



Justices warn that changes will have to be significant

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AUSTIN — Legislators have until June 1 to fix the state's public school finance system, which the Texas Supreme court ruled unconstitutional Tuesday with a warning it will take significant changes to develop a proper tax structure and a better way to educate children.

The court, in a 7-1 opinion with one justice not participating, said the local school property tax that funds much of the \$33 billion-a-year school system has become a statewide property tax prohibited by the Texas Constitution.

That's because the system requires most public school districts to impose the maximum \$1.50 property tax rate per \$100 valuation for maintenance and operations. All Bexar County school districts have reached that cap.

Although handing a victory to school districts that brought the lawsuit, justices also dealt them a blow by rejecting claims that legislators don't provide enough money for a system that teaches 4.4 million public school children.

But the court noted that many schools "are struggling to teach an increasingly demanding curriculum to a population with a growing number of disadvantaged students, yet without additional funding needed to meet these challenges."

Conservatives were generally pleased with the ruling because they have argued that education can't be fixed simply by spending more money.

Educators disagreed over whether the ruling puts enough pressure on the Legislature to address concerns that Texas schools will fail if they don't have the resources they need — and some lawyers for school districts said the ruling leaves the door open for more lawsuits if things don't improve.

Gov. Rick Perry said he would like to have recommendations from a tax reform commission he named before calling lawmakers back into special session. John Sharp, head of that commission, said that with public hearings and work sessions on tap, those recommendations likely won't emerge until after the March 7 primary elections.

The court acknowledged wide performance gaps among low-income students, high dropout rates, low college preparedness rates and high teacher turnover. But it was unwilling to say current funding levels violate the constitution, which requires the state to provide for an adequate diffusion of knowledge.

Despite growing achievement gaps between students based on ethnicity and income, the court also noted that "the undisputed evidence is that standardized test scores have steadily improved over time, even

while tests and curriculum have been made more difficult."

"It remains to be seen whether the system's predicted drift toward constitutional inadequacy will be avoided by legislative reaction to widespread calls for change," the ruling stated.

It said there is substantial evidence "that the public education system has reached the point where continued improvement will not be possible absent significant change, whether that change take the form of increased funding, improved efficiencies or better methods of education."

Legislators have failed five times in the past two years to solve school funding issues, and Perry said this ruling will help focus their attention on what must be fixed and that the deadline will give them a push. Without legislative action, the deadline raised the specter of school funds being shut off.

"What the Supreme Court did was clear up in the legislators' minds what they must deal with — and that is, clearly, lower property taxes and get this statewide property tax off of the backs of the people of the state of Texas," Perry said.

Calling the ruling a victory for schoolchildren and property taxpayers, Perry also said there are no constitutional questions about funding equity and adequacy. He emphasized that the court "agreed with a position that I have long advocated — that is that simply pouring more money into the same system will not alleviate the property tax problem."

But some — including lawyers for the school districts that sued — said lawmakers need to address the adequacy of funding, even without a court order to do so.

Several years ago, the Supreme Court warned that enough school districts eventually would reach the tax rate cap to make it a statewide and unconstitutional property tax. The warnings about funding adequacy contained in Tuesday's ruling are similar, said Dallas lawyer George Bramblett, one of the attorneys representing property-wealthy school districts, lead plaintiffs in the West Orange-Cove case.

"This is a very strong opinion in which seven justices all joined together in agreeing the system is very close to a constitutional violation (on whether the state provides adequate school funding)," said Houston lawyer Phillip Fraissinet, another lawyer representing property-wealthy schools.

"It's a very strong warning from seven judges of the Supreme Court that some action needs to be taken and that this issue can be presented to the courts in the future if such action isn't taken," Fraissinet said.

Buck Wood, a lawyer representing 270 poor and mid-wealth school districts collectively known as the Alvarado plaintiff interveners, is not sure that the governor and state leaders understand the ruling.

The court sent a strong message, Wood said, "but when you get Perry coming out and saying, 'Our schools are just wonderful,' you kind of wonder if they got it."

Texas Attorney General Greg Abbott, whose office defended the state's current school funding system in court, said the ruling validates the quality of the state's education system.

"This is a victory for democracy because it ensures that decisions about education policymaking will remain in the elected Legislature rather than the courts," he said.

Abbott said he's confident the Legislature will meet the June 1 deadline to correct the tax problems.

The court strongly hinted that legislative efforts during the past year to drop the school property tax rate of \$1.50 per \$100 to about \$1.30 while giving local school districts flexibility with an additional rate of 15 cents per \$100 would not solve the problem.

Rep. Mike Villarreal, D-San Antonio, vice chairman of the House Ways and Means Committee, said it's clear that a plan relying on a tax rate cap won't pass muster. The court in its ruling declared that "a cap to which districts are inexorably forced by educational requirements and economic necessities ... will in short order violate the prohibition of a state property tax."

"School districts have to have meaningful discretion within the rates that their voters have already authorized," said David Thompson, one of the lawyers for property-wealthy districts. "The court did not buy the state's argument of low standards. We don't want kids with an eighth-grade education. We want kids who can compete in the world that they will live in."

The court's ruling irritated the Mexican American Legal Defense and Educational Fund, which represents Edgewood School District and 21 other property-poor districts, many of which filed the 1984 landmark school finance case.

MALDEF lawyers faulted the court for ignoring what they contend are persistent inequities in the system.

Trial evidence "showed that the quality of education for certain Texas children still suffers as a direct result of which side of the tracks they live on," said David Hinojosa, the organization's lead counsel in the case. "Despite the glaring disparities between the haves and have-nots, the court refused to confront the issues head on."

Scott McCown, a retired state judge who ruled in the original Edgewood case, said the current Supreme Court characterizes the school funding system as inequitable, then seems to reluctantly conclude that it cannot say those inequities leave the entire system inefficient.

"Given the court's opinion, however, if equity continues to erode, there will be further litigation. With regard to equity in funding facilities, the court in essence invites further litigation by ruling only that necessary evidence was not presented, rather than that facilities funding is equitable," said McCown, now head of the Center for Public Policy Priorities, a research group that tracks issues affecting low- and modest-income families.

The court said evidence was not presented on funding for school facilities, an issue it has addressed in previous cases. Some school districts said they may go back to court on that.

MALDEF will consider filing a motion for the court to reconsider portions of the ruling, Hinojosa said, adding that phone calls from parents and school districts after the ruling also indicate a desire to file brand-new litigation if necessary.

"We are highly disappointed by the Supreme Court's retreat from its precedent (the insistence on equitable funding between rich and poor schools), but we remain hopeful that the Legislature will come through and provide us a fairly funded system for every child in Texas," Hinojosa said.

Sen. Judith Zaffirini, D-Laredo, said she was disappointed that the ruling didn't go further, but she said the Legislature can still do what's needed for education. "There shouldn't have to be an ax over our heads. We should be willing to do the right thing," she said.

Sen. Jeff Wentworth, R-San Antonio, said he expected the justices' ruling that the property tax-heavy funding system is unconstitutional and that he expected it to leave the ball in lawmakers' court to craft a specific solution, as it did.

"They essentially said, 'We're the umpires. You're the players. You need to get back in the game and play, and we'll tell you whether or not you are playing by the rules,'" he said.

The Texas Public Policy Foundation, a group that supports limited government, embraced the court's ruling, particularly the admonition that "pouring more money into the system may forestall those challenges, but only for a time." The ruling amplifies the need to change public education in Texas, said Brooke Rollins, the group's president.

The court noted that the relationship between public education and funding is neither simple nor direct.

"Public education can and often does improve with greater resources, just as it struggles when resources are withheld, but more money does not guarantee better schools or more educated students," the justices said.

Justice Scott Brister cast the lone dissent. He said the case "once again focuses on short-term funding rather than long-term solutions. ... But there is no end in sight. If the past is any indication, the new funding will not last long, and public education will not change much."

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