell*. See *Roe* v. *Wade*, — U.S., at —.

Similarly, the right to vote in state elections has been recognized as a "fundamental political right," because the Court concluded very early that it is "preservative of all rights." *Yick Wo* v. *Hopkins*, 118 U.S. 356, 370 (1886); see, *e.g.*, *Reynolds* v. *Sims*, 377 U.S. 533, 561–562 (1964). For this reason, "this Court has made clear that a citizen has a *constitutionally protected right* to participate in elections *on an equal basis with other citizens in the jurisdiction*." *Dunn* v. *Blumstein*, 405 U.S. 330, 336 (1972) (emphasis added). The final source of such protection from inequality in the provision of the state franchise is, of course, the Equal Protection Clause. Yet it is clear that whatever degree of importance has been attached to the state electoral process when unequally distributed, the right to vote in state elections has itself never been accorded the stature of an independent constitutional guarantee.[60] See *Oregon* v. *Mitchell*, 400 U.S. 112 (1970); *Kramer* v. *Union Free School District No. 15*, 395 U.S. 621, 626–629 (1969); *Harper* v. *Virginia Board of Elections*, 383 U.S. 663, 665 (1966).

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

The majority is, of course, correct when it suggests that the process of determining which interests are fundamental is a difficult one. But I do not think the problem is insurmountable. And I certainly do not accept the view that the process need necessarily degenerate into an unprincipled, subjective "picking-and-choosing" between various interests or that it must involve this Court in creating "substantive constitutional rights in the name of guaranteeing equal protection of the laws," *ante*, at —. Although not all fundamental interests are constitutionally guaranteed, the determination of which interests are fundamental should be firmly rooted in the text of the Constitution. The task in every case should be to determine the extent to which constitutionally guaranteed rights are dependent on interests not mentioned in the Constitution. As the nexus between the specific constitutional guarantee and the nonconstitutional interest draws closer, the nonconstitutional interest becomes more fundamental and the degree of judicial scrutiny applied when the interest is infringed on a discriminatory basis must be adjusted accordingly. Thus, it cannot be denied that interests such as procreation, the exercise of the state franchise, and access to criminal appellate processes are not fully guaranteed to the citizen by our Constitution. But these interests have nonetheless been afforded special judicial consideration in the face of discrimination because they are, to some extent, interrelated with constitutional guarantees. Procreation is now understood to be important because of its interaction with the established constitutional right of privacy. The exercise of the state franchise is closely tied to basic civil and political rights inherent in the First Amendment. And access to criminal appellate processes enhances the integrity of the range of rights[62] implicit in the Fourteenth Amendment guarantee of due process of law. Only if we closely protect the related interests from state discrimination do we ultimately ensure the integrity of the constitutional guarantee itself. This is the real lesson that must be taken from our previous decisions involving interests deemed to be fundamental.

The effect of the interaction of individual interests with established constitutional guarantees upon the degree of care exercised by this Court in reviewing state discrimination affecting such interests is amply illustrated by our decision last Term in *Eisenstadt* v. *Baird*, 405 U.S. 438 (1972). In *Baird*, the Court struck down as violative of the Equal Protection Clause a state statute which denied unmarried persons access to contraceptive devices on the same basis as married persons. The Court purported to test the statute under its traditional standard whether there is some rational basis for the discrimination effected. *Id.*, at 446–447. In the context of commercial regulation, the Court has indicated that the Equal Protection Clause "is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. See, *e.g.*, *McGowan* v. *Maryland*, 366 U.S. 420, 425 (1961); *Kotch* v. *Board of River Port Pilot Commissioners*, 330 U.S. 552, 557 (1947). And this lenient standard is further weighted in the State's favor by the fact that "[a] statutory discrimination will not be set aside if any state of facts reasonably may be conceived [by the Court] to justify it." *McGowan* v. *Maryland*, 366 U.S., at 426. But in *Baird* the Court clearly did not adhere to these highly tolerant standards of traditional rational review. For although there were conceivable state interests intended to be advanced by the statute—*e.g.*, deterrence of premarital sexual activity; regulation of the dissemination of potentially dangerous articles—the Court was not prepared to accept these interests on their face, but instead proceeded to test their substantiality by independent analysis. See 405 U.S., at 449–454. Such close scrutiny of the State's interests was hardly characteristic of the deference shown state classifications in the context of economic interests. See, *e.g.*, *Goesaert* v. *Cleary*, 335 U.S. 464 (1948); *Kotch* v. *Board of River Port Pilot Commissioners*, *supra*. Yet I think the Court's action was entirely appropriate for access to and use of contraceptives bears a close relationship to the individual's constitutional right of privacy. See 405 U.S., at 453–454; *id.*, at 463–464 (WHITE, J., concurring). See also *Roe* v. *Wade*, —U.S., at —.

A similar process of analysis with respect to the invidiousness of the basis on which a particular classification is drawn has also influenced the Court as to the appropriate degree of scrutiny to be accorded any particular case. The highly suspect character of classifications based on race,[63] nationality,[64] or alienage[65] is well established. The reasons why such classifications call for close judicial scrutiny are manifold. Certain racial and ethnic groups have frequently been recognized as "discrete and insular minorities" who are relatively powerless to protect their interests in the political process. See *Graham* v. *Richardson*, 403 U.S. 365, 372 (1971); cf. *United States* v. *Carolene Products Co.*, 304 U.S. 144, 152–153 n. 4 (1938). Moreover, race, nationality, or alienage is " 'in most circumstances irrelevant' to any constitutionally acceptable legislative purpose, *Hirabayashi* v. *United States*, 320 U.S. 81, 100." *McLaughlin* v. *Florida*, 379 U.S., at 192. Instead, lines drawn on such bases are frequently the reflection of historic prejudices rather than legislative rationality. It may be that all of these considerations, which make for particular judicial solicitude in the face of discrimination on the basis of race, nationality, or alienage, do not coalesce—or at least not to the same degree—in other forms of discrimination. Nevertheless, these considerations have undoubtedly influenced the care with which the Court has scrutinized other forms of discrimination.

In *James* v. *Strange*, 407 U.S. 128 (1972), the Court held unconstitutional a state statute which provided for recoupment from indigent convicts of legal defense fees paid by the State. The Court found that the statute impermissibly differentiated between indigent criminals in debt to the state and civil judgment debtors, since criminal debtors were denied various protective exemptions afforded civil judgment debtors.[65] The Court suggested that in reviewing the statute under the Equal Protection Clause, it was merely applying the traditional requirement that there be " 'some rationality' " in the line drawn between the different types of debtors. *Id.*, at 140. Yet it then proceeded to scrutinize the statute with less than traditional deference and restraint. Thus the Court recognized "that state recoupment statutes may be token legitmate state interests" in recovering expenses and discouraging fraud. Nevertheless, MR. JUSTICE POWELL, speaking for the Court, concluded that "these interests are not thwarted by requiring more even treatment of indigent criminal defendants with other classes of debtors to whom the statute itself repeatedly makes reference. State recoupment laws, notwithstanding the state interests they may serve, need not blight in such discriminatory fashion the hopes of indigents for self-sufficiency and self-respect." *Id.*, at 141–142.

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

Similarly, in *Reed* v. *Reed*, 404 U.S. 71 (1971), the Court, in striking down a state statute which gave men preference over women when persons of equal entitlement apply for assignment as an administrator of a particular estate, resorted to a more stringent standard of equal protection review than that employed in cases involving commercial matters. The Court indicated that it was testing the claim of sex discrimination by nothing more than whether the line drawn bore "a rational relationship to a state objective," which it recognized as a legitimate effort to reduce the work of probate courts in choosing between competing applications for letters of administration. *Id.*, at 76. Accepting such a purpose, the Idaho Supreme Court had thought the classification to be sustainable on the basis that the legislature might have reasonably concluded that, as a rule, men have more experience than women in business matters relevant to the administration of estate. 93 Idaho 511, 514, 465 P. 2d 635, 638 (1970). This Court, however, concluded that "[t]o give a mandatory preference to members of either sex over members of the other, merely to accomplish the elimination of hearings on the merits, is to make the very kind of arbitrary legislative choice forbidden by the Equal Protection Clause of the Fourteenth Amendment . . . ." *Id.*, at 76. This Court, in other words, was unwilling to consider a theoretical and unsubstantiated basis for distinction—however reasonable it might appear—sufficient to sustain a statute discriminating on the basis of sex.

James and *Reed* can only be understood as instances in which the particularly invidious character of the classification caused the Court to pause and scrutinize with more than traditional care the rationality of state discrimination. Discrimination on the basis of past criminality and on the basis of sex posed for the Court the spectre of forms of discrimination which it implicitly recognized to have deep social and legal roots without necessarily having any basis in actual differences. Still, the Court's sensitivity to the invidiousness of the basis for discrimination is perhaps most apparent in its decisions protecting the interests of children born out of wedlock from discriminatory state action. See *Weber* v. *Aetna Casualty & Surety Co.*, 406 U.S. 164 (1972); *Levy* v. *Louisiana*, 391 U.S. 68 (1968).

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

"[I]mposing disabilities on the illegitimate child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing. Obviously, no child is responsible for his birth and penalizing the illegitimate child is an ineffectual—as well as an unjust—way of deterring the parent. Courts are powerless to prevent the social opprobrium suffered by these hapless children, but the Equal Protection Clause does enable us to strike down discriminatory laws relating to status of birth." 406 U.S., at 175–176 (footnote omitted).

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

In summary, it seems to me inescapably clear that this Court has consistently adjusted the care with which it will review state discrimination in light of the constitutional significance of the interests affected and the invidiousness of the particular classification. In the context of economic interests, we find that discriminatory state action is almost always sustained for such interests are generally far removed from constitutional guarantees. Moreover, "[t]he extremes to which the Court has gone in dreaming up rational bases for state regulation in that area may in many instances be ascribed to a healthy revulsion from the Court's earlier excesses in using the Constitution to protect interests that have more than enough power to protect themselves in the legislative halls." *Dandridge* v. *Williams*, 397 U.S., at 520 (dissenting opinion). But the situation differs markedly when discrimination against important individual interests with constitutional implications and against particularly disadvantaged or powerless classes is involved. The majority suggests, however, that a variable standard of review would give this Court the appearance of a "super legislature." *Ante*, at ——. I cannot agree. Such an approach seems to me a part of the guarantees of our Constitution and of the historic experiences with oppression of and discrimination against discrete, powerless minorities which underlie that Document. In truth, the Court itself will be open to the criticism raised by the majority so long as it continues on its present course of effectively selecting in private which cases will be afforded special consideration without acknowledging the true basis of its action.[67] Opinions such as those in *Reed* and *James* seem drawn more as efforts to shield rather than to reveal the true basis of the Court's decisions. Such obfuscated action may be appropriate to a political body such as a legislature, but it is not appropriate to this Court. Open debate of the bases for the Court's action is essential to the rationality and consistency of our decisionmaking process. Only in this way can we avoid the label of legislature and ensure the integrity of the judicial process.

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

B

Since the Court now suggests that only interests guaranteed by the Constitution are fundamental for purposes of equal protection analysis and since it rejects the contention that public education is fundamental, it follows that the Court concludes that public education is not constitutionally guaranteed. It is true that this Court has never deemed the provision of free public education to be required by the Constitution. Indeed, it has on occasion suggested that state supported education is a privilege bestowed by a State on its citizens. See *Missouri ex rel. Gaines* v. *Canada*, 305 U.S. 337, 349 (1938). Nevertheless, the fundamental importance of education is amply indicated by the prior decisions of this Court, by the unique status accorded public education by our society, and by the close relationship between education and some of our most basic constitutional values.

The special concern of this Court with the educational process of our country is a matter of common knowledge. Undoubtedly, this Court's most famous statement on the subject is that contained in *Brown* v. *Board of Education*, 347 U.S. 483, 493 (1954):

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

Only last Term the Court recognized that "[p]roviding public schools ranks at the very apex of the function of a State." *Wisconsin* v. *Yoder*, 406 U.S. 205, 213 (1972). This is clearly borne out by the fact that in 48 of our 50 States the provision of public education is mandated by the state constitution.[68] No other state function is so uniformly recognized[69] as an essential element of our society's well-being. In large measure, the explanation for the special importance attached to education must rest, as the Court recognized in *Yoder*, *id.*, at 221, on the facts that "some degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system . . .," and that "education prepares individuals to be self-reliant and self-sufficient participants in society." Both facets of this observation are suggestive of the substantial relationship which education bears to guarantees of our Constitution.

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

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ture lend it an importance that is undeniable." [70]

Of particular importance is the relationship between education and the political process. "Americans regard the public schools as a most vital civic institution for the preservation of a democratic system of government." *School District of Abington Township* v. *Schempp*, 374 U.S. 203, 230 (1963) (BRENNAN, J., concurring). Education serves the essential function of instilling in our young an understanding of and appreciation for the principles and operation of our governmental processes.[71] Education may instill the interest and provide the tools necessary for political discourse and debate. Indeed, it has frequently been suggested that education is the dominant factor affecting political consciousness and participation.[72] A system of "[c]ompetition in ideas and governmental policies is at the core of our electoral process and of First Amendment freedoms." *Williams* v. *Rhodes*, 393 U.S. 23, 32 (1968). But of most immediate and direct concern must be the demonstrated effect of education on the exercise of the franchise by the electorate. The *right* to vote in federal elections is conferred by Art. I, § 2, and the Seventeenth Amendment of the Constitution, and access to the state franchise has been afforded special protection because it is "preservative of other basic civil and political rights," *Reynolds* v. *Sims*, 377 U.S. 533, 561–562 (1964). Data from the Presidential Election of 1968 clearly demonstrates a direct relationship between participation in the electoral process and level of educational attainment; [73] and, as this Court recognized in *Gaston* v. *United States*, 395 U.S. 285, 296 (1969), the quality of education offered may influence a child's decision to "enter or remain in school." It is this very sort of intimate relationship between a particular personal interest and specific constitutional guarantees that has heretofore caused the Court to attach special significance, for purposes of equal protection analysis, to individual interests such as procreation and the exercise of the state franchise.[74]

While ultimately disputing little of this, the majority seeks refuge in the fact that the Court has "never presumed to possess either the ability or the authority to guarantee the citizenry the most *effective* speech or the most *informed* electoral choice." *Ante*, at—. This serves only to blur what is in fact at stake. With due respect, the issue is neither provision of the most *effective* speech nor of the most *informed* vote. Appellees do not now seek the best education Texas might provide. They do seek, however, an end to state discrimination resulting from the unequal distribution of taxable district property wealth that directly impairs the ability of some districts to provide the same educational opportunity that other districts can provide with the same or even substantially less tax effort. The issue is, in other words, one of discrimination that affects the quality of the education which Texas has chosen to provide its children; and, the precise question here is what importance should attach to education for purposes of equal protection analysis of that discrimination. As this Court held in *Brown* v. *Board of Education*, 347 U.S., at 493: The opportunity of education, "where the state has undertaken to provide it, is a right which must be made available to all on equal terms." The factors just considered, including the relationship between education and the social and political interests enshrined within the Constitution, compel us to recognize the fundamentality of education and to scrutinize with appropriate care the bases for state discrimination affecting equality of educational opportunity in Texas' school districts [75]—a conclusion which is only strengthened when we consider the character of the classification in this case.

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C

The District Court found that in discriminating between Texas school children on the basis of the amount of taxable property wealth located in the district in which they live, the Texas financing scheme created a form of wealth discrimination. This Court has frequently recognized that discrimination on the basis of wealth may create a classification of a suspect character and thereby call for exacting judicial scrutiny. See, *e. g.*, *Griffin* v. *Illinois*, 351 U.S. 12 (1951); *Douglas* v. *California*, 372 U.S. 353 (1963); *McDonald* v. *Board of Election Commissioners of Chicago*, 394 U.S. 802, 807 (1969). The majority, however, considers any wealth classification in this case to lack certain essential characteristics which it contends are common to the instances of wealth discrimination that this Court has heretofore recognized. We are told that in every prior case involving a wealth classification, the members of the disadvantaged class have "shared two distinguishing characteristics: because of their impecunity they were completely unable to pay for some desired benefit, and as a consequence, they sustained an absolute deprivation of a meaningful opportunity to enjoy that benefit." *Ante*, at —. I cannot agree. The Court's distinctions may be sufficient to explain the decisions in *Williams* v. *Illinois*, 399 U.S. 235 (1970); *Tate* v. *Short*, 401 U.S. 395 (1971); and even *Bullock* v. *Carter*, 405 U.S. 134 (1972). But they are not in fact consistent with the decisions in *Harper* v. *Virginia Board of Elections*, 383 U.S. 663 (1966), or *Griffin* v. *Illinois*, *supra*, or *Douglas* v. *California*, *supra*.

In *Harper*, the Court struck down as violative of the Equal Protection Clause an annual Virginia poll tax of $1.50, payment of which by persons over the age of 21 was a prerequisite to voting in Virginia elections. In part, the Court relied on the fact that the poll tax interfered with a fundamental interest—the exercise of the state franchise. In addition, though, the Court emphasized that "[l]ines drawn on the basis of wealth or property . . . are traditionally disfavored." *Id.*, at 668. Under the first part of the theory announced by the majority the disadvantaged class in *Harper* in terms of a wealth analysis, should have consisted only of those too poor to afford the $1.50 necessary to vote. But the *Harper* Court did not see it that way. In its view, the Equal Protection Clause "bars a system which excludes [from the franchise] those unable to pay a fee to vote or who *fail to pay*." *Ibid.* (Emphasis added.) So far as the Court was concerned, the "degree of discrimination [was] irrelevant." *Ibid.* Thus, the Court struck down the poll tax *in toto;* it did not order merely that those too poor to pay the tax be exempted; complete impecunity clearly was not determinative of the limits of the disadvantaged class, nor was it essential to make an equal protection claim.

Similarly, *Griffin* and *Douglas* refute the majority's contention that we have in the past required an absolute deprivation before subjecting wealth classifications to strict scrutiny. The Court characterizes *Griffin* as a case concerned simply with the denial of a transcript or an adequate substitute therefor, and *Douglas* as involving the denial of counsel. But in both cases the question was in fact whether "a State that [grants] *appellate review* can do so in a way that discriminates against some convicted defendants on account of their poverty." *Griffin* v. *Illinois*, 351 U. S., at 18 (emphasis added). In that regard, the Court concluded that inability to purchase a transcript denies "the poor an adequate *appellate review* accorded to all who have money enough to pay the costs in advance," *ibid.* (emphasis added), and that "the type of an *appeal* a person is afforded . . . hinges upon whether or not he can pay for the assistance of counsel," *Douglas* v. *California*, 372 U.S., at 355–356 (emphasis added). The right of appeal itself was not absolutely denied to those too poor to pay; but because of the cost of a transcript and of counsel, the appeal was a substantially less meaningful right for the poor than for the rich.[76] It was on these terms that the Court found a denial of equal protection, and those terms clearly encompassed degrees of discrimination on the basis of wealth which do not amount to outright denial of the affected right or interest.[77]

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

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

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

Casualty & Surety Co., 406 U.S. 164 (1972); *Levy* v. *Louisiana*, 391 U.S. 68 (1968).

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

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

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

D

The nature of our inquiry into the justifications for state discrimination is essentially the same in all equal protection cases: We must consider the substantiality of the state interests sought to be served, and we must scrutinize the reasonableness of the means by which the State has sought to advance its interests. See *Police Dept. of the City of Chicago* v. *Mosley*, 408, U.S. 92, 95 (1972). Differences in the application of this test are, in my view, a function of the constitutional importance of the interests at stake and the invidiousness of the particular classification. In terms of the asserted state interests, the Court has indicated that it will require, for instance, a "compelling," *Shapiro* v. *Thompson*, 394 U.S. 618, 634 (1969), or a "substantial" or "important" *Dunn* v. *Blumstein*, 405 U.S. 330, 343 (1972), state interest to justify discrimination affecting individual interests of constitutional significance. Whatever the differences, if any, in these descriptions of the character of the state interest necessary to sustain such discrimination, basic to each is, I believe, a concern with the legitimacy and the reality of the asserted state interests. Thus, when interests of constitutional importance are at stake, the Court does not stand ready to credit the State's classification with any conceivable legitimate purpose,[87] but demands a clear showing that there are legitimate state interests which the classification was in fact intended to serve. Beyond the question of the adequacy of the state's purpose for the classification, the Court traditionally has become increasingly sensitive to the means by which a State chooses to act as its action affects more directly interests of constitutional significance. See, *e.g.*, *United States* v. *Robel*, 389 U.S. 258, 265 (1967); *Shelton* v. *Tucker*, 364 U.S. 479, 488 (1960). Thus, by now, "less restrictive alternatives" analysis is firmly established in equal protection jurisprudence. See *Dunn* v. *Blumstein*, 405 U.S. 330, 343 (1972); *Kramer* v. *Union Free School District No. 15*, 395 U.S. 621, 627 (1969). It seems to me that the range of choice we are willing to accord the State in selecting the means by which it will act and the care with which we scrutinize the effectiveness of the means which the State selects also must reflect the constitutional importance of the interest affected and the invidiousness of the particular classification. Here both the nature of the interest and the classification dictate close judicial scrutiny of the purposes which Texas seeks to serve with its present educational financing scheme and of the means its has selected to serve that purpose.

The only justification offered by appellants to sustain the discrimination in educational opportunity caused by the Texas financing scheme is local educational control. Presented with this justification, the District Court concluded that "[n]ot only are defendants unable to demonstrate compelling state interests for their classification based on wealth, they fail even to establish a reasonable basis for these classifications." 337 F. Supp., at 284. I must agree with this conclusion.

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

In Texas statewide laws regulate in fact the most minute details of local public education. For example, the State prescribes required courses.[88] All textbooks must be submitted for state approval,[89] and only approved text books may be used.[90] The State has established the qualifications necessary for teaching in Texas public schools and the procedures for obtaining certification.[91] The State has even legislated on the length of the school day.[92] Texas' own courts have said:

"As a result of the acts of the Legislature our school system is not of mere local concern but it is statewide. While a school district is local in territorial limits, it is an integral part of the vast school system which is coextensive with the confines of the State of Texas." *Treadway* v. *Whitney Independent School District*, 205 S. W. 2d 97, 99 (Tex. Civil App. 1947).

See also *El Dorado Independent School District* v. *Tisdale*, 3 S. W. 2d 420, 422 (Tex. Comm. App. 1928).

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

The study introduced in the District Court showed a direct inverse relationship between equalized taxable district property wealth and district tax effort with the result that the property poor districts making the highest tax effort obtained the lowest per pupil yield.[93] The implications of this situation for local choice are illustrated by again comparing the Edgewood and Alamo Heights School Districts. In 1967–1968, Edgewood, after contributing its share to the Local Fund Assignment, raised only $26 per pupil through its local property tax, whereas Alamo Heights was able to raise $333 per pupil. Since the funds received through the Minimum Foundation School Program are to be used only for minimum professional salaries, transportation costs, and operating expenses, it is not hard to see the lack of local choice—with respect to higher teacher salaries to attract more and better teachers, physical facilities, library books, and facilities, special courses, or participation in special state and federal matching funds programs—under which a property poor district such as Edgewood is forced to labor.[94] In fact, because of the difference in taxable local property wealth, Edgewood would have to tax itself almost nine times as heavily to obtain the same yield as Alamo Heights.[95] At present, then, local control is a myth for many of the local school districts in Texas. As one district court has observed, "rather than reposing in each school district the economic power to fix its own level of per pupil expenditure, the State has so arranged the structure as to guarantee that some districts will spend low (with high taxes) while others will spend high (with low taxes)." *Van Dusartz* v. *Hatfield*, 334 F. Supp. 870, 876 (Minn. 1971).

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

III

In conclusion it is essential to recognize that an end to the wide variations in taxable district property wealth inherent in the Texas financing scheme would entail none of

Footnotes at end of article.

the untoward consequences suggested by the Court or by the appellants.

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

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

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

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

I would therefore affirm the judgment of the District Court.

FOOTNOTES

[1] See *Van Dusartz* v. *Hatfield*, 334 F. Supp. 870 (Minn. 1971); *Milliken* v. *Green*, — Mich. —,— N. W. 2d — (1972); *Serrano* v. *Priest*, 5. Cal. 3d 584, 487 P. 2d 1241, 96 Cal. Rptr. 601 (1971); *Robinson* v. *Cahill*, 118 N. J. Super 223, 287 A. 2d 187, 119 N. J. Super. 40, 289 A. 2d 569 (1972); *Hollins* v. *Shofstall*, Civil No. C–253652 (Super. Ct. Maricopa Cty., Ariz., July 7, 1972). See also *Sweetwater County Planning Comm. for the Organization of School Districts* v. *Hinkle*, 491 P. 2d 1234 (Wyo. 1971), juris, relinquished, 493 P. 2d 1050 (Wyo. 1972).

[2] The District Court in this case postponed decisions for some two years in the hope that the Texas Legislature would remedy the gross disparities in treatment inherent in the Texas financing scheme. It was only after the legislature failed to act in its 1971 Regular Session that the District Court, apparently recognizing the lack of hope for self-initiated legislative reform, rendered its decision. See Texas Research League, Public School Finance Problems in Texas 13 (Interim Report 1972). The strong vested interest of property rich districts in the existing property tax scheme poses a substantial barrier to self-initiated legislative reform in educational financing. See N. Y. Times, Dec. 19, 1972, at 1, col. 1.

[3] Texas provides its school districts with extensive bonding authority to obtain capital both for the acquisition of school sites and "the construction and equipment of school buildings," Tex. Educ. Code Ann. § 20.01, and for the acquisition, construction, and maintenance of "gymnasia, stadia, and other recreational facilities," *id.*, §§ 20.21–20.22. While such private capital provides a fourth source of revenue, it is, of course, only temporary in nature since the principal and interest of all bonds must ultimately be paid out of the receipts of the local ad valorem property tax, see *id.*, §§ 20.01, 20.04, except to the extent that outside revenues derived from the operation of certain facilities, such as gymnasium, are employed to repay the bonds issued thereon, see *id.*, §§ 20.22, 20.25.

[4] See Tex. Const., Art. 7, § 3; Tex. Educ. Code Ann. § 20.01–.02. As a part of the property tax scheme, bonding authority is conferred upon the local school districts, see n. 3, *supra*.

[5] See Tex. Educ. Code Ann. § 20.04.

[6] For the 1970–1971 school year, the precise figure was 41.1%. See Texas Research League, *supra*, n. 2, at 9.

[7] See Tex. Educ. Code Ann. § 20.04.

Theoretically, Texas law limits the tax rate for public school maintenance, see *id.*, § 20.02, to $1.50 per $100 valuation, see *id.*, § 20.04(d). However, it does not appear that any Texas district presently taxes itself at the highest rate allowable, although some poor districts are approaching it, see App., at 174.

[8] Under Texas law local districts are allowed to employ differing bases of assessment—a fact that introduces a third variable into the local funding. See Tex. Educ. Code Ann. § 20.03. But neither party has suggested that this factor is responsible for the disparities in revenues available to the various districts. Consequently, I believe we must deal with this case on the assumption that differences in local methods of assessment do not meaningfully affect the revenue raising power of local districts relative to one another. The Court apparently admits as much. See *ante*, at —. It should be noted, moreover, that the main set of data introduced before the District Court to establish the disparities at issue here was based upon "equalized taxable property" values which had been adjusted to correct for differing methods of assessment. See Ap. C to Affidavit of Professor Joel S. Berke.

[9] Texas has approximately 1,200 school districts.

[10] See App. I, *infra*.

[11] See *id.* Indeed, appellants acknowledge that the relevant data from Professor Berke's affidavit show "a very positive correlation, 0.973, between market value of taxable property per pupil and state and local revenues per pupil." Reply Brief for Appellants 6, n. 9.

While the Court takes issue with much of Professor Berke's data and conclusions, *ante*, at —, nn. 38 and —, I do not understand its criticisms to run to the basic finding of a correlation between taxable district property per pupil and local revenues per pupil. The critique of Professor Berke's methodology upon which the Court relies, see Goldstein, Interdistrict Inequalities in School Financing: A Critical Analysis of *Serrano* v. *Priest*, and its Progeny, 120 U. Pa. L. Rev. 504, 523–525, nn. 67 and 71 (1972), is directed only at the suggested correlations between family income and taxable district wealth and between race and taxable district wealth. Obviously, the appellants do not question the relationship in Texas between taxable district wealth and per pupil expenditures; and there is no basis for the Court to do so, whatever the criticisms that may be leveled at other aspects of Professor Berke's study, see *infra*, n. 55.

[12] See App. II, *infra*.

[13] See *Ibid.*

[14] For the 1970–1971 school year, the precise figure was 10.9%. See Texas Research League, *supra*, n. 2, at 9.

[15] Appellants made such a contention before the District Court but apparently have abandoned it in this Court. Indeed, data introduced in the District Court simply belies the argument that federal funds have a significant equalizing effect. See App. I, *infra*. And, as the District Court observed, it does not follow that remedial action by the Federal Government would excuse any unconstitutional discrimination effected by the state financing scheme. 337 F. Supp. 280, 284.

[16] For the 1970–1971 school year, the precise figure was 48%. See Texas Research League, *supra*, n. 2, at 9.

[17] See Tex. Const., Art. 7, § 5 (Supp. 1972). See also Tex. Educ. Code Ann. § 15.01 (b).

[18] See Tex. Educ. Code Ann. § 15.01 (b).

The Permanent School Fund is, in essence, a public trust initially endowed with vast quantities of public land, the sale of which has provided an enormous copus that in turn produces substantial annual revenues which are devoted exclusively to public education. See Tex. Const., Art. 7, § 5 (Supp. 1972). See also V Report of the Governor's Committee on Public School Education. The Challenge and the Chance 11 (1969) (hereinafter Texas Governor's Committee Report).

[19] This is determined from the average daily attendance within each district for the preceding year. Tex. Educ. Code Ann. § 15.01(c).

[20] See *id.*, §§ 16.01–16.975.

[21] See *id.*, §§ 16.71 (2), 16.79.

[22] See *id.*, §§ 16.301–16.316, 16.45, 16.51–16.63.

[23] See *id.*, §§ 16.72–16.73, 16.76–16.77.

[24] See *id.*, §§ 16.74–16.76. The formula for calculating each district's share is described in V Texas Governor's Committee Report 44–48.

[25] See Tex. Educ. Code Ann. § 16.01.

[26] See V Texas Governor's Committee Report 40–41.

[27] See *id.*, at 45–67; Texas Research League, Texas Public Schools Under the Minimum Foundation Program—An Evaluation: 1949–1954, 67–68 (1954).

