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SERRANO V. PRIEST 50TH ANNIVERSARY: ORIGINS, IMPACT AND FUTURE

INTRODUCTION TO SPECIAL ISSUE IN *EDUCATION AND LAW JOURNAL*

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The *Serrano* case has been discussed often over the years by both academics and policy makers. It is one of the most influential school finance court cases due to its importance to litigants seeking to challenge state school finance systems in the absence of federal court standing to do so due to the *San Antonio v. Rodriguez* US Supreme court decision.¹ This year, 2021, marks the 50th anniversary of the landmark *Serrano v. Priest* California Supreme Court ruling.² We commemorate this historic anniversary via this special issue of the *Education and Law Journal* which contains contributions from a stellar

¹ Allan R. Odden & Lawrence O. Picus, School Finance: A Policy Perspective (2019).

² *Serrano v. Priest*, 487 P.2d 1241 (Cal. 1971) (*Serrano I*).

group of academics including two of the primary individuals involved in the original case, Sid Wolinsky (lead lawyer) and Jack Coons (legal scholar). The purpose of this special issue is to revisit the origins and impact of *Serrano* and to speculate on the future directions of school finance litigation. We provide a synopsis of each manuscript at the end of this introduction.

I. ORIGINS OF SERRANO

To truly understand the origins of *Serrano*, it is imperative to frame it within the broader racialized historical political context of California. In the 1960s, the Chicano (or Mexican-American) civil rights movement demanded political, economic, and educational justice after being treated as second class citizens for well over a century, since the Mexican-American War and the Treaty of Guadalupe of 1848, which ceded a substantial portion of Mexico to the United States, including what is now California. As Jimenez-Castellanos, Kelly, and Carranza (2021, p. 70) concluded:

[R]acially biased policies have helped institutionalize school funding disparities for Mexican-American communities in California that were cited in *Serrano*. These racist policies were deeply rooted in the organization of California's education system before *Serrano*, and they were maintained by formally race neutral policies after *Serrano*. The historical evolution of these policies reflects the systemic nature of racism against Mexican

American communities in both the past and the present.³

After suffering through the “Mexican Schools” era and not seeing any significant educational improvement after the *Mendez* decision, the calls for equal educational opportunity for Mexican-Americans came to a climax in the late 1960s. The year 1968 was pivotal in the Chicano community across the nation, and in particular in East Los Angeles, partly due to the walkouts which saw Chicano high school students walk out of class en masse to demand a higher quality of education.

It was that same year that John Serrano, a Mexican-American parent of children in Baldwin Park Unified School District, a predominantly Mexican-American neighborhood on the east side of Los Angeles, filed the *Serrano I* lawsuit represented by attorney Sid Wolinsky. The lawsuit highlighted the gross disparity in expenditures per pupil between Baldwin Park Unified School District (\$577.49 per pupil) and Beverly Hills Unified School District (\$1,231.72 per pupil). The plaintiffