APPENDIX A: THE SUPREME COURT OPINIONS

Edgewood I - 1989

The Supreme Court ruling

The *Edgewood I* ruling set the standard by which all subsequent legislation would be measured: districts must have "substantially equal access to similar revenues per pupil at similar levels of tax effort."

The Supreme Court found that the state's then-current school-finance system violated Art. 7, sec. 1 of the Texas Constitution, which requires the Legislature "to establish and make suitable provision for the support and maintenance of an efficient system of public free schools" to provide "a general diffusion of knowledge." The court did not mandate any particular school-finance system, but it did specifically outline several characteristics of an acceptable system. The new system would have to permit "a direct and close correlation between a district's tax effort and the educational resources available to it," in contrast to the inability under the then-current system of property-poor districts to generate sufficient revenue to meet minimum standards even with high tax rates. Children in all districts "must be afforded a substantially equal opportunity to have access to education funds." (This was a modification of the district court opinion, which would have required all districts to have the *same* ability to obtain funds.)

The opinion stated explicitly, "We do not now instruct the Legislature as to the specifics of the legislation it should enact; nor do we order it to raise taxes. The Legislature has the primary responsibility to decide how best to achieve an efficient system." However, the court warned, "more money allocated under the present system would reduce some of the existing disparities between districts but would at best only postpone the reform that is necessary to make the system efficient. A band-aid will not suffice; the system itself must be changed."

The court stayed the district court's injunction against continued use of the current system until May 1, 1990 giving the Legislature only seven months to fix the system.

The factual background. The Supreme Court opinion opened with a recitation of some public-school finance statistics presented in the district-court trial, based on the 1985-86 school year, which it said were "not in dispute." The court stated that "there are glaring disparities in the abilities of the various school districts to raise revenues from property taxes because taxable property wealth varies greatly from district to district." These disparities in district property wealth lead to widely varying amounts of spending per student, which has a "real and meaningful impact on the educational opportunity offered" to a student in a property-poor district, said the court.

The Foundation School Program (FSP) attempts to ensure that each student can be provided with a basic education, but the court found that the FSP did not cover even the cost of meeting state-mandated minimum requirements. In addition, the FSP made no allotments for school facilities or for debt service, understated the actual costs of instruction and transportation, and underfunded the career ladder teacher salary supplement, according to the opinion. For these reasons, almost all districts must spend additional local funds.

However, property-poor districts must "tax high" just to support a comparatively low level of expenditures, while the wealthiest districts can raise and spend above-average amounts at minimal tax rates. Property-poor districts, with their high tax rates and inadequately funded schools, are unable to

attract new industry, trapping them in a cycle of poverty from which there is no opportunity to free themselves, concluded the court.

In ruling the school-finance system unconstitutional, the court did not consider the other constitutional arguments raised by the plaintiffs, including the contention that the finance system denied equal protection to children being educated in low-property-wealth districts. The opinion also did not address the issue of school-district organization and boundaries, which had figured prominently in the district court opinion. It noted that the state's contributions to local districts had increased since the 1985-86 school year figures used in the case, but indicated that no change had been made in the system.

Characteristics of an acceptable system. The court permitted the state to "recognize differences in area costs or in costs associated with providing an equalized educational opportunity to atypical students or disadvantaged students." (Differences in area costs were recognized in the Foundation School Program through the price differential index, which was intended to reflect geographic variations in educational resource costs that were beyond the control of the school district. In practice, the index favored large urban districts with higher-than-average teacher salaries and districts with large percentages of students from low-income families.) Difference in costs of a typical students or disadvantaged students were reflected in a system of "weights" a system of multipliers or add-ons that increased the amount per student received by a district. Districts received extra funds for students in compensatory education, bilingual education, special education, vocational education, and programs for the gifted and talented. The plaintiff districts received greater-than-average benefits from student weights, particularly from the weights for compensatory education (based on the number of low-income students enrolled in the federal school lunch program) and bilingual education.

The court also stated that it would permit school districts to supplement state aid, but "any local enrichment must derive solely from local tax effort." This phrase was subject to later interpretation by the court.

Policy options in response to Edgewood I.

The judicial requirements outlined in by the *Edgewood I* court have been retained essentially unchanged throughout the four years of policy debate that has followed. The requirements imposed by the court have both spurred legislative action and restricted its scope. All proposals advanced in the wake of the plaintiffs' victory were shaped by the need to satisfy judicial pronouncements. In contrast, the proposals considered in the 1984 special session were subjected solely to the basic test of all legislation the need to attract a majority of votes.

The *Edgewood I* decision focused on "access equality" or "fiscal neutrality," defining equity in terms of the revenue per student that a school district would receive for each penny of tax rate. Rulings in other states have imposed mandates that require revenue equality (e.g. *Abbott v. Burke*, 575 A.2d 359 (N.J. 1990), which held that poorer urban school districts must have budgets substantially equal to property-rich, suburban districts) or minimum revenue equality (e.g. *Rose v. Council for Better Education*, 790 S.W.2d 186, (Ky. 1989), which held that the state must provide "adequate" funding for every district in the school system). *Edgewood I* required the Legislature to guarantee that a district's ability to generate revenue would not depend on its local property wealth, but not that each district actually raised a particular amount of revenue or that the amount guaranteed by the state was necessarily adequate to finance an education program of a certain quality.

Most Republicans and many conservative Democrats contended that reforms to improve education would have to precede discussions of adding revenue. As Gov. Bill Clements asserted after the *Edgewood I* opinion, "Money alone is not the answer." However, many of the school-finance proposals advanced in response to the court's ruling would have required substantial increases in education spending. Proponents of additional spending argued that the equity of the system could not be improved significantly by simply redistributing state aid or even by reorganizing school districts on a logical basis. They also pointed to the Texas' lowly ranking in expenditure per pupil (33rd in the nation and ninth among the 10 largest states in 1989-90) and the gap between the statewide average operating expenditure per pupil ($3,700) and the national average ($4,450). Increased state spending also would ease the task of achieving equity by lessening the pressure to limit spending by wealthy districts.

Plans supported by most low-wealth school districts would have required more state spending than those advanced by other groups, including the Governor's Task Force of Public Education (dominated by members selected by Gov. Bill Clements) and the State Board of Education, an independently elected body. Legislation filed by Sen. Hector Uribe of Brownsville (in the low-income and predominantly Mexican-American Rio Grande Valley) and Rep. Gregory Luna of San Antonio, a member of the original national board of MALDEF, would have increased the average spent per pupil in average daily attendance to about $4,700 a year in three years. (Most school-finance discussion was carried out in terms of spending per *weighted* student; spending under the Uribe-Luna plan would have totaled $3,400 per weighted student after three years.) The plan would have required an additional $3 billion in state spending by 1992-93. The Equity Center, an association of low-wealth school districts, proposed that all districts be able to generate about $4,900 in revenue per student after five years at a cost of $3.1 billion in new state spending in the fifth year. In contrast, the Governor's Task Force recommended increasing the average amount spent per student to about $4,150 after five years, which would have required the state to increase spending by $1.5 billion by the fifth year. The numbers proposed in various plans changed during the years of the finance debate, particularly after a changed political climate cut off the option of increasing state taxes, but poor districts never abandoned their arguments for increasing state spending.

Methods of increasing education spending. The plans proposing increasing education spending used two primary approaches to how the money would be delivered to local districts. One approach was to increase the basic allotment and the local fund assignment; the other was to raise the emphasis on guaranteed-yield taxation.

Increasing the basic allotment and the local fund assignment. The first tier of the Foundation School Program was calculated from a basic allotment amount, which was adjusted for local cost differences and for the special needs of students within each district. In the 1989-90 school year the basic allotment was $1,477 per student in average daily attendance.

The local fund assignment (based on the proportion of the total statewide cost of the first tier of the FSP "assigned" to local districts) required each district to levy a tax rate of 34 cents per $100 in property value. The amount that a district could raise at the minimum tax rate was subtracted from its FSP entitlement to determine the amount paid by the state. The percentage that each district could raise of its individual FSP entitlement at that tax rate varied according to the number of weighted students in the district and its taxable wealth. Districts with sufficient local property wealth per student to generate more than their first-tier entitlement solely from local revenue, known as "budget-balanced districts",

received no FSP aid from the state and could keep any excess local revenue. In 1989-90, about 73 of the approximately 1,060 school districts in the state were budget-balanced.

An increase in the basic allotment, which set the floor for public-school expenditures in every district in the state, would increase each district's tier-one entitlement and therefore the amount of state aid received by each district. In terms of the court's focus on yield the total revenue per student received for each penny of tax rate an increase in the basic allotment would increase the yield of districts receiving state aid. Since the yield of the budget-balanced districts would not change (and most of these districts would continue to be able to generate more than even an augmented first-tier entitlement solely from local revenue), an increase in the basic allotment would narrow the disparity in yields and help satisfy the court's mandate.

An increase in the local fund assignment tax rate would require that more money be raised at the local level. If no other change were made, more districts would be able to generate their first-tier entitlement solely from local revenue, eliminating the need for state aid to these districts and freeing that money for distribution to poorer districts. The overall equity of the system would be increased by requiring wealthy districts to contribute a large share of the total cost of education.

The Uribe-Luna plan would have increased the basic allotment to $2,300 per student in 1990-91 (with $230 of this amount allotted for facilities financing) and $2,070 thereafter, with a separate sum for facilities. The plan would have required a minimum tax rate of 80 cents per $100 in valuation (but levied on property countywide rather than in individual districts). Other plans would have increased by basic allotment and minimum tax rate by lesser amounts. For example, the Governor's Task Force recommended raising the basic allotment over five years, to $1,750 in the 1990-91 school year and in steps to $2,100 by 1994-95. The local fund assignment tax rate would have been 46.9 cents per $100 of property valuation in the first year, rising to 61.6 cents per $100 after than program was fully implemented in 1994-95.

Broader reliance on guaranteed yield. The school-finance system contained a second tier of aid under the Foundation School Program "equalization" funding, distributed through the a guaranteed yield program based on the number of weighted students in a districts, the district's tax rate and its property wealth.

Each district was guaranteed a specified amount per weighted student in state and local funds for each cent of tax effort over that required for the local fund assignment, up to a specified maximum level. Additional taxes beyond those required to be levied for the local fund assignment were known as the "district enrichment tax rate," since the second tier was intended "to provide all school districts with substantially equal access to funds to provide an *enriched* program." (Education Code, sec. 16.002).

For the 1989-90 school year the guaranteed yield program guaranteed each districts that it would receive $18.25 per weighted student in state and local funds for each cent of tax effort over the tax rate required for the local fund assignment (34 cents per $100 of property value), up to 36 cents in additional tax effort (for a total rate of 70 cents). If a district's property value per student were too low to generate the full $18.75 of revenue per pupil for each one cent of additional tax, the state made up the difference. If the district could generate more than the $18.25 guaranteed amount, the state would not provide additional aid and the district could retain all revenue generated. In 1989-90 some 65 percent of

the pupils in the state were in districts that received state guaranteed-yield aid. Money received under the program, unlike first-tier FSP allocations, could be used for capital outlays and debt service.

Tax effort greater than the required LFA rates, plus 36 cents, was not matched by the state. The "third tier" revenue generated by a tax rate above that eligible for the guaranteed yield program was totally unequalized by state aid, so that the revenue generated by a district by a tax rate over 70 cents was determined solely by the district's wealth per pupil. A district with $30,000 in property wealth per weighted student, such as Edgewood ISD, would scarcely find it worthwhile to levy a tax over 70 cents, since each additional penny would generate only $3.00 in local revenue per weighted student. A district with $500,000 in property wealth per weighted student, such as Alamo Heights, could generate $50 in local revenue per weighted student for each penny of tax rate.

Because of the court's focus on "substantially equal access to similar revenues per pupil at similar levels of tax effort," many proposals attempted to expand the guaranteed yield program. Increasing the tax rate eligible for guaranteed yield aid would reduce the size of the unequalized third tier, reducing the ability of wealthy districts to generate large amounts of revenue unattainable by poorer districts. Increasing the amount of revenue guaranteed per penny would increase the amount available to districts at any given tax rate, reducing the disparity between the revenue-generating ability of the rich and poor.

The Equity Center initially proposed total reliance on a guaranteed yield system, replacing the two-tier system with a single guaranteed-yield tier. Their proposal would have guaranteed districts $43.75 per student per one-cent of tax rate, up to a tax rate of $1.12 per $100 in property valuation, for a maximum total revenue of $4,900 per student. The maximum tax rate and total revenue generated subsequently would be adjusted based on the tax rate and spending of districts in the top 5 percent of tax rates and school spending.

Single-tier guaranteed-yield proposals were intended to directly remedy the most glaring inequity in the school-finance system the huge differences in districts' ability to raise tax revenue. However, a guaranteed-yield system could not eliminate all of the disparity among districts, since it would be prohibitively expensive for the state to guarantee each district the $700 per student per one-cent of tax rate that the richest district could raise. The maximum yield per penny of tax rate that the state was thought to be able to afford was roughly $50. The Equity Center's figure of $43.75 per student per penny was selected to equalize funding for roughly 95 percent of students.

It also would be prohibitively expensive for the state to guarantee local tax revenue for an unlimited tax rate. Proposed guaranteed-yield systems therefore included a limit on the tax rate eligible for matching aid, a cap on the expenditure per student that the state would guarantee, or a cap on total state education aid. Even with a limited yield or tax rate, a guaranteed-yield system can make state fiscal planning difficult. State spending would depend on local tax-setting choices, which could not be known when the appropriations bill was being debated. Estimates of the costs of guaranteed-yield plans generally assumed that all districts would raise their rates to the maximum rate that would qualify for a guaranteed yield.

Countywide tax base. School districts raised almost all their locally generated income by taxing property within their boundaries. A primary reason for the inequality of funding within the Texas school-finance system is the disparity in taxable property wealth per student. One means of achieving greater equity in

the access to funding by property-poor school districts is to broaden the property base for school-district property taxes.

MALDEF favored a plan, filed by Sen. Hector Uribe of Brownsville and Rep. Gregory Luna of San Antonio, which would create a countywide tax base for levying certain local school taxes. (The Texas Research League, a business-funded research organization, proposed a similar countywide plan, but at a much lower level of expenditure.) The Uribe-Luna plan would have required the state to calculate the local share of the Foundation School Program (FSP) by county, rather than by district. State aid to each county would make up the difference between the FSP entitlement and the money raised through the countywide tax. All counties would levy a minimum tax to be set by the Legislature, starting at 80 cents per $100 valuation in the 1990 and 1991 tax years. The money would be distributed to the school districts within the county on the basis of *weighted* students, so that districts with unusually large numbers of students in bilingual and compensatory education programs (or other programs qualifying for student weights) would receive more funds per capita.

Broadening the tax base that supports each district to include a whole county is intended to equalize access to revenue among the school districts in each county. In counties with both property-rich and property-poor counties, some revenue from a countywide tax collected in rich districts would flow to the poorer districts. Equalization would take place between inner-city districts and suburban districts in the same county, but also within rural counties in which a sparsely populated oil-rich district was separate from the main population center of the county. Among the twelve independent school districts in Bexar County (San Antonio), in 1988-89 there were six districts with a taxable value per student of less than $65,000 (Harlandale, Edgewood, South San Antonio, Somerset, Southwest and Southside) and four districts with a taxable value per student of over $185,000 (Alamo Heights, North East, Northside and Judson). In rural Kleberg County, site of the King Ranch, Kingsville ISD attempted to educate nearly 5,500 students by taxing a property wealth of $95,000 per student, while Santa Gertrudis ISD (83 students) and Laureles ISD (22 students), had access to property value per student in excess of $2 million and $4.5 million respectively.