[28] Technically, the economic index involves a two step calculation. First, on the basis of the factors mentioned above, each Texas county's share of the Local Fund Assignment is determined. Then each county's share is divided among its school districts on the basis of their relative shares of the county's assessable wealth. See Tex. Educ. Code Ann. §§ 16.74–16.76; V Texas Governor's Committee Report 43–44; Texas Research League, Texas Public School Finance: A majority of Exceptions 6–8 (2d Interim Report 1972).

[29] V Texas Governor's Committee Report 48, quoting statement of Dr. Edgar Morphet.

[30] The extraordinarily complex standards are summarized in V Texas Governor's Committee Report 41–43.

[31] The key element of the Minimum

Foundation School Program is the provision of funds for professional salaries—more particularly, for teacher salaries. The Program provides each district with funds to pay its professional payroll as determined by certain state standards. See Tex. Educ. Code Ann. §§ 16.301–16.316. If the district fails to pay its teachers at the levels determined by the state standards it receives nothing from the Program. See *id.*, § 16.301 (c). At the same time, districts are free to pay their teachers salaries in excess of the level set by the state standards, using local revenues—that is, property tax revenue—to make up the difference, see *id.*, § 16.301 (a).

The state salary standards focus upon two factors: the educational level and the experience of the district's teachers. See *id.*, §§ 16.301–16.316. The higher these two factors are, the more funds the district will receive from the Foundation Program for professional salaries.

It should be apparent that the net effect of this scheme is to provide more assistance to property rich districts than to property poor ones. For rich districts are able to pay their teachers, out of local funds, salary increments above the state minimum levels. Thus, the rich districts are able to attract the teachers with the best education and the most experience. To complete the circle, this then means, given the state standards, that the rich districts receive more from the Foundation Program for professional salaries than do poor districts. A portion of Professor Berke's study vividly illustrates the impact of the State's standards on districts of varying wealth. See App. III, *infra*.

[32] In 1967–1968, Alamo Heights School District had $49,478 in taxable property per pupil. See Berke Affidavit, Table VII, App., at 216.

[33] In 1967–1968, Edgewood Independent School District had $5,960 in taxable property per pupil. *Ibid.*

[34] I fail to understand the relevance for this case of the Court's suggestion that if Alamo Heights School District, which is approximately the same physical size as Edgewood Independent School District but which has only one-fourth as many students, had the same number of students as Edgewood, the former's per pupil expenditure would be considerably closer to the latter's. *Ante*, at —, n. 3. Obviously, this is true, but it does not alter the simple fact that Edgewood *does* have four times as many students but not four times as much taxable property wealth. From the perspective of Edgewood's school children then—the perspective that ultimately counts here—Edgewood is clearly a much poorer district than Alamo Heights. The question here is not whether districts have equal taxable property wealth in absolute terms, but whether districts have differing taxable wealth given their respective school-age populations.

[35] In the face of these gross disparities in treatment which experience with the Texas financing scheme has revealed, I cannot accept the Court's suggestion that we are dealing here with a remedial scheme to which we should accord substantial deference because of its accomplishments rather than criticize it for its failures. *Ante*, at —. Moreover, Texas' financing scheme is hardly remedial legislation of the type for which we have previously shown substantial tolerance. Such legislation may in fact extend the vote to "persons who otherwise would be denied it by state law," *Katzenbach* v. *Morgan*, 384 U.S. 641, 657 (1966), or it may eliminate the evils of the private bail bondsman, *Schilb* v. *Kuebel*, 404 U.S. 357 (1971). But those are instances in which a legislative body has sought to remedy problems for which it cannot be said to have been directly responsible. By contrast, public education is the function of the State in Texas, and the responsibility for any defect in the financing scheme must ultimately rest with the State. It is the State's own scheme which has caused the funding problem, and, thus viewed, that scheme can hardly be deemed remedial.

[36] Compare App. I, *infra*.

[37] Brief for Appellants 3.

[38] Thus, in 1967–1968, Edgewood had a total of $248 per pupil in state and local funds compared with a total of $558 per pupil for Alamo Heights. See Berke Affidavit, Table X, App., at 219. For 1970–1971, the respective totals were $418 and $913. See Texas Research League, *supra*, n. 2, at 14.

[39] Not only does the local property tax provide approximately 40% of the funds expended on public education, but it is the *only* source of funds for such essential aspects of educational financing as the payment of school bonds, see n. 3, *supra*, and the payment of the district's share of the Local Fund Assignment, as well as for nearly all expenditures above the minimums established by the Foundation Program.

[40] Compare, *e.g.*, J. Coleman, et al., Equality of Educational Opportunity 290–330 (1966), Jencks, The Coleman Report and the Conventional Wisdom, in On Equality of Educational Opportunity 69, 91–104 (F. Mosteller & D. Moynihan, ed. 1972), with *e.g.*, J. Guthrie, G. Kleindorfer, H. Levin, & R. Stout, Schools and Inequality 79–90 (1971); Kiesling, Measuring a Local Government Service: A Study of School Districts in New York State, 49 Rev. Econ. & Statistics 356 (1967).

[41] Compare Berke Deposition, at 10 ("[D]ollar expenditures are probably the best way of measuring the quality of education afforded students . . ."), with Graham Deposition, at 3 ("[I]t is not just necessarily the money, no. It is how wisely you spend it."). It warrants noting that even appellants' witness, Mr. Graham, qualified the importance of money only by the requirement of wise expenditure. Quite obviously, a district which is property poor is powerless to match the education provided by a property rich district assuming each district allocates its funds with equal wisdom.

[42] See Brief of, *inter alia*, San Marino Unified School District; Beverly Hills Unified School District as *amici curiae;* Brief of, *inter alia*, Bloomfield Hills, Michigan, School District; Dearborn City, Michigan, School District; Grosse Pointe, Michigan, Public School System as *amici curiae*.

[43] Answers to Plaintiffs' Interrogatories, App., at 115.

[44] *Ibid.* Moreover, during the same period, 37.17% of the teachers in Alamo Heights had advanced degrees, while only 14.98% of Edgewood's faculty had such degrees. See *id.*, at 116.

[45] *Id.*, at 117.

[46] *Id.*, at 118.

[47] In the 1967–1968 school year, Edgewood had 22,862 students and 864 teachers, a ratio of 26.5 to 1. See *id.*, at 110, 114. In Alamo Heights, for the same school year, there were 5,432 students and 265 teachers for a ratio of 20.5 to 1. See *ibid.*

[48] Reply Brief for Appellants 17. See also, *id.*, at 5, 15–16.

[49] Indeed, even apart from the differential treatment inherent in the local property tax, the significant interdistrict disparities in state aid received under the Minimum Foundation School Program would seem to raise substantial equal protection questions.

[50] I find particularly strong intimations of such a view in the majority's efforts to denigrate the constitutional significance of children in property poor districts "receiving a poorer quality education than that available to children in districts having more assessable wealth" with the assertion "that at least where wealth is involved the Equal Protection Clause does not require absolute equality or precisely equal advantages." *Ante*, at —. The Court, to be sure, restricts its remark to "wealth" discrimination. But the logical basis for such a restriction is not explained by the Court, nor is it otherwise apparent, see pp. ——— and n. 77, *infra*.

[51] See Answers to Interrogatories by Dr. Joel S. Berke, Ans. 17, p. 9; Ans. 48–51, pp. 22–24; Ans. 88–89, pp. 41–42; Deposition of Dr. Daniel C. Morgan, Jr., 52–55; Affidavit of Dr. Daniel C. Morgan, Jr., App., at 242–243.

[52] It is true that in two previous cases this Court has summarily affirmed district court dismissals of constitutional attacks upon other state educational financing schemes. See *McInnis* v. *Shapiro*, 293 F. Supp. 327 (ND Ill. 1968), aff'd *per curiam sub nom. McInnis* v. *Ogilvie*, 394 U.S. 322 (1969); *Burruss* v. *Wilkerson*, 310 F. Supp. 572 (WD Va. 1969), aff'd *per curiam*, 397 U.S. 44 (1970). But those decisions cannot be considered dispositive of this action, for the thrust of those suits differed materially from that of the present case. In *McInnis*, the plaintiffs asserted that "*only* a financing system which apportions public funds according to the educational needs of the students satisfies the Fourteenth Amendment." 293 F. Supp., at 331. The District Court concluded that "(1) the Fourteenth Amendment does not require public school expenditures [to] be made only on the basis of pupils' educational needs, and (2) the lack of judicially manageable standards makes this controversy nonjusticiable." *Id.*, at 329. The *Burress* District Court dismissed that suit essentially in reliance on *McInnis* which it found to be "scarcely distinguishable." 310 F. Supp., at 574. This suit involves no effort to obtain an allocation of school funds that considers only educational need. The District Court ruled only that the State must remedy the discrimination in the distribution of taxable local district wealth which has heretofore prevented many districts from truly exercising local fiscal control. Furthermore, the limited holding of the District Court presents none of the problems of judicial management which would exist if the federal courts were to attempt to ensure the distribution of educational funds solely on the basis of educational need, see *infra*, pp.— — —.

[53] Tex. Const., Art. 7, § 1.

[54] Problems of remedy may be another matter. If provision of the relief sought in a particular case required identification of each member of the affected class, as in the case of monetary relief, the need for clarity in defining the class is apparent. But this involves the procedural problems inherent in class action litigation, not the character of the elements essential to equal protection analysis. We are concerned here only with the latter. Moreover, it is evident that in cases such as this provision of appropriate relief, which takes the injunctive form, is not a serious problem since it is enough to direct the action of appropriate officials. Cf. *Potts* v. *Flak*, 313 F. 2d 284, 288–290 (CA5 1963).

[55] I assume the Court would launch the same criticism against the validity of the finding of a correlation between poor districts and racial minorities.

[56] The Court rejects the District Court's finding of a correlation between poor people and poor districts with the assertion that "there is reason to believe that the poorest families are not necessarily clustered in the poorest districts" in Texas. *Ante*, at —. In support of its conclusion the Court offers absolutely no data—which it cannot on this record—concerning the distribution of poor people in Texas to refute the data introduced below by appellees; it relies instead on a recent law review note concerned solely with the State of Connecticut. Note, A Statistical Analysis of the School Finance Decisions: On Winning Battles and Losing Wars, 81 Yale L. J. 1303 (1972). Common sense suggests that the basis for drawing a demographic conclusion with respect to a geographically

large, urban-rural, industrial-agricultural State such as Texas from a geographically small, densely populated, highly industrialized State such as Connecticut is doubtful at best.

Furthermore, the article upon which the Court relies to discredit the statistical procedures employed by Professor Berke to establish the correlation between poor people and poor districts, see n. 11, *supra*, based its criticism primarily on the fact that only four of the 110 districts studied were in the lowest of the five categories, which were determined by relative taxable property per pupil, and most districts clustered in the middle three groups. See Goldstein, Interdistrict Inequalities in School Financing: A Critical Analysis of *Serrano* v. *Priest* and its Progeny, 120 U. Pa. L. Rev. 504, 524 n. 67 (1972). See also *ante*, at —. But the Court fails to note that the four poorest districts in the sample had over 50,000 students which constituted 10% of the students in the entire sample. It appears, moreover, that even when the richest and the poorest categories are enlarged to include in each category 20% of the students in the sample, the correlation between district and individual wealth holds true. See Brief for the Governors of Minnesota, Maine, South Dakota, Wisconsin, and Michigan as *amici curiae* 17 n. 21.

Finally, it cannot be ignored that the data introduced by appellees went unchallenged in the District Court. The majority's willingness to permit appellants to litigate the correctness of that data for the first time before this tribunal—where effective response by appellees is impossible—is both unfair and judicially unsound.

[57] Third Amended Complaint, App., at 23. Consistent with this theory, appellees purported to represent, among others, a class composed of "all . . . school children in independent school districts . . . who . . . have been deprived of the equal protection of the law under the Fourteenth Amendment with regard to public school education because of the low value of the property lying within the independent school districts in which they reside." *Id.*, at 15.

[58] The degree of judicial scrutiny that this particular classification demands is a distinct issue which I consider in Part II, C, *infra*.

[59] Indeed, the Court's theory would render the established concept of fundamental interests in the context of equal protection analysis superfluous, for the substantive constitutional right itself requires that this Court strictly scrutinize any asserted state interest for restricting or denying access to any particular guaranteed right, see, *e.g.*, *United States* v. *O'Brien*, 391 U.S. 367, 377 (1968); *Cox* v. *Louisiana*, 379 U.S. 536, 545–551 (1965).

[60] It is interesting that in its effort to reconcile the state voting rights cases with its theory of fundamentality the majority can muster nothing more than contention that "[t]he constitutional underpinnings of the *right to equal treatment in the voting process* can no longer be doubted. . . ." *Ante*, at —n. 74 (emphasis added). If, by this, the Court intends to recognize a substantive constitutional "right to equal treatment in the voting process" independent of the Equal Protection Clause, the source of such a right is certainly a mystery to me.

[61] It is true that *Griffin* and *Douglas* also involved discrimination against indigents, that is, wealth discrimination. But, as the majority points out, *ante*, at — n. 67, the Court has never deemed wealth discrimination alone to be sufficient to require strict judicial scrutiny; rather, such review of wealth classifications has been applied only where the discrimination affects an important individual interest, see, *e. g.*, *Harper* v. *Virginia Board of Elections*, 383 U. S. 663 (1966). Thus, I believe *Griffin* and *Douglas* can only be understood as premised on a recognition of the fundamental importance of the criminal appellate process.

[62] See, *e. g.*, *Duncan* v. *Louisiana*, 391 U. S. 145 (1968) (right to jury trial); *Washington* v. *Texas*, 388 U. S. 14 (1967) (right to compulsory process); *Pointer* v. *Texas*, 380 U. S. 400 (1965) (right to confront one's accusers).

[63] See, *e. g.*, *McLaughlin* v. *Florida*, 379 U. S. at 191–192; *Loving* v. *Virginia*, 388 U. S. 1, 9 (1967).

[64] See *Oyama* v. *California*, 332 U. S. 633, 644–646 (1948; *Korematsu* v. *United States*, 323 U. S. 214, 216 (1944).

[65] See *Graham* v. *Richardson*, 403 U. S. 365, 372 (1971).

[66] The Court noted that the challenged "provision strips from indigent defendants the array of protective exemptions Kansas has erected for other civil judgment debtors, including restrictions on the amount of disposable earnings subject to garnishment, protection of the debtor from wage garnishment at times of severe personal or family sickness, and exemption from attachment and execution on a debtor's personal clothing, books, and tools of trade." 407 U. S., at 135.

[67] See generally Gunther, The Supreme Court, 1971 Term: Foreword, In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection, 86 Harv. L. Rev. 1 (1972).

[68] See Brief of the National Education Association, et al., as *amicus curiae*, App. A. All 48 of the 50 States which mandate public education also have compulsory attendance laws which require school attendance for eight years or more. *Id.*, at 20–21.

[69] Prior to this Court's decision in *Brown* v. *Board of Education*, 347 U.S. 483 (1954), every State had a constitutional provision directing the establishment of a system of public schools. But after *Brown*, South Carolina repealed its constitutional provision, and Mississippi made its constitutional provision discretionary with the state legislature.

[70] Developments in the Law—Equal Protection, 82 Harv. L. Rev. 1065, 1129 (1969).

[71] The President's Commission on School Finance, Schools, People, and Money; the Need for Educational Reform 11 (1972), concluded that "[l]iterally, we cannot survive as a nation or as individuals without [education]." It further observed that:

"[I]n a democratic society, public understanding of public issues is necessary for public support. Schools generally include in their courses of instruction a wide variety of subjects related to the history, structure and principles of American government at all levels. In so doing, schools provide students with a background of knowledge which is deemed an absolute necessity for responsible citizenship." *Id.*, at 13–14.

[72] See J. Guthrie, G. Kleindorfer, H. Levin, & R. Stout, Schools and Inequality 103–105 (1971); R. Hess & J. Torney, The Development of Political Attitudes in Children 217–218 (1967); Campbell, The Passive Citizen, VI Acta Sociologica, Nos. 1–2, 9, 20–21 (1962).

That education is the dominant factor in influencing political participation and awareness is sufficient. I believe, to dispose of the Court's suggestion that, in all events, there is no indication that Texas is not providing all of its children with a sufficient education to enjoy the right of free speech and to participate fully in the political process. *Ante*, at ——. There is, in short, no limit on the amount of free speech or political participation that the Constitution guarantees. Moreover, it should be obvious that the political process, like most other aspects of social intercourse, is to some degree competitive. It is thus of little benefit to an individual from a property poor district to have "enough" education if those around him have more than "enough." Cf. *Sweatt* v. *Painter*, 399 U.S. 629, 633–634 (1950).

[73] See United States Department of Commerce, Bureau of the Census, Voting and Registration in the Election of November 1968, Current Population Reports, Series P–20, No. 192, Table 4, p. 17 (1968). See also Levin, The Costs to the Nation of Inadequate Education, Committee Print of the Senate Select Committee on Equal Education Opportunity, 92d Cong., 2d Sess., pp. 46–47 (1972).

[74] I believe that the close nexus between education and our established constitutional values with respect to freedom of speech and participation in the political process makes this a different case than our prior decisions concerning discrimination affecting public welfare, see, *e. g.*, *Dandridge* v. *Williams*, 397 U.S. 471 (1970), or housing, see, *e. g.*, *Lindsey* v. *Normet*, 405 U.S. 56 (1972). There can be no question that, as the majority suggests, constitutional rights may be less meaningful for someone without enough to eat or without decent housing. *Ante*, at ——. But the crucial difference lies in the closeness of the relationship. Whatever the severity of the impact of insufficient food or inadequate housing on a person's life, they have never been considered to bear the same direct and immediate relationship to constitutional concerns for free speech and for our political processes as education has long been recognized to bear. Perhaps, the best evidence of this fact is the unique status which has been accorded public education as the single public service nearly unanimously guaranteed in the constitutions of our States, see n. 65, *supra*. Education, in terms of constitutional values, is much more analogous in my judgment, to the right to vote in state elections than to public welfare or public housing. Indeed, it is not without significance that we have long recognized education as an essential step in providing the disadvantaged with the tools necessary to achieve economic self-sufficiency.

[75] The majority's reliance on this Court's traditional deference to legislative bodies in matters of taxation falls wide of the mark in the context of this particular case. See *ante*, at ——. The decisions on which the Court relies were simply taxpayer suits challenging the constitutionality of a tax burden in the face of exemptions or differential taxation afforded to others. See, *e.g.*, *Allied Stores of Ohio, Inc.* v. *Bowers*, 358 U.S. 522 (1959); *Madden* v. *Kentucky*, 309 U.S. 83 (1940); *Carmichael* v. *Southern Coal & Coke Co.*, 301 U.S. 495 (1937); *Bells's Gap R. Co.* v. *Pennsylvania*, 134 U.S. 232 (1890). There is no question that from the perspective of the taxpayer, the Equal Protection Clause "imposes no iron rule of equality, prohibiting the flexibility and variety that are appropriate to reasonable schemes of state taxation. The State may impose different specific taxes upon different trades and professions and may vary the rate of an excise upon various products." *Allied Stores of Ohio, Inc.* v. *Bowers*, 358 U.S., at 526–527. But in this case we are presented with a claim of discrimination of an entirely different nature—a claim that the revenue producing mechanism directly discriminates against the interests of some of the intended beneficiaries; and in contrast to the taxpayer suits, the interest adversely affected is of substantial constitutional and societal importance. Hence, a different standard of equal protection review than has been employed in the taxpayer suits is appropriate here. It is true that affirmance of the District Court decision would to some extent intrude upon the State's taxing power insofar as it would be necessary for the State to at least equalize taxable district wealth. But contrary to the suggestions of the majority, affirmance would

not impose a strait jacket upon the revenue raising powers of the State, and would certainly not spell the end of the local property tax. See *infra*, pp. ——.

[76] This does not mean that the Court has demanded precise equality in the treatment of the indigent and the person of means in the criminal process. We have never suggested, for instance, that the Equal Protection Clause requires the best lawyer money can buy for the indigent. We are hardly equipped with the objective standards which such a judgment would require. But we have pursued the goal of substantial equality of treatment in the fact of clear disparities in the nature of the appellate process afforded rich versus poor. See, *e. g., Draper* v. *Washington*, 372 U.S. 487, 495–496 (1963); cm. *Coppedge* v. *United States*, 369 U.S. 438, 447 (1962).

[77] Even putting aside its misreading of *Griffin* and *Douglas*, the Court fails to offer any reasoned constitutional basis for restricting cases involving wealth discrimination to instances in which there is an absolute deprivation of the interest affected. As I have already discussed, see *supra*, p. —, the Equal Protection Clause guarantees equality of those persons who are similarly situated; it does not merely bar some form of excessive discrimination between such persons. Outside the context of wealth discrimination, the Court's reapportionment decisions clearly indicate that relative discrimination is within the purview of the Equal Protection Clause. Thus, in *Reynolds* v. *Sims*, 377 U.S. 533, 562–563 (1964), the Court recognized:

"It would appear extraordinary to suggest that a State could be constitutionally permitted to enact a law providing that certain of the State's voters could vote two, five, or 10 times for their legislative representatives, while voters living elsewhere could vote only once. . . . Of course, the effect of state legislative districting schemes which give the same number of representatives to unequal numbers of constituents is identical. Overweighting and overvaluation of the votes of those living here has the certain effect of dilution and undervaluation of the votes of those living there. . . . Their right to vote is simply not the same right to vote as that of those living in a favored part of the State. . . . One must be ever aware that the Constitution forbids 'sophisticated as well as simple-minded modes of discrimination.'"

See also *Gray* v. *Sanders*, 372 U.S. 368, 380–381 (1963). The Court gives no explanation why a case involving wealth discrimination should be treated any differently.

[78] But cf. *Bullock* v. *Carter*, 405 U.S. 134, 144 (1972), where prospective candidates' threatened exclusion from a primary ballot because of their inability to pay a filing fee was seen as discrimination against both the impecunious candidates and the "less affluent segment of the community" that supported such candidates but was also too poor at a group to contribute enough for the filing fees.

[79] But cf. M. Harrington, The Other America 13–17 (Penguin ed. 1963).

[80] See E. Banfield, The Unheavenly City 63, 75–76 (1970); cf. R. Lynd & H. Lynd, Middletown in Transition 450 (1937).

[81] Cf. *City of New York* v. *Miln*, 11 Pet. 102, 142 (1837).

[82] Theoretically, at least, it may provide a mechanism for implementing Texas' asserted interest in local educational control, see *infra*, pp. —— – ——.

[83] True, a family may move to escape a property poor school district, assuming it has the means to do so. But such a view would itself raise a serious constitutional question concerning an impermissible burdening of the right to travel, or, more precisely, the concomitant right to remain where one is. Cf. *Shapiro* v. *Thompson*, 394 U.S. 618, 629–631 (1969).

[84] Indeed, the political difficulties that seriously disadvantaged districts face in securing legislative redress are augmented by the fact that little support is likely to be secured from only mildly disadvantaged districts. Cf. *Gray* v. *Sanders*, 372 U.S. 368 (1963). See also n. 2, *supra*.

[85] See Tex. Cities, Towns, & Villages Code Ann. §§ 1011a–1011j. See also, *e.g., Skinner* v. *Reed*, 265 S. W. 2d 850 (Tex. Civ. App. 1954); *City of Corpus Christi* v. *Jones*, 144 S. W. 2d 388 (Tex. Civ. App. 1940).

[86] *Serrano* v. *Priest*, 5 Cal. 3d 584, 603, 487 P. 2d 1241, 1254, 96 Cal. Rptr. 601, 614 (1971). See also *Van Dusartz* v. *Hatfield*, 334 F. Supp. 870, 875–876 (Minn. 1971).

[87] Cf., *e.g. Two Guys from Harrison-Allentown, Inc.* v. *McGinley*, 366 U.S. 582 (1961); *McGowan* v. *Maryland*, 366 U.S. 420 (1961); *Goesaert* v. *Cleary*, 335 U.S. 464 (1948).

[88] Tex. Educ. Code Ann. §§ 21.101–21.117. Criminal penalties are provided for failure to teach certain required courses. *Id.*, §§ 4.15–4.16.

[89] *Id.*, §§ 12.11–12.35.

[90] *Id.*, § 12.62.

[91] §§ 13.031–13.046.

[92] *Id.*, § 21.004.

[93] See App. II, *infra*.

[94] See Affidavit of Dr. Jose Cardenas, Superintendent of Schools, Edgewood Independent School District, App., at 234–238.

[95] See App. IV, *infra*.

[96] My Brother WHITE, in concluding that the Texas financing scheme runs afoul of the Equal Protection Clause, likewise finds on analysis that the means chosen by Texas—local property taxation dependent upon local taxable wealth—is completely unsuited in its present form to the achievement of the asserted goal of providing local fiscal control. Although my Brother WHITE purports to reach this result by application of that lenient standard of mere rationality traditionally applied in the context of commercial interests, it seems to be that the care with which he scrutinizes the practical effectiveness of the present local property tax as a device for affording local fiscal control reflects the application of a more stringent standard of review, a standard which at the least is influenced by the constitutional significance of the process of public education.

[97] See n. 98, *infra*.

[98] Centralized educational financing is, to be sure, one alternative. On analysis, though, it is clear that even centralized financing would not deprive local school districts of what has been considered to be the essence of local educational control. See *Wright* v. *Council of the City of Emporia*, 407 U.S. 451, 477–478 (1972) (BURGER, C. J., dissenting). Central financing would leave in local hands the entire gamut of local educational policy-making—teachers, curriculum, school sites, the whole process of allocating resources among alternative educational objectives.

A second possibility is the much discussed theory of district power equalization put forth by Professor Coons, Clune, and Sugarman in their seminal work, Private Wealth and Public Education 201–242 (1970). Such a scheme would truly reflect a dedication to local fiscal control. Under their system, each school district would receive a fixed amount of revenue per pupil for any particular level of tax effort regardless of the level of local property tax base. Appellants criticize this scheme on the rather extraordinary ground that it would encourage poorer districts to overtax themselves in order to obtain substantial revenues for education. But under the present discriminatory scheme, it is the poor districts who are already taxing themselves at the highest rates, yet are receiving the lowest returns.

District wealth reapportionment is yet another alternative which would accomplish directly essentially what district power equalization would seek to do artificially. Appellants claim that the calculations concerning state property required by such a scheme would be impossible as a practical matter. Yet Texas is already making far more complex annual calculations—involving not only local property values but also local income and other economic factors—in conjunction with the Local Fund Assignment portion of the Minimum Foundation School Program. See V Texas Governor's Committee Report 43–44.

A fourth possibility would be to remove commercial, industrial, and mineral property from local tax rolls, to tax this property on a state-wide basis, and to return the resulting revenues to the local districts in a fashion that would compensate for remaining variations in the local tax bases.

None of these particular alternatives are necessarily constitutionally compelled; rather they indicate the breadth of choice which remains to the State if the present interdistrict disparities were eliminated.

[99] See n. 98, *supra*.

[100] Of course, nothing in the Court's decision today should inhibit further review of state educational funding schemes under state constitutional provisions. See *Milliken* v. *Green*, — Mich. —, — N.W. 2d — (1972); *Robinson* v. *Cahill*, 118 N. J. Super. 223, 287 A. 2d 187 119 N.J. Super. 40, 289 A. 2d 569 (1972); cf. *Serrano* v. *Priest*, 5 Cal. 3d 584, 487, P. 2d 1241, 96 Cal. Rptr. 601 (1971).

APPENDIX I TO OPINION OF MARSHALL, J., DISSENTING

REVENUES OF TEXAS SCHOOL DISTRICTS CATEGORIZED BY EQUALIZED PROPERTY VALUES AND SOURCE OF FUNDS [1]

Categories [2] market value of taxable property per pupil	Per pupil revenues				
	Local	State	State and local (cols 1 and 2)	Federal	Total (cols 1, 2, and 4)
Above $100,000 (10 districts)	$610	$205	$815	$41	$856
$100,000–$50,000 (26 districts)	287	257	544	66	610
$50,000–$30,000 (30 districts)	224	260	484	45	529
$30,000–$10,000 (40 districts)	166	295	461	85	546
Below $10,000 (4 districts)	63	243	305	135	441

[1] Source: Policy Institute, Syracuse University Research Corporation, Syracuse, N.Y.

[2] Prepared on the basis of a sample of 110 selected Texas school districts from data for the 1967–68 school year. Based on table V to affidavit of Joel S. Berke, App., at 208.

APPENDIX II TO OPINION OF MARSHALL, J., DISSENTING

TEXAS SCHOOL DISTRICTS CATEGORIZED BY EQUALIZED PROPERTY VALUES, EQUALIZED TAX RATES, AND YIELD OF RATES [1]

Categories [2] market value of taxable property per pupil	Equalized tax rates on $100	Yield per pupil (Equalized rate applied to district market value)
Above $100,000 (10 districts)	$0.31	$585
$100,000–$50,000 (26 districts)	.38	262
$50,000–$30,000 (30 districts)	.55	213
$30,000–$10,000 (40 districts)	.72	162
Below $10,000 (4 districts)	.70	60

[1] Source: Policy Institute, Syracuse University Research Corporation, Syracuse, N.Y.

[2] Prepared on the basis of a sample of 110 selected Texas School Districts from data for the 1967–1968 school year. Based on Table II to affidavit of Joel S. Berke, App., at 205.

APPENDIX III TO OPINION OF MARSHALL, J., DISSENTING

SELECTED BEXAR COUNTY, TEX., SCHOOL DISTRICTS CATEGORIZED BY EQUALIZED PROPERTY VALUATION AND SELECTED INDICATORS OF EDUCATIONAL QUALITY [1]

Selected districts from high to low by market valuation per pupil [2]	Professional salaries per pupil [3] (percent)	Teachers with (percent) [4]		Percent of total staff with emergency permits [5]	A student counselor ratios [6]	Professional personnel per 100 pupils
		College degrees	Master's degrees			
Alamo Heights	$372	100	40	11	645	4.80
North East	288	99	24	7	1,516	4.50
San Antonio	251	98	29	17	2,320	4.00
North Side	258	99	20	17	1,493	4.30
Harlandale	243	94	21	22	1,800	4.00
Edgewood	209	96	15	47	3,098	4.06

[1] Policy Institute, Syracuse University Research Corp., Syracuse, N.Y.
[2] Prepared on the basis of a sample of 6 selected school districts located in Bexar County, Tex., from data for the 1967–68 school year.
[3] Policy Institute, Syracuse University Research Corp., Syracuse, N.Y.
[4] U.S. District Court, Western District of Texas, San Antonio Division, "Answers to Interrogatories," civil action No. 68-175-SA.
[5] Ibid.
[6] Ibid.

Source: Based on table XI to affidavit of Joel S. Berke, app., at 220.

[71–1332—Dissent (A)]

APPENDIX IV TO OPINION OF MARSHALL, J., DISSENTING

Bexar County, Texas, school districts ranked by equalized property value and tax rate required to generate highest yield in all districts*

Districts ranked from high to low market valuation per pupil:†

	Tax rate per $100 needed to equal highest yield
Alamo Heights	$.68
Judson	1.04
East Central	1.17
North East	1.21
Somerset	1.32
San Antonio	1.56
North Side	1.65
South West	2.10
South Side	3.03
Harlandale	3.20
South San Antonio	5.77
Edgewood	5.76

*Policy Institute, Syracuse University Research Corporation, Syracuse, New York.

†Prepared on the basis of the 12 school districts located in Bexar County, Texas, from data from the 1967–1968 school year.

Based on Table IX to Affidavit of Joel S. Berke, App., at 218.

TRIBUTE TO THE POLICE OFFICERS OF AMERICA

HON. BILL NICHOLS

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 5, 1973

Mr. NICHOLS. Mr. Speaker, the senseless and wanton killing of America's police officers is continuing. Just a few days ago, the Metropolitan Police Department here in Washington paid tribute to a fallen comrade, 31-year-old G. D. Jones, fatally wounded while trying to quell a domestic fight.

Last October, Officer Israel "Speedy" Gonzalez, of the Arlington County Police Department, was shot to death as he attempted to stop a bank robbery in Crystal City. His death prompted Officer Charles "Tex" DeMoss, of the U.S. Capitol Police, to write a poem in memory of Officer Gonzalez. Although this poem was a tribute to Officer Gonzalez, I am sure Office DeMoss is expressing the feelings of his colleagues throughout the Nation for the 112 law enforcement officers who were killed in the line of duty in 1972 and those others who have paid the supreme sacrifice to protect society and this great Nation.

Mr. Speaker, I would like to place Officer DeMoss' poem in the CONGRESSIONAL RECORD in tribute to the thousands of men who protect our Nation, the police officers of America:

IN MEMORY OF ISRAEL "SPEEDY" GONZALEZ

(By Charles "Tex" DeMoss)

The rains come down, the skies are gray
Another "cop" is buried today.

His young wife mourns; her grief we share
A final tribute to show we care.

He died with honor, he met the test
This man in blue, the Nation's best.

We ask ourselves, why Must this be
And who is next, maybe you or me.

Yes the flowers wilt and lose their beauty
And a young man died in the line of duty.

Still the rains come down, the skies are gray
Another "cop" is dead today.

But the sun must shine, the rains must cease
So we say farewell, May he rest in peace.

THE HUMANITIES OF THE SEA

HON. GERALD R. FORD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 5, 1973

Mr. GERALD R. FORD. Mr. Speaker, in connection with our overwhelming approval earlier this week of House Resolution 330, endorsing the President's oceans policy and the position of the U.S. delegation to the forthcoming United Nations Conference on the Law of the Sea, there has come to my attention a stimulating speech on "The 'Humanities of the Sea'—Antidote for 'Future Shock'" which was given last summer in Columbus, Ohio, by Gilven N. Slonim, vice president of the Oceanic Educational Foundation. I include the speech in the RECORD for the information of the Congress:

THE "HUMANITIES OF THE SEA"—ANTIDOTE FOR "FUTURE SHOCK"

(By Gilven M. Slonim)

How significant it seems for us to foregather at the Ohio State University Center for Tomorrow—to examine the prospect of a new avenue for tomorrow's teaching-learning commitment.

The decision to delve into the new discipline of oceanic education through a "Humanities of the Sea" program at Ohio State this fall is a source of profound gratification for the entire board of the Oceanic Educational Foundation (OEF). The forward looking program you have formulated as a total community-university cooperative pioneering venture, I am confident will provide a pattern for future emulation on campuses throughout the country. Needless to say, the interest of the nation will be served thereby.

Dr. Edgar Shannon, President of the University of Virginia, and also the senior Vice President of OEF has asked me to bring his warm personal regards and best wishes for every success in your oceanic educational undertaking.

Alvin Toffler tell us, "You must teach the future!"

Fresh from hearing this admonition of the newly endoctored author of today's, surprisingly sexless, best seller *Future Shock* at the University of Cincinnati commencement, I found the University of Virginia's announcement of the first summer institute for educators on the "Humanities of the Sea" in our mailbox on my return to Washington. I detected a subtle tangency. Could this, the study of the "Humanities of the Sea" conceivably serve as the antidote to future shock? The idea, needless to say intrigued me.

Indeed, the heretofore much neglected, study of the seas is aimed increasingly at meeting future needs. It is geared to long-term global thinking. It offers new life styles. New modes of modern problem solution, ostensibly, will spin-off from sea-oriented multi-disciplinary research and study. Oceanic education affords an attractive answer to the tensions of today's troubled world. The tranquilizer for future shock? This was, indeed, a new stimulating idea.

Certainly, the concept of utilizing the seven tenths of the earth's surface as a cushion for the ills of over-population, over concentration of people in our cities, and the terrible emotional impact imposed by the pace of the present world seemed psychologically sound, if educationally acceptable. Understandably, there was a long way to go to gain the oceanic interest and understanding of all Americans. But here on our own planet was the built in space to cushion shock. This new frontier for limitless creativity, afforded a new avenue for constructive innovation. The seas could attenuate the impact of revolutionary technology with therapeutic reliability, were we to gain greater oceanic understanding.

At Cincinnati, Toffler luridly described the terrible toll already being suffered from swift change, from the claustrophobia creating megalopolises of tomorrow, from the fossilization of our civilization resulting from the rigidly structured study of the past. Obviously, Toffler is up tight. And so are a lot of Americans. The ills he depicts are real. This is precisely why this new educational approach gives promise of impressive impetus if citizens gain insight as to the meaning of this revolutionary intellectual attack on the environment of the oceans in substantive humanistic terms.

True, our work weeks grow shorter. We retire earlier. Time hangs heavily on our hands. Despite the pacifying wonders of television, there is the ever present threat that we will vegetate in our hard earned leisure. Recognizing boredom can break the will of even a spirited progressive people, the critical consideration is how do we resist growing

into a stylish-superficial-strata of senior citizens who are indeed 'vegetables'?

Unquestionably, perplexing problems of every variety confront us all during this last third of our swift spinning century. Toffler's thesis that it takes change to beat change is valid. The oceans afford an instrument for doing precisely this. Some of today's problems, unfortunately, are insoluable. Others, I am certain, we can solve. It will take determination and depth in the pursuit of understanding, and the will "to make the world work" as Buckminster Fuller describes our oceanic effort.

We're an affluent—an opulent—society. Some say we have lost our will to work. Others characterize our ship of state as rudderless—lacking in the long range policies and goals a great nation needs to move toward the future with confidence and vision.

The answer lies in the issues. We must remain vitally interested in what goes on in this world of ours, if we are to continue to grow. Even though the machine is now doing much of our work for us, and the computer more and more of our thinking—the challenge is to learn, to continue our commitment, to cling to our involvement, to retain our lively interest in issues throughout our lifetime.

The crux is indeed education. And oceanic education affording a new dimension in people's thinking can contribute toward zestful thinking and zestful living to a degree heretofore not achieved. Issue-oriented as the new subjects of the sea must be taught, we can count on people's participation in the mainstream of world affairs. The lifetime of learning concept inherent can contribute toward the kind of commitment that makes life meaningful. The aim of the oceanic educational foundation is "advancing mankind through knowledge of the world ocean." What we are seeking in offering studies which encompass the total spectrum of oceanic endeavor is a new depth of understanding.

My students frequently come to me to ask what I want them to learn. What are the facts I want them to master. In each instance, I explain, this isn't that kind of course. What we are really attempting to do is to add a new oceanic dimension to your thinking. Hopefully, you will learn to relate the water world to your thinking in a way that you will probe the ocean potential in seeking solutions for pressing problems. What we like to think is that through creating a keener awareness of the oceans, new channels of opportunity unfold.

At the outset of the course, somehow this doesn't seem to make too much sense for students conditioned to a more structured approach in the teaching-learning process. But, by the end of the term they, invariably, gain a good grasp of where the seas should fit in their thinking. The remarkable thing is the degree to which they are "turned on" by this process of putting them on their own toward finding the true meaning of their intellectual pursuit. Many students tell me at the conclusion of the course that they are excited by the new vistas of thinking unfolding. They tend to feel comfortable in what formerly had been a fearful unknown. Once geared to dealing in global terms, they translate their thinking to the long term to tap the rich resources of what had previously been a no-man's land of experience and inquiry. These results strengthen the evaluation of having found a promising cure for future shock.

As you can surmise, I see much in Toffler's thinking that makes sense. Future shock sales, zooming as they are, show at least a modicum of wisdom in what he has to say. However much he may over-accentuate the negative to dramatize his perspective, as the skyrocketing leadership reveals, it is a timely text. The serious symptoms revealed call for affirmative action. One can hardly question the emotional impact of our super-industralization upon the minds and manners of people.

The unprecedented mobility of our population most assuredly breeds disruptive impermancy. Losses in basic security are felt universally. Some of the signs of deterioration in the fabric of our society stem from what Toffler describes as "a mindless hold-over from the past". That protest has become a way of life in a world that spends ever increasing segments of its resources on welfare which deprive people of their self-respect as well as their ambitions cannot be easily reconciled. Whether the pill or parental permissiveness causes the laxity in modern morality, the deterioration is striking—a serious symptom of future shock. Nevertheless, to continue to concentrate on ills and symptoms is counter-productive. What we need desperately are solutions to the burgeoning problems in every field of human endeavor. This then is the crucial challenge to enlightened leadership.

Here, as I mentioned previously, answers are to be found if we delve deeply into the potential of the oceans. The blockade of Haiphong Harbor affords a case in point.

"Pacem in Maribus" proclaims an ultimate oceanic aim toward man's future quality of life. With weapons of mass destruction threatening to eradicate civilization, the seas take on increased significance toward providing world stability. But whether peace is to prevail, or warfare will remain the historic reality, the oceans increasingly can serve man in his search for a better life.

At the outset of the 70's, this high level Malta convocation, seeking "Peace in the Oceans" observed; "Sea transport has been far and away the major cause that has shaped world history; it is from seaports that modern civilization has developed." This finding affords insight to the deeper cultural aims sought in man's turn to the sea.

The seas, as a creative force, succor man's highest powers of mind and spirit. During the centuries that man has sailed the seas, the flow of culture, as well as commerce moved along the lines of communications across the world ocean. Exploration followed the sea. Colonization invariable moved in the wake of the seafarer's probing into the perilous real of the unknown.

Today, there is growing realization man's future is dependent on his knowledge of the seas, and his understanding of their dynamic relationship to his society. Through knowledge of the world ocean man increases his capacity to satisfy his needs, to support his growth and fulfillment of self.

As a matter of direct interest to you friends in Columbus, permit me to quote from a lecture to the first University of Virginia course in the "Humanities of the Sea" by Congressman Bill Anderson titled "The Riverine Revolution":

"A moment's reflection tells us that water, too, is a prime source of life, offering food and minerals in abundance, offering the most natural forms of transportation, power, commerce and recreation. One of our central problems as land oriented creatures, is how do we gain a more comprehensive knowledge, how do we achieve the confidence and creativity to enrich man's life, and how do we reverse or transform our thinking to see the oceans, the seabeds, the lakes, rivers and waterways as man's true benefactor?"

The first nuclear submarine skipper to navigate under the ice across the North Pole went on to recommend the creation of centers of Riverine studies at leading universities, such as Ohio State, to capitalize fully from river utilization in the global, portal-to-portal, intermodal oceanic transportation now emerging. I would add my blessing to his broadened concept for oceanic education.

In the nitty-gritty of getting oceanic studies off the deck, we find that a key problem is semantic. At the outset of each class several students invariably come to the classroom and ask "Is this where the oceanography course is being taught?" How perplexing this can become when one realizes 'the block' encountered in expanding the scope of the scientific study of the sea to include the arts and humanities. For this reason, for a comprehensive definition of what we mean by oceanic education we call on Dr. Horace Kallen, the venerable philosopher, who with characteristic insight provides this discerning development:

"Oceanic education should consist of teaching the people from childhood on through the nation's schools of all levels:

What the oceans are.

How, throughout the history of human culture, they have affected human life and growth in civilization as:

Resources for certain kinds of foods, medicines, minerals.

Avenues of transportation in various kinds of vehicles—dugouts to ocean liners.

Requiring knowledge of the heavens for direction and guidance.

Generating the occupations of sailor, fisherman, and various sophisticated vocations which the changes of naval architecture and motor power keep demanding.

Fields for the defense of the land by the exercise of naval police power and battle power, and the like.

Opportunity for the invention of various recreational skills.

What role the oceans play in the religious thinking of the worlds people; in the arts.

The dangers they present and the harm they can do to human life.

The balance sheet of oceanic help and harm.

The dangers to help from the works of man-pollution and the like as they menace the composition, the life, and the land.

Water relationship of the oceans—all ecology.

The insurance of the help by national and international undertakings to keep the oceans as growing and to prevent them from becoming diminishing resources of human survival.

Oceanic education should facilitate adding to this knowledge and rendering it a part of the funded mentality of all our people—an integral element of all liberal education."

Having defined what oceanic education means let us now determine how the "Humanities of the Sea" can contribute towards a fuller future.

The seas have proven themselves a great teacher in engineering, navigation and mathematics. Indeed, the seas forced us to use the full capabilities of the mind in order to survive. The seafarer has given the world many of its industrial breakthroughs. Electric generators were installed aboard ship for a full 20 years before they came into use ashore. Refrigeration was aboard battleships nearly a quarter of a century before being brought into our homes. We produced steel for ships a half century in advance of putting the first steel girder in city buildings.

Buckminster Fuller, the great innovative mind of our age, observes: "The fundamental something I find is the great difference between the ways of thinking about the seas and about the land. It is in no way understood by our world society at large, 99.9 per cent of man being landed." "At sea everything depends on doing more with less, and the doing more with less that came out of the navy has changed the world."

Seeing what is opening up on the oceans, Fuller emphasizes the curve of doing more with less, from which all unexpected is fallout of the competent long distance thinking that brings the blessings of the sea to mankind. Based on what he calls "closed cycle spherical thinking," Fuller contends, "our survival depends upon the kind of thinking that has come out of the sea."

To unlock the wealth of the world ocean fascinating fields of human endeavor unfold, man in his turn toward the sea, attracted by the might and the mystery of the world of water is already directing mounting effort toward tapping the resources of the oceans while prodding for progress in laboratories ashore and at sea. But beyond the water pikes, the swift chris-craft cabin cruisers, water beds, and nuclear missile firing submarines and catamaran sailboats that are creeping into our lives daily to spell betterment of physical living and security—there will be a whole family of spin-offs from today's oceanic research. Cities under the sea will follow. Under-the-ocean restaurants are being constructed in the Virgin Islands—the first indication of things to come spelling greater enjoyment—a more comfortable existence for future generations through increased understanding and more direct involvement with water.

The visions of the future gleaned here in your strikingly impressive center of tomorrow are symbolic not merely in coming to grips with future shock, but of the better world—for mankind which can be found through profounder knowledge of the dominant dimension of our planet. The "Humanities of the Sea" can, indeed, lead us toward the kind of future in which the higher aspirations of man approach fulfillment. Therefore, in coming to Columbus to emphasize "education as survival" I say: "Let us study together."

In this cooperative, creative, constructive way, I am confident we can perceive a world in which peace and prosperity prevail, and our future is assured.

THE EXECUTIVE AND LEGISLATIVE DEPARTMENTS OF THIS GOVERNMENT MUST WORK TOGETHER IN THE PUBLIC INTEREST

HON. HAROLD D. DONOHUE

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 5, 1973

Mr. DONOHUE. Mr. Speaker, the actual and wholesome fact that the President and the Congress are in full agreement on the vital necessity of establishing a national spending ceiling has been largely obscured, of late, because of the more dramatic stories about the different challenges and confrontations currently going on between the executive and legislative branches of the Government.

It is, therefore, emphatically good news to observe the most recent Senate approval of a $268 billion ceiling on Federal expenditures for fiscal year 1974. In taking this step the Senate merely reaffirmed their action of last October when, you will recall, both the House and Senate overwhelmingly agreed to place a ceiling on Federal outlays. However, as I am sure you will further recall, when the executive branch refused to spell out to the Congress where the administration planned to apply funding cuts, the Legislature then insisted that any reductions should be made across the board, thereby guaranteeing that some content and measure of previously established congressional spending priorities in human service programs would be retained. Unfortunately the White House then refused to accept any legislative involvement in the Executive funding impoundments they had projected so any hope of providing a sensible spending ceiling for fiscal 1973 had to be abandoned.

Mr. Speaker, right now the Congress is processing, and there is no doubt that they will approve, again, the establishment of a necessary budget ceiling on Federal spending so the real question, as the public is well aware, between the administration and the Congress, is not the establishment of a spending ceiling, but the power and authority of the legislative branch of Government to separately determine priority programs and the funding of them, in the national interest.

Most authorities acknowledge the separate power of the Congress to declare such priorities and program funding, under our Constitution, but our recent political history too clearly shows that the White House has repeatedly attempted to interfere with and infringe upon such legislative enactment, both directly and indirectly, even after congressional override of a Presidential veto.

Under these circumstances it would seem that the Congress has no alternative but to develop and approve specific measures especially designed to limit Presidential procedures and strategems to thwart the will of the people and the Congress through the undue exercise of impoundment by executive administrative actions.

Because of such happenings many concerned constitutional experts and respected journalists have been impelled to remind us that this country began as a repudiation of "kingly" impositions. Our unique system of government was wisely and judiciously and purposely established by the Founding Fathers to circumvent and reject dictatorships of all and every kind.

Obviously, Mr. Speaker, this country cannot expect to recover its essential unity of purpose or maintain its healthy progress if the executive and legislative departments are too much and too deeply involved in nonproductive and nonessential arguments and disputes over their separate powers. Up to this historical period it was pretty widely held and pretty well accepted that the Congress was established to make the laws of the land and the executive branch of the Government was expressly set up to carry out these laws. The President can certainly and rightfully and dutifully recommend to the Congress, but he cannot and ought not to attempt to rescind and negate the intent and provisions of laws as approved by the majority of the Congress in response to public need and request. This prerogative traditionally belongs, through the elective process, to the people of this country and no one should try to usurp it from them.

On many occasions in the past, Mr. Speaker, I have expressed my very deep conviction that the basic duty of the legislative and executive branches of the Government is to exert their joint effort of action "for the good of all Americans." Through the inspiration of this approaching Easter season, I am hopeful that a new spirit of good-will and compromise cooperation will be accomplished and projected by the legislative and executive branches of our Government so that we can move more speedily and effectively, in united obligation, toward the solution of the large number of great and troublesome problems that are plaguing our people and our country today. In common effort, we can and we will achieve our national objectives and fulfill our highest separate duty of serving our people and our Nation "together."

OEO–AIM

HON. JOHN E. HUNT

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 5, 1973

Mr. HUNT. Mr. Speaker, contrary to the impression which one gets from the news media, the American Indian Movement—AIM—represents only a very small, extreme, and militant faction among American Indians. AIM's activities at Wounded Knee have brought much of AIM's development and history. Among other things, we have learned that the three most powerful leaders of AIM have all spent time in the Minnesota State Penitentiary.

In order to place the events at Wounded Knee in their proper perspective, I submit the following editorial from the New Mexico Union County Leader in the RECORD.

I believe this editorial will point out the relationship between OEO and AIM and provide another example to support the restructuring of OEO:

THE TYPE WE DO NOT NEED

The American Indian Movement has been prominent in the news since some 200 armed members occupied the small settlement called Wounded Knee, on the Pine Ridge Sioux reservation in South Dakota, took several innocent individuals as hostage, started shooting at airplanes and passenger cars, demanded a full scale investigation of our government treatment of Indians, etc.

This is not the first revolutionary activity involving AIM members.

Just prior to the general election last November, militant Indians, under the direction of AIM occupied the Bureau of Indian Affairs headquarters in Washington, D.C., wrecked the place, hauled off three truckloads of government documents, including Federal Bureau of Investigation files, and stole or destroyed valuable paintings and Indian artifacts. That rampage cost the American Taxpayers an estimated two and one-half million dollars.

This type of confrontations makes one ponder who AIM is and where the necessary finances to support this type of organized hoodlumism came from.

According to information divulged by one national Indian activist the AIM organization was cooked up in the Minnesota penitentiary.

Three of the founders of AIM have fairly long records of lawlessness. These three are Clyde and Vernon Bellecourt and Dennis Banks.

Banks has been convicted on charges of assault, battery or burglary fifteen times.

Vernon Bellecourt was convicted of burglary in 1950 and armed robbery in 1953 for which he received a prison sentence of 5 to 40 years in the Minnesota penitentiary.

Clyde Bellecourt, his brother, was convicted of armed robbery in 1954 and sentenced to 2 to 15 years in prison. He was paroled and in 1960 was convicted again on charges of burglary. Paroled a second time in 1964 he was charged last November with aggravated crim-

inal property damage involving a Minneapolis restaurant.

There is little doubt that the organization has received most of its finances from the American taxpayer by way of the Great White Father in Washington. The office of Economic opportunity has been fueling AIM with U.S. dollars. The organization received a $113,000 grant from O.E.O. in June 1972. Informed observers state that AIM siphoned off an additional $30,000 from O.E.O. funds for the Upper Midwest American Indian Center in Minneapolis. The national administration gave the radicals occupying the BIA headquarters in Washington $66,000 of O.E.O. funds to get them to leave town last November.

Howard Phillips, who was serving as head of O.E.O.'s office of Program Review, opposed the original funding grant for AIM. He filed reports to the effect that the organization was being led by professional agitators with extensive criminal backgrounds prior to O.E.O. funding the revolutionary group with the initial grant. He temporarily halted approval of the O.E.O. funding but was overruled by higher ups apparently with the concurrence of the White House.

Richard Wilson, a tribal chairman of the Sioux Indians, has insisted that the leaders involved in the criminal acts at Wounded Knee be prosecuted to the fullest extent of the law. We suspect most American citizens agree.

Perhaps we should also insist that the dismantling of O.E.O. proceed at a rapid pace. In our humble opinion our nation doesn't need that type of federal agencies.

SUCCESS CONSIDERED A THREAT TO INTERNATIONAL PEACE

HON. JOHN R. RARICK

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 5, 1973

Mr. RARICK. Mr. Speaker, the most recent infringement on the right of the American people to be a free sovereign nation was the President's announcement that he plans to sell materials from strategic stockpiles maintained for national security.

The impact of depleting our stockpiles of strategic materials like tin, rubber, and so forth, is that these supplies are not available in the United States. In case of hostilities, our people would be caught less able to defend themselves.

Mr. Nixon's explanation is that a reduction in the stockpiles would help drive prices down and offer some relief to inflation, at least until after all the Government-owned stockpiles are exhausted.

The President also feels that—

The stockpile numbers were set up at a time that we were thinking of a very different kind of conflict than we presently might be confronted with in the world.

The announcement of the depletion of strategic materials from our stockpiles has now been followed by a White House report on meat price ceilings where under the heading "Food Outlook" this statement is made:

The long term solution to the food problem is based primarily on government actions taken to increase food supplies which include: . . . selling its grain stocks with the objective of literally emptying its grain bins.

Selling the materials in our strategic stockpiles, like flooding the market by emptying our food bins, may lower the price for a while. But what happens after they are gone?

Perhaps the attitude of the President's advisers as to the future is presently demonstrated by the phasing out of the Internal Security Division of the Department of Justice. If our leaders feel there is no threat from communism and subversion from outside the country, then likewise, there must be no threat from within our country.

To our new found Communist allies, as to the Socialists and the egalitarians, abundance, peace, and prosperity are repugnant, they are spread over the world and benefit everyone equally. Shutting down our storehouses of food and defensive materials so that we have no internal supplies to fall back on, forces Americans to become dependent on the small, unstable nations of the world rather than look to our own national sovereignty for protection and progress.

We are reminded of the parable of the ant and grasshopper. What our Democratic ants have been putting in storage, our Republican grasshoppers are ready to fiddle away.

I insert a question and answer article from the Weekly Compilation of Presidential Documents, a portion of the White House fact sheet, and several related news clippings:

[From the Weekly Compilation of Presidential Documents, Mar. 19, 1973]

STOCKPILES OF STRATEGIC MATERIALS

Q. Mr. President, have you decided to sell materials from the strategic stockpiles and, if so, what are the safeguards from a security standpoint?

THE PRESIDENT. We have examined the stockpile question over the past 4 years. I have long felt that these stockpiles were really irrelevant to the kind of a world situation we presently confront. The stockpile numbers were set up at a time that we were thinking of a very different kind of conflict than we presently might be confronted with in the world.

Under the circumstances, after very full evaluation and discussion within the Administration, I have found that it will be safe for the United States to very substantially reduce our stockpiles. And we are going to go forward and do that.

Now, there are going to be some squeals, but while the complaints will be made on the basis of national security, let me just say, I have made the decision on the basis of national security. The complaints will be, and I understand this, from those who produce and sell some of the materials in which we are going to sell the stockpiles. But we are going to do this, first, because the Government doesn't need this much for its national security and, second, because in this particular period, we need to take every action we possibly can to drive down prices, or at least to drive down those particular elements that force prices up. And selling the stockpiles in certain areas will help.

THE WHITE HOUSE FACT SHEET: MEAT PRICE CEILINGS

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FOOD OUTLOOK

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The long term solution to the food problem is based primarily on government actions taken to increase food supplies which include:

The Government is selling its grain stocks with the objective of literally emptying its grain bins.

[From the Wall Street Journal, Mar. 15, 1973]

NIXON SETS HUGE COMMODITIES SALES FROM STOCKPILES TO FIGHT INFLATION

(By James P. Gannon)

WASHINGTON.—The White House has decided to begin massive sales of metals and other basic commodities in government stockpiles in a new effort to deflate price pressures.

"The President has decided to dramatically reduce" the $6.5 billion strategic hoard of key industrial materials, a high Nixon administration official disclosed. He said a "substantial" portion of the total stockpile will be sold under existing authority and legislation authorizing lower minimum levels for future strategic needs will soon be sought by the White House.

The official said that a basic change in the government's stockpile policy had been reached by President Nixon in light of inflationary forces building in the economy and in changed strategic conditions. While the previous goal of stockpile sales had been to generate revenue for the government, the new goal is to aid the overall fight against inflation, the official said.

A government stockpile specialist said present law would permit sale of about $1.7 billion of the $6.5 billion total hoard. The $1.7 billion includes large amounts of aluminum, lead and zinc, but doesn't include any amounts of some other key materials such as copper, he said. To go beyond $1.7 billion in sales, the specialist added, the administration would need approval by Congress.

The White House decision to begin dumping stockpiled materials on the market has major implications for prices of a wide variety of commodities. There are some 80 different commodities in the federal stocks, including about 15 highly important industrial materials.

The sales, which the official said would be "across the board" to encompass all the government's hoarded goods, will include large quantities of aluminum, copper, zinc, tin, rubber, lead, nickel, chromium and other important commodities.

PRICES OF METALS

In recent weeks, and especially since the Nixon administration introduced the revised Phase 3 wage-price controls program, prices of many key metals have been rising. Recent price boosts for copper, zinc, aluminum and others were key factors in the decision to begin selling off the stockpiled goods, the official indicated. "We're very well aware of those price increases," he remarked.

"We have the authority to immediately sell a substantial portion of the stockpiles within existing legislation," the administration official said. However, President Nixon will shortly ask Congress to further reduce the minimum levels for various commodities so that the government can reduce stocks of some items below the currently prescribed floors.

The official characterized the stockpile sales as "a peace dividend" resulting from the ending of the Vietnam war and "overall lessening of world tensions."

FURTHER EXTENSION OF STRATEGY

The move marks a further extension of the Nixon administration's strategy to try to deal with price increases by boosting supplies on the market rather than by clamping direct controls on prices. This strategy has been the cornerstone of the administration's attack on food prices through such steps as relaxing crop-planting restrictions and removing meat-import quotas.

Now that industrial-commodity prices appear to be coming under heavier inflationary pressure too, the administration has decided to fight back in the marketplace. Industrial commodities, which had been the most stable element in the price picture over the past year, showed a disturbing rise in February, as the wholesale price index of these items

jumped at a seasonally adjusted annual rate of 12%.

The government has massive quantities of materials, especially metals, in its strategic hoard. According to a federal tally as of last Sept. 30, the main stockpiled goods and their values then included:

Nearly 1.3 million tons of primary aluminum, valued at more than $580 million; more than 72 million pounds of cobalt, $150.4 million; about 191,500 tons of copper, $101.5 million; some 1.1 million tons of lead, $316 million; nearly 1.2 million tons of ferromanganese, $220 million; more than 268,000 long tons of rubber, $207.5 million; about 250,000 long tons of tin, $608 million; over 122 million pounds of tungsten ores and concentrates, at $382 million, and 974,309 tons of zinc, $271.3 million.

The stockpiles are managed by the General Services Administration, the government's housekeeping agency, which presumably will handle the new sales program.

It isn't clear what impact, if any, the administration's new plans will have on an agreement reached with the major aluminium companies only three months ago allowing them more time to pay for past purchases of surplus aluminum. In return, the companies agreed to support a Nixon administration recommendation that Congress release for sale 450,000 tons of aluminium currently in government stockpiles. This additional amount then would be added to the aluminum the companies already are obligated to buy under an earlier disposal arrangement.

The rationale for the agreement, negotiated by GSA, was that the aluminum industry was still emerging from a steep sales slump and couldn't afford the $180 million lump-sum payment it otherwise would have faced this year.

[From the Wall Street Journal, Mar. 16, 1973]

NIXON PLAN TO SELL STOCKPILED COMMODITIES COULD BE SLOWED BY MARKET, LEGAL SNAGS

President Nixon said the U.S. plans to reduce its stockpiles of strategic materials "very substantially," but market conditions and legal restraints may prevent any immediate dramatic change in the government's present disposal practices.

Reacting to Mr. Nixon's announced plans, prices of precious-metal and nonferrous-metal commodities contracts declined in U.S. and British markets yesterday, and prices of the common stocks of major aluminum, nickel, zinc and lead producers dropped sharply.

Some metals-industry executives said they were afraid that any large-scale infusion of the stockpiled materials into the open market would cause serious disruptions in some prices.

At the same time, many companies said they doubted the President could attempt any sweeping release without congressional clearance. They also predicted loud objections by legislators to the possibility of reducing backup supplies of strategic materials to practically nothing.

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SPECIFIC DISCLOSURES

However, one official said the Nixon administration will propose legislation "by the end of the month" that will ask for authority to sell large amounts of 70 different stockpiled commodities. The administration's new stockpile plan will call for hoarding only 41 commodities, instead of the present 80, he said.

The administration intends to drastically overhaul the so-called "objectives" or target levels, for various stockpiled items. The total federal stockpile amounts to some $6.5 billion of materials, considerably above the target levels for various commodities that total some $4.7 billion. The administration plan calls for slashing the target level to about $700 million from $4.7 billion. Thus, the plan calls for eventual disposal of all but $700 million of the $6.5 billion hoard. But the disposal of this massive amount will take a long time, officials said.

Specific details of disposal plans on a commodity-by-commodity basis weren't disclosed. Officials said the disposals would vary widely depending on market conditions for the specific material. In general, "we aren't going to offer anything at below market prices," an official said, "but we are going to follow the market down" when prices fall. Previous price floors below which the government wouldn't sell will be abolished, he added.

For some commodities, such as rubber, there is immediate industrial demand, the official said, but for others, such as lead, there isn't any ready demand. "I don't know what we'll do with the lead," he remarked. In the case of copper, all the stockpiled metal to be disposed of will be sold to the U.S. Mint, the official said, so it actually won't reach the open market.

For some materials, such as natural quartz, there is practically no market. "Some of this stuff may be here for 20 years," the official added.

Federal stocks consist of about 80 commodities, including about 15 key industrial materials. The Nixon administration official who disclosed the plan Wednesday said sales will include large amounts of aluminum, copper, zinc, tin, rubber, lead, nickel and chromium.

At the General Services Administration, which manages the stockpiles, an official said the agency is adopting a "more aggressive" sales policy, especially for metals. But he cited factors that make a quick and heavy sell-off unlikely.

The GSA official added that metals-market prices already have slipped because of disclosure of the policy change. And he acknowledged that the administration probably can achieve some of its price-dampening objectives through simply announcing its plans even before any stepped-up selling occurs.

BIGGEST RESTRAINT ON GSA

Perhaps the biggest restraint on the GSA in suddenly switching to a policy of major disposal is a prohibition in the Federal Stockpile Act against selling surpluses in a way that would cause market "disruptions." It isn't known whether the administration will seek a change in this legal restriction when it sends Congress a request for legislation to authorize lower stockpile minimums.

Mr. Nixon raised none of the possible problems in the disposed plans at his news conference. He predicted "some squeals" from producers and sellers of materials involved, but he sounded ready to disregard them. "While the complaints will be made on the basis of national security," Mr. Nixon remarked, "let me just say, I have made the decision on the basis of national security."

* * * * *

MOST SERIOUSLY AFFECTED

The commodities that will be most seriously affected by the President's disposal plan are those whose stockpiles are large enough to make up large percentages of total U.S. annual consumption. A sudden infusion of sizable amounts of these items could cause prices to nosedive.

In the case of lead and zinc, for instance, the stockpile amounts to nearly two-thirds of annual consumption. The stockpile of silver and platinum are almost equal to total annual consumption of the metals.

By contrast, the copper stockpile of 251,592 tons is tiny in comparison with the country's 2.3-million-ton annual usage. As a result, copper executives said they weren't concerned by the administration action and didn't expect it to have any effect on their prices.

Copper prices and prices of many other metals have risen sharply lately, partly spurred by speculation during the current monetary crisis. Earlier this month, the price of copper rose to 60 cents a pound, the ceiling under administration price controls. The price of zinc, held down under Phase 2, began to rise as soon as restrictions became voluntary. The last boosts took place only last Friday, with St. Joe Minerals Corp. setting a record of 20¼ cents a pound. The price of lead also rose earlier in March, to 16 cents a pound.

Some metals executives had been hoping that price rises would cool on foreign markets as the monetary crisis subsided, thus avoiding a decision to release the U.S. stockpiles.

The domestic lead market would react more violently to a large-scale government release because the metal isn't in as strong demand as zinc. "There isn't any question that dumping 550,000 tons of lead would have a serious effect on the market," said one source. "You'd have a great oversupply of the metal."

LEGAL ROADBLOCKS SEEN

Despite such fears, however, metals companies contended that the administration would face legal roadblocks to massive dumping.

In London, commodities dealers yesterday expressed doubts that the U.S. sale of stockpiled materials would have much impact on world markets. One dealer said that only if the U.S. released "large quantities of metal immediately, certainly in the case of tin, which hasn't been released since 1968, then it would have very serious political consequences."

In Pittsburgh, major aluminum producers said plans to sell the stockpiled items would have no effect on that industry since the companies already have contracted with the government to purchase the entire aluminum stockpile.

Reynolds Metals Co., the nation's No. 2 producer, said that the aluminum companies agreed in 1965 to buy 1,449,000 tons of the 1,899,000-ton stockpile by 1990. This was renegotiated last December when the companies and the GSA agreed to add the remaining 450,000 tons to the commitment.

Reynolds Metals hoped that those 450,000 tons "have not been authorized for disposal by Congress," but added that "the companies have agreed to support such congressional action and to purchase the metal" when it is approved. The company said the stipulation, if cleared, would provide that purchases of the additional metal wouldn't start "until existing purchase obligations are satisfied."

Reynolds also said that "aluminum prices are well below base period prices determined under price control rules, and have been anything but inflationary in recent years."

The pricing of aluminum ingot presents another uncertainty for the stockpile situation. Companies must buy from the supplier at the published price, which currently is 25 cents a pound—several cents above the prevailing market price.

One industry observer said current strong demand for aluminum products is driving the selling price of ingot upward, possibly to the 25-cent level "by July 1." Another, however, said the list price should be reduced before companies agreed to buy more from the hoard.

ALLEGHENY-LUDLUM WOULD BENEFIT

One company that would stand to benefit from price reductions on stockpiled materials, is pleased the President plans to use the stockpile to fight inflation, but has reservations about eliminating much of the stockpile. This is Allegheny-Ludlum Industries Inc., the country's largest producer of specialty steels. Allegheny-Ludlum said it is the world's largest consumer of nickel and chromium, both used in producing stainless steels. The company blamed a 6% price increase it initiated earlier this week on stainless-steel sheet and strip products on increased materials costs.

In Akron, Ohio, a rubber-industry source said privately that releasing of the government's stockpile of natural rubber could cause a sizable price reduction for the commodity. One result could be to hurt demand for synthetic rubber, he added. According to this source, U.S. consumption of natural rubber is expected to be 665,000 long tons this year. A government intention to unload a large amount of natural rubber could represent a potentially large market impact.

[From the Washington Post, Apr. 2, 1973]

TIN, RUBBER AND THOSE STOCKPILES

Times have suddenly become very prosperous for those small countries that live by selling raw commodities to the industrial nations. Until about a year ago the producing countries were suffering grievously, as worldwide inflation pushed up the prices of the manufactured goods they must buy. But now inflation has reached the basic materials with a vengeance. Their prices are now going up much faster than those of finished products, and the positions are reversed. Now it is the rich nations that complain bitterly of the effects of world price increases on their unstable currencies and their internal economic troubles.

The rise or fall of a few cents in the price of copper determines the strength of Zambia's position in its long struggles with Rhodesia. The price of tin in a major influence on the durability of governments in Bolivia. The price of coffee is crucial to standards of living in half a dozen countries throughout Latin America and Africa. All of these prices are moving upward sharply—metals, foodstuffs, fibers.

The political effects of this surge are superbly indiscriminate. It is good for right-wing generals in Brazil, left-wing generals in Peru, the Labor Party in Australia and President Allende in Chile. Conversely, it is a growing embarrassment and threat to a Conservative government in Britain, a Social Democratic government in Germany, a Liberal government in Canada and the Republican administration here. Each commodity moves within its own peculiar market, but they are all responding to the enormous acceleration of the world's economy as the rich nations, led by the United States and Japan, come pounding out of their recent recession. The price increases are evidently being amplified, to some unknown degree, by the currency crisis. People who used to keep their money in U.S. dollars, for security, have now been frightened by two devaluations and are looking for *something* a bit more tangible to hold.

President Nixon has responded to this wave of inflation by announcing that the United States will now begin to sell off most of its strategic stockpiles. The stockpiles are, at this point, hardly more than an expensive joke. They are part of the government's elaborate and increasingly obsolete preparations for the kind of national emergency that overtook the country in World War II.

Mr. Nixon presented his decision as an attempt to fight inflation, but it appears to be having very little effect on the prices of the stockpiled commodities. As a matter of foreign policy Mr. Nixon has, in fact, successfully chosen a moment when he can dump the stockpiles without hurting friends abroad. The stockpiles have been a matter of the greatest anxiety to many of the small producing countries. Malaysia is a notable example. Malaysia lives by its exports of rubber and tin. The stockpiles hold $100 million worth of rubber, and $1 billion in tin. The chief responsibility of the Malaysian embassy here has been to point out to each successive administration the foreign implications of dumping the stockpiles. In the spring of the year, an American President was frequently tempted to throw some of that stockpiled rubber and tin on the market to bring in a little last-minute cash and help cut a budget deficit. In those seasons the Malaysian diplomats, and their colleagues from the other threatened countries, would rally around to persuade the White House that the cash would be trivial compared with the costs of the political chaos that a sinking market might generate. But currently the commodity markets are strong enough to withstand the American decision to sell. The price of tin was $1.80 a pound a year ago and is now bouncing above $2. The rubber that was 17 cents a pound a year ago is now 29 cents a pound, and the price actually has risen since Mr. Nixon's announcement that he will sell all of the 246,000 tons of it in the stockpile.

The producing countries' grievance against the rich industrial countries is very similar to the 19th century American farmers' grievances against the manufacturers in the cities. A manufacturer could set his own price, but a farmer had to ride up and down with a volatile and uncontrollable market. For the producing countries, at the moment, the ride is upward. As the experience with the American stockpiles suggests, there is not much that even a powerful government can do about it.

PEABODY AWARD TO WHRO-TV

HON. G. WILLIAM WHITEHURST

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 5, 1973

Mr. WHITEHURST. Mr. Speaker, the George Foster Peabody Awards for 1972 were recently announced, honoring distinguished public service by radio and television programs and stations. The Second District of Virginia, which I represent and serve, received a double honor in the announcements when WHRO-TV was selected to receive one of the coveted awards; it was the only television station in the Nation winning the award for inschool programing.

WHRO-TV is an educational station headquartered in Norfolk, and serving the communities of Hampton Roads. It is one of the outstanding educational television stations in the country, and this award reflects the skill, experience, and dedication of the entire staff and management of WHRO-TV.

I am inserting an article from the Ledger-Star newspaper of March 26, 1973, which gives additional detail on the station's winning entries:

WHRO GETS TOP TV AWARD

NORFOLK.—Educational television station WHRO (Channel 15) here has been named a recipient of the coveted George Foster Peabody Award for 1972, it was announced today by Dean Warren K. Agee of the University of Georgia School of Journalism, which administers the program.

The Peabody Awards are broadcasting's equivalent of the Pulitzer Prize.

The only television station in Virginia to win the Peabody, Channel 15 was honored for "its overall classroom programing as evidenced by 'Animals and Such,' 'Writing Time,' 'People Puzzle,' and 'Dollar Data.'"

It was the only television station in the nation to win the award for in-school programing.

General Manager Randolph S. Brent gave credit for the award to the entire staff of the public instructional station.

"I am very pleased," he said, "that all of our production efforts for 1972 were accorded this singular honor. The award should be shared by the entire staff for we all are dedicated to producing instructional programs of the highest quality for our classroom pupils."

The Peabody Awards are given each year to honor the most distinguished and meritorious public service by radio and television programs, stations, networks and individuals. They are named in memory of the late George Foster Peabody, a native Georgian who became a successful New York banker and philanthropist.

There were 13 Peabody Awards given, including:

CBS-TV for "The Waltons," NBC-TV for three special programs devoted to 20th Century American music, CBS-TV for "Captain Kangaroo," NBC-TV for "Pensions: The Broken Promise," an investigative documentary about the private pension system, ABC-TV for "XX Olympiad," and Alistair Cooke for his "America" series on NBC.

A SALUTE TO ADMIRAL RICKOVER

HON. JACK F. KEMP

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 5, 1973

Mr. KEMP. Mr. Speaker, Adm. Hyman G. Rickover is one of the few living Americans who has firmly etched and rightfully reserved a place in history. I was delighted, therefore, to learn recently of a tribute to Admiral Rickover written by my good friend, Lloyd Graham, which appeared in the Buffalo Courier-Express on March 25. Admiral Rickover's accomplishments, his vision, and his intelligence have profoundly influenced America. Lloyd Graham has rightfully acknowledege those contributions. I recommend it to my colleagues and insert it in the RECORD at this point:

LLOYD GRAHAM'S PERSPECTIVE: A SALUTE TO RICKOVER, A GIFT FROM RUSSIA

This is in the nature of a salute to Hyman George Rickover, probably, in irony, Russia's greatest gift to the defense of America; Czarist Russia, that is.

The gift was not intentional. Call it a twist of fate, but it was still important to our country.

Rickover was born in Makow, Russia, Jan. 27, 1900, the son of a tailor who migrated with family to the United States (Chicago) in 1906.

A bright boy, Hyman George Rickover won an appointment to the United States Naval Academy and graduated at 22. (He also was awarded a master's degree in electrical engineering for work at Columbia University).

During World War II, Rickover headed the electrical section of the Bureau of Ships for the Navy. After this war, he served briefly with the Atomic Energy Commission. All this was prelude, but it was here that he conceived the idea of a submarine powered by atomic energy—a lethal marine weapon that could travel for weeks, even months, thousands of miles, in and under water, without refueling.

Rickover headed a team including four other officers of the Navy. Finally, in 1947, their plan for an atomic submarine was approved, and the first atomic submarine, the USS "Nautilus," went to sea in 1955.

Beginning with the "Nautilus," Rickover has supervised the construction and sea trials of every American submarine sent to sea since that time. He took this personal interest, he writes, "to be sure that their nuclear propulson plants functioned properly and

that the officers and men had been well trained."

A hard-driving officer with an enormous capacity for detail, he aroused the ire of some brother officers and was twice passed over for promotion. But friends in Congress took a hand in the matter, whereupon he was advanced to rear admiral in 1953 and to vice admiral in 1959.

The 59th Congress awarded him the Congressional Gold Medal in recognition of his achievements with the nuclear-powered submarine.

(Rickover also helped develop the first large-scale atomic-energy power plant, Shippingport, Pa., 1957).

So as a result of this gift from Russia to these United States, out there in the Atlantic and the Pacific Oceans, probably elsewhere as well, there roam this minute 41 nuclear-powered Polaris submarines. Those submarines stand between you Americans and your potential enemies.

Even this may not seem very dramatic. All right. Try to visualize their importance. Each of these 41 submarines is equipped to fire 16 missiles with nuclear warheads while the submarine is submerged.

Were this country ever attacked, in a matter of minutes any or most of those 41 nuclear submarines would be able to launch an attack that would mean disaster to the aggressor.

There they are out in the wet blue yonder, roaming, waiting, listening.

They represent today probably the greatest single deterrent of possible enemy action that exists in the American arsenal, or in the arsenal of any other country for that matter.

It is obvious that Admiral Rickover was and is a high achiever, a term educators are fond of using; a man who is perceptive, highly motivated, inventive, energetic, and highly innovative, but still just another wearer of the Navy's gold braid.

But Rickover is more than that. He possesses a breadth of interests one rarely finds in personnel of any highly specialized service such as the Navy. He has long been vitally interested in education and is author of several books on the subject. Note them well: "Education and Freedom," "Swiss Schools and Ours: Why Theirs Are Better," and "American Education—A National Failure."

He also possesses a vital interest in American history, this son of Russia, and his latest book, "Eminent Americans," reflects that interest as well as his first love, the Navy.

On launching any of those 41 Polaris submarines, any other admiral would probably have followed routine in choosing a name, permitted some appropriate person to participate in the christening ceremony and that would have been that. There would still be 41 missile-carrying submarines out there, waiting, listening.

But Rickover added another dimension of interest, gave those submersible protectors, so to speak, added significance. From the launching of the "Nautilus," Admiral Rickover formed the habit of writing personally to each of the 80 members of Congress who had taken a personal interest in the project. He described what the sub had been able to do in its first voyage.

When came to the Polaris series, he conceived the idea of naming them after eminent Americans. He named the first "George Washington," and when he sent his letter report to members of Congress on the performance of this first Polaris, he reminded them of some highlights in the life of George Washington.

Rickover followed this practice with each of the 40 Polaris submarines that followed the "George Washington." Most of the original letters were written aboard ship in spare moments during sea trials. They were well received by members of Congress and many were published in the CONGRESSIONAL RECORD.

In fact, they created so much interest that he was urged to put the sketches about the 41 "eminent Americans" into a book. This he finally decided to do, giving credit "to my dear wife, who did most of the research for these essays, I could not possibly have completed this task while carrying out my official duties as a naval officer."

To make the project official, House Concurrent Resolution No. 213, July 27, 1968, authorized the printing of the Rickover letters as a "House document (the Senate concurring) . . . relating to the distinguished Americans in whose honor the United States Navy Polaris nuclear submarines were named."

As a gesture of goodwill and admiration for Admiral Rickover (and his wife), the resolution included a special provision, "notwithstanding any provisions of the copyright laws and regulations with respect to publication in public domain, the letters shall be subject to copyright by the author thereof."

This meant that Admiral Rickover might, if he desires, make a deal with a trade book publisher for publications of the same work in some other form. He might thus acquire several extra dollars.

However, we see an extra dimension in the measure of this man in that he has refused to take advantage of this permission by Congress.

This House document on "Eminent Americans" contains 316 pages in paperback, including eight dramatic illustrations of Polaris submarines in action. In his preface, the author writes:

"To keep the size of this book within reasonable bounds, I was forced merely to suggest rather than fully develop many important themes in our history. Yet these essays will have served their purpose if they reveal something of the amazing diversity of principles and ideals which our forebears had to reconcile in building a nation out of 13 suspicious and jealous colonies."

If you desire a copy of "Eminent Americans" by Rickover, send $1.25 by check or money order to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., 10402, and ask for it by name and stock number: 5271-00315.

Issued by a trade publisher, this book would easily sell for $5 to $8 a copy in hard cover.

The Government Printing Office is not noted for swiftness in filling orders, but you should receive it in about two months from the time you mail your order.

This is the kind of book that should for several reasons be in every school in the nation, at least as required reading. But probably not one school in 10,000 has or will acquire a copy.

This book contains 41 significant capsule biographies. They are about men who made great contributions to this nation and to a better understanding of American policies and its place in the world.

LEGAL SERVICES FOR THE POOR: WILL THEY BE CONTINUED?

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 5, 1973

Mr. RANGEL. Mr. Speaker, the legal services program, which is a part of the Office of Economic Opportunity that is being dismantled by President Nixon, has long been providing essential services to our Nation's poor. However, unless enabling legislation is enacted by June 30, 1973, legal services will join the long list of OEO programs that appear to be destined for an unfortunate demise.

The usefulness of the legal service program to the poor since it was begun has been immeasureable. There have been a few members of the Nixon administration who have criticized this program on the grounds that it has concentrated most of its efforts on bringing suits against local, State, and Federal agencies. The facts are, however, that over 97 percent of the cases handled by legal services are matters of a routine legal nature—such as divorces and complaints about jobs and housing. These matters, although routine in a legal sense, are mountainous problems in the lives of the poor.

President Nixon seems to have recognized the need for legal services since he included over $70 million in this year's budget for such a program outside of OEO. With this proposed allocation came a promise for the appropriate legislation to accomplish the reorganization of the legal service program.

It is now the first week in April and the administration has still failed to submit the needed legislation to Congress. Many of the neighborhood law offices have already been forced to close.

In 1971, President Nixon said of these neighborhood law offices:

Here each day the old, underprivileged and the largely forgotten people of our nation may seek help. Perhaps it is an eviction, a marital conflict, repossession of a car, or misunderstanding over a welfare check—each problem may have a legal solution. These are small claims in the nation's eye, but they loom large in the hearts of poor Americans.

The President seems to have forgotten his words. Because of his lack of action, many of these offices have already closed. Unless the President immediately introduces his promised legislation, the fate of the remaining offices will be similar.

I would like to insert into the RECORD for the benefit of my colleagues a WCBS-TV, New York editorial on the future of legal services. Unless the President follows its recommendations, the benefits of the legal services program that he recognized less than 2 years ago will soon be lost:

WCBS-TV EDITORIAL: SAVE LEGAL SERVICE

The Nixon administration, it seems, has declared war on the "war on poverty" and is dismembering many of the anti-poverty programs started in the 1960's. One of the casualties may be the legal services program. The Office of Legal Services has been described as the country's largest law firm. But it's not in one of those fancy Wall Street or Park Avenue offices. It consists of about 2,500 attorneys working out of 900 neighborhood law offices, providing free legal help to some 1.2 million poor people all over this country.

The legal services program has been one of the most successful weapons in the war on poverty—winning an estimated 80 per cent of its cases. Most of its cases deal with personal problems such as divorces and disputes with landlords. But others deal with larger issues such as finding homes for poor people who have been forced to move by urban renewal projects.

Because the legal services program has taken local governments to court over such matters as urban renewal and other problems of common concern to the poor, some high administration figures, like Vice President Agnew, have criticized the program.

They say that the federal government shouldn't be paying for law suits that bring government agencies and elected officials into court. However, many lawyers, with the support of the American Bar Association, argue that many of the problems poor people have are the result of policies made by housing and other agencies of government, and that often these people have little peaceful recourse against the local and state governments that control so much of their lives other than to go to court.

This argument, it seems to us, makes sense. And President Nixon, himself a lawyer, agrees. He has in the past expressed support for the legal services program's efforts to help the poor deal with government institutions. And this year he included over $73 million for continuing the legal services program in another form. But so far, legislation to do so has not been introduced by the administration. Unless this legislation is passed, the whole legal services program is likely to go out of business June 30. Time is runnng out. If legal services is to be saved, the President must act soon.

VISION SCREENING IN DALLAS

HON. JAMES M. COLLINS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 5, 1973

Mr. COLLINS. Mr. Speaker, during Save Your Vision Week, the first week of March, several groups in the Dallas area sponsored an extremely worthwhile project designed to test vision in area citizens aged 50 or older. Five days of testing, under the auspices of the North Texas Optometric Society, the Dallas chapters of the American Association of Retired Persons and the National Retired Teachers Association, provided vision screening for about 1,000 older Americans. Some of these people traveled 100 miles to take advantage of the free examinations. The oldest person who was screened was 103.

As a person ages, his powers of vision naturally begin to experience some deterioration. Impaired vision is responsible for limiting the activity of 745,000 persons in the United States over the age of 65. In that same bracket, 42 percent have vision that is so impaired that they cannot read the newspaper. Of those in that age group who suffer from a chronic condition, 48 percent suffer from poor vision.

Beyond the problems of vision impairment, is the extreme condition of blindness. There are at least 430,000 legally blind people in the Nation. Glaucoma contributes about 13.5 percent of this, cataracts contribute 15.6 percent.

At three separate locations in various parts of Dallas, 27 optometrists donated their time and services, along with the aid of eight members of their auxiliary, to examine these older citizens and help them preserve one of their most priceless faculties.

The vision care specialists, after noting case histories, checked visual acuity, measurement of intraocular pressure, completed external and internal examinations of the eye, and then explained the results to each person. Based on suspicion of glaucoma, needed cataract evaluation or other pressing reasons, the optometrists referred 113 patients to specialists. Complete visual examinations were recommended for another 357.

I am so proud of these fine optometrists in my home State. The time which they contributed to this screening program relieved many elderly citizens of the problem of paying for an examination. They brought the problem and dangers of various eye diseases to the attention of the entire metropolitan Dallas area.

These 27 optometrists in this one program aided 1,000 of their neighbors. In these days, it is a joy to see such unselfish action. This project illustrates how much a few concerned citizens can accomplish in helping their fellow man. Vision is a precious gift. Few of us fully appreciate the wonder of sight. Our learning, our earning, our very enjoyment of life depend in large measure upon this priceless faculty.

These three groups—the North Texas Optometric Society, the Dallas chapters of the American Association of Retired Persons, and the National Retired Teachers Association—are to be greatly commended for their tremendous efforts in helping so many maintain and preserve their sight. I do not know whether this type of program has been done other places; I would hope so. And I hope that this selfless program will be emulated in many other cities and towns. I cannot say enough good things about the virtues of the profession of optometry and their care about the vision of this country.

CHARLES R. DREW POSTGRADUATE SCHOOL THREATENED BY CUTS IN REGIONAL MEDICAL PROGRAM FUNDS

Hon. Yvonne Brathwaite Burke

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 5, 1973

Mrs. BURKE of California. Mr. Speaker, on Thursday, March 29, 1973, I testified before the Subcommittee on Public Health and Environment of the House Committee on Interstate and Foreign Commerce concerning my support of the Public Health Service Act of 1973.

The Public Health Service Act's regional medical program has led to the creation of greatly needed health services for many people in California. In particular, it has provided the funds necessary to construct the Charles R. Drew Postgraduate Medical School which serves the many health needs of the people in south central Los Angeles in conjunction with the Martin Luther King, Jr., Hospital

In including a copy of my testimony in the CONGRESSIONAL RECORD, I want to call to the attention of my colleagues an effective and innovative program made possible by the regional medical program:

TESTIMONY BY THE HONORABLE YVONNE BRATHWAITE BURKE

Mr. Chairman and Members of the Committee: I am glad to have the opportunity to present to you and your Subcommittee on Public Health and Environment the reasons for my strong support of the Public Health Service Act of 1973. This Act would extend many programs which have directly contributed to the health and welfare of my constituents, and without it, it is safe to say that they would not have access to many vital health services.

One important program with which I am particularly familiar is the Regional Medical Programs, which provided both the stimulus and the initial funds necessary to construct the Charles R. Drew Postgraduate Medical School in Southeast Los Angeles.

While the formulation of the Drew School, which is the educational partner of the new Los Angeles County-Martin Luther King, Jr. General Hospital, was supported almost exclusively by RMP, the School is a superb example of RMP's intent to catalyze other community resources. The original RMP awards totaling $2.6 million since 1968 have succeeded in attracting more than $5 million additional funds, about half of them from Los Angeles County, which provides the basic support for the Drew faculty.

When the Watts Riots subsided in 1965, a decision was made to build a public hospital in South Central Los Angeles. The Drew Medical Society joined with the Schools of Medicine at UCLA and the University of Southern California to create the Drew Postgraduate Medical School. The Hospital was designed to serve all: those thousands—many poor and underemployed—who needed basic health care and the medical community itself, which had provided most of the care.

The Drew Postgraduate Medical School thus quickly became a focal resource. Today, it is the magnet to attract full-time medical and dental educators of all races who are committed to serve local and regional community health needs threatened by heart disease, cancer, stroke, kidney disease and other major diseases. Each Drew faculty member not only has to meet the executive criteria of the Drew School but has to qualify for a joint academic appointment in either UCLA or USC Schools of Medicine (or Dentistry, Public Health), the affiliate institutions.

Although the Drew proposal did not conform to the usual categorical funding requirements, the California Committee on Regional Medical Programs recognized that a genuine impact on specific disease in the South Central area of Los Angeles could only occur with a realignment of many of the community's resources and basic relationships. The first task was to recruit a faculty.

Faculty recruitment, however, was painstaking. When King Hospital opened on medical and dental staff are directing patient care, educational and research activities in this facility. When King Hospital opens all of its 394 beds, a faculty complement of about 120, supervising a like number of intern and resident physicians and dentists, will be assisted by community physicians and dentists who are joining in the teaching-learning process.

Although RMP does not pay for services at King Hospital, RMP did underwrite recruitment of the special faculty and administrative staff needed to meet the peculiar health problems of the poor in South Central Los Angeles. Now approximately 90% of patient care services at King Hospital are provided by Drew School personnel or by house officers and staff under their supervision. In the first eleven months, for example, this staff provided care to 30,344 emergency room visits, 104,073 out-patient visits, and 5,439 hospital admissions.

Much of the RMP support since 1968 (about $250,000 annually) has gone to Drew's Department of Community Medicine, which functions as an education and development service, to serve the following needs:

the assembler of health planning data, the focus for continuing professional and consumer health education, the stimulus for community self-help programs in ecology, buyers' clubs, weight and hypertension control programs, and other health educational endeavors. The Department's sponsored work-study programs for high school and college students have influenced many underprivileged students to pursue health-oriented careers.

Also under the Department of Community Medicine, but funded by other sources, is California's first physician's assistant program. This first class of students, who were trained to work with busy, urban primary care physicians, will graduate in June. It is expected that a significant number of these physician's assistants and many of the house officers now in training at King Hospital will continue to practice in the area. Already, the presence of nearly 80 new full-time physicians has nearly doubled the numbers of medical manpower in the community, in some cases being the only medical specialists within the service area. With physician's assistants and house officers, the community's medical manpower has nearly tripled since 1970—all as a proximate result of the initial RMP funds.

Drew's educational programs are creative and pertinent. They "serve the people." Pediatric residents spend one day each week in public schools, assuming responsibility for the health of students; young children are screened for learning disabilities and their parents and teachers counselled in their continuing management; a community-wide maternal and early childhood health monitoring system, with effective follow-up, is being considered. Foster homes families are being visited and provided with health services never received before. The components of a child care and development center, to help train child care workers while providing services to Hospital employees in need, are being assembled. The Department of Psychiatry is developing a model training program for health workers who will be involved in the complex social and cultural problems of a disadvantaged minority community. Special efforts to screen and educate people about sickle cell anemia are under way. A rational medical plan, within the County-wide plan, for emergency medical services is being developed with RMP support, significant because the principal cause of "persons years lost" in this community is deaths from trauma and violence.

This is but a brief account of the increased manpower and facilities, and the impact of socially committed and dedicated persons working together to elevate the health status of a community. Without the catalysis of RMP support, none of these activities would now be actually operational in the saving of lives and guiding the population at large in ways they can exercise to maintain individual and community health. For many, the services have been direct, in skilful, compassionate care in a new hospital. For others, the impact has been more subtle—in job training, new learning and knowledge, and in creative community programs.

The initial investment is already rewarding. But, without continuation of the Public Health Service Act, RMP funds to support the Department of Community Medicine—truly the pivot around which community-focused health activities occur—will cease on June 30th. No longer will there be funds for Drew to train volunteers to aid the post-stroke victim; no longer will there be funds to educate dental auxiliaries who can function in overworked dental practices; no longer will there be funds to mobilize an emergency medical services system as one thrust in curbing the grim loss of lives. And no longer will there be funds to provide technical expertise in planning, in community organization, in disseminating health information, in mobilizing a community around health. For these reasons, I firmly believe HR 5608 must be reenacted—to continue helping a strengthened community to help itself to health.

The needs in 1973 are as great as in 1965. A spirit of renaissance, of which Drew School is a major contributor and symbol, is quelling the anguish and despair which was expressed in August, 1965.

PROBLEMS WITH THE STUDENT LOAN PROGRAM

HON. B. F. SISK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 5, 1973

Mr. SISK. Mr. Speaker, I believe many of the Members will recall the experience we had last fall with the logjam of student loans that occurred, because a need test had been included in the authorization. That logjam was finally broken by repealing the need test, but not before thousands of students and their families had suffered deep financial distress.

I had hoped that our troubles with this program were over, and that it would run smoothly from now on. I reckoned, however, without the attitude of the administration. I was horrified to read in the Washington Star and News an Associated Press dispatch headlined: "College Loan Picture Fuzzy for 1973 Term." I was further horrified by the much more detailed article written by Eric Wentworth on Sunday, March 18, in the Washington Post, headlined: "Hill Funding Fight Leaves Uncertainity For Students' Aid." These articles make one thing perfectly clear—it is impossible for either the students or the educational institutions to make plans to meet the costs of the upcoming college year with the current confusion over the future of Federal aid programs administered by the U.S. Office of Education.

If I see this matter correctly, the President proposes to hold these student loan and grant programs as pawns in his struggle to control the Federal power of the purse strings. With the same disregard for human considerations he has shown in dismantling other Federal aid programs, the President now is holding the student assistance programs hostage in his continuing attempt to seize congressional powers by impounding appropriated funds.

There is no doubt that the President can create a great deal of hardship to the students, their families, and the colleges in each of our districts. He undoubtedly intends us all to be subjected to considerable pressure from our distressed constituents, who do indeed have a right to expect better treatment from their Government. The President enjoys considerable advantages over us in his ability to command instant television and widespread publication of his views in the newspapers. He is playing over and over the role of the economizer, when the record shows that it was the Congress who held down the President's budgets—to the extent that it was possible to hold them down. Even with the Congress doing the budget cutting, the President was able in 4 years to raise the national budget from $195 to $269 billion—an increase of 40 percent. The budget he proposes for 1974, while sermonizing on the supposed spending tendencies of Congress, is actually $23 billion more than he requested last year.

We all know, of course, that despite his broadax approach to the hard-won social programs of Franklin D. Roosevelt and Lyndon B. Johnson, the President has done little or nothing to cut military spending. In this area of the budget, he is strangely restrained. Let the poor, the ill-housed, the aged, the veterans—let the programs for saving our polluted streams—yes, let the students and the colleges pay for the President's image as the Great Economizer. But do not touch his pet projects for his big business friends.

I am concerned—greatly concerned—over what is going to happen to the plans these students have made for their education, based in good faith on the laws we have passed here in the Congress. You are as aware as I am that there are four student aid programs under the Office of Education—including the new "basic opportunity grants" authorized last year. We protected the three existing programs by writing into the law a requirement that they be funded at specified levels. But the President's budget calls for no money for direct grants or low-interest loans, while calling for $622 million to get the new program started this year, and $959 million to continue it next year.

Now, I hope this confrontation can be avoided. It is, of course, a part of the much larger problem of fund impoundments by the President. The President is simply refusing to recognize the intent of the Congress in passing last year's requirement that funding be maintained on the existing program. He has been trying for several years to target aid to the neediest students and shift the rest to guaranteed bank loans. We certainly want to help those neediest students, but we do not want to see the other programs thrown out the window.

If the President can be persuaded to compromise—to yield a bit on these student loans for education—now is the time to effect some kind of agreement. Now is really the deadline, if not actually yesterday—for this is an area in which time is of the essence. Forward planning has to be done both by the students and the institutions. Neither can afford to wait until the fall semester is imminent. In all practical terms, it is imminent now.

I have, therefore, written to our esteemed colleague, the chairman of the Committee on Education and Labor, as follows:

CONGRESS OF THE UNITED STATES,
Washington, D.C., April 4, 1973.

HON. CARL D. PERKINS,
Chairman, Committee on Education and Labor, Washington, D.C.

DEAR MR. CHAIRMAN: It is obvious that the budget for Fiscal Year 1974 as concerns the student aid programs administered by the United States Offices of Education is widely at variance with the intent of the 92nd Congress as expressed in the 1972 law.

We are all familiar with the situation that developed last year when the need test was

suddenly applied to the student loan and grant programs. Thousands of students and their families suffered severe hardship while they waited for federal assistance. At this time, colleges are admitting students for the fall term. I am sure we do not want to see a prolongation of the confusion that currently exists because colleges cannot advise their applicants what financial assistance will be available.

This is, of course, part of a much larger pattern. It is part of the pressure which the President is putting on each of us to relinquish our power, Constitutionally specified, of controlling the pursestrings. On this matter, the distress of students and their families is being mobilized against us.

It is my sincere hope, Mr. Chairman, that through your good offices some agreement can be worked out which will spare these young people the hardships which are now shaping up. There is simply not time to go through prolonged legislative processes while battling the White House. The students, their families, and the colleges need to know what they can count on. If a reasonable compromise can be worked out that will be acceptable to the House and Senate, and which will have the assurance of the White House that the money will be made available, I most strongly urge upon you the need to act speedily. I cannot but feel that you and the honorable members of your committee will be in accord with that need.

With kind regards,

Sincerely,

B. F. SISK,
Member of Congress.

Mr. Speaker, I stand firmly upon the principle that the power of the pursestrings is constitutionally vested in the Congress and nowhere else. I would like, however, to see that principle tested in some area where disaster for thousands of our constituents is less imminent. I am sure there are such areas.

ADDRESS BY MR. MAXWELL FIELD

HON. JAMES A. BURKE

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 5, 1973

Mr. BURKE of Massachusetts. Mr. Speaker, many people have risen in the last few years to detail the continuing plight of the New England shoe industry. I myself have addressed the House of Representatives a number of times concerning this serious situation.

However, in all my years in the Congress, I have seen few statements that are as concise, complete, and comprehensive as that delivered by Mr. Maxwell Field, executive vice president and secretary of the American Footwear Industries Association to the New England chapter of the Robert Morris Associates on January 24, 1973. In his address entitled "The New England Shoe Industry: Past, Present, and Future," Mr. Field "tells it like it is," so to speak. Once the leading manufacturer of shoes in the United States, New England has been dealt a serious blow by the invasion of foreign imported footwear. Mr. Field describes this excellently and makes some observations as to the future of this vital New England industry.

I include his address for the RECORD and commend it to my colleagues' attention:

THE NEW ENGLAND SHOE INDUSTRY—PAST, PRESENT, AND FUTURE

(By Maxwell Field, Executive Vice President-Secretary, American Footwear Industries Association)

Mr. Chairman, distinguished guests and friends, it is a pleasure for me to address so illustrious a group of bankers, all vitally interested in the development of New England and the future progress of its great shoe industry.

I am also happy to be back "home" here, having only moved from Boston to Washington this past summer where the shoe association offices have been relocated.

With two speakers on your program to discuss a rather complex industry, beset with many problems but still a major factor in the region's economy, I shall push on in order to complete my talk on schedule. I intend to "say it like it is"—to quote the advice given to me by my good friend—and yours—Henry Allen when he extended the invitation to be your speaker.

THE AMERICAN SHOE MANUFACTURING INDUSTRY

New England has always been the leading region in this industry, although its share of the market has been declining. To understand the reasons why, let's first describe the total industry in the United States.

The American shoe industry is an eight billion dollar industry, based on retail sales in 1972. This total includes sales of about 530 million pairs of American-made shoes plus additional sales of 285 million pairs of imported foreign footwear—valued at over $825 million of dollars! Thus imports accounted for a hefty 35 per cent share of the U.S. market!

It should be noted that these footwear sales are of nonrubber footwear—thus excluding canvas sneakers, rubbers and rubber boots, etc. The rubber footwear industry has been identified by government agencies as a separate industry and it is so recognized by shoemen. Its annual retail volume in 1972 is estimated at $1.2 billions! Furthermore, a score of these plants operate in New England and employ an estimated 10,000 workers.

The American shoe manufacturing industry reported factory sales in 1972 of about $3 billions, with production of about 530 million pairs—of non-rubber footwear. Over 205,000 shoe workers were employed in some 900 shoe plants operated by 520 companies. An additional 45,000 workers are employed in machinery, tanning and other shoe supply companies.

Shoe manufacturing is concentrated in twelve states. Pennsylvania is the largest producing state, having overtaken Massachusetts several years ago. Third in size is New York, followed by Missouri and Tennessee, then Maine and New Hampshire.

Now let's take a hard look at your region.

NEW ENGLAND'S SHOE INDUSTRY: PAST AND PRESENT

The shoe industry, from the birth of our nation, has always played a major role in the economy of New England.

In the home and handicraft stages from 1635 to 1750, in the 100-year period which followed of the ten footer shops and the "putting out" system, and finally, in the factory and mass production stage from Civil War days to the present, New England played the dominant role in this industry. Through every period of history, in years of wars, of depressions and prosperity, New England manufacturers were able to meet all competition in the trade.

Beginning in the Sixties, however, outside influences buffeted this industry—and others like textiles and apparel, steel, etc.—and stopped most of its members from showing real progress. And in truth, caused many to retrench and eventually go out of business.

This influence, of course, was Foreign Imported Footwear!

Let us first put into focus the size of the shoe manufacturing industry in this region.

New England's share of shoe volume in 1972 is estimated at 140,000,000 pairs, or 26% of total U.S. output. In the mid-Sixties, its share was 33–35 per cent with output over 200 million pairs annually!

The factory value of 1972 shoe shipments is estimated at slightly under $800 million—still a very respectable volume.

Some 250 shoe plants are currently operating in the region. Workers number approximately 56,000, with over 50 per cent being women. An additional 21,000 workers are employed in supply companies, whose products are used by shoe manufacturers.

Massachusetts' shoe industry has some 115 plants and currently employs about 20,000 workers. But this is a shocking 35% decline from its level a decade ago!

It is the result of some 70 factory closings since 1967 with a direct loss in employment of over 11,400. These were mostly small to medium size companies, producing women's low priced footwear, and it is this type of footwear that foreign imports have hit the hardest!

Massachusetts has been the worst affected state due to imports. Is it any wonder that current unemployment in the Commonwealth continues to increase and is at over 7%?

The shoe industry in Maine is the Number One employer of all manufacturing industries. Currently, 76 shoe factories employ almost 18,000 workers—and the total for the leather and leather products industry numbers 21,000 workers.

In 1972, Maine's shoe output is estimated at 33 million pairs, valued at $225,000,000.

Maine in the past four years has really been hurt—both by competition from imports of women's and men's sport type shoes, but also by fashion changes which turned the public "off" from buying moccasin types—Maine's greatest production gainers in the Fifties and early Sixties.

In the past 6 years, we've counted 28 factory closings with a loss of 5,560 workers. At the present time, I am pleased to note, there have been completed or are in various building stages, some five *new* plants operating in this state.

New Hampshire's shoe industry is third or fourth largest in this state. It has current employment of over 11,000 in 55 plants. It suffered the loss of 4,800 workers from 22 factory closings from 1967 to 1972.

But enough of bare statistics. It is only because I am addressing a group of bankers, the more intelligent leaders in our business community, who are accustomed to dealing with figures, that I dare throw this barrage of figures at you. But they do tell the story—good or bad!

You've heard, I am sure, the old pun "Figures do not lie, but liars do figure". Well, at a recent Statistical conference, one of the officers declared in a talk: "If all statisticians were laid end to end, they would all be dead!"

Let me briefly describe other important characteristics of the domestic shoe industry.

The shoe industry is made up of a large number of small and medium-sized producers. The Big Four only account for 24 percent of the national gross—with no real increase noted in several decades. In actuality, our largest producers during the Sixties expanded sales and profits by diversification programs—of buying companies in other industries with greater profit potentials. In the same period, major shoe chain operators expanded sales by opening more stores, of course, but veered away from acquiring shoe

manufacturers and also diversified by merging with non-shoe retail organizations.

The shoe industry is volatile, marked by a larger number of failures or factory closings, or migrations, than is found in most other manufacturing sectors.

The shoe industry is a wage intensive industry. Labor costs equal 24 to 35 per cent of the wholesale price. Hourly wages average $2.64—with the highest wage of any state being the $2.93 in Massachusetts.

This fact of America having the highest wage rates in the world is the major reason why American shoe manufacturers cannot compete with foreign producers. The average hourly wage rate in the United States, including fringes, is now $3.11. Comparable wage rates, including fringes, are $0.21 in Taiwan, Brazil $0.34, Spain $0.57, Japan $1.09, $1.45 in the United Kingdom and $1.70 in Italy.

Also, the shoe industry has a record for being one of the least profitable industries in our economy. It operates on the very narrow profit return of 2–4 per cent, after taxes, on net dollar sales!

However, as I hardly need explain to a group of bankers, our manufacturers do enjoy a good return on invested capital. With a large number of turns of working capital in a year, therefore, profits can be favorable. And to quote one of your own bankers, recently retired, E. Morton Jennings, Jr. in his excellent book "Bank Loans to Shoe Manufacturers":

"As a general rule, the average men's shoe company turns over its working capital five times a year, and women's shoe factories ten times a year".

Finally, there are a number of very successful shoe manufacturers continuing profitable operations in New England, as well as in other shoe states. They are characterized as "specialty" producers—or by others, as "fashion" leaders. These producers have a track record of making more each year of the "right" shoes better merchandised to their market than their competitors.

I am proud to note that one of the most successful shoe entrepreneurs is your other speaker: Ronald Ansin.

THE NEW ENGLAND SHOE INDUSTRY: THE FUTURE

The future of the New England shoe industry during the Seventies, and beyond—like that of the American Footwear Industry—is directly dependent on the policies and programs of the Federal Government and of the U.S. Congress!

The entire growth of the American shoe industry during the decades of the Fifties and Sixties, thru 1972, was taken over in toto by foreign imports!

Just think of it: To-day, one pair for every three pairs sold is a foreign product. This plain fact spells fewer American factories and fewer jobs here in this country in 1973 and every year in the future that shoe imports remain unrestricted! And the plants and workers in the three New England states: Massachusetts, Maine and New Hampshire, will continue to bear the brunt of these losses!

Our government has approved very low tariff duties, and has no restrictions on foreign footwear imported from such key low wage countries as Spain and Italy, Japan, Taiwan and South Korea, and more recently Brazil. The importers and retailers selling these foreign shoes enjoy a far greater markup than on domestic shoes, thus providing the added incentive for these companies to expand each year their sales—and profits.

Naturally, a number of domestic shoe manufacturers in more recent years have supplemented their sales by importing shoes in order to service their customers' demands for either lower-priced, or shoes with more fashion features, than they can produce in their own plants. With only one or two exceptions, they have not purchased outright any foreign plants—but many, I am sure, have made investments in them to assure delivery of their orders.

Also in recent years, important technical and machinery developments have enabled a group of American producers to expand their operations by "running ahead" of their foreign competitors in the specialty products they have developed and are producing. These processes, primarily, have reduced costs by eliminating or combining jobs. The potential for such developments are great when one realizes that 200 distinct operations are carried on in a single establishment producing such staples as Men's Goodyear Welt shoes.

The Shoe Industry, currently under the leadership of our American Footwear Industries Association, and supported by the major producers and suppliers, is embarked on multi programs to: Improve Marketing and Fashion know-how, develop Manufacturing Standards and improve Productivity; to Sharpen up on Management techniques, and to expand our National Affairs programs!

The balance of my remarks will be devoted to the latter program.

The shoe associations, spearheaded by top industry leaders, have worked hard and long at considerable costs, to secure favorable action by Presidents Kennedy, Johnson and Nixon to control the rate and quantity of foreign footwear imports. We attempted in these years, also, to secure enactment of Orderly Marketing legislation, of the Mills bill, and currently we are on record in favor of the Burke-Hartke bill.

During the past several years also, our Association and Industry leaders have been waiting for the President to reach a decision on action to break a 2–2 Tariff Commission ruling in the Shoe Industry's Escape Clause case. The Commission undertook this Escape Clause investigation under direct orders of the President and its deadlocked decision was issued in January 1971.

Under the Trade Expansion Act of 1962, the Administration can either take favorable action on this Escape Clause ruling by the United States Tariff Commission, and increase tariff duties or declare the industry eligible for adjustment assistance, or it can take a side with the two Commissioners who voted in the negative, and take no action!

More recently, we attempted to secure the same treatment for footwear—in the form of voluntary agreements with key exporting nations—which President Nixon granted to both the steel and textile industries! Our friends in Washintgon tell us that we didn't have enough political clout—which means not enough votes to count in the elections.

We shall never give up on this effort—actually we are redoubling our efforts in this 93rd Congress.

Just so long as exporting nations continue to subsidize their countries' shoe exports to the United States—and these subsidies take various forms and they are substantial . . . Just so long as these foreign nations continue their ban on importing American shoes . . . Then AFIA will stay in this fight!

Personally, I have more confidence than ever in our industry being granted positive action and some measure of import controls on foreign footwear. The 93rd Congress, Democratic controlled, will listen more to labors' claims on loss of jobs due to foreign competition. The Burke-Hartke Act, supported by AFL-CIO and opposed by both the U.S. Chamber of Commerce and the National Associations of Manufacturers, as well as multinational corporations and international bankers, will be extensively amended before it is in its final form for floor consideration, debate and vote. Either this bill, or other trade legislation, or even a new Nixon measure calling for some moderate restraints on international trade, will eventually be enacted.

My optimism is based on these facts:

1. For 1972, the adverse balance of trade of over $6.4 billions points up the need for the Administration to take positive action to stem imports—especially from Japan and Common Market countries. Imports will never go away by themselves. Foreign countries need to "dump" their government-subsidized products on American shores to boost their economies. Also, they represent too much profits for *American retailers!*

2. The Adjustment Assistance program has been insignificant and plans to retrain workers have been a failure. About $10 million dollars to date have been parcelled out to a handful of manufacturers—mostly shoe companies in New England—and a few thousands of unemployed workers.

Not much more can be expected under current laws.

3. Labor union leaders, next to minimum wage legislation, are demanding trade controls to save American jobs and will give all-out support to the Burke-Hartke bill. And our shoe industry, and scores of other trades, will join in this battle in order to survive in the trade wars of the future.

4. Administration leaders are currently working on new trade legislation for enactment in this Congress to give the President the bargaining authority needed to launch a new round of negotiations with the Common Market and other nations. Already, newspaper stories in the "New York Times" and "Washington Post," among others, all trial balloons undoubtedly, have reported on attempts to strengthen the Administration's position by offering concessions to industries hurt by imports. One proposal is to "agree to establish criteria for imposing temporary quotas or other measures to allow time for affected industries to adapt to changing competitive conditions". This is quoted from an editorial "Protectionists Try Again" in Business Week's January 13, 1973, issue.

CONCLUSION

I close this talk by offering some personal opinions on New England's future. As one who has spent his lifetime here—and loved every day of it—as well as worked his lifetime in the most traditional and oldest of all industries in the region, perhaps they will prove helpful. I hope so.

New England has been over-studied: by government agencies who have accomplished nothing, both state and federal; as well as by banks, trade organizations and newspapers.

New England needs better PR. Who needs a headline every month like this one in the Sunday New York Times of January 7, 1973: "New England: System, Creaking With Age, Is Held In Need of Overhaul". And just who is going to overhaul it?

We all believe in better communications. But which agencies, and companies, are taking positive action to get to-gether state leaders, labor leaders, industrialists, and others, to get everyone involved in organizing a program of ACTION. State laws need overhauling, more economy in government is a must, taxes must be lowered.

New England will always need a strong manufacturing base to improve its economy. To say that this region should be mostly a Service economy is nonsense. And one can't keep on depending on government contracts to keep its R&D plants on Route 128—and elsewhere—running.

New England has a good Labor force—with good productive workers. But they are paid wages higher than in the newer regions of the South and Southwest. These costs must be lowered where they are not offset by higher productivity. And the union leaders must be made to believe this and take action to save jobs—and to even expand the number of jobs.

New England is the nation's greatest center for learning for R&D—for training future leaders. The future of all these colleges is tied in with New England's progress—or lack of it. Their collective brainpower should be turned to additional areas—to help rebuild a stronger economy in this region.

Finally, look to yourselves, as every New Englander should, man and woman, to work to-gether for a better place to live and work. If a major industry—like Footwear—has an Imports problem that can only be solved at the National level by the Administration and the Congress, every New Englander should demand of his Senators and Representatives, of his Governor and state representatives, that they take all-out action collectively to represent their constituents. For by protecting the "other guys" jobs, they can be protecting their own in the long run.

There will always be a shoe industry in this country! How large it will be in New England—how many plants will remain operating and how many jobs they provide for shoe workers in Massachusetts, Maine and New Hampshire—will depend on all the factors I've outlined above.

My challenge to New England is a call for Leadership in Action.

We need these leaders now—at home and in Washington—working to-gether to rebuild and revitalize a great region—larger by far, than many nations in the world!

CUTS IN AMPHETAMINE QUOTA

HON. CLAUDE PEPPER

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 5, 1973

Mr. PEPPER. Mr. Speaker, I am gratified to learn that the Federal Government is acting to recall most types of amphetamine diet drugs. The elimination of the injectable form of amphetamines, because it is unsafe and of the combination diet pills, because they are no more effective than amphetamines alone, is another step in the right direction in curtailing the abuse of dangerous drugs, and in reducing production quotas.

This action is especially gratifying in view of the efforts of the Select Committee on Crime to reduce amphetamine and drug abuse. Testimony during our hearings on drug abuse indicated that the abuse of amphetamines was a substantial problem, and it is, therefore, heartening to note that effective action is being taken to eliminate this national menace.

At this point, I insert the following articles from the New York Times of April 2 and April 4, 1973, and the Washington Post of April 4, 1973, describing the action to be taken by the Bureau of Narcotics and Dangerous Drugs and the Food and Drug Administration, in the RECORD:

[From the New York Times, Apr. 2, 1973]

U.S. SETS DIET DRUG RECALL IN DRIVE ON AMPHETAMINES

(By Harold M. Schmeck, Jr.)

WASHINGTON, April 1.—The Bureau of Narcotics and Dangerous Drugs and the Food and Drug Administration have decided to recall diet drugs that contain amphetamines, with the objective of eliminating them from the market by June 30.

The action, described by a spokesman for the bureau as the largest recall of controlled substances ever made, is designed to end the use of all injectable amphetamine, and closely related chemicals, and all combination diet pills that contain amphetamine and other ingredients such as vitamins or a sedative.

Controlled substances are prescription drugs that can be dispensed only with special safeguards such as nonrefillable prescriptions and extra recordkeeping obligations on the part of the doctor.

Current use of the drugs involved in the recall is huge. They make up the bulk of the so-called diet pill market. Yearly retail distribution is estimated at about 480 million dosage units—equivalent to that many 10-milligram pills.

The decision to recall existing stocks of the injectable amphetamines is based on the F.D.A.'s contention that these products have such a great drug abuse potential that they cannot be used safely.

The agency considers the combination drugs, taken by mouth, to be ineffective on the grounds that the amphetamines do little good in obesity control and the other ingredients contribute nothing useful toward this objective.

The narcotics bureau, a unit of the Justice Department, and the drug agency, a part of the Department of Health, Education, and Welfare, have been moving against these drugs for several years, but have met strong opposition from industry and some doctors. The recall will be the climax of the Government agencies effort.

John E. Ingersoll, director of the narcotics bureau, and Sherwin Gardner, acting commissioner of Food and Drugs, are expected to send letters this week to 300 major manufacturers and distributors of the drugs informing them of the recall.

State officials are being asked to work with the two Federal agencies in making sure that the drugs are taken out of circulation. Between 10,000 and 20,000 retail and wholesale outlets will be visited by Federal or state officers during the next three months as part of the nationwide effort, an officer of the narcotics bureau said today.

Because the products are on the Federal controlled substances list, each batch recalled will have to be destroyed in the presence of an official witness, he said.

The basis for the recall was a final notice published in the Federal Register on Friday. This notice makes it unlawful, with few exceptions, to ship any of the combination pills or the injectable amphetamines in interstate commerce. The injectable products to be banned include not only amphetamine itself but also such closely related substances as dextroamphetamine, levamphetamine and methamphetamine.

The recall itself is not mentioned in the notice but it constitutes an effort by the Federal agencies to get the drugs out of circulation with as little delay as possible.

The exceptions to the order banning interstate shipment of the drugs covers several products of five manufacturers who have asked for hearings before the F.D.A. on their drugs.

EXCEPTIONS LISTED

These products are Obetrol-10 and Obetrol-20 tablets, manufactured by a division of Rexer Pharmacal Corporation of Brooklyn; Eskatrol Spansules, Dexamyl tablets, Elixir and Spansules of Smith Kline & French Laboratories, Philadelphia; Bamadex Sequels, of Lederle Laboratories Division of American Cyanamid Company, Pearl River, N.Y., and Delcobese tablets, sustained release tablets, Capsules and sustained release capsules of Delco Chemical Company, Mount Vernon.

All of those products may continue to be marketed pending a ruling on the requests for hearings before the F.D.A. Although some of these, such as Dexamyl, are among the most widely used of the combination drugs, the total impact of these exceptions is small considering that there are about 1,500 products involved altogether.

The combination products are estimated to make up 72 per cent of all the appetite suppressing drugs prescribed by doctors.

The F.D.A. still considers the amphetamines, used alone, to have some legitimate usefulness as a short-term aid to the treatment of obesity. In a drug bulletin sent to doctors last December, however, the agency said the drugs should be prescribed and dispensed sparingly and that they should be used only for a short term for patients for whom other weight reduction programs have been ineffective.

The amphetamines are powerful stimulants and are considered to have a great potential for abuse and for creating drug dependence in the user. In recent years large amounts of amphetamines appear to have entered the illicit drug market.

The narcotics bureau and the drug agency have sought increasingly strict limitations on production and use of the drugs to minimize diversion and misuse. Within the last two years, the narcotics bureau has reduced manufacturers' amphetamine production quotas by about 90 per cent. A further reduction is expected soon.

In addition to their limited use as a help in obesity treatment, the drugs are considered valuable in treating a few relatively rare conditions such as narcolepsy—in which the patient has an overwhelming tendency to sleep—and in a few highly selected patients with some psychiatric or behavioral problems.

They are also used sometimes for fatigue, but a review by the Council on Drugs of the American Medical Association said this use was unjustified except under the most extraordinary circumstances.

[From the New York Times, Apr. 4, 1973]

SHARP CUT ASKED IN AMPHETAMINE QUOTA

(By Harold M. Schmeck, Jr.)

WASHINGTON, April 3.—The Bureau of Narcotics and Dangerous Drugs proposed today a sharp reduction in manufacturers' production quotas for amphetamine and methamphetamine in a further effort to reduce the illicit use of the powerful stimulants.

The announcement came only a few days after the bureau made public plans for a huge recall of drugs containing the substances. The recall, organized by the bureau and the Food and Drug Administration, was also aimed at cutting the use of the drugs.

"The quota reductions, along with the recall, will remove vast quantities of abusable stimulants from stocks held by manufacturers, wholesalers, hospitals, pharmacies and physicians by the end of 1973," said John E. Ingersoll, director of the bureau, in making the announcement today.

The proposed national production quota for amphetamine is 992 kilograms, a 39 per cent reduction from the 1,564 kilograms granted to manufacturers last year. Industry had asked for 2,159 kilograms as the production quota for this year. A kilogram is about 2.2 pounds.

The methamphetamine quota announced today was 561 kilograms, as compared with 969 granted in 1972. Industry had asked for permission make 2,752 kilograms this year.

Last year there were even sharper quota cuts for both drugs. Added to the earlier cuts, those proposed today reduce legitimate production of the drugs by more than 90 per cent in two years, Mr. Ingersoll said.

The basic reason for the reductions is that the F.D.A. has concluded that the drugs have only limited medical usefulness and great potential for abuse. The main legitimate use in recent years has been in aiding in the treatment of obesity.

Although amphetamines were used widely for this purpose, both alone and in combination with drugs having other ingredients, a

major F.D.A. review determined that the chemicals were of only limited use as short term aids to obesity treatment, that the combination drugs should not be used at all, and that injectable amphetamines should also be eliminated from the market.

BIGGER CUT POSSIBLE

Indeed, a major part of the proposed 1973 amphetamine production quota may never be allowed at all. An officer of the bureau said today that 650 kilograms of the total 992 had been authorized only on a contingency basis in case the F.D.A. loses in court in its efforts to remove the combination drugs from the market. The issue has not yet been brought to court, but four manufacturers have asked for hearings on the status of their own products.

If the F.D.A. view prevails, and the 650 kilograms is not needed, the total national production quota for amphetamine will be only 342 kilograms.

The Bureau of Narcotics and Dangerous Drugs estimates that this, together with supplies already on hand, would be enough to treat 5½ million obesity patients for a month. The amount of methamphetamine likely to be available this year would provide diet pills for a total of about 1.6 million patients.

The new production quotas are intended to reduce inventories to a minimum during the current year and thus lessen the chances of theft from drugstores, wholesalers and manufacturers. Such thefts have been a major source of supply for illicit users in recent years.

The announcement today also set proposed production levels for this year for two other major stimulant drugs—methylphenidate, sold under the trade name Ritalin; and phenmetazine, sold as Preludin.

The proposed quota for methylphenidate was raised from the 1,857 kilograms authorized last year to 2,440 this year. Industry has asked for 2,820. Production of this drug, which is used to treat some behavioral disorders in children, was increased because previous reductions had reduced stocks to a low level, an officer of the bureau explained.

The quota for Preludin was reduced from last year's figure of 2,672 to 1,204 kilograms proposed for this year.

This drug is used in obesity control in much the same fashion as the amphetamines themselves.

Both Ritalin and Preludin are considered to have serious potential for abuse, but, to date, they have not become so great a problem in the United States as the amphetamines.

After the announcement today there will be an opportunity for comment to the Bureau of Narcotics and Dangerous Drugs, which is a unit of the Justice Department. The announcement of final quotas will be made after May 1.

[From the Washington Post, Apr. 4, 1973]

UNITED STATES TO CUT PRODUCTION OF "SPEED"

(By William L. Claiborne)

Federal narcotics authorities announced yesterday that they plan to slash national production quotas of amphetamines by 40 per cent from last year in hopes of curbing widespread abuse of the popular stimulant drug.

Manufacturers, according to the new regulations, could eventually be forced to reduce their production of amphetamines—commonly called "speed"—up to 80 per cent from last year's quotas, federal officials said.

If the government adheres to the 80 per cent rollback, the new ceiling may put a serious crimp in the illicit trafficking of "speed," according to the Bureau of Narcotics and Dangerous Drugs (BNDD).

Each year the BNDD tells drug manufacturers how much of controlled drugs they will be permitted to produce.

Last year, 1,654 kilograms of bulk amphetamines were manufactured, resulting in an "epidemic" of abuse of the drug in Washington and several other Eastern Seaboard cities, according to the U.S. Public Health Service's center for communicable diseases in Atlanta.

This year, the manufacturers will be allowed to produce only a maximum of 992 kilograms of amphetamines and could even be held to as low as 342 kilograms. They have requested permission to produce 2,159 kilograms of the drug.

One kilogram of bulk amphetamines produces 100,000 10-milligram capsules.

Whether or not the BNDD will be allowed to enforce the 342-kilogram production ceiling depends, in part, on whether the Food and Drug Administration is upheld during appeals of Monday's decision to recall two types of weight-reducing drugs—injectable amphetamines, and amphetamines combined with sedatives, tranquilizers and vitamins.

Even if the government is not upheld in the recall controversy, production of amphetamines next year will be 90 percent lower than in 1971, federal narcotics officials said.

BNDD Director John Ingersoll said yesterday that the quota reductions "will remove vast quantities of abusable stimulants from stocks held by manufacturers, wholesalers, hospitals, pharmacies and physicians by the end of 1973."

Also affected by yesterday's BNDD order is the production of methamphetamines, a slightly stronger formula of the stimulant drug and the original "speed" capsules which were popularized in the early 1960s.

Legitimate production quotas of methamphetamines has been rolled back from 4,926 kilograms in 1971 to 561 this year, the BNDD said.

William W. Vodra, assistant chief counsel of BNDD, said in an interview yesterday that the new production ceilings stem from sharp annual declines in the number of legitimate prescriptions written for amphetamines.

Last January, for instance, there were 617,000 amphetamine prescriptions, as compared with 1.9 million in May, 1971. Part of the decline resulted from an Oct. 31, 1971, FDA order placing amphetamines under the Controlled Substances Act and prohibiting prescription refills.

The sharp decrease in the legitimate use of amphetamines was accompanied by a barely perceptible increase in the use of non-amphetamine weight-reducing pills, indicating to federal narcotics agents that much of the difference was being absorbed by illicit trading of the drug.

Vodra said the number of firms producing amphetamine capsules has fallen from 60 to 40 in the last year and that the bulk price of the drug has risen from $33 per kilogram last summer to $100 in January.

He attributed both of those developments to the BNDD's efforts to limit the production quotas of the drug and to an awareness by some small manufacturing firms that it is no longer profitable to sell amphetamines to "fat doctors," physicians specializing in weight control.

BNDD sources quoted an official of a society of physicians who specialize in treating obesity as saying that quota controls have pushed amphetamine prices so high that they can no longer give pills to patients undergoing weight control treatment.

Vodra said that two consecutive years of production quota controls here reduced from three to one the number of pharmaceutical firms that produce raw chemicals for amphetamine mixing.

Arenol Chemicals Inc. of Long Island City, N.Y., produces all of the bulk powder for amphetamine production, he said, while two other firms have dropped out of the field. In addition, Vodra said, many other firms have exhausted their dosage quotas and are now advising wholesalers that they can no longer supply certain types of amphetamines.

One of the most promising aspects of the quota limit, he said, is that by the end of the year existing factory stockpiles of amphetamines will have been "soaked up," permitting the BNDD to monitor distribution of the drug more closely.

Vodra said, however, that the new quotas will not affect clandestinely manufactured "kitchen speed" capsules, the smuggling of illicit amphetamines (called "Mini-Bennies") from Mexico, or the theft of amphetamines from drugstores by street dealers.

The most noticeable effect, he said, will be felt by people who depend on legitimate supplies of amphetamines.

BNDD officials predicted that the quota restrictions will have a noticable effect on amphetamine abuse in Washington, because the principal "speed" drug being abused here is Desoxyn, which is manufactured by one of the firms that has been ordered to sharply reduce its output.

WESTCHESTER COUNTY, N.Y.

HON. PETER A. PEYSER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 5, 1973

Mr. PEYSER. Mr. Speaker, recently there has appeared in several national periodicals an advertisement encouraging businesses to move their businesses to Westchester County, N.Y. This advertisement, by the Westchester Foundation, extols the multitude of advantages that exist for a company located in Westchester County. The luxury of having corporate headquarters situated in the historic suburban countryside of Westchester is a temptation which is attracting numerous businesses. In fact, the county is now being called the corporate leadership county.

I would like to take this opportunity to congratulate the Westchester Foundation for making such a convincing advertisement for our fine county. A copy of the advertisement follows:

IN THE EAST IT'S WESTCHESTER AND DON KENDALL KNOWS IT!

"When PepsiCo outstripped its space in New York City our search for new quarters led us to a 112-acre site in Purchase, a suburban Westchester community with a rich 300-year history.

"Edward Durell Stone, one of the nation's leading architects, drew plans for a revolutionary seven-building complex. For all its scope the complex would fit unobtrusively into the suburban countryside. Each spring 6,000 daffodils would project a profusion of colors. Three thousand new trees were planted to supplement existing greenery.

"In the fall of 1970, a scant 36 months after the first turning of earth, these buildings sprung alive, working, clattering, humming with active people.

"It has more than fulfilled all our aspirations."

Donald M. Kendall, Chairman, PepsiCo, Inc.

If you would like to know why Westchester County is called the Corporate Leadership County, write for the booklet: In The EAST It's WESTchester. Write The Director: The Westchester Foundation, P.O. Box 125, White Plains, N.Y. 10604.

PASSOVER—1973

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 5, 1973

Mr. ANDERSON of California. Mr. Speaker, on April 17, millions of Jews throughout the world will be observing the Passover. As you are well aware, this is an ancient and a holy occasion, full of meaning, not only for Americans of Jewish descent, but I believe for all mankind.

First of all, may I say that the very fact that Jews have continued to observe this sacred tradition for so many thousands of years is itself worth noting. Living in a time when customs, ideas, values, even ideals, seem to go in and out of fashion like articles of clothing, I find it astonishing that any group of human beings should have created an institution which has nourished so many for so long. When one reflects upon what has happened to the holy days, the traditions, the languages, even the land, of so many ancient peoples, it is all the more remarkable that this particular group has survived. Few of the customs of the religious ancient Greeks, the Romans, the great empire of the Pharaohs survive.

Their modern descendants speak another tongue, practice another faith, observe other rituals and hold different values. Alone among the peoples who once lived in that part of the world which we now call the Middle East and which historians have called "The Cradle of Western Civilization," the Hebrew people have endured.

That fact alone speaks volumes. But when one considers what they have endured, how they have managed to survive so much hatred and persecution, I believe there is a lesson here for all of us. And perhaps more important, a great and inspiring chapter in human history.

For when all over the world Jews assemble in their homes to celebrate the rites of Passover, they will do so in an astonishing variety of climates, situations, and circumstances. Some will observe the ceremony surrounded by symbols of affluence and success, respected and honored not only among Jews, but by the nations to which they have contributed so much. Others, it is sad to say, will gather in fear behind locked doors, lest an ignorant or spiteful neighbor denounce them to the police and they be charged with "cosmopolitanism," "zionism," or some other new name for an old and hideous practice—Jew-baiting. Still others will gather in modest tract houses or apartments.

The astonishing thing is, that regardless of economic circumstance, country, climate, social position, and so forth, the prayers that will be offered, the rituals that will be observed, and even the food that will be consumed, will be very much the same. Now there are countries on this earth where many Jews have achieved a high degree of education, economic well-being, and a respected, indeed, an honored place in the national life. I am proud to say that I believe the United States is one of these.

And there are countries where Jews are still poor and oppressed and despised. But in both of these circumstances Jews will gather as their forefathers have for so many thousands of years to observe the Passover. For the point of these observances is to pay homage to a people, a tradition and a cause—that, which distinguishes the Jewish people from all others and which gives the individual Jew his identity.

The rest of us who live here in America and who do not share this tradition might well take a measure of pleasure and perhaps even a kind of inspiration from this legacy of our fellow citizens. For it offers concrete proof that the idea of an on-going civilization can be a reality. That all that men build and do is not inevitably doomed to disappear and be forgotten. Would it not be a hopeful thing, would it not perhaps even change the whole tone of our national life and the way we relate to one another, if we Americans could believe that thousands of years into the future our descendants would still be speaking our words, clinging to our most sacred traditions, holding fast to our values? But the existence of the Jewish people here among us gives proof that such things are possible. And that where men build wisely upon principles of human life which are truly everlasting, a kind of immortality does, indeed, exist.

What are those principles which have given this people such enormous resiliency? From my own wide experience with the Jewish people here at home, in Israel, indeed all over the world where Jews are free to live the Jewish life, I would cite perhaps two or three.

THE JUST COMMUNITY

One is the idea of justice and the just community. Man is a social animal and his salvation must be won here on this earth, in his relationships with other men. I believe this idea permeates the Bible even as it permeates the thinking of the most modern Jewish thinkers, writers and philosophers. In the words of the old folk saying "Life is with people." Human beings must work out their destinies here on earth with and through other human beings, and these relationships should be governed not by power alone, not wealth, not by passion and prejudice, but by the law. And while the law itself may change due to circumstance and situation, what does not change, what must not change, is the ideal of a just society. Every human being has a right to be treated like a human being—a proud and upright member of the community unless and until by his own acts he cuts himself off from the human family.

EVERY HUMAN BEING

I stress "every human being." This concept itself is singular. For to the ancient Greeks a foreigner was a Barbarian and therefore not entitled to the same rights as a Greek. Roman law, and Roman privileges, were for the Romans. But the ancient Hebrews, perhaps because they believed in a universal God, acknowledged the existence of a universal need to live according to just principles.

This stress upon community and the rights of every member of the community has, I believe, proven a powerful factor in the survival of the Jewish people. For even in times of the greatest calamities, natural or manmade, there was a place, a family of men and women and children, of refuge.

Many scholars and sociologists have noted down through the centuries that on the whole the Jewish people, particularly the young people, have been remarkably law abiding. I believe that is because most Jewish youngsters grow up with an awareness that within the home and the Jewish community, they can expect justice, or at least as close an approximation of it as fallible humans are likely to achieve. And where justice prevails, lawlessness is not simply rebellion against one's parents or the police, it is rebellion against the nature of things—against reason itself.

THE IDEAL OF A HUMAN SOCIETY

Second, I would place the ideal of a human society. I find few among my many Jewish friends who do not also pay homage to the works of the human spirit and the human mind. Publishers will testify that Jews buy books far out of proportion to their numbers in the general population. The same is true of paintings, of music, and of the arts generally. As the boundaries of prejudice and exclusion have been lowered or removed in recent years, Jews increasingly have not only patronized but contributed to the arts in this country in full measure.

This, too, I believe to be a reflection of a traditional value; man is the measure and his works and his faith are one.

There are some who fear this remarkable flowering of talent in one element of our population. And others who seek to exploit that fear. Such fears, it seems to me, betray a profound lack of faith in ourselves and our institutions. For clearly no group, no race, no culture has a monopoly of talent and dedication and wisdom and any work which raises the human condition enhances us all. The plays of an Arthur Miller or the music of a Leonard Bernstein are not "the work of Jewish artists"—they are in the deepest and truest sense American art and American music. And every American is richer for their existence.

THE SURVIVAL OF ISRAEL

I should not like to close these remarks without a reference to a subject that is of the greatest concern to all Americans these days—the struggle of the State of Israel to survive in the shadow of wars and threats of wars. I believe, as I am confident most Americans believe, that the founding and survival of the State of Israel is one of the glorious achievements in this century. While totalitarianism and ignorance prevail over so many unhappy lands, the triumph of this democratic people under the most difficult conditions anyone can imagine constitutes something of a modern miracle. A miracle perhaps as portentious in its way, not merely for the Jewish people, but for all mankind, as

the events which led to the first celebration of Passover.

For the Lord God sayeth:

What mean ye by this service? That ye shall say, It is the sacrifice of the Lord's passover, who passed over the houses of the children of Israel in Egypt, when he smote the Egyptians, and delivered our houses. And the people bowed the head and worshipped. And the children of Israel went away and did as the Lord had commanded Moses and Aaron, so did they.

Once again the Lord has seen fit to deliver the children of Israel and spare their houses. May He continue to do so. And may the people do as Moses and Aaron commanded. For in a world so full of sham and delusions, of fads and fancies, all of us, Jews and Gentile, Israelite and Arab, desperately need the wisdom of the Covenant, and the faith of the people who have preserved it.

WATERGATE BREAK-IN

HON. RICHARDSON PREYER

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 5, 1973

Mr. PREYER. Mr. Speaker, I believe most of the Congress—regardless of party membership—finds the Watergate break-in and the resulting revelations of political sabotage disturbing and I believe almost all of us are committed to complete and fair determination of guilt in this matter. We in North Carolina are proud that our distinguished senior U.S. Senator is chairing the inquiry by the other body into this unfortunate incident in our political history. We know that he will be fair and that he will be thorough and we believe the efforts of Senator ERVIN and his colleagues will help to renew the faith of those who believe politics can be a noble profession. The press of my State has been almost unanimous in its support of the investigation and its denunciation of the break-in and of any effort to prevent a full inquiry into the facts surrounding it. Typical of this is the following broadcast editorial recently expressed by Mr. William P. Cheshire, editorial director of Television Station WRAL-TV in Raleigh, N.C.:

WRAL VIEWPOINT

Nearly every day produces another shocker in the festering Watergate scandal, and every day it becomes clearer than ever that President Nixon himself will have to lay the nation's doubts to rest. Thus far his inclination has been to lie low. It is too late for that. There are too many muddy footprints leading from the Watergate Hotel to the White House steps.

This is not to say the President knew about the Watergate caper beforehand. Of course he didn't. For one thing, no sensible politician would have allowed any such harebrained scheme—loaded with risk and offering only the puniest returns—to get as far as the planning stage. And even Mr. Nixon's most devoted detractors will concede that Mr. Nixon is a sensible politician.

No, what is involved here is not a plot involving the President, but something nearly as bad: a plot involving men so high in the President's esteem that he entrusted his re-election to them. It goes even further than that, according to one of the Watergate defendants, James W. McCord Jr. McCord says two White House higher-ups, including White House counsel John W. Dean, knew about the Watergate break-in well before the Democratic Party's headquarters were burglarized.

The President has responded to this accusation as he has responded to all similar accusations. Last week, when Senate Minority Leader Hugh Scott went to the President with his worries, Mr. Nixon told the Senator to report that the President had "nothing to hide." Just so when Watergate defendant James McCord linked White House counsel Dean to the Watergate plot. The President expressed "total confidence" in Dean, the man who headed the White House investigation of Watergate and for whom the President pleaded executive privilege when inquisitive Senators wanted to ask about his use of FBI files.

There are at least two aspects to this troubling affair: one political and one presidential. On the political side, many a Republican is alarmed at what Watergate may do to the party come election time. That problem chiefly concerns Republicans. But there is also the presidential perspective, and that is a matter for every American to be concerned about. The Watergate affair is damaging the office of the Presidency. It is undermining confidence in the nation's highest and most respected public official. In these circumstances, the President's faith in his lieutenants is not enough—not when the President has invoked executive privilege to keep his aides from being questioned. If this is a mark of his confidence in their innocence, it will not be so interpreted.

Loyalty is a quality to be admired, but the President is carrying personal loyalty too far—and at grave risk to himself and to the office he holds. The Watergate scandal has become too serious for cronyism. If he continues to shield his aides from proper inquiry, the President must be prepared to relinquish public confidence and support.

MAIL SERVICE DECLINING

HON. TOM BEVILL

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 5, 1973

Mr. BEVILL. Mr. Speaker, I am deeply concerned over the declining quality of mail service in this country. Every week I receive countless letters complaining of the inefficiency of the U.S. Postal Service.

I would like to share with my colleagues in the House some of the recent correspondence I have received from my constituents concerning inferior mail service.

Mr. Speaker, these complaints represent only a random sampling of a very thick file. But they clearly point up the need for immediate action to correct the situation.

The letters follow:

GUNTERSVILLE, ALA.,
March 5, 1973.

Hon. TOM BEVILL,
Congress of the United States,
Washington, D.C.

DEAR MR. BEVILL: On October 26, 1972, my wife bought two international money orders at the Huntsville Post Office, to send to our son, who was seriously ill in India. We selected this means of sending the money, because we had faith in our postal system as the most reliable agency. To our chagrin, our son never received the money; he would have died for lack of medical attention if it had not been for intervention of friends. Certainly no thanks to the U.S. Postal Service.

Since the money was not delivered, I secured forms for obtaining a refund from the Huntsville Post Office. These forms, a copy of each of which is enclosed for reference, were returned to Huntsville Post Office on December 4, 1972, in accordance with our instructions. We have had no better luck than our son in getting the $200 owed by the governmental agency—we have not even been shown the courtesy of an acknowledgement of the claim.

I would certainly appreciate it if you will stimulate the postal authorities to return my $200, plus the cost of the money orders.

———

CEDAR BLUFF, ALA.,
March 10, 1973.

Hon. TOM BEVILL,
U.S. Congressman,
Washington, D.C.

DEAR SIR: I understand Congress is looking into the present postal service. I do hope you Senators and Congressmen can change the service back as it was before Mr. Blount changed it.

In Centre, an employee who has been with the Centre Postoffice several years and resides in Centre, has been transferred to the Fort Payne postoffice. In Cedar Bluff, one of the employees was cut so short with work hours that she found another position. Letters and packages are late. And no one wants U.S. Postal Service stamped on the envelope. It is nicer to get a letter with the town or city from which it was mailed, stamped on the letter.

Mr. Bevill, when you spoke in Centre at the Area Vocational school's opening, may I apologize for appearing to be writing while you and others were talking. I was taking notes. I am with our local newspaper, the Cherokee County Herald and am correspondent for my county with The Birmingham News. I don't have a recorder, nor do I know short hand, so for fear I forget, I take notes as I find everyone, local people especially like to be included in articles. You made a fine talk.

———

Hon. TOM BEVILL,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN BEVILL: I am very dissatisfied with the mail service we are receiving at the Alabama City Station. This Post Office closes one-half day on Wednesday, all day on Saturday and Sunday. It has been rumored that they are planning to close this station. Our mail service is bad enough without making it worse. We need this station open at least six days a week.

We will appreciate anything that you can do to help our mail service.

Sincerely,

———

P.S.—Our pension checks come in on the 3rd, which will be on Saturday this month and we will not be able to get them until Monday because the Post Office will be closed on Saturday and Sunday.

LETTER OF COMPLAINT ABOUT THE U.S. POSTAL SERVICE

To whom it may concern:

One of our Church and Community Workers received a letter on October 20, 1972, a first class letter too, and this letter was postmarked from Morristown, Tennessee on September 29, 1972. This was a full three weeks to receive a first class letter.

We have received a number of letters in our Post Office Box which had another Post Office Box address—three of these in one day in October, 1972—but others on a number of other days. On October 21 we got one addressed to Box 311 and our Box Number is 255.

We have also been dissatisfied with how long it has taken other letters and mail to reach us, especially since August, 1972.

There have also been letters and other mail sent to us which we have yet to receive. It was confirmed by the sender that this particular mail was sent through the U.S. Postal Service, but we did not receive it. One in particular that has proved to be a handicap and inconvenience, was a mailing sent from our Conference Headquarters in Birmingham—in fact this has happened twice within the last month.

We shall appreciate better service from the U.S. Postal Service.

Sincerely,

——— ———.

———

KENNEDY, ALA.,
December 7, 1972.

DEAR SIR: I have a mail complaint.

Last July about the 9th we mailed out electric bill to R.E.A. To this date it hasn't been delivered. We almost got our power cut off on the account of it.

——— ———.

———

MARCH 7, 1972.

The LAMAR DEMOCRAT,
Vernon, Ala.

DEAR SIR: I was by the office sometime back and renewed my subscription for 2 more years, I spoke with Mr. Rainwater about my paper getting to me so late, he referred me to the post office, which I did. When my very next copy came in with a postmark of Mulga, Ala. on it. I sent the label and the postmark to the post office. The Postmaster turned my complaint over to the inspector. I received a note last week that my papers were found in the package sent to Jasper, Ala. My paper carries my correct address, so I am really puzzled over the whole thing. I would appreciate getting my paper before the news is history—if it could be managed—we are just out of the city limits of Birmingham and they get their papers on Friday. And mine comes on Monday and Tuesday of the next week. I hope these problems can be solved.

——— ———.

RESPONSIBILITY CAN BE CONTAGIOUS

HON. ROBERT W. DANIEL, JR.

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 5, 1973

Mr. ROBERT W. DANIEL, JR. Mr. Speaker, I ask consent to introduce into the RECORD this interesting and objective Wall Street Journal editorial. The editor asserts that responsibility can be contagious. For the sake of our country I hope and pray that the contagion of fiscal responsibility spreads and flourishes throughout our National Government and especially its legislative branch.

The editorial follows:

BELIEVE IT OR NOT

It's true. The United States Senate, of all bodies, has voted to sustain a presidential veto of a spending bill. Not just any spending bill, but a politically supercharged measure that would normally cow even the most fiscally conservative Senators: The Vocational Rehabilitation Act, which the Senate originally passed in February by a vote of 86 to 2.

That it would now decide, by a four-vote margin, to uphold the Nixon veto is one of the first clear signs that Congress may at last be breaking away from the habits it acquired in the 1960s. Not only has Congress spent money on program after program without serious consideration of the total final cost, but it has too often failed to look closely at the mechanics of the individual programs. Only the motive counted; if the bill purported to help someone needy, pass it first and ask questions later.

The Vocational Rehabilitation Act is supposed to expand existing federal aid to the retarded and disabled. Surely these are worthwhile purposes; few other groups are more entitled to society's sympathy. In fact, the program has undergone a fourfold expansion during the Nixon years and now costs about $650 million annually. The bill he vetoed authorized an extra $1 billion over three years. Most of the extra money would be spent building onto the existing bureaucracy and duplicating existing programs, but no doubt some of it would reach people who need help.

So in a sense even this flawed bill would be nice to have. But the larger point is that there isn't money to pay for all the worthy projects Congress would like to pursue. Some worthy projects will have to be voted down unless we are to inflict further burdens of inflation on the nation in general and the poor in particular. The only alternative is to raise taxes, and certainly there is no majority on Capital Hill for that. The 36 Senators who supported Mr. Nixon perceived the larger interest at stake. Indeed, we suspect a number of those Senators who voted to override the veto are privately relieved that 36 of their colleagues were brave enough to draw the line.

The 31 Republicans who supported the President on this issue will go on our honor roll. But given the fierce partisanship that has marked this battle of the budget, a special commendation goes to those five Democrats who resisted the powerful appeals that were made by their leadership and cast an undiluted vote for the national interest: Byrd of Virginia, Johnston of Louisiana, McClellan of Arkansas, and Nunn and Talmadge of Georgia. The 10 Republicans who deserted the President also belong in a special category.

Of course, this one Senate vote is only a beginning, but it's a solid one. Responsibility can be contagious. It can even feel good once you get used to it. And the House of Representatives, which has shouldered all of the political burdens of what little prudence there has been in the past decade, must feel great relief that the other body may give it some help. We're already looking forward to full recovery of the institution. That is, the day when it decides to stop sending to the White House spending bills that have to be vetoed in the first place.

ORGANIZATION OF AMERICAN STATES: A PRIME PROPAGANDA MACHINE

HON. H. R. GROSS

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 5, 1973

Mr. GROSS. Mr. Speaker, among the international mooching societies which flourish largely because Uncle Sap continues to stand still while they pick his pockets, none is better known than the Organization of American States for being a prime anti-American propaganda forum.

The latest session of this outfit opens here this week and you can bet your bottom dollar—if it has not already been taken—that the propaganda machine will be turning full blast.

Syndicated columnist Robert S. Allen has written a perceptive analysis of the state of this organization and I commend it to the attention of every American. I ask unanimous consent to include it in the RECORD at this point:

ORGANIZATION OF AMERICAN STATES: A PRIME PROPAGANDA MACHINE

(By Robert S. Allen)

WASHINGTON.—That little-noticed meeting here of the Organization of American States (OAS) warrants far more attention and public concern than it's getting.

OAS is in difficult straits; wracked on one hand by disruptive internal convulsions, and on the other by deep-seated external disputes and differences that literally seriously jeopardize the future of the 23-nation body.

One possible outcome of the 12-day parley is splitting OAS; with one headquarters remaining in Washington, and another set up in a Latin American capital.

Principal backstage ruckus revolves around a sudden move by Secretary General Galo Plaza Lasso to purge a number of long-time employees—a remarkably high proportion of them U.S. nationals.

This country puts up 66 percent of the approximately $50 million OAS budget. But one-third of the staff people axed by Plaza are U.S. nationals.

Avowed reason for the wholesale firing was cutting expenses.

Some weeks ago, Plaza stunned the OAS staff by announcing an across-the-board cut of 69 jobs to effect a $1.6 million saving in expenses. This was necessary, maintained the Ecuadorean who has been Secretary General for five years, to "stabilize the budget."

In the ensuing internal furor, it developed that a slash of that depth would cost about $600,000 in termination and other charges.

Whereupon, Plaza quickly backtracked.

Instead of eliminating 69 employees, the number was reduced to 18.

Those fired were presumably tagged by an employees' committee set up by Plaza. What criteria, if any, were used to determine selection are unknown. But significantly, of the 18 dropped—

* * * Six are U.S. nationals; two of them with more than 10 years' service, and all with unblemished and satisfactory records. One of these staff men had uncovered some unauthorized "borrowing" from the employees' pension fund and forced return of the money.

* * * Three other discharged staffers, Latin nationals, had won grievance cases against Plaza.

* * * Among the largest bloc of OAS employees are Cubans—although Cuba now is not an OAS member; it was expelled after Castro established a communist regime. The Cuban staffers are refugees, and exercise far-reaching inner influence on personnel, management and policies.

MORE ANTI-UNITED STATES SNIPING

Ringleader of the undercover scheme to split OAS is Panama—ruled by dictator General Omar Torrijos, who engineered the recent week-long meeting of the UN Security Council in Panama City. He and his two main Marxist henchmen, Foreign Minister Juan Tack and UN Ambassador Aquilino Boyd, strenuously sought to put through a virulently anti-U.S. resolution.

This explosive maneuver was blocked by a veto by U.S. Ambassador John Scali—only the third cast by the U.S. in the Security Council.

The Torrijos-Tack-Boyd trio, continuing their extremist vendetta against the U.S. and its control of the Panama Canal, which they are after, will attempt to use the OAS meeting for their ends.

Backing them will be Peru and Ecuador—the former ruled by a "revolutionary" mili-

tary dictatorship, the latter by an ultra-nationalist regime.

Both countries have strong anti-U.S. bias over fishing rights. They claim sovereignty over waters 200 miles from their shores, vigorously disputed by the U.S. Both Peru and Ecuador have seized a number of U.S. fishing vessels and assessed fines totaling millions of dollars.

Also planned by Panama-Peru-Ecuador is a demand for the re-admission of communist Cuba to the OAS. On that they are confidently counting on the backing of other Latin countries.

It's an open secret in the OAS that the Torrijos-Tack-Boyd combination contemplate establishing formal relations with Cuba and East Germany. Torrijos visited the former, and makes a great show of being on buddy-wuddy terms with dictator Fidel Castro.

Panama has already established relations with Libya, Bulgaria and Algeria, and negotiations are underway to do the same with Russia, China and East Germany.

While the U.S. puts up two-thirds of the approximately $50 million OAS budget, it is definitely on the defensive at this session of the General Assembly. Privately, State Department authorities admit the following are entirely possible:

(1) Two OAS headquarters will be created; one in Washington to deal with political and international matters; another in a Latin capital concerned with economic and social affairs. (2) Communist-ruled Cuba will be re-admitted to the OAS.

While the U.S. pays 66 percent of OAS costs, a number of members are in default—with no impairment of their voting rights.

They include Bolivia, which hasn't contributed for more than 10 years; Haiti, Chile, Paraguay.

It's possible Secretary General Galo Plaza may be replaced.

The Ecuadorean wants to hold on to the job—with good reason. It pays $40,000 a year, with a furnished house, chauffeured limousine and other juicy perquisites and allowances.

Ambassador John Jova, U.S. representative to OAS, a career diplomat, is due to be shifted elsewhere.

FEDERAL PROGRAM SPECIALISTS

HON. WILLIAM D. FORD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 5, 1973

Mr. WILLIAM D. FORD. Mr. Speaker, during the month of February the Michigan Association of State and Federal Program Specialists visited Washington, D.C., to discuss Federal education programs and legislation with Members of Congress.

This organization of professional educators is comprised of Federal program specialists, superintendents, project directors, principals, and teachers from local, regional, and State levels with representation in virtually every congressional district in Michigan.

Because its membership is characterized by such a diversity in individual roles and levels in education, it brings together a tremendous amount of breadth and depth of insight with respect to Federal, State, and local education programs. For this reason I would like to share with my colleagues the following statements and recommendations which represent the consensus of this fine organization:

POSITION STATEMENT OF THE MICHIGAN ASSOCIATION OF STATE AND FEDERAL PROGRAM SPECIALISTS, ON FEDERAL AID TO EDUCATION

The Michigan Association of State and Federal Program Specialists (MAS/FPS) is an organization of professional educators comprised of federal program specialists, superintendents, project directors, principals, and teachers from local, regional and state levels with representation from every Congressional district in Michigan. Because our membership is characterized by such a diversity of individual roles and levels in education, we bring together a breadth and depth of insight with respect to federal, state, and local educational programs not common to other professional organizations. A goal of our organization for the current year has been to examine critically existing federal legislation and programs as a means of providing input to the Congress as it considers new and revised directions for federal education legislation. The following statements and recommendations represent the consensus of this organization.

INTRODUCTION

Federal aid to education must be a national priority. Such financial support has begun to restore public confidence and credibility in American education and must continue. Federal aid has provided impetus for instructional program improvement, created new trends, and caused critical examination of curricular programs. Federal dollars have helped shift the emphasis from educational programs as ends in themselves to programs designed to meet individual student needs, from education for all to equality of educational opportunity aimed at developing each child's full potential.

Federal funds have caused educators and parents to look critically at children in educational settings. This look is bringing about an evaluation of the local school district's operation and roles of parents in decision making. Federal aid has resulted in increasing the tempo of educational development leading to use of new educational methods, encouraged self-analysis, and significant revision of established programs. It has involved parents in educating their children, communities in instructing their citizens, and the state in identifying and responding to societal needs. The commitment of an increased share of our national resources to the cause of education will provide significant impetus to continued public faith in the educational system.

PHILOSOPHY

Acts of Congress usually are consistent and clear in their statements of intent. It is possible, however, for differing emphases in different acts to create a variety of interpretations of the purpose of such legislation. A greater degree of coordination of purpose among federal education acts should continue to be a legislative goal in this year of change.

ACCOUNTABILITY

Federal education legislation should require fiscal and program accountability. Since responsibility for expending federal funds is a public trust, the utilization of accepted business and accounting practices should be required. Local responsibility for the development and accomplishment of realistic, locally-set objectives should be specified. Unsuccessful programs should be discontinued and those funds redirected toward revised or more promising local educational practices.

FEDERAL SHARE OF EDUCATIONAL DOLLAR

Federal contribution to education should increase to a minimum of one-third of the per pupil expenditures for the state or for all of the states, whichever is higher. Ideally, this should be accomplished by 1980.

THE EQUALIZING ROLE OF FEDERAL DOLLARS

The federal education dollar should be distributed in such a manner as to assure that every child regardless of his place of residence and race will have access to equal educational opportunity. Given the wide disparity of wealth among and within the states, the achievement of this goal is illusory without federal funding.

SHARED RESPONSIBILITY FOR EDUCATION

Local programs should be designed and implemented within the context of goals developed and accepted at the local, state, and national levels. Federal education legislation should continue to encourage parental and community involvement in educational programs. It should, however, define roles, separating the responsibilities of the legally-constituted bodies and the expected functions of parent and/or community groups. In an accountability model the legally-constituted agencies, i.e., state and local, assure the validity of the educational programs while parental and advisory groups will understand, support, reinforce, and monitor them.

PROGRAM EMPHASIS

Educational programs financed by federal funds should endeavor to encourage comprehensive approaches to the solution of problems in education. The importance of a thorough grounding in basic academic skills is recognized and supported. However, it would be short-sighted if such critical areas as affective education were neglected. In addition, funds should be available for the educational community, early intervention, compensatory programs, career education, special programs for the mentally, socially, and physically handicapped.

RESEARCH AND DEVELOPMENT

If education is to meet the needs of a dynamic society, support for experimentation and innovation should be encouraged and augmented. Therefore, federal education legislation should include funds for local, practically-oriented research and development. In addition to locally-initiated and conducted research there is also a need for funding at the regional and state levels. The creation of research and development funding carries with it the responsibility for ongoing evaluation, program decision-making in terms of evaluation, and the dissemination of results.

FLEXIBLE USE OF FUNDS

Because of the unique needs of local school districts throughout the nation, funds should be available for a variety of programs. Maximum impact can be achieved when flexibility is permitted in accordance with the objectives of local programs, e.g., planning, administration, construction, retraining.

INVOLVEMENT OF UNIVERSITY, BUSINESS, LABOR, AND OTHER CULTURAL RESOURCES

The participation of university, business, labor and other cultural resources in the planning and implementation of educational programs can result in more effective approaches. The joint application by such agencies and local districts for funds for specific programs should be encouraged.

FEDERAL FUNDS FOR NON-PUBLIC SCHOOL

Educational services funded by federal dollars should be available for all children with similar needs related to specific program funding and should be distributed through a public education agency.

FUNDING FORMULA

Many categorical programs have been proven successful in meeting the identified needs of children. As implementers of federal education legislation, we urge as a first priority maintenance and expansion of the current categorical programs which meet positive evaluation standards and criteria. We further recommend, as a second priority, expeimentation and demonstration funds to be provided to local education agencies on a non-competitive basis. A percentage of these funds should be designated for staff development to assure trained personnel to implement innovations and to continue proven programs. Our third priority is for general Federal aid designed to contribute toward equalization of resources based on a minimum of one-third of the per pupil expenditures for the state or for all states, whichever is higher.

Within the foregoing three priorities we strongly recommend the following elements: advance funding, flexible periods of funding with a minimum of three years, funds for diffusion of successful programs, and the possibility of joint applications from various cultural resources.

WATCH ON THE POTOMAC

HON. JOEL T. BROYHILL

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 5, 1973

Mr. BROYHILL of Virginia. Mr. Speaker, a constituent recently called my attention to an article which appeared in the Reader's Digest last month which he believed should receive the wide attention of all American citizens.

The article, "Watch on the Potomac," by Kenneth Y. Tomlinson, carried a subtitle "Consider these examples of blatant disregard for how taxpayer dollars are spent," and cited several examples of fiscal irresponsibility on the part of Government officials.

As I agree with my constituent that many of these practices should be eliminated, I insert the text of Mr. Tomlinson's article at this point in the RECORD:

WATCH ON THE POTOMAC: CONSIDER THESE EXAMPLES OF BLATANT DISREGARD FOR HOW TAXPAYER DOLLARS ARE SPENT

(By Kenneth Y. Tomlinson)

An all-out campaign to reduce waste in government is long overdue. Foolish federal spending drives up taxes and fuels inflation. Yet hardly a day passes without some new disclosure of blatant waste. Here are eight ideas for helping us taxpayers get our money's worth:

1. End costly rivalries. Government agencies often engage in ludicrous games of bureaucratic oneupmanship, with the taxpayer picking up the tab. One example: The Department of Housing and Urban Development had a single 45-foot flagpole in front of its Washington headquarters. The neighboring Department of Transportation had a pair of 75-foot flagpoles. Peeved HUD bureaucrats spent $26,500 to erect two 80-foot poles so they could have the highest ones on the block.

2. Eliminate self-serving propaganda. Agencies frequently embark on ridiculous propaganda campaigns to seek support for controversial projects. The Department of Transportation, for instance, spent $12,800 to publish a children's comic book extolling the Supersonic Transport (SST) project, subsequently rejected by Congress. Featuring "The Supersonic Pussycat," a lucky pet which flies to Paris in 2½ hours, the book was mailed to public and private schools across the country.

3. Defeather lame ducks' nests. Congress devours tens of thousands of dollars each year sending members who have been defeated for reelection on worldwide junkets. Last October, for example, Rep. James Byrne (D., Pa.), his wife, and a military escort went on a lavish three-week tour of Paris, Nice, Athens, Istanbul, and Vienna, ostensibly to study U.S. military problems overseas. Six months earlier, Byrne had been defeated in his party's primary, Sen. Gordon Allott (R., Col.), journeyed to Bonn, Belgrade, Bucharest and Prague after Colorado voters rejected his bid for re-election.

4. Cut silly frills. If you live in Washington, D.C., and have a sick plant, the National Capital Parks Green Scene Service will, upon request, send a specialist to your home to examine the greenery. Cost to taxpayers for this "plant ambulance service": about $15,000 a year.

5. Make military officers pay for servants. Public funds are not supposed to be used in the operations of military service clubs. Yet the Air Force assigned 24 enlisted men to full-time duty as servants in an Alaska chateau operated for officers. These cooks, waiters, and steambath attendants cost taxpayers $179,000 in 1971.

6. End research boondoggles. This year's "research" budget of the Department of Health, Education and Welfare is $1.7 billion, up 50 percent from 1967. And what are the taxpayers getting for their money? Often very little, according to the Los Angeles *Times*. Look at the performance of a task force commissioned to study the Career Education Program, a new educational concept designed to ensure that students are prepared for either advanced schooling or a job at the end of high school. After spending $19.9 million in more than one year's research, the group could not decide on a working definition of what "career education" should be. Asserts education specialist Rep. Edith Green (D., Ore.): "Over and over again we have found educational organizations taking money for work not done, for studies not performed, for analyses not prepared, for results not produced."

7. Relay information by mail. Postmaster General Klassen spent $27,000 last year on a color film and taped speech that were carried by hand to top postal officials around the country. Klassen's message: The Postal Service must cut costs to avoid rate increases. "Why not put the directive in letters and use the U.S. mail?" demanded Rep. William Scherle (R., Iowa).

8. Derail the Congressional gravy train. For years, members of the House of Representatives have been permitted to pocket unused portions of their $3500-a-year stationery allowance. Former Sen. John J. Williams (R., Del.) was responsible for ending this practice in the Senate in 1968. In the closing days of the last Congress, the House Administration Committee finally met (behind closed doors) and discussed the controversial practice. Result: the allowance was raised to $4250.

Behind every example cited here are officials who apparently couldn't care less about fiscal responsibility. They should be replaced with public servants who view the elimination of irresponsible spending as a top priority of government. We taxpayers can spur this effort by communicating with our elected officials and insisting that they act today.

SPEECH SALUTED

HON. STANFORD E. PARRIS

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 5, 1973

Mr. PARRIS. Mr. Speaker, recently at a meeting of the Virginia Trial Lawyers Association in Hot Springs, Va., the Honorable WILLIAM L. SCOTT delivered a speech praising President Nixon for taking steps to improve crime control in America.

In the speech, the junior Senator from the Commonwealth said the President's actions will greatly strengthen the cause of justice in this Nation and will justify the faith which law-abiding people have always had in the American system.

I believe that many of my colleagues will appreciate the remarks made by Senator SCOTT and for that reason I would like to include his speech in the RECORD.

ADDRESS BY WILLIAM L. SCOTT

Mr. President, ladies and gentlemen, of course it is good to be with the Virginia trial lawyers tonight and I appreciate very much having my former colleague and longtime friend, Watt Abbitt, introduce me. Watt served from the 80th through the 92nd Congress, a total of twenty-four years, and since he announced his retirement, groups throughout his district and beyond, have been honoring him for his distinguished service. Certainly I would like to add my high regards, for even though Watt was one of the first to leave when the final vote was taken at the end of the week's business so that he could go hunting, he was always present at crucial times representing the best interests of our State.

You know, serving in the Senate does afford an opportunity to make quite a few talks, and we receive various responses. One evening a listener told me that my speech was not very good, in fact, he said, it was terrible, but the program chairman attempted to reassure me and said, "Don't pay any attention to him Senator, he's the village halfwit. He just goes around repeating everything he hears."

During last fall's campaign, we traveled throughout Virginia and received cordial welcomes. People are generally kind to candidates, but we did go into some areas where where they were straight-line Democrats. I noticed one gentleman who seemed a bit reserved, but a candidate attempts to shake every hand and I said, "I am Bill Scott," to which he replied, "You are a Republican aren't you?" I said, "Yes, of course I am." He extended his hand rather limply and said, "Just press it lightly."

Now I believe we obtain better government by having the competition provided by our two major parties. Yet, people seem to be paying more attention to an individual's qualifications for office and his philosophy than they do to party labels. The straight party vote is becoming less and less popular. Perhaps we can go too far in either direction.

Let me talk with you tonight first about some pocketbook issues and then a few legal matters pending in the Congress. There's no doubt in my mind that the major issues confronting the Congress are fiscal matters. People are concerned about the high cost of living, about the high cost of government, about deficit spending and inflation. Members of the Congress recognize this. Last year both Houses adopted different measures setting a $250 billion spending ceiling, but they were not able to get this included in the same

bill and no law was enacted on the subject. However, the President has indicated his intention to hold spending for the fiscal year ending June 30 to this $250 billion figure. He has refused to spend some of the funds appropriated by the Congress. This had lead to charges of illegal impoundment by the more liberal element in Congress. Let me add that the liberals at this time do appear to be in control of both Houses.

With little or no hearings, Congress is repassing bills pocket vetoed by the President after the adjournment of the 92d Congress and also measures which died in the closing days because of differences between House and Senate versions. They are also changing the wording so that rather than say the Secretary or the head of an executive department is "authorized to expend" they are using the phrase the Secretary "shall expend." I believe there are 17 such bills which the President has indicated he will veto. The first veto, the Vocational Rehabilitation Act, is scheduled to be voted on Tuesday afternoon.

In this connection, 33 of the 43 Republican Senators have agreed to a policy of voting to sustain Presidential vetoes which they feel are essential for fiscal responsibility. If substantially all of these Republicans hold to the principle they have agreed upon, only a few Democratic votes will be needed to sustain the President.

No doubt this audience would be in substantial agreement on the need to put our fiscal house in order and to reduce government spending. The President is criticized for not spending enough, yet, the budget he submitted to the Congress is $268.7 billion, almost $19 billion higher than last year's budget, the largest expenditure in our history. With contemplated receipts of $256 billion, this leaves a deficit of $12.7 billion. Among the items included in the budget is $26.1 billion as interest on the national debt, a debt which now totals approximately $460 billion. This is the money we pay because of deficit spending in past years. If we had not had deficit spending in the past and could eliminate this payment of interest on the national debt, we could spend everything programed in the President's budget and still have a surplus of $13.4 billion. Therefore, it seems reasonable that we make every effort to return to the concept of a balanced budget.

It is difficult for us to contemplate a billion dollars, much less a $460 billion debt. I am told that a billion $1.00 bills placed end to end would extend four times around the world. If we carried this a step further and converted the entire national debt into $1 bills, they would form piles end to end, 1,840 bills deep, stretched around the entire world. That illustrates the vastness of our national debt.

We pay as debt service more than $50,000 per minute without reducing the debt. So, if you hear that one of your Senators or Congresmen has voted against a spending proposal which you feel has some merit, you might think of this overall situation. Almost every bill introduced in the Congress has merit. We have special interest groups asking that we spend money in almost every conceivable manner, if we attempt to respond favorably to all of these groups, we will have far greater monetary problems than exist today, therefore, we must have an overall spending limit and reasonable priorities within that limit.

I believe the general public is aware of this problem but it would be helpful if members of the bar would continue to plug for fiscal sanity.

Turning to legal matters, the Senate Judiciary Committee is considering a proposal to create fifty-one additional judgeships. This was recommended by the judicial conference and endorsed by the American Bar Association, I might add that it includes three additional judges for Virginia, two in the Eastern District and one in the Western. The senior judges from both districts and Judge Turk have testified before the subcommittee in support of the new judges for Virginia. I have discussed the matter informally with the subcommittee chairman and it does appear that we will obtain at least two of the three.

Many members of the bar are concerned about proposals of the Department of Housing and Urban Development establishing ceilings on fees for legal work relating to land settlements. These proposals are made under the Emergency Home Finances Act of 1970. I believe the Veterans Administration has also been considering the proposal.

Our office became aware of it last summer and has been in communication, by letter and telephone, with these agencies many times. In fact, it seems that practically every lawyer in northern Virginia has written to us about this proposal, which includes a maximum attorney's fee of $180 for title examination, preparation of papers and closing real estate transactions. Now, as you know, these were merely proposals published in the Federal Register; but oftentimes it is just a short step between proposals and an accomplished Federal regulation. I am told that HUD is presently evaluating public comments, having received over eight hundred suggestions, and that with the new secretary in office, all controversial proposals are being re-examined. I like to think that the regulation of the practice of law is still a State function and that the Federal Government should not invade this field. The interested agencies are aware of my position and that of other members of Congress. But having said this, let me urge that the organized bar concern itself with any abuses in charges for title work so that we will not invite Federal regulation.

As you may know, the President did not deliver a State of the Union message in person to the Congress this year, but submitted his message in several parts in writing.

The sixth portion, dated March 14, concerns the Federal system of criminal justice. It talks about the break-down of law and order during the sixties as constituting a threat to the integrity of our free insitutions; discusses the reduction in the serious crime rate within the District of Columbia by more than half. More recently we have learned from the FBI crime index that serious crime throughout the country decreased last year by approximately 3%. Of course, we know the only part of the country over which the Federal Government has exclusive jurisdiction is the District of Columbia, and that the control of crime in other parts of the country is primarily a State or local responsibility.

Recognizing this, considerable financial assistance has been given to State and local law enforcement authorities through the law enforcement assistance administration within the Department of Justice. The recent FBI statistics, indicating an overall decrease in crime throughout the country, may well be some of the fruits of this Federal assistance to State and local law enforcement officials.

I was privileged just yesterday to introduce the President's nominee for Director of the L.E.A.A. to the Judiciary Committee, which is considering his nomination. Many of you may know Mr. Donald E. Santarelli, since he is a graduate of the University of Virginia law school and a resident of the city of Alexandria. He has served in a responsible position within the Department of Justice for a number of years.

The President, in his message to the Congress, recommends an overall revision in the Federal criminal code. He feels that many offenses can be consolidated, and that the penalty for violation of crimes of a similar nature can be more uniform.

Perhaps the most publicized provision of the March 14 message is the recommendation that the death penalty be restored. Let me quote his exact language:

"I do not contend that the death penalty is a panacea that will cure crime. Crime is the product of a variety of different circumstances—sometimes social, sometimes psychological—but it is committed by human beings and at the point of commission it is the product of that individual's motivation. If the incentive not to commit crime is stronger than the incentive to commit it, then logic suggests that crime will be reduced. It is in part the entirely justified feeling of the prospective criminal that he will not suffer for his deed which, in the present circumstances, helps allow those deeds to take place."

The President further suggests that in making their plans, criminals should have to consider the fact that if a death results from their crime, they, too, may die, and adds that we must return to a greater concern with protecting those who might otherwise be the innocent victims of violent crime than with protecting those who have committed those crimes.

A reading of the *Furman* v. *Georgia* decision of last June indicates that not all of the five-member majority see the death penalty to be unconstitutional under all circumstances. At least two of the justices who joined with the majority so indicate in concurring opinions.

I gather from a reading of this opinion and from the President's message that the legislature can authorize the automatic imposition of the death penalty when guilt is found and death results in the commission of such serious offenses as treason, kidnaping or aircraft piracy.

Let me add that proposals similar to the President's crime message are included in Senate bill 1, introduced at the beginning of the Congress. They are similar to proposals coming from a crime commission in which a former colleague in the House and now Mr. Justice Poff of our State Supreme Court, played an important part and those developed from a stu ly made by the Department of Justice.

I am co-sponsoring the death penalty bill, which should receive reasonably prompt and favorable action in the Congress.

The President's message is an excellent one. In it, he concludes it is time for the Government to justify the faith of the law-abiding American people in the law, by assuring them that our system of criminal justice works, both as responsible citizens and as officers of the court, we too have an obligation to see that our system of justice works.

Let me now mention a few measures I have sponsored, one would reduce the size of juries in Federal courts from twelve to six members, we have little knowledge of the origin of the twelve-man jury. Some feel it is an outgrowth of the twelve tribes of Israel, but in any event, it grew into our system without logical reason and it would seem that a six-man jury would be just as effective, would reduce the costs, and would result in speedier trials.

Now I know that Lou Koutoulakos and a few other criminal lawyers would argue that prospects of acquittal would be lessened. Yet this jury would still constitute a group of lay peers between the accused and the State, functioning as the conscience of the community. Some Federal districts have already adopted the six-man jury by rule of court but I would prefer that it be uniformly enacted through Federal legislation.

We have a number of legislative proposals relating to the busing of children, one by legislative act would prohibit assignment of children to public schools based on race, creed, or color, but, because this might be declared contrary to the Constitution, a second would preserve the neighborhood school through a constitutional amendment. I have co-sponsored both measures and I

am the principal sponsor of a bill to transfer jurisdiction over all issues and controversies involving the public schools from the federal to the state courts.

Public schools are an extension of the training received in the home. I believe children should go to school as near their home as possible and that judges familiar with local conditions should determine questions relating to public schools. Under this bill the Circuit Courts of Virginia would be the trial courts with right of appeal to our Supreme Court of Appeals and thereafter on certiorari to the Supreme Court of the U.S. This would retain federal supremacy and would mean that constitutional questions could be decided in the final analysis by our highest court. Nevertheless, the court of original jurisdiction would be the court most familiar with local conditions and local problems.

I have talked briefly with the chairman of our Senate Judiciary Committee, Mr. Eastland, and he appears to agree with this concept. It also fits in with the expressed desire of the President to return decision making to the States and the localities.

In the March 14 crime message we discussed a few minutes ago, the President said, "sometimes it seems that as fast as we bail water out of the boat through law enforcement and rehabilitation, it runs right back in through the holes in our judicial system."

Perhaps one way we can improve our judicial system is by amending the Constitution to provide for tenure of judges. My own bill provides for ten-year terms. Senator Byrd has one for eight years. As you know our own Virginia Circuit Court Judges have eight-year terms whereas Court of Appeal judges serve for twelve years. Frankly, I believe the choice of eight, ten or twelve years would make little difference, but all public officials, legislative, executive or judicial in my opinion should at one time or another have to account for their stewardship, either to the people directliy, or to their elected representatives. Life tenure does away with accountability.

There does appear to be an increasing interest in tenure for Federal judges but until such a proposal is adopted, at least my own office will not recommend a lawyer for appointment to the Federal bench unless he is known as a strict constructionist who will recognize the legislative duty to make the laws and the judicial duty to interpret them as enacted by the Congress.

Perhaps I should say in closing that it is a great honor to represent the people of Virginia in the United States Senate. It might even be called a credit to our system that an average citizen can be elected to the highest legislative body in the country, in discharging the obligations of public service, I believe one needs confidence and faith—having and keeping faith in our country, in our fellowman, in our God and in ourselves. Be assured that I want to do the very best possible job and will, of course, always welcome the suggestions and the ideas of my colleagues from the Virginia bar.

MAN'S INHUMANITY TO MAN—HOW LONG?

HON. WILLIAM J. SCHERLE

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 5, 1973

Mr. SCHERLE. Mr. Speaker, for more than 3 years, I have reminded my colleagues daily of the plight of our prisoners of war. Now, for most of us, the war is over. Yet despite the cease-fire agreement's provisions for the release of all prisoners, fewer than 600 of the more than 1,900 men who were lost while on active duty in Southeast Asia have been identified by the enemy as alive and captive. The remaining 1,220 men are still missing in action.

A child asks: "Where is daddy?" A mother asks: "How is my son?" A wife wonders: "Is my husband alive or dead?" How long?

Until those men are accounted for, their families will continue to undergo the special suffering reserved for the relatives of those who simply disappear without a trace, the living lost, the dead with graves unmarked. For their families, peace brings no respite from frustration, anxiety, and uncertainty. Some can look forward to a whole lifetime shadowed by grief.

We must make every effort to alleviate their anguish by redoubling our search for the missing servicemen. Of the incalculable debt owed to them and their families, we can at least pay that minimum. Until I am satisfied, therefore, that we are meeting our obligation, I will continue to ask, "How long?"

"SHIELD LAW"

HON. MIKE McCORMACK

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 5, 1973

Mr. McCORMACK. Mr. Speaker, in recent months an across-the-board attack has been launched by the administration against public access to a free flow of information. I have watched with alarm as the President's appointees to the Corporation for Public Broadcasting Board attempted to wrest control of programing and scheduling public television programs from the Public Broadcast Service. Atlhough it now appears that attempt may fail, the future of public affairs programming remains in jeopardy.

I was further incensed by the January speech of the President's television policy advisor, Clay Whitehead, in which he threatened the introduction of legislation which would make local station managers accountable at license renewal time for the content and balance of network news carried by their stations. No President in modern history has used such a blatent form of intimidation to attempt to insure that the content of news reflects the administration line.

I believe, however, that the most potentially threatening attack on free press and an informed public is the denial of the right of newsmen to hold confidential their sources of information. When reporters go to jail for withholding confidential sources, those and other traditionally confidential sources of information will surely dry up. These are sources which many times provide information to which the public should have access, information beyond what an official public relations news release might have us know.

Mr. Speaker, in February, Mr. Hu Blonk, managing editor of the Wenatchee Daily World, made the case most forcefully in testimony at a hearing before the Joint House and Senate Judiciary Committee of the Washington State Legislature. Mr. Blonk is freedom of information chairman of the Associated Press Newspapers in Washington State, and national vice chairman of the Freedom of Information Committee of the Associated Press Managing Editors Association in charge of bench-bar press relations.

Before the matter of a "shield law" comes before the House for action, I would like my colleagues to have the benefit of Mr. Blonk's thinking:

TESTIMONY OF MR. BLONK, MANAGING EDITOR OF THE WENATCHEE DAILY WORLD, BEFORE THE JOINT HOUSE AND SENATE JUDICIARY COMMITTEE OF THE WASHINGTON STATE LEGISLATURE

The principle of newspapermen keeping confidential the names of people who give them information leading to exposure of activities detrimental to the public interest and to other stories is as much part of American journalism as the typewriter we pound out the news on.

Any ruling preventing protection of news sources provides the quickest way to make limp the good right arm of the press working on behalf of the people's right to know—which is fundamental to our form of government.

No one but the press continually watches the city council, the school board, the legislature, the Congress. What it finds behind the scene talking to public officials and others in quotable form or in confidence assures that the public interest is safeguarded and that the democratic function is carried on as it should be—openly and honestly.

The protected news source provides the avenue leading to exposure of governmental messes, of bribery, and of malfeasance in office. The good citizen often can't afford to speak up openly and have his name revealed—for fear of loss of job, of ridicule, or abuse or pressure.

It was the protection that editors and reporters could give news sources that led to the exposure of Billy Sol Estes, the Teapot Dome scandal, corruption in Dave Beck's union, and the Watergate incident.

With minor exceptions, research shows that every major scandal in public office in the past 20 years was uncovered by the press.

In a true sense, to force reporters to reveal news sources is to slip a tranquilizer to an alert watchdog—for that's what the press is: a watchdog protecting the public welfare.

The confidential relationship between reporter and news source ought to be shielded by law, federal and state, in the same manner that the relationship in the court between lawyer and client, doctor and patient, and pastor and parishioner is assured secrecy.

The publication of exposes involving information obtained from sources the press needs to keep confidential is not something that a newspaper undertakes lightly. The decision as to whether or not to print an article based on facts so gathered is one of the most important ones I face in operation of the newspaper.

I ask myself these questions: 1. Is the story fair; have we given both sides; has any bias crept in? 2. Is the story based on solid facts; has the reporter thoroughly checked and rechecked the accuracy of what he is saying? 3. Is the story potentially libelous, because of malice or sloppy reporting?

In any story in which a public figure or agency is held up to public view in an ad-

verse light, there are involved numerous conferences between editors like myself and the men writing the story. Each bit of new information as dug up by the reporter is discussed between editor and reporter. We editors demand full disclosure where the reporter got the facts as each additional set of facts becomes available. Step by step we keep a rigid check of how the story is developing.

Then, when the story is actually written, we editors and the reporter confer at length again in the editing. As changes are made, these are checked and when the final version of the story has been typed we give it a final check. A mistake can mean hundreds of thousands of dollars, and equally bad, damage the reputation of a public official unjustly.

I bring this out to eliminate any impression anyone may have that a reporter cashes out to interview, a questionable figure in some isolated dark place in the middle of the night, comes in next morning, pounds wildly on the typewriter, throws the story on the editor's desk, who then rushes it into print.

Stories that *disclose* corruption or malfeasance take endless hours to prepare. We just ran an article charging a municipal judge with conflict of interest because he sat in judgment of a driver charged with drunken driving, who five times previously had been convicted of drunken driving, a man the judge had represented as a lawyer at various times over a period of 20 years. The tip on the hanky-panky came from a confidential source.

The reporter put in 200 hours of work. We had at least a couple dozen conferences in my private office as the story developed. Then satisfied we had the facts, the story was sent down to the composing room enroute to the press.

I think that the press' finest role is being "watchdog" over the public's business.

It is a costly role in man-hours. For oftentimes an investigation reveals there is no hanky-panky going on.

We just this week finished checking out a story—the tip on which came to us from a confidential course—that would have revealed a crime at municipal level. We find at this time we do not have the basis of a story. In this case we devoted 150 hours of a reporter's time, from which the newspaper gets no benefit at all—not an inch of type. Yet newspapers are glad to contribute this time and cost in the public interest.

I checked with the shield laws of some 12 or 13 states several years ago. To find out how they worked, I wrote to editors in each of the states. I particularly wanted to find out 1. if the privilege had been abused by irresponsible newspapers or radio stations, and 2. whether the public was antagonistic about the newspapers being given what some call a special privilege.

The answer in each instance was that there had been no abuse and no adverse public reaction. No one is crying for abolishment of confidence laws already on the books because of abuses.

Sometimes criticism is heard that confidence laws would lead to opening up news columns to rampant gossiping. This has not been the case. The laws are no protection against libel.

Some critics of the press feel that confidence laws give a special privilege to the press.

I feel such laws are not privilege of the press, but the right of the people. It is the refuge of the citizens against corruption at every level of our society.

The public needs an ombudsman and the press is the only one it has. And such an ombudsman must be one who can protect his sources, who isn't required to spend a lot of time in court, who, being human, does not begin to get cautious about saying anything so that there will be an increasing number of things you won't hear about in the future.

MONKEY ON OUR BACKS

HON. DAN DANIEL

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 5, 1973

Mr. DAN DANIEL. Mr. Speaker, the guarantees of the first amendment—freedom of religion, of speech, and of the press, the right to peaceful assembly and the privilege of petitioning the Government for a redress of grievances—are among our most cherished democratic principles.

None of these is more zealously guarded—and rightly so—than freedom of the press.

All of us are frequently made aware that much unresponsible reporting and unobjective commentary is brought forth in the name of press freedom, but in most cases we would far rather suffer the irritations than tamper with the inherent rights involved.

The press—both written and over the air waves—seems to do a creditable job of opposing outside efforts to impose censorship and as long as this trend continues, neither the press nor the public at large has much to fear from that source. But what of the censorship of the press from sources within its basic establishment? Is there not a greater threat from those who would downgrade certain points of view and stifle expression of those views?

The Constitution, after all, does not require that the press be objective or intellectually honest—only that it be free, but what an enormous responsibility it has for objectivity. The reader or the listener does not have at his disposal all the facts or background that the reporter, the editor or the commentator may have. He may know only that which comes to his attention in the newspaper, the magazine, the book or the leaflet; and, indeed on the radio or over television. Yet, that limited access may be the basis on which he forms his opinion, makes his decisions or guides his personal activities.

This two-part role of censorship is the subject of a splendid editorial which appeared in the April 4 edition of the News, of Lynchburg, Va., under the title "Monkey on Our Backs." The writer voices legitimate concern and his words are worthy of note—particularly among those elements of the press where vigilance in their own operations may not measure up to the concern shown for outside censorship.

I would like to include the editorial and the accompanying article in the RECORD with my remarks and commend it to the reading of the Members of the House:

MONKEY ON OUR BACKS

There are two kinds of press censorships. One is the censorship resulting from pressure brought upon the press from outside sources. The other is censorship by the press itself resulting from the suppression or downgrading of certain viewpoints and facts and the propagandizing of others. The press must be protected against the first kind and the people must be protected against the second.

The First Amendment to the U.S. Constitution affords ample protection against outside censorship—AS LONG as the press itself refuses to compromise that protection.