Under a countywide system, wealthy districts that had supported their school system at a tax rate lower than the proposed countywide rate would have to raise their tax rates, sharing the increased revenue generated with poorer districts in the same county. Property-poor districts that taxed at rates higher than the countywide rate could lower their rates (although they would probably choose to retain a rate higher than the mandatory minimum, in order to be eligible for the guaranteed-yield program).

However, since many school districts with below-average wealth also are located in counties with below-average wealth, countywide taxation would not, by itself, greatly improve the equity of the school-finance system. For instance, the average taxable wealth per student in Kleberg County as a whole in 1988-89 was $146,000, well below the statewide average of $213,500, despite the presence of two of the wealthiest districts in the state. The Uribe-Luna plan proposed to enhance the equalizing effect of a countywide tax base by increasing the amount of state aid to individual districts.

School board and administrator groups opposed using a countywide, or larger, tax base, claiming that it would undermine local control of schools one of the recurring shibboleths of the school-finance debate. Raising the mandatory tax rate and imposing it countywide would, they argued, deprive local school boards of meaningful control of their property tax rates; the loss of control in one area could lead to loss of local authority over other aspects of public education. Proponents of a broader tax base replied that,

without an equalized finance system, poor districts were deprived of a range of meaningful financial choices over which to exert control.

A broader philosophical objection was raised to any proposal to redistribute wealth from rich to poor, which were dubbed "Robin Hood" plans. The wealthy could sincerely see themselves as merely seeking to provide a good education to the children of their community, and denied any obligation for children in other communities. The poor had a broader notion of community, one that imposed on taxpayers responsibility for the education of all the schoolchildren in the state, not just those within the taxpayer's own school district. They had the support of the Constitution, which clearly imposed on the state the duty to "establish and make suitable provision for .. an efficient system of public free schools." But they had trouble gaining the support of the Legislature or, eventually, of the voters.

Caps on local enrichment. The 1988-89 school-finance system equalized revenues per student through the local-fund-assignment mechanism of the first tier of the Foundation School Program (FSP) and through the guaranteed-yield program that comprised the second tier of the FSP. One source in inequality was the ability of districts to set their tax rates above the rates eligible for state matching funds (70 cents in 1988-89). At these higher rates, property-rich districts could raise more revenue for each additional one-cent of tax rate than could property-poor districts, since state equalization aid no longer compensated for disparities in revenue capacity at these tax rates.

The 1988-89 system equalized revenues received on the minimum local-fund-assignment rate of 34 cents per $100 of property value, and on any higher rate levied by the district, up to a total tax rate of 70 cents. However, most districts set operating tax rates higher than 70 cents and used the extra revenue to "enrich" local programs through higher teacher salaries, lower pupil-teacher ratios, or additional course offerings, without any equalization by the state. In 1988-89 more than 80 percent of school districts levied operating taxes at rates higher than those eligible for state equalization.

As long as districts were free to set their tax rates above those covered by equalization programs, the school-finance system inevitably favored property-rich districts. Any increase in equity from higher state spending directed toward property-poor districts could be negated by an increase in unequalized local taxes levied by property-wealthy districts for enrichment.

The Uribe-Luna plan proposed capping an optional local enrichment tax rate at 20 cents above the required local-fund-assignment rate and guaranteeing the revenue yield. Unequalized enrichment above the prescribed maximum tax rate would not be permitted. In addition, the revenue per weighted student that any district could raise would be limited, even below the maximum tax rate.

A limit on local revenue-raising ability was designed to bring together the interests of wealthy and poor districts in seeking additional state funding. Wealthy districts would otherwise have no reason to lobby for more state education funding, since their budgets would be largely unaffected by state funding formulas. If there were a limit on local enrichment through a prohibition against tax rates greater than those eligible for the guaranteed-yield program, the only way for a wealthy district to enrich its local program would be to increase the amount it (and all other districts) could raise under a guaranteed-yield program.

High-spending districts argued that a cap on local enrichment would force them to cut spending ("dumbing down"), despite local willingness to spend more on education. For instance, the Uribe-Luna

plan would have reduced revenue in 73 districts in the state. Opponents of a cap said that a cap would lead to a uniform level of mediocrity throughout the state and pointed to California schools, which they said had deteriorated markedly because of a court-imposed limit on school-district spending.

The *Edgewood I* decision did not appear to rule out continued local enrichment. The opinion stated, "Nor does it mean that local communities would be precluded from supplementing an efficient system established by the Legislature; however, any local enrichment must derive solely from local tax effort." Proponents of a cap on enrichment argued that the choice of words "local tax *effort*," rather than simply "local taxes," implies that any local enrichment above a foundation level must be part of a guaranteed-yield system that would equalize revenue per penny of tax rate. Wealthy districts and other opponents said that the Supreme Court would allow optional local expenditures unmatched by state funds, once an "efficient" system was established.

Recapture (redistribution) of local revenues. Another method of limiting wealth disparities among school districts is to "recapture" a portion of the revenue raised by the wealthiest districts and redistribute it to other districts. For example, under a guaranteed-yield system that assured each district a revenue of $30 per student for each one-cent of tax rate, a district that had sufficient property wealth to generate $50 per student per one-cent of tax rate would be permitted to keep only $30 per student. The remaining $20 per student would be returned to the state to fund the guaranteed yield for less wealthy districts.

A countywide tax base has elements of recapture, since some of the revenue raised from property within a wealthy school district in effect would be distributed to less wealthy districts within the same county. A direct form of recapture would require districts above a certain wealth level to send to the state an amount of money sufficient to reduce their revenue-raising ability to the desired level.

One advantage of recapture from a legislator's point of view is that it offers a way to equalize funding among school districts without requiring large amounts of new state spending (or new state taxes). Wealthy districts would have an incentive to increase their tax rates in order to support the level of spending to which they had become accustomed. Yet these higher tax rates also would generate new income that could be redistributed within the school-finance system in place of state tax money.

Recapture proposals, like countywide tax plans, brought objections that they would diminish local control of schools, since school districts would not be able to spend all of their tax revenue on their own programs. Recapture was also painted as a "soak-the-rich" plan what would lower the quality of education in a few wealthy districts without producing a noticeable impact on the finances of the numerous districts among which the recaptured funds would be distributed.

A potential legal difficulty was presented by a 1931 Texas Supreme Court ruling, *Love v. City of Dallas*, (40 S.W.2d 20), that prohibited the use of revenue raised by one school district for the benefit of students in another district. Although it was thought that countywide or regional districts could be created to redistribute revenue among their constituent independent school districts, statewide recapture of locally raised revenue might run afoul of *Love*.

State aid for capital expenditures. The 1988-89 school-finance system provided little state aid to local school districts for capital expenditures construction of facilities, purchase of equipment and repayment of bonds. The guaranteed-yield program enacted in 1989 (before *Edgewood I*) allowed districts to use

their allotment under the program for any legal purpose, specifically including capital outlay and debt service.

The Supreme Court noted that, since there was no specific state-aid allotment for school facilities or for bond debt service, "low-wealth districts use a significantly greater proportion of their local funds to pay the debt service on construction bonds while high-wealth districts are able to use their funds to pay for a wide array of enrichment programs."

The Uribe-Luna plan would have funded facilities through a separate entitlement based on the age of classrooms, outstanding debt and enrollment growth within a school district. Other alternatives included issuance of state bonds, the proceeds from which would provide grants and low-interest loans to local districts, an emergency grant program directed to districts with the greatest need to construct or renovate facilities, and creation of a third tier (above a foundation program and a guaranteed-yield enrichment tier) that would guarantee the revenue yield on debt service taxes levied by districts.

Proration. HB 72 (1984) established a "sum certain" ceiling on state spending under the Foundation School Program. If the total state share of the FSP, as calculated by the formulas governing the program, is greater than the total amount actually appropriated by the Legislature for the FSP for that year, each district's allocation of state funds must be reduced accordingly, or "prorated." In 1988-89 the proration was determined by a formula adopted by the State Board of Education that took into account a district's wealth, so that property-poor districts would lose proportionately less state aid than wealthier districts.

The *Edgewood I* opinion addressed the issue of proration: "In setting appropriations, the Legislature must establish priorities according to constitutional mandate; equalizing education opportunity cannot be relegated to an 'if funds are left over' basis." This was thought at the time to require that any new school-finance program would have to be given priority in the distribution of state funds, eliminating the "sum certain" ceiling. Proration could be eliminated by giving a "first call" on the state's general revenue to the amount necessary to full fund FSP formulas or by imposing some penalty on the state for failing to correct a funding shortfall.

Proration grew in importance as an issue for property-poor districts and became a focus of efforts by the Equity Center in particular. The formula-required funding was $45 million more than appropriations in the 1989-90 school year and $168 million in 1990-91 because of an underestimate in projections of public-school enrollment and the number of students eligible for compensatory education aid. Once school districts became accustomed to expect proration of state aid, they built some shortfall into their budget and increased local taxes by an increment necessary to cover the anticipated proration. Since higher tax rates increased the state commitment through the second-tier guaranteed-yield program, formula-required funding increased even further past state appropriations, and the amount of proration grew. In the 1992-93 school year state appropriations were $700 million short of covering the state share of the FSP as calculated by the formulas governing the program.

Distribution of Available School Fund. The Texas Constitution dedicates to the Available School Fund (ASF) investment earnings from the Permanent School Fund and one-quarter of motor-fuels tax revenue. A portion of the ASF is used to purchase free textbooks for public-school students. The remainder of the fund is distributed "to the several counties according to their scholastic population" (Tex. Const. Art. 7, sec. 5).

In 1988-89 the term "scholastic population" was defined as pupils in average daily attendance (Education Code, sec. 15.01(c)). Distribution on the basis of the number of *weighted* students in average daily attendance, which could be accomplished by a statutory change, would help increase the equity of the school-finance system by directing more funds to districts with an above-average number of students with special needs, which generally are property-poor districts. Distribution of the ASF as part of the two-tiered Foundation School Program, rather than on an independent per-student basis, would make available some $1 billion a year that could be applied directly to increasing equity, but would require a constitutional amendment. (A constitutional amendment requires approval by a two-thirds vote of each house of the Legislature and by a statewide election.)

Changing the ASF distribution would harm the wealthy "budget-balanced" districts, which received no other state aid under the Foundation School Program. They argued that the framers of the state constitution intended the ASF to be shared equally among all Texas students, without regard to the property wealth of a student's school district or a student's special needs.

Transitional funding. One worthwhile piece of currency in school-finance negotiations is the allowance of a phase-in period before a new plan is to be fully implemented. In order to soften the impact on local expenditures of a limit on local enrichment taxes or a redirection of state aid is include a "hold-harmless" clause that permits a district to maintain its current level of expenditures during the phase-in period, or guarantees that no district would receive less state aid per student under a new program than it received under the prior formulas until the expiration of the phase-in period. In order to mitigate opposition from wealthy districts, most proposals advanced by the poor districts permitted the wealthy to continue their funding advantage for a few additional years.

SB 1 - 1990

The Legislature met for four consecutive special sessions before finally enacted a revision of the school-finance system acceptable to Gov. Bill Clements. The sessions involved a series of cliffhangers: the first session ended after the Senate passed a school-finance plan, only to have to soundly rejected by the House; the second session ended on May 1, the Supreme Court's deadline for submission of a new plan, after the governor vetoed the tax bill necessary to pay for a new finance system, dooming the plan; the district court judge extended the deadline by one month, but threatened to appoint a master and implement his own plan if the Legislature and governor missed the new date; the third session collapsed after the governor vetoed another plan (the Senate voted to override the veto, but the House fell eight votes short).

The finance system that was finally enacted in the fourth special session, SB 1, was intended to meet the *Edgewood* standard by distributing a larger proportion of state aid to school districts with lower wealth and higher tax rates. It retained, at higher state-funding levels and with various modifications, the basic structure of the Foundation School Program that distributed state aid based on a district's wealth, tax rate, size and type of student.

SB 1 provided that the state school-finance system must meet a standard of fiscal neutrality that allows 95 percent of all students (excluding the 5 percent living in the wealthiest districts) to have substantially equal access to similar state and local revenue per student, regardless of the wealth of their school districts, if their districts make a similar tax effort. State officials would have broad discretion in setting

the funding elements to meet that standard. Various studies would establish an empirical framework for deciding what amounts of state aid would provide an adequate education for all students.

The bill linked more closely the level of state aid and the tax effort made by local districts. Its complex funding formulas were intended to reward with higher levels of state aid those districts levying higher taxes on a low-wealth tax base. Eventually the level of school aid guaranteed for each student was to be tied to the revenue per student in the wealthier districts as state and local revenue increased in the wealthier districts, so would the revenue per student for the less-wealthy districts.

The bill retained the basic school-finance structure of 1,050 school districts raising local revenue by taxing the property wealth within their individual boundaries, with state funding used to compensate for the differences in district wealth. It did not cap, nor did it redistribute to less wealthy districts, the additional local revenue per student that districts could raise beyond the level matched by state aid.

Edgewood II

The Supreme Court was not satisfied with the Legislature's initial effort to revamp the finance system. By another unanimous ruling the court, in January, 1991, declared the school-finance system enacted by SB 1 unconstitutional.

The *Edgewood II* opinion was written by Chief Justice Tom Phillips, a Republican appointed to the post by Gov. Clements in 1988 and elected to a six-year term in November, 1990. The *Edgewood II* court contained two new justices who had not participated in the first opinion, with the partisan line-up tightening to five Democrats and four Republicans, but all nine justices joined in Phillips' opinion. The court gave the Legislature until April 1, 1991 just over two months to enact a constitutional system or face an injunction against distributing any money under the school-finance system.

The court held that, although "SB 1 does make certain improvements in public school finance... SB 1 leaves essentially intact the same funding system with the same deficiencies we reviewed in *Edgewood I.*" The opinion focused on the exclusion from the equalization system of the wealthiest districts with 5 percent of students found this to be a fundamental flaw:

Most property owners must bear a heavier tax burden to provide a less expensive education for students in their districts, while property owners in a few districts bear a much lighter burden to provide more funds for their students... To be efficient, a funding system that is so dependent on local ad valorem property taxes must draw revenue from all property at a substantially similar rate

The court appeared to indicate to the Legislature potential remedies for the constitutional problem: "Consolidation of school districts is one available avenue toward greater efficiency in our school finance system. Another approach to efficiency is tax base consolidation.

The Legislature, which was meeting in regular session at the time of the opinion, immediately began work on a new finance system. The Senate passed a plan to create 20 new regional education districts. All independent school districts would be required to tax at a certain minimum rate (which was higher than that charged by many wealthy districts). If the amount raised by a school district at its required minimum tax rate exceeded the cost of the basic education program in that district, the district would have to remit the excess for redistribution to other school districts within the same regional education district that were unable to generate the full amount of their basic program at the required minimum

tax rate. An enrichment program would provide each school district with a guaranteed state-local revenue yield for each cent of tax rate above the required minimum rate. If the amount per weighted student generated by a school district for each penny of tax rate (its "yield per penny") exceeded the amount per weighted student per penny guaranteed by the state, the district would have to remit the excess tax revenue, which would be redistributed to lower-yield school districts within the same regional education district.

Despite opposition from wealthy districts, who were unwilling to hand over locally raised tax revenues, and from the school board and administrators groups, who feared loss of local control of schools, the plan passed the Senate by 20-7. The House Public Education Committee passed out a similar bill that included the second-tier recapture provisions, but substituted 189 county education districts for the Senate's 20 regional districts. The bill was placed on the calendar for floor debate on Wednesday, February 27.

***Edgewood II* motion for rehearing**

The Supreme Court unexpectedly intervened before the House could vote. At 6:15 p.m. on Monday, February 25 less than 40 hours before the House was to take up the proposed finance plan the court released a divided opinion on the motion for a rehearing. The motion, a routine procedure customarily denied without comment, was filed by the plaintiff-intervenors, who sought clarification of the effect on tax base consolidation of a 1931 opinion, *Love v. City of Dallas,* 40 S.W.2d 20. The opinion was written by Chief Justice Phillips (author of *Edgewood II*) and joined by four other justices the other three Republicans and one Democrat. A dissent was issued by Justices Lloyd Doggett and Oscar Mauzy (author of *Edgewood I*), joined by Justice Bob Gammage, and a separate dissent was issued by Justice Raul Gonzalez.

The majority opinion declined to overrule or modify *Love*, which prohibits the state from requiring a school district to give local tax revenue up for education of students who do not reside in the district. However, the majority allowed that "tax base consolidation could be achieved through the creation of new school districts... These school districts could be organized along county or other lines and could be given the authority to generate local property tax revenue for all of the other school districts within their boundaries." This aspect of the opinion was similar to language in *Edgewood II* and appeared to support the legislation then working its way through the Legislature.

The majority also addressed a second issue, which was not explicitly raised by the motion filed by plaintiff-intervenors. The question, which had been repeatedly raised by the defendants, also was put forward in an amicus brief filed by ten members of the House, who asked

Does the Texas Constitution permit local enrichment through locally adopted ad valorem taxes that is unequalized, i.e. may the Legislature enact plan that permits a school district to levy and collect a local enrichment tax above and beyond any taxes for which the state provides a guaranteed yield?

The issue of unequalized local enrichment was a source of conflict among the property-poor school districts. "Enrichment" is locally raised revenue above the foundation level of spending required of all school districts. This extra spending is considered "equalized" when the state guarantees that any local district will receive a certain level of state-local revenue per student for each cent of enrichment tax

rate, regardless of local property wealth. Unequalized enrichment is the extra local revenue raised by each district that is not matched by state money to equalize the difference in district property wealth.

MALDEF and the plaintiffs favored elimination of unequalized local enrichment, arguing that any unequalized enrichment would inevitably restore inequities to the system. Poor districts would be unable to afford to offer their students the same quality of education available to students in wealthy districts because their less valuable tax bases would not allow them to raise as much additional revenue for enrichment purposes. The Senate version of the bill pending at the time of the opinion on the *Edgewood II* motion for rehearing would have guaranteed a certain yield for all tax rates up to the statutory limit of $1.50 per $100 of property valuation for maintenance-and-operations (M&O) taxes and recaptured any local revenue generated by a higher yield, eliminating all unequalized enrichment (except on debt service taxes above the $1.50 M&O tax-rate limit). In Al Kaufman's words, "In January 1991 *Edgewood II*came down very strong and appeared to recommend CEDs [originally proposed by the MALDEF/Uribe-Luna bill], all of that was going our way, then the opinion on the motion for rehearing came out and took a lot of the wind out of our sails, since it said you didn't have to be perfect."

The TIAF Network, which scaled back its involvement in the school-finance issue after the *Edgewood I* opinion, found itself at odds with MALDEF on the issue on unequalized enrichment. Christine Stevens recalls, "MALDEF was hostile to us" and asked TIAF to stay out. She felt that MALDEF was unwilling to compromise on its goal of 100 percent equity and refused to support any bill that fell short of absolute equity. "They wanted everything." TIAF wanted to shift the focus to the adequacy of school funding and thought that MALDEF was unreasonably stuck on equalization.

The Equity Center and the plaintiff-intervenors, was well as the Texas Association of School Boards and administrator groups, favored a plan that would equalize enrichment, but only up to a certain tax rate determined by reference to percentiles of wealth and revenue the equalized tax rate would change as the property wealth and tax rates of wealthy school districts changed. This was the approach adopted by the Legislature in SB 1, which was held unconstitutional by the *Edgewood II* opinion.

The school board and administrator groups argued that unequalized enrichment was necessary for communities to retain fiscal authority and responsibility for their schools. They said full equalization would, in effect, cap school-district revenue at below current levels, since the state did not have the resources to equalize *all* current school spending. These caps would "level down" exemplary school programs within the state to achieve uniformity, guaranteeing only mediocrity.

The Equity Center and plaintiff-intervenors also found a benefit in permitting wealthy districts to spend above the state-guaranteed level. Their spending could signal a desirable level of education spending, which would demonstrate to the Legislature when it was necessary to raise the state-guaranteed level and state funding of education. Allowing the wealthy to spend the amount they felt was required to give their children an adequate education would, over time, pull up the state-guaranteed level available to all districts, which would otherwise stagnate under the budgetary pressure of other urgent public needs and the steady corrosion of inflation. To ensure that the Legislature responded to these signals, the Equity Center favored a "floating cork" arrangement that directly linked the state-guaranteed level of funding to the revenue of the district at a certain percentile of revenue. This would create a dynamic system that would automatically adjust to ensure an adequate level of spending for all districts, without relying on the Legislature's sensitivity. Opponents of "floating cork" proposals argued that, since the amount of state funding would be forced up by the decisions of local school boards, such a system

would "give away the key to the state treasury," escalating state costs unpredictably and depriving the Legislature of control of the state budget.

Apparently realizing that the bill quickly working its way through the Legislature would completely eliminate unequalized enrichment, to the detriment of the wealthiest school districts, the conservative elements on the Supreme Court acted. Unwilling to wait for the traditional Wednesday morning release of its rulings, the court hurried out its opinion after normal working hours on a Monday. The majority opinion concluded that "the Constitution does permit such enrichment, without equalization." The opinion stated that, "the current system remains unconstitutional not because *any* equalized local supplementation is employed, but because the state relies so heavily on unequalized local funding in attempting to discharge its duty" to maintain an efficient system of public schools. Therefore, "once the Legislature provides an efficient system in compliance with [the Constitution], it may, so long as efficiency is maintained, authorize local school districts to supplement their educational resources if local property owners approve an additional property tax."

Three opinions were filed criticizing the majority for even issuing an opinion. Two of the dissents, by Democratic Justices Raul Gonzales (the only Mexican-American on the court) and Bob Gammage, were brief. Gonzales said that the majority had issued an advisory opinion, which is not permitted by the Texas Constitution: "We should not speculate or interfere with the ongoing legislative debate as to how to meet the mandates of *Edgewood I* or *Edgewood II*; nor should we get into the business of giving the legislature pre-clearance on proposed legislation." Gammage's opinion was similar, saying that any opinion "should narrowly confine itself to the question *presented* (emphasis in original). The majority's gratuitous action is addressing matters not raised in the motion for rehearing is both unnecessary and in appropriate, amounts to an advisory opinion, and is calculated to further confound and confuse the public and the legislative process.

Justice Doggett, joined by Justices Mauzy and Gammage, issued a blistering 14-page dissent that charged that the majority opinion "constitutes a frantic rush to influence the final stages of current legislative deliberations... The underlying need for writing arises from the fear that the Legislature may otherwise fail to satisfy certain judicial desires, not that it may inadvertently pursue some further unconstitutional course." The dissent added, "Our decision on local enrichment in *Edgewood I* was straightforward and has been a puzzle primarily to those who preferred not to comprehend it or who disliked what they read." Doggett appended two press clippings to his opinion. One was an op-ed piece by Tom Luce, the chief of staff of the 1983-84 Perot Committee who unsuccessfully ran for the Republican gubernatorial nomination in 1990, arguing in favor of unequalized local enrichment. The second was a news report pointing out that the Legislature was operating under the assumption that unequalized enrichment was barred by Supreme Court's rulings.

SB 351 (County Education Districts) 1991

The opinion on the motion for rehearing changed the direction of the legislative debate. It seemed clear that the Senate's original plan to redistribute funds among existing local districts in 20 different areas would fail the test of *Love*. To remedy this constitutional defect would require creation of new type of district that could tax over a broad area spanning several school districts. The opinion also made clear that unequalized enrichment would be permitted. The House easily passed a revamped plan that was sent to conference committee to work out differences with the Senate. But in the face of a threatened freeze by the court on the distribution of state education funds if no plan was passed by April 1, the

House rejected the conference committee bill. The judge appointed a master, assisted by Billy Walker of the Texas Association of School Boards and Jos Cardenas of IDRA, to draw up a plan to be imposed if not legislation were enacted by April 15. A few legislative maneuvers later, a bill was passed and signed the new governor, Ann Richards.

SB 351 grouped the state's 1,050 independent school districts into 188 county (and multi-county) education districts (CEDs), chosen so that each CED's total real-property value per student did not exceed $280,000 per weighted student. Each CED levied a tax, at a rate set by the state, to provide the "local share" of the first-tier basic allotment. That revenue, plus the state's share, was distributed to the component local districts in proportion to their share of the CED's property value. This procedure equalized the yield for all local districts within each CED by, in effect, recapturing revenue generated by property in the wealthier districts and redistributing it to poorer districts. CEDs were created solely to levy the first-tier tax.

The second-tier guaranteed-yield program was organized along existing school district lines. As in SB 1, the program guaranteed that each one cent of a district's tax rate, beyond the minimum rate for the local-share requirement (levied by the CED) yielded a specified amount per weighted student. Districts that could generate more than the state-guaranteed yield from their local property tax base could retain the excess revenue. Taxes levied over the maximum guaranteed-yield rate (scheduled to rise to $1.45 by 1994-95) were completely unequalized districts received only the revenue generated by their local tax base. However, a per-pupil revenue limit was imposed that permitted no more than 2 percent of the weighted students in the state to be in districts with state and local revenue greater than 110 percent of the total revenue guaranteed to each district at a total tax rate of $1.25.

Edgewood III 1992

This time the Legislature's handiwork was challenged by the wealthy districts, while MALDEF and the Equity Center took seats in court next to the state's attorney defending SB 351. During the bill-writing process, MALDEF had announced that it could support an early Senate version of SB 351 that was fully equalized up to the maximum tax rate of $1.50 the first time the plaintiffs had indicated that they might accept a legislative response to a Supreme Court ruling. Even after the changes made to the bill after the *Edgewood II* motion for rehearing indicated that unequalized enrichment was permissible, MALDEF felt that SB 351 was worth defending in court. As Al Kaufman reasoned, "SB 351 would have been stronger without the motion for rehearing [permitting unequalized enrichment]... but it was clearly a good bill and better than anything that preceded it."

The wealthy districts were less pleased with SB 351. For the first time, wealthy districts were directly affected by school finance reform, since the mandated CED tax rate forced significant tax increases in 1991 in districts that had below-average local independent school district (ISD) tax rates in 1990. For instance, the combined CED-ISD school tax rate in Highland Park ISD in Dallas County ($847,000 in property wealth per weighted student in 1991 v. a state average of $124,000) almost doubled, from 69 cents per $100 of property value to $1.35. The combined school tax rate in Glen Rose ISD, which is the site of the South Texas Nuclear Project and one of the wealthiest sizable districts in the state ($4.4 million in property wealth per weighted student; 1,449 weighted student), increased from 22 cents to 87.25 cents, up nearly 300 percent. In addition, as many as 20 percent of all districts had to raise taxes just to maintain their accustomed level of expenditures. The defendant-intervenors, who had initially intervened in the lawsuit on the side of the state in defense of the finance system, switched sides to

oppose both the state and the plaintiffs. Because of the shifting roles, the next time the Supreme Court heard the *Edgewood* case, its official caption was *Carrollton-Farmers Branch ISD, et al. v. Edgewood ISD, et al.*

The Supreme Court issued its opinion on January 30, 1992, again invalidating the school-finance system. However, the decision turned exclusively on technical legal issues concerning the creation of CEDs; the equity of the finance system created by SB 351 was never discussed. Reflecting the division that surfaced in the *Edgewood II* motion for rehearing, the *Edgewood III* court split 7-2 on the question of the constitutionality of the CED tax. The majority opinion was written by Justice Gonzalez. The dissenters were Justices Doggett and Mauzy, the court's most liberal members. The majority held that the tax was an unconstitutional state property tax and that CEDs could not levy any tax without voter authorization in a local election. They gave the Legislature until June 1, 1993 16 months away and after the 1992 elections and the 1993 regular legislative session to create a constitutional system.

Art. 8, sec. 1-e of the Texas Constitution prohibits a state property tax. The court ruled that, since the state creates the CEDs, requires them to levy the tax, determines the tax rate that must be charged and prescribes the distribution of the tax proceeds, the CED tax is a prohibited state property tax. The court found that, although the tax rates for CEDs varied because of difference in local conditions, the state actually controlled the CED tax rate through mandatory formulas in state law, effectively making CED taxes a state, not a local levy. The court said even though each CED keeps all the tax revenue it collects and none of the revenue is deposited in the state treasury, CED funding still is part of the *state* public education scheme. The history of Art. 8, sec. 1-e clearly shows that voters intended to eliminate a state property tax as a source of funds for public education, the majority opinion noted.

The court further held that while local authorities such as CEDs may be created by the Legislature and impose local property taxes, they may do so only with local voter approval. The Texas Constitution (Art. 7, sec. 3) requires voter approval for collection of a local school property tax by a new local entity such as a CED. Even though each CED is composed of local school districts that have been authorized to collect taxes, and each CED exists only to collect and redistribute local school taxes, the court found that CEDs are separate local entities and cannot derive approval for their taxing authority from the authority previously granted by the voters in the component school districts.

The 84-page dissent is a catalog of impassioned objections to the majority opinion. Justices Doggett and Mauzy accused the majority of "an ever-present elitist philosophy" that supported "a new principle the privileged must be accorded a veto of any sharing of the state's resources with the underprivileged." They argued that *Edgewood II* and the motion for rehearing had entrapped the Legislature into believing that tax base consolidation, which was accomplished through the creation of CEDs, would be accepted by the court, but "now the majority unjustifiably changes the instructions." They charged the majority with delaying issuance of the opinion until after the Legislature adjourned its special session on redistricting (January 2-8, 1992) and after the filing deadline for three seats on the court had expired (January 2). The dissenters also warned that, since "any attempt to revise property tax financing must be charted through a judicial minefield, with no map provided," the court's action would push the Legislature closer toward adoption of an income tax to pay for public education. (In November, 1993, the voters approved a constitutional amendment that dedicates at least two-thirds of all net revenues of a personal income tax to reduce the rate of public school property taxes; the remaining revenue would have to be used for the support of education. The amendment also requires approval by a statewide

referendum of any statute that imposed a state personal income tax. The amendment was thought by many to establish a roadmap toward adoption of a state income tax in Texas, which is one of only five states without a personal income tax.)

The court also split on the issue of the collection of the CED taxes. Five justices decided that the CEDs could continue to collect both 1991 taxes (due January 31, 1992) and 1992 taxes (due January 31, 1993). Justices Doggett and Mauzy disagreed with this aspect of the ruling, as did Justices Gammage and Cornyn, in separate opinions accusing the majority of succumbing to election-year pressures by allowing the Legislature to avoid dealing with the issue until after the 1992 elections.

Justice Cornyn added a long essay on the need to define a constitutional educational system in terms of educational results, not just in terms of funding. Following the model of the Kentucky Supreme Court (*Rose v. Council for Better Education*, 790 S.W.2d 186 (1989), Cornyn argued, "But the state's obligation to provide an adequate education does not seek equalization of school funds as its primary goal. Once a uniform, basic education is provided by the school system, equalization of funding is not necessary." The dissent was little noted in the press, but it marks the first crack in judicial backing for the *Edgewood I* equity standard.

The Fair Share Plan 1992

In contrast to her low profile during the 1991 debate over SB 351, Gov. Ann Richards stepped forward with a detailed proposal in response to the *Edgewood III*ruling. In April, 1992, she set out a plan that would require three constitutional amendments, to be placed before the voters on the November presidential election ballot. One amendment would have created a statewide property tax on business and mineral property, which would help equalize tax bases among school districts by removing the greatest source of unequal local wealth oil wells, nuclear plants, refineries and other large industrial and commercial complexes. The second amendment would have created an equity standard in the Texas Constitution, setting out the degree of equity that must be achieved by the school finance system and eliminating the legal basis for the *Edgewood* suit. The third amendment would have distributed the Available School Fund to school districts according to student performance, rather than on a per capita basis.

However, legislators would unwilling to face the difficult choices presented by the governor's plan just six months before an election. In became clear that, in the absence of an immediate court deadline, it would be impossible to attract the two-thirds vote of each chamber of the Legislature necessary to place the proposed amendments on the November ballot for voter approval. The governor backed off and postponed calling a special session until after the elections, when legislators might be more willing to pass the controversial plan.

A special session was convened on November 10. The governor, along with Lt. Gov. Bullock and Speaker Gib Lewis, presented a variation of the governor's original proposal, packaged as the "Fair Share Plan." The statewide property tax was gone, replaced by a plan to equalize funding by recapturing revenue from the wealthiest 10 percent of school districts. An equity standard would be written into the Constitution requiring that 95 percent of all state and local school revenue would have to be in an equalized system. The Available School Fund, renamed the Good Schools Fund, would be distributed to districts according to their progress toward certain goals for test scores, attendance and graduation

rates. State bonds already approved by the voters would be converted to provide $750 million in state aid for facilities construction.

A united front of the education community, stretching from the Equity Center to the Coalition of Wealthy Districts opposed the plan. The fear of greatly increased local tax rates was the driving force behind the coalition, but the poor districts were particularly disturbed by the proposed equity standard, which they felt would gut the achievements of the*Edgewood* suit. According to calculations by the Equity Center, the Fair Share Plan would equalize revenue at the 85th percentile of revenue for 64 percent of the students far below the standard found inadequate by the *Edgewood II* court.

The Fair Share Plan (SJR 1 by Parker) quickly passed the Senate by 29-2. but ran aground in the House, where solid Republican opposition to any recapture provisions kept the plan ten votes short of the necessary 100 votes. In the final hours of the special session the plaintiffs and plaintiff-intervenors, along with all the major school district associations, offered to settle the *Edgewood* case. Motivated by a fear that things were likely to get worse, rather than better, during the upcoming regular session, the poor districts were willing to give up the lawsuit in trade for preventing the state from gutting the equity standard. To end the case, the Legislature would have to pass a constitutional amendment to allow a limited amount of recapture of revenue from wealthy districts. No change would be made in the constitutional provisions read by the courts to require funding equity. The proposed settlement also would have kept the funding elements (basic allotment, guaranteed yield amount, local fund assignment, etc.) of SB 351 intact and protected the level of state funding.

The plaintiffs were convinced to join in the settlement agreement by the realization that Republican gains in the incoming Senate could preclude the two-thirds vote necessary for a constitutional amendment allowing recapture and that the Culberson Amendment, which would eliminate Supreme Court jurisdiction over school finance cases, was gaining appeal to legislators as a method of putting an end to the agony of repeated attempts to satisfy the courts. The state leadership was offering an additional $650 million in state funding to sweeten the deal, but would not guarantee that the money would remain on the table in the upcoming regular session. In addition, it appeared from the motion for rehearing on *Edgewood II* and the tone of the opinions in *Edgewood III* that support on the Supreme Court for the plaintiffs was weakening. Justice Oscar Mauzy, the author of *Edgewood I* and a solid vote for the plaintiffs, had been defeated in the November 1992 election and replaced by a Republican. It appeared rational to take what was offered, rather than to keep pushing for complete fulfillment of the promises of the original court victories, but time ran out before the school community could round up enough votes in the House to pass the necessary constitutional amendment.

The "Robin Hood" Plan 1993

The new Legislature had to act quickly to fashion a school finance plan before the June 1, 1993, court-imposed deadline. Although the concept of recapturing revenue from one school district for redistribution to another had received the deadly public appellation of a "Robin Hood" plan, there appeared to state leaders to be no other way to satisfy the court's requirements without unacceptably large increases in state aid (and state taxes). The Supreme Court's reaffirmation of the *Love* rule, which precluded taking local tax funds from property-rich school districts and distributing the funds directly to property-poor districts, indicated that a constitutional amendment would be required.

By this time in the saga, the legislative process had become almost completely internal. As Al Kaufman of MALDEF remembers, "The Legislature had already heard all they wanted to from experts. They pretty much knew what we all thought." Although all the interested parties continued to testify at hearings and confer privately with legislators, the decision making was increasingly done by small groups of officials. There were no new ideas to be floated, just hard choices to be made.

Three constitutional amendments were finally adopted for the Legislature for consideration by the voters in an election on May 1, 1992. One amendment, adopted in response to clear language in the *Edgewood* opinions specifying equal access to funding for facilities as a necessary part of a constitutional finance system, would have allowed the Legislature to issue up to $750 million in bonds to assist school districts in financing facilities. To appease school districts that complained of the cost of satisfying state-imposed rules, such as maximum class size, another amendment would have exempted school districts from complying with state educational mandates not fully funded by the state. The third the "Robin Hood" amendment addressed the heart of the school finance dilemma.

The "Robin Hood" amendment, on the ballot as Proposition 1, would have authorized the Legislature to enact laws redistributing property taxes levied and collected by a school district among other districts in the state. The Legislature could have recreated CEDs and permitted them to levy property taxes up to $1.00 per $100 of property valuation. The amount redistributed, either statewide or within CEDs, could not exceed 2.75 percent of all state and local public-school revenue. State leaders stumped the state arguing that the proposed amendment was the only way to prevent the court from cutting off funding and shutting the schools. They said that all the alternatives a state personal income tax, a state tax on business property or consolidation of school districts had been rejected as undesirable or politically unfeasible. Voter approval of Proposition 1 would permit the Legislature to devise a plan that pooled revenue from a few rich districts and use it to help poor districts, either through reconfigured CEDs or by a statewide recapture program, without a huge state or local tax increase, argued the governor and others.

The most vocal opponents of Proposition 1 included most of the state's Republicans (even though the Senate sponsor of the amendment was Republican Sen. Bill Ratliff, the chair of the Senate Education Committee) and many residents of wealthy school districts. Apparently motivated by an ideological distaste for an involuntary redistribution of wealth, the opposition spread tales of state-imposed tax rates as high as $2.50 two-thirds higher than the actual statutory maximum rate. They argued that state lottery proceeds should be dedicated to funding public education and that wasteful spending should be curtailed before asking voters to approve a new finance system.

The Equity Center, MALDEF and the TIAF Network all actively supported Proposition 1, since the key notion of limited statewide recapture had been lifted from the settlement agreement supported by the plaintiffs and plaintiff-intervenors. Al Kaufman reports giving 25 speeches in the Rio Grande Valley on the issue, The TIAF groups educated their members about the proposal and encouraged them to vote on May 1. The Equity Center published detailed refutations of opponents' claims, accusing them of "engaging in deliberate, outright fabrications of date and distortion of the truth." Privately the poor school districts felt that the improvement in equity from the limited amount of recapture permitted by Proposition 1 would be minimal and that increased state spending would be the only reliable source of adequate funding. Some feared that voter approval of the proposition, which fell short of establishing a truly equitable system of school finance, would close the lawsuit and end the best chance for equity in a

generation. But to maintain their relationships with the governor and other state leaders who strongly supported the propositions, the low-income school districts and community groups did their best to turn out the vote.

Despite their efforts, the election results were not even close: Proposition 1 went down with only 37 percent of the vote, mainly on fears of vastly increased local taxes. The school bond proposition suffered from a similar reaction and failed with 44 percent. Even the prohibition against unfunded mandates, which was intended to forestall additional local spending, lost by a 48.7 to 51.3 margin. The plaintiff school districts all delivered majorities for the propositions (Al Kaufman: "Those people know their own self interest.") but they were swamped by large votes against in the rest of the state.

SB 7 1993

With less than a month left before the judge would act to suspend school funding, the Legislature had to devise an alternative plan quickly. The Senate passed a bill that would have equalized tax bases by transferring business property among school districts. The House developed the concept into a multiple choice plan, through which districts would be able to choose from among five methods of reducing their taxable property value per student below a certain level. A conference committee resolved the differences between the versions in less than a week and the bill, SB 7, was signed by the governor on May 31 the day before the court deadline.

Under SB 7 a district could, with voter approval, purchase from the state attendance credits necessary to reduce its wealth per student, develop programs with other districts to increase the number of students educated by the districts or create a local taxing district by consolidating its tax base with another district. A district also could voluntarily consolidate with another district or permit another district to tax some of its property. If a district failed to reduce its wealth per student below the maximum permissible level, the commissioner of education could detach property from the district and attach it to a district with lower wealth.

The basic allotment the minimum amount of state and local funding per student was set at $2,300 per student, rather than the $2,800 promised for the 1994-95 school year by SB 351, the prior law that had been held unconstitutional. The local fund assignment (LFA) tax rate the minimum tax that a district must levy was 86 cents per $100 of property valuation, rather than the $1.00 originally established in SB 351. These changes worked against the poor districts, since a lower basic allotment decreases the state aid per student received for each penny of tax rate. In addition, a lower LFA tax rate permits more districts to qualify for state aid, since they cannot raise their full basic allotment at the lower tax rate, so spreads the available state revenue over a larger number of students. (See p. 32 for a detailed explanation of the consequences of changes in the basic allotment and local fund assignment tax rate.)

The poor districts did gain something in the guaranteed yield program. The guaranteed yield for each cent of a district's tax rate above the minimum LFA rate of 86 cents was cut to $20.55 per weighted student, rather than the $28 promised by SB 351 by 1994-95, which lowered the yield received by poor districts. However, the district enrichment and facilities tax rate that portion of a district's tax rate, beyond the minimum LFA rate, for which the yield per penny per weighted student is guaranteed by the state would be 64 cents per $100 of property valuation, rather than 45 cents. The guaranteed yield program thus would include *all* tax effort up to the maximum maintenance-and-operations tax rate of $1.50 (86 cents of LFA plus 64 cents guaranteed yield.) This eliminated the unequalized third tier tax

rates above those covered by the guaranteed yield program, through which wealthy districts were able to generate many times the yield available to poor districts one of the major complaints of the poor districts from the initial stages of the *Edgewood* litigation.

Unfortunately, the lower guaranteed yield enacted by SB 7 opened up what the plaintiffs and plaintiff-intervenors called the "$600 permanent gap" between the maximum revenue guaranteed to poor districts and the revenue available to wealthy districts. The bill limits school districts to a maximum of $280,000 in property value per weighted student. A districts with this tax base can generate $28 per weighted student for each one cent of tax rate per $100 of property valuation. The state, though the guaranteed yield program, guarantees that each district will receive at least $20.55 in state and local revenue per weighted student per one cent of tax rate over the required minimum rate. The difference between $28 and $20.55 $7.45 per weighted student for each penny of tax rate multiplied by the 64 cents of tax rate covered by the guaranteed yield program leads to an disparity of more than $475 between the revenue raised by districts reliant on the state aid of the guaranteed yield program and the revenue of the wealthiest districts. Combined with the impact of the distribution of the Available School Fund, the operation of student weights, and other detailed machinery of the Foundation School Program, the disparity in yields leads to a $600 per pupil average difference between the total revenue available to a district at the highest permissible wealth level at a tax rate of $1.50 and the total revenue available to a district with a very low level of property wealth at the same tax rate.

SB 7 The District Court Opinion

On December 9, 1993, state District Judge F. Scott McCown upheld the constitutionality of SB 7, the school finance plan adopted by the Legislature at the end of the 1993 regular session. The bill had been challenged by the poor districts, who argued that the new system still failed to provide "substantially equal access to similar revenues per pupil at similar levels of tax effort," since wealthy districts would be able to retain their unfair advantage in generating school revenue. Wealthy districts had their own complaints about the bill, arguing that the mechanisms by which they were required to reduce their property wealth violated certain sections of the Texas Constitution involving the power of the executive branch and due process guarantees, as well as the Supreme Court's rule prohibiting the diversion by the state of local property tax revenues raised in one school district to finance programs in another.

The plaintiffs' case rested primarily on the "$600 permanent gap" permitted by the discrepancy between the yield guaranteed to poor districts by the state and that available to wealthy districts from locally generated taxes. The plaintiff-intervenors focused on the revenue losses that would be suffered by the poor districts in the 1993-94 school year compared to funding received in 1992-93 under the prior school funding system, which was ruled unconstitutional for reasons unrelated to funding equity.

The state's defense was based on a comparison of education funding in 1993-94 under SB 7 to funding in 1988-89, before the *Edgewood I* ruling. The state calculated that state education funding increased from $4.9 billion to $7.3 billion during that period, with almost 40 percent of the increased directed to the 300 poorest districts in the state.

The judge admitted the existence of the "$600 gap," but concluded that it was not unreasonable for the Legislature to leave the gap in revenue-generating ability. Only 15 percent of Texas school children live is districts that can generate more than the state-guaranteed yield; only the 6 percent of students who live in districts with the maximum permissible property wealth could enjoy the fully advantage of the gap.

The $600 gap possible under SB 7 is much smaller than the revenue gap of up to $4,700 that could have existed under the school-finance system invalidated by the *Edgewood I* ruling. And, said the judge, "Consider the options." Lowering the maximum wealth level to ensure absolute equality would further level down the revenue available to school districts, which was opposed by expert witnesses from all sides at the trial. Equalizing the yield for all districts up to the yield of the current maximum wealth level would cost the state an additional $2.4 billion per year, according to the judge. Therefore, Judge McCown ruled,

The court cannot say that the Legislature was unreasonable in concluding that the districts had substantially equal access to revenue. The $600 advantage about which plaintiffs complain is too small and enjoyed by too few for the court to say that it was unreasonable for the Legislature to leave this gap, particularly when eliminating it would require further leveling down or a $2.4 billion appropriation.

The judge held that SB 7 is "a genuine attempt by the Legislature to fulfill its very difficult responsibilities" under the Texas Constitution and said that "the judiciary owes the Legislature the respect of giving SB 7 a chance to work. He stated that the property-poor school districts would be entitled to seek additional relief if the Legislature did not continue funding the school-finance system at the level necessary to produce substantial equity, or if the Legislature reduced the equity of the school-finance system by amending or repealing provisions of SB 7.

The judge did find that the provisions for funding facilities failed to meet constitutional standards. If a district uses all of its guaranteed-yield funding for maintenance and operations, any debt-service needs for facilities must be supported solely by local revenue generated from the local property tax base at a tax rate of over $1.50 (the maximum rate eligible for guaranteed-yield aid). Because of the large disparities in local tax bases, fording districts to rely on unequalized aid for capital expenditures violates the *Edgewood I*requirement of substantially equal yield for equal effort. Judge McCown gave the Legislature until September 1, 1995, three months after the end of the 1995 regular session, to remedy this remaining inequity.

The judge's opinion reflected the attitudes of the Legislature and governor. The poor districts had gained a lot from their years of court battles. More importantly, they seem unlikely to gain much more. The Legislature had done about as much as it is willing to do to close the gap between rich and poor. The chances of obtaining the large new appropriations necessary to increase equity further seem remote. Everyone the Legislature, the school districts and the public are exhausted from the repeated crises over school finance. Although the Supreme Court has yet to hear the appeal from Judge McCown's ruling, the consensus is that they will conclude that the judicial system has achieved all it can in forcing school equity. Any further gains have to come from within the legislative process, perhaps through a coalition of school districts of all wealth levels demanding that the state absorb a greater proportion of public education costs.

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