And, as long as the press is protected against the first kind of censorship, only the press itself can protect the people against the second. Clearly there is no remedy in law against press suppression or downgrading viewpoints or ideas or stories to which a newspaper or an individual reporter, editor or commentator may object. The press must clean its own house.

The press, in short, must be committed to nothing but the honest presentation of the truth. It cannot afford to commit itself to ideologies, or philosophies, or persons or parties. To do so is to propagandize, to advocate. Commitment in this sense compromises the primary duty of the press, to the detriment of the people——AND the First Amendment.

Attacks from the outside take various forms. Judge Harold Medina discusses one of these in his article on this page. While we're on the subject, we'd like to discuss another. It is a more insidious form of attack, for it seeks to worm inside the press, to influence its overall presentation of the news. It takes the form of so-called "press councils."

Press councils are composed of people who watch over the press and—with the cooperation of the victim—seek to influence the presentation of the news. These councils, simply put, seek to substitute their opinions and viewpoints for those of the newspaper—and they propose to do it by resorting to the very kind of pressure which they charge newspapers with misusing—publicity! Moreover, they want the press to cooperate and provide that publicity . . .

To succeed, press councils must have the cooperation of the press. Without that cooperation, they would be voices shouting in a barrel.

Any newspaper which consents to being called before an outside pressure group to explain why it handled a story in a certain way, or why it didn't print a certain story, or why it did print it, obviously surrenders its own freedom. Such newspapers would be continually defending and explaining their actions before these councils. The day-by-day judgments of the editors and reporters would have to take into consideration the views of the watchdog council . . .

An organization called The Twentieth Century Fund recently published the results of its study of the press council plan in a book entitled "A Free and Responsive Press." The conclusion: press councils are a good thing and should be set up at the national and state and community levels.

Note, particularly, the word "responsive." Not "responsible," but "responsive." It means responsive to the views of press councils. Since the membership of these councils can be easily manipulated to reflect pressure groups, newspapers which consent to press council censorship ignore their first responsibility to the people.

The Twentieth Century Fund is a textbook example of such manipulation. It is a liberal-leftwing organization. Its views, therefore, are doctrinaire liberal-left and do not include opposing views. Nor would the press councils as it conceives them. There might be a "house conservative included" but the liberal viewpoint would prevail.

Significantly, the Fund recommends that a "national press council" be established "to receive, to examine, and to report on complaints concerning the accuracy and fairness of news coverage in the United States" as well as "to study and report on issues involving freedom of the press. Such a national council would be, according to the Fund, limited to reviewing news reporting by

the "principal national suppliers of news"—the nationwide news wire service, national weekly news magazines, national newspaper syndicates, national daily newspapers and nationwide commercial and non-commercial broadcast networks. Since the vast majority of newspapers rely on the wire services and syndicates for their national and international news and commentary, making these primary sources of news "responsive" to a national press council would be to organize the primary source of news even more along liberal-leftist lines than they are now. It's a right good way to gain control of the press, even that part of it antagonistic to liberalism, without investing a cent!

If the press lets this monkey on its back—if it allows such people a voice in its management—it will be surrendering its First Amendment freedom and weakening that freedom for everyone else. Our responsibility is to defend that freedom against any and all intrusions, not only for ourselves, but for every American.

PRESS COUNCILS: HOW THE MONKEY WORKS

Press councils already have been established in some states. To demonstrate how one works, consider the resolution adopted by the Honolulu, Hawaii, Community-Media Council urging all national media to avoid certain terms and to substitute others in connection with the war in Vietnam.

The resolution took note that the media had decreased its use of such terms as "Communist" or "red" in reference to China and said: "More accurate reporting has led to the use of such terms as 'mainland' and/or 'People's Republic.'"

(By all means don't remind the American public that these are Communists!)

The Council expressed concern over the use of such terms as "Communist" or "enemy" to describe political or military groups or forces in Indochina. It went on to say:

"These terms should be avoided as much as possible in favor of more descriptive terms which accurately designate the people or organizations to which they refer. In this regard we recommend the following questions as guidelines:

"a. When opposing forces meet, who actually makes up the opposing forces? What organizations are involved? Does the word 'Communist' accurately describe who they are? Can everyone who is fighting against the South Vietnamese government be described as a 'Communist'?

"b. When death tolls are announced, who actually has been killed? Are the military personnel, or are they civilians? Can everyone who is killed be accurately described as an 'enemy'? Is a person an 'enemy' simply because he has been killed by the South Vietnamese? See Senator Kennedy's subcommittee report on refugees and civilian casualties."

The pro-Communist bias of the Honolulu Council is obvious. It objects to depicting the Communists as "enemies" of the United States, even in a shooting war such as was going on when its resolution was passed.

This is the kind of attitude we can expect from such councils—a bias on the left or a bias on the right—depending who appoints the members. In either case, the objectivity, or attempts at it, of the press is compromised and the press subjected to prejudiced pressures.

We repeat: any newspaper which cooperates with these councils surrenders its freedom and ignores its responsibility to its readers. If people want to express their views to newspapers, they can write letters to the editor or submit news releases. They will be used, and the incidents treated as the news stories they are.

BIKE AID BREAKTHROUGH

HON. EDWARD I. KOCH

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 5, 1973

Mr. KOCH. Mr. Speaker, as you know, on April 4, the House Public Works Committee approved an amendment providing for the construction of exclusive bicycle lanes and shelters using moneys from the highway trust fund in conjunction with primary, secondary and urban road systems. This is a significant milestone for the 85 million cyclists in this country.

John Auerbach, the executive director of the Bicycle Institute of America, has pedaled long and hard in support of this proposal. With the thought that it might be of interest to my colleagues, I am appending the testimony which he gave before the committee:

TESTIMONY BEFORE THE COMMITTEE ON PUBLIC WORKS, U.S. HOUSE OF REPRESENTATIVES, BY JOHN AUERBACH, EXECUTIVE DIRECTOR, BICYCLE INSTITUTE OF AMERICA

Mr. Chairman, and honorable members of this Committee. My name is John Auerbach. I am here to testify in favor of the language and intent of Section 145 of Senate Bill S–502 as it concerns this committee's deliberations on the Federal Highway Act of 1973. I have been Executive Director of the Bicycle Institute of America for more than 25 years. During that quarter of a century, the bicycle industry and our country have undergone dramatic changes, both individually, and in relationship to one another.

The bicycle industry has grown in size and stature. It has changed from being a small supplier of children's toys, and grown into the largest supplier of bicycles for people of all ages in the entire world. Many of the American bicycle companies make more bicycles today than did the entire industry 25 years ago; and there are more kinds, styles, types and varieties of bicycles manufactured in America than in any other nation. America has become the Bike Capital of the world.

Let me, at the outset, commend the Honorable Congressmen Koch, Conti and their co-sponsors, the members of this great Committee and, indeed, the entire leadership of the Congress for recognizing this fact, and for putting that recognition into practice, by planing, as it is now doing, to include the construction of bicycle facilities in our nation's future road-building program.

Should there be, however, some among your colleagues who do not share your wisdom and far-sightedness, allow me to cite a few statistics.

In 1971, Americans bought nearly 9 million bikes . . . 30% more than the preceding year. In 1972, industry sales reached an all-time record high of 13.8 million bikes . . . roughly 45% more than in 1971 . . . a 45% increase on top of a 30% increase.

Today, gentlemen, industry sales for the 1st quarter of 1973 are running 23% ahead of last year!

This is no fad . . . no flash in the pan.

America is becoming a nation on two wheels. In 1972, for the first time since World War I, Americans bought more bicycles than automobiles. In 1972, for the first time since the turn of the Century, sales to adults represented half of total production. In 1972, for the first time in history, nearly 80 million Americans rode bicycles. If sales increase only 10% a year, that figure will reach 100 million by mid-1974.

One hundred million bicycle-riding Americans . . . every other American on a bike.

Where are we going to put the hundreds of thousands of urban commuter cyclists, who use their bikes daily for quick, efficient, and pollution-free short haul transportation? Where are we going to put hundreds of thousands of physical fitness enthusiasts who are cycling for good health? Where are we going to put the millions of parents and children who cycle just for fun, and have made cycling the nation's leading outdoor recreation activity? Where are we going to put the millions of school children who ride their bikes to school each day, or the growing millions of ecology-minded adults who see cycling as their personal contribution to a healthier environment, or a lessening of the energy crisis?

If we do not consider their legitimate needs right now, we are going to put them in jeopardy.

Gentlemen, the so-called "bicycle lobby" is no small, special interest group, seeking to acquire or preserve some narrowly-defined privilege. It is 100 million people . . . *half* of America, half—if you will—of your constituency, demanding a legitimate share of the nation's road space.

I have used the word legitimate advisedly. For the benefit of any of your colleagues in this great House of Representatives who are less sensitive to this pressing need, allow me to quote from Webster's New World Dictionary:

"highway: noun, 1. any road, freely open to everyone; a public road; 2. a main road or thoroughfare; 3. a main route; and 4. a direct route to some objective."

That's it . . . the whole definition, with nothing left out. Not one word about automobiles, nothing about exclusive use, nothing about restrictions of any kind . . . just "any road, open to everyone".

So let us be wise enough to end the confusion about who the highways of America belong to . . . they belong to everyone, to be used freely by whatever means of transportation each man, woman or child finds best suited to his needs.

Increasingly, the bicycle is suiting those needs . . . and these are ever more sophisticated cyclists, taking longer trips, touring and camping by bike, taking family vacations by bike, and seeing America first by bike. It is no longer feasible to suggest that a simple ride around the block is enough to satisfy their needs. There are millions and millions of cyclists with almost as many different places to go as there are roads to use to get there.

Recognizing the fact that there *are* millions of bikes on the roads, and millions more coming every year, many states have already accepted the proposition that a bicycle *is* a road vehicle, and that a bicycle path adjacent to a newly-constructed road is—de facto—a highway project.

To provide for a smooth, safe flow of traffic, and the development of sensible statewide bike route systems, as wall as for the prudent use of available money, many states have developed long-range feasibility studies and Master Plans for bike routes. Excellent examples are those conducted by California, Oregon and Arizona.

More importantly, California, Oregon and now Michigan have still further recognized the legitimacy of the bicycle as a road user, and have voted to include bike paths in their overall road budget to the tune of 1% or more of their state gas-tax revenues.

There is a great legislative ferment for bicycles in state capitols across the country. Right now, 71 bicycle trail bills have been introduced into the legislatures of 24 states since January 1 of this year. Not less than 31 of those bills make the bicycle trail building function the responsibility of the state Highway Department, and directed that funds shall be made available out of highway tax revenues.

Shall I list a few of them? Arizona—HCR–

2016, to amend the Arizona constitution designating the use of vehicle tax receipts for the construction of bicycle paths . . . Connecticut—S–974, the State Bike Act to allocate a portion of gasoline taxes to finance bike paths . . . Florida—H.B.–1 . . . Hawaii—H.B.–251 . . . Illinois—S–83, and on and on it goes.

Thus the precedents have been set; the examples well established, and we are looking at the wave of the future. Highway building funds are no longer conceived to have the narrow purpose of satisfying automotive needs alone. They are no longer so conceived by 24 of our states, or by the people, and I respectfully submit that they should no longer be so conceived by the Congress of the United States.

This Congress can take a leadership role in providing for those 100 million road users on bikes. Bicycles simply must be included in all federal highway planning so that matching funds can be made available to the states, who cannot carry the burden alone.

There must be programming and federal funding available for separate paths alongside or near highways where that is necessary, for separate lanes on existing roads where that is practical, for marking and signing devices, for engineering studies, for the increasingly necessary traffic safety education, for parking facilities, and for massive bicycle registration and licensing programs to help prevent theft.

If it were necessary to impose new taxes to provide a financial base for such programs, justifiably a great hue and cry would be raised across the land. But as this great committee is well aware, no new taxes are necessary. It is only necessary to recognize the fact that bicycles are here to stay; they are a fact of life in America for all the reasons I have already mentioned, and they are an increasingly important factor on the nation's roads and highways.

Bicycles are growing more popular every day. If we ignore them, they will not go away. If we bury our heads in the sand, we will not solve our problems, but will only create new ones.

It is obviously not the intention of this committee to avoid seeing this reality. The very wording, intention and spirit of the bill it is now considering give unmistakable evidence of that fact.

And so we commend the Committee for its forceful leadership, for its vision, for its knowledge of the facts of road use as they are, and for its acuteness in recognizing the needs of a very sizeable group of legitimate road users as it ponders the wording, intent and eventual fate of this bill.

May I close then by summarizing for the record a few of the reasons why we support such a bill, and this Committee's favorable report on it, so that any of your colleagues in the House who are not quite so visionary, not quite so knowledgeable, or not quite so acute, may chance to come upon them before they cast their votes.

1. Bicycling is the nation's leading outdoor recreation activity.

2. The growing popularity of bicycling for fast, economical and pollution-free transportation in and around our major urban centers is a well-documented national phenomenon.

3. Today's 80 million American cyclists will reach a staggering 100 million by mid–1974.

4. Bicycles, recognized as legal vehicles in all 50 states, are legitimate users of our nation's roads. Their needs must be considered in all future highway planning.

5. Three states, California, Oregon and Michigan, have already acknowledged this fact, and are appropriating a portion of state highway tax revenues for bike facilities construction.

6. 24 other states have introduced bicycle trail legislation, almost all of it calling for funding through state highway funds.

7. No new funding is required by this bill. No new taxes are proposed. The nation's bicyclists are merely asking for equal rights . . . for their share, as legal and legitimate users of the roads, of the monies already provided for road development.

The Bicycle Institute of America most earnestly urges your favorable consideration of this forward-looking legislation.

Mr. Chairman, members of the Committee, thank you for your courtesy in allowing me to testify today.

FOOD PRICES SHOULD BE CONTROLLED

HON. MICHAEL HARRINGTON

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 5, 1973

Mr. HARRINGTON. Mr. Speaker, we are all aware of the fact that food prices are skyrocketing practically without limit. The administration has put a ceiling on the price of beef, veal, and pork, but this is not enough. All food prices should be frozen for 60 days. Although this may not be desirable philosophically, there is no other practical solution.

The administration has asked the Nation for patience while agricultural production adjusts to market forces. The consumer, however, is already paying too much for food and any delay will simply mean that they will pay still more. The consumer is not to blame for rising food prices and should not bear the cost. The administration itself must accept its share of blame for its policy failures and must accept the responsibility of protecting consumers.

Two columns by Hobart Rowen in the Washington Post place the blame where it belongs and as we deliberate the rising price of food, his comments deserve the attention of all Members. Therefore, I would like to insert these articles in the RECORD at this time:

[From the Washington Post, Apr. 1, 1973]

NIXON MISSES CHANCE TO STRENGTHEN CONTROLS

(By Hobart Rowen)

President Nixon's ceiling on beef, pork and lamb prices is merely a faltering step in the right direction. What the current inflation cries out for is a comprehensive controls system on wages, prices, dividends and some interest rates.

The attempt to forestall a kick in the teeth from George Meany seems to have been abortive. What the administration doesn't seem to realize is that Meany has little influence over the collective bargaining policies of the many strong AFL–CIO unions. They just won't take 5.5 per cent wage increases when the consumer cost of living for January-February rose at an annual rate of almost 8 per cent with food bought in the grocery stores up 28 per cent.

It's too much to expect Meany to keep union presidents in line when the score-card reads that way; even if the presidents wanted to play ball, the rank-and-file wouldn't.

Mr. Nixon is also losing old political supporters like economist Pierre Rinfret, who said: "The President used a pea-shooter to try to kill an elephant."

Twelve weeks ago, on Jan. 11, the President abandoned a moderately successful, mandatory Phase II for a "voluntary" Phase III, a decision which has been a near disaster for the economy. Since then, all hell has broken loose, including the second devaluation of the dollar in 14 months.

Phase III, for all of the PR pretense that it is just as tough as Phase II, has actually kicked off a new round of inflation of which skyrocketing meat prices were merely the most obvious and most politically sensitive reflection.

The business community interpreted Phase III to mean that prices were decontrolled, and that union leaders would be fairly free to bargain for wages substantially higher than the old 5.5 per cent guidepost. There was no good reason for the business community to figure it any other way.

Thus, in February, the annual rate of increase in the wholesale industrial commodity price index was a sensational 12 per cent, the biggest one-month jump since the Korean war. Gone was the effective requirement of Phase II that demanded prior approval of major wage and price increases, replaced with one that would tinker with after-the-fact adjustments. And the enforcement authority, cleverly associated in Phase II with the Internal Revenue Service, was reduced to a token.

Wholesale prices were rising so rapidly in mid-January that abandonment of Phase II was also an abandonment of elementary good sense. It was close to being irresponsible, as the Joint Economic Committee majority report said, to get to over-all price stability, there should be very little increase in wholesale industrial prices, so as to offset ballooning prices of services.

Leaving out food entirely, wholesale prices in the three-month period November, 1972, to February, 1973, rose at a seasonally adjusted rate of 5.9 per cent, and the rise was spread over 12 of the 13 major industrial categories.

The following table from the Joint Committee Report tells a dramatic story:

WHOLESALE PRICES (PERCENT CHANGE)

	November 1972 to February 1973 (seasonally adjusted compound annual rate)	February 1972 to February 1973
All commodities	18.6	8.2
Farm products, processed foods and feeds	56.0	19.1
Consumer foods	32.1	11.2
Consumer goods, excluding food	6.8	3.1
Industrial commodities	5.9	4.1
Textile products and apparel	8.2	4.8
Hides, skins, leather, and related goods	2.5	21.7
Fuel and related products and power	15.3	8.5
Chemical and allied products	3.1	2.0
Rubber and plastic products [1]	2.6	.8
Lumber and wood products	20.5	16.9
Pulp, paper, and allied products	3.2	4.4
Metals and metal products	6.6	3.5
Machinery and equipment	2.0	2.0
Furniture and household durables	1.1	2.1
Nonmetallic mineral products	—0.9	3.0
Transportation equipment	4.3	.5
Miscellaneous products [1]	8.2	2.7

[1] Not seasonally adjusted.

Source: Bureau of Labor Statistics.

In the facet of this record, what President Nixon should have done Thursday night was to establish a 90-day freeze on all prices and

wages—in effect, returning to Phase I of Aug. 15, 1971—with a promise that a new and effective enforcement system would be set up once again, leading to a new Phase II. Congress, which on its own pressing for stronger legislation, could have done nothing but extend the basic stabilization authority past April 30.

The ceilings on meat are but a half-hearted gesture that should be useful in puncturing bloated food prices, but which may have to be supplemented eventually with export controls to prevent leakage of supplies abroad.

Not the least of the compelling reasons for a tougher controls program is the now clear pattern of tighter money emerging as Federal Reserve Board policy. Chairman Arthur F. Burns is deliberately slowing the growth of the money supply precisely because inflation threatens to run rampant, and because Phase III is at best a questionable ally in controlling a wage-price push.

And that emerging Federal Reserve policy—to put it mildly—scares the living daylights out of financial markets. For them, that policy spells a credit crunch on recession.

The history of the Nixon administration is that it is bull-headed about changing its economic policies. It took from January, 1969, until Aug. 15, 1971, to get the first "game plan" junked, although it brought only recession and higher inflation. (In his radio-TV address, the President misspoke when he implied that he acted four years ago to cut the rate of inflation in half).

In January, it dumped Phase II in the mistaken notion that it could assuage George Meany, forgetting that Meany's constituency is more responsive to food prices than any other symbol of inflation.

It has taken these 12 weeks for the administration to recognize that it had to do something about food, rather than pray for relief by the end of the year by reversing Secretary Butz' policy of scarcity.

The danger now is that it will again wait too long for comprehensive controls—until, that is, a recession seems inevitable.

Perhaps the most ironic part of the whole story is that the rest of the world was truly envious of the U.S. down-hold on inflation during Phase II and was—and remains—bewildered when it was scrapped. Now, there is wonderment abroad whether this huge economy is capable of reasonable self-management. That's the kind of thinking that shakes confidence and leads to speculation against paper money.

[From the Washington Post, Mar. 29, 1973]

FOOD PRICES: PAYING NOW FOR PAST MISTAKES

(By Hobart Rowen)

Secretary of Agriculture Earl Butz and others who oppose price controls on food products argue that it's all a question of supply and demand. The artificiality of controls, they suggest, will merely bring about shortages and black markets.

We must suffer the thing through, they say, until the good old free market system, stimulated by high prices, increases producers' incentive to put more food on the table.

Well, where were Mr. Butz and Co. a year or two ago?

The real answer, and it was supplied with great candor by none other than Economic Council Chairman Herbert Stein, is that they had forgotten all about the free enterprise system, and were concentrating on getting the farmer to the polling place where he would vote Republican.

Before the White House mafia descends on Mr. Stein, let me hasten to say that he didn't put it in just that language.

But in briefing the press on the worst cost of living data in 22 years, Stein conceded that "one or two years ago," the Administration had not foreseen the extent of demand for agricultural products.

"Now," he said—referring to the desperate attempts to boost farm output—"we have a policy more conducive to the production of farm products than we had (then). . . . I would sound silly if I said we had forecast the situation correctly."

It is true that unfavorable weather conditions, including a corn blight in 1972, and the extraordinary demand from abroad have contributed to the rise in farm prices.

At the same time, the rise reflects the earlier policy of the Nixon Administration. Net farm income declined in 1970 after reaching the highest level in 20 years in 1969. Looking ahead to the 1972 election, the administration became anxious about the farm vote.

The 1971 Economic Report of the President, at a time when the President was saying that "free prices and wages are the heart of our economic system," was duty bound to report the following:

"To some extent, the rise in these (crop) prices was a consequence of Federal cropland adjustment programs, which had diverted substantial acreage from production in the past two years, and the large stocks of commodities built up earlier were thus somewhat diminished."

By early August, 1972, Butz knew the dimensions of the Soviet grain purchase. But as farm expert John A. Schnittker (a former Agriculture department Under Secretary in the Johnson Administration) pointed out in recent Congressional testimony, Butz as late as October wanted a conservative corn crop target. Then, in December, he announced a restrictive program for feed grains that had to be junked in January.

So the Nixon Administration record in the whole area runs from poor to dismal, and one is entitled to view with a jaundiced eye the bland assurances that everything that should be done is now being done, and that price controls would only mess things up.

Reasonable persons can differ about the long run impact of price controls. But there just can't be any doubt that controls would put an end to the present unacceptable level of skyrocketing food prices and put more meat in the supermarkets.

That much is conceded by David Stroud of the National Meat Board. But he contends that pig farmers and cattle breeeders who have been urged lately by the administration to stimulate their production and who will—he insists—deliver more meat by the end of 1973, would quit under price controls and return to the old scarcity policy.

No one ever explains why this should be so. The attitude of the authorized spokesmen for the meat industry, such as Mr. Stroud, seems to be that the livestock farmers has gotten a bum rap in the distribution of national income since the end of World War II, and no one should interfere now, because for the first time, he is getting what's coming to him.

There is no reason why the livestock producers should not get a reasonable price for their meat, with controls in effect. If rising demand is there—and this is the element on which Mr. Butz puts most of the blame—it should be able to sustain good prices for heavy marketings over a long period of time, assuring a prosperous time for farmers.

Price controls now, for three to four months, with encouragements rather than discouragements to production, are needed to shoot down the soaring price balloon.

MILWAUKEE ROAD, RAILROAD SERVING MONTANA

HON. DICK SHOUP

OF MONTANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 5, 1973

Mr. SHOUP. Mr. Speaker, recently one of the railroads serving Montana, the Milwaukee Road, announced its decision to convert the electrified rail lines between Harlowton, Mont., and Avery, Idaho to 100 percent diesel power. In view of the energy crisis facing the Nation and pollution and environmental considerations, I have asked the Milwaukee Road to reconsider its decision and in addition have alerted various concerned Federal agencies to this problem. One of my constituents has made some valid points on this subject, and I include this letter in full at this point:

MISSOULA, MONT., *March 29, 1973.*

DEAR MR. SHOUP: I am employed by the Milwaukee Road as Chief Maintainer of Substations, Rocky Mountain Division. I want to thank you for your efforts to keep the electrics in Montana and Washington.

Our letter dated February 15, 1973 from the president of the Milwaukee Road stated it was not economically feasible to continue electrification, yet the Muskingum Electric in Ohio is an impressive example of efficient transportation; American Electric Power Corporation states with no refueling, less terminal service, fewer and shorter major overhauls, and regular maintenance, electrification is 30 to 50% less than comparable diesel costwise; Modern Railroad Magazine writes, with 1000 miles of track evaluation, the railroad studied would recover, in a 30 year period, its investment in electrification 84 times over.

Mr. Kello, who made the decision and put it before the board, admitted at our meeting in Missoula that electrification would pay off better in the long run. Another Milwaukee official, who was envolved in the Milwaukee electrification evaluation, told me at the meeting that the diesels would give a return on the investment sooner than the electrics; and of course, the fast dollar is what they are thinking of. Also, most of us would have made ecology a factor if we had known of their intentions before the decision was so bluntly stated.

Our substations' equipment on the Rocky Mountain Division is at least as good as, and in most cases better than when originally installed. The trolley is also in good condition.

If I can be of any help in promoting electrification, please let me know. Otherwise, this letter is a matter of information, and no reply is necessary.

Sincerely,

CHUCK RAFFERTY.

NEW SOVIET CARRIER

HON. PATRICIA SCHROEDER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 5, 1973

Mrs. SCHROEDER. Mr. Speaker, in the U.S. Military Posture for fiscal year 1974, Admiral Moorer mentioned the new Soviet carrier *Kiev*—CV. In the interest of providing Congress and the people

with information vital to our understanding of defense postures. I would like to include in the RECORD at this point some facts and figures on the new carrier. This factual study was compiled by the Center for Defense Information, directed by Rear Adm. Gene La Rocque, retired:

CENTER FACT SHEET—NEW SOVIET CARRIER

	U.S. attack carrier Enterprise	U.S. amphibious assault carrier-Tarawa (LHA)	Soviet new carrier Kiev (CV)
Displacement	89,600 tons	39,300 tons	45,000 tons.
Length	1,123 ft	820 ft	900+ ft.
Flight deck	1,123 ft	820 ft	560+ ft. (estimate).
Aircraft	90 multiple purpose	48 helicopters V/STOL	36 V/STOL (estimate).
Speed	35 kn	24 kn	30 kn (estimate).
Crew	5,500	1,825	1200 (estimate).
Range	Unlimited	15,000 mi	15,000 mi (estimate).
Defensive weapons	24 surface-to-air launchers	16 surface-to-air launchers 3 5 in. guns.	6 surface-to-air launchers. 14 57 mm guns.

The United States has 14 attack aircraft carriers (CVA), 2 anti-submarine warfare carriers (CVS) and 7 amphibious landing aircraft carriers (LPH). The United States is building 2 large (90,000 tons) nuclear powered (CVAN) aircraft carriers (*Nimitz* and *Eisenhower*) and 5 amphibious assault landing aircraft carriers (LHA). The U.S. Navy is also requesting additional funds for a fourth nuclear powered aircraft carrier CVN-70 this year.

The British have 1 50,000 ton attack carrier and 3 helicopter assault aircraft carriers. The French have 2 32,000 ton attack carriers and 2 helicopter assault carriers.

Two Soviet helicopter cruisers (*Moscow* and *Leningrad*) (16,000 tons) are used for anti-submarine warfare duties.

Over a year ago the U.S. Navy announced that the USSR was constructing a large ship in Nikolayev on the Black Sea. Although first thought to be a tanker, ten days before the defense budget was presented to Congress in January 1973, the Navy released an artist's concept of the Soviet ship now identified as an aircraft carrier.

The new ship, the *Kiev*, will probably begin sea trials by the end of this year and be operational in 1975. Unlike western aircraft carriers, it has no catapults for launching heavy attack aircraft and will initially be restricted to Vertical Take Off and Landing (VTOL) or Short Take Off and Landing (STOL) aircraft. The *Kiev* and its aircraft will give elements of the Soviet Navy limited air-to-air defenses.

SENATE—*Friday, April 6, 1973*

The Senate met at 10:30 a.m. and was called to order by Hon. J. BENNETT JOHNSTON, JR., a Senator from the State of Louisiana.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Eternal God, our Father, since man cannot live by bread alone or find fulfillment solely in material things, help all who serve in the Government of this Nation to minister to the moral and spiritual needs of humanity. May we ever bear witness to the divine image walking and working with the dignity and grace of the Great Galilean. We beseech Thee, O Lord, to preserve this Nation as a beacon of light to all who aspire to freedom and justice.

Grant that we may ever live and move and have our being as a people whose trust is in Thee. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. EASTLAND).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., April 6, 1973.

To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. J. BENNETT JOHNSTON, JR., a Senator from the State of Louisiana, to perform the duties of the Chair during my absence.

JAMES O. EASTLAND,
President pro tempore.

Mr. JOHNSTON thereupon took the chair as Acting President pro tempore.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Thursday, April 5, 1973, be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that all committees may be authorized to meet during the session of the Senate today.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider nominations on the calendar.

There being no objection, the Senate proceeded to consider executive business.

DEPARTMENT OF TRANSPORTATION

The second assistant legislative clerk read the nomination of Robert Timothy Monagan, Jr., of California, to be an Assistant Secretary of Transportation.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is confirmed.

DEPARTMENT OF COMMERCE

The second assistant legislative clerk proceeded to read nominations in the Department of Commerce.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that those nominations be considered en bloc.

The ACTING PRESIDENT pro tempore. Without objection, the nominations are considered and confirmed en bloc.

INTERSTATE COMMERCE COMMISSION

The second assistant legislative clerk proceeded to read sundry nominations in the Interstate Commerce Commission.

Mr. MANSFIELD. Mr. President, I make the same request.

The ACTING PRESIDENT pro tempore. Without objection, the nominations are considered and confirmed en bloc.

FARM CREDIT ADMINISTRATION

The second assistant legislative clerk read the nomination of Alfred Underdahl, of North Dakota, to be a member of the Federal Farm Credit Board, Farm Credit Administration.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is confirmed.

DEPARTMENT OF LABOR

The second assistant legislative clerk proceeded to read nominations in the Department of Labor.

Mr. MANSFIELD. Mr. President, I ask that those two nominations be considered and confirmed en bloc.

The ACTING PRESIDENT pro tempore. Without objection, the nominations are considered and confirmed en bloc.

ACTION

The second assistant legislative clerk read the nomination of Michael P. Balzano, Jr., of Virginia, to be Director of ACTION.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is confirmed.

U.S. AIR FORCE

The second assistant legislative clerk proceeded to read sundry nominations in the U.S. Air Force.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the nominations be considered en bloc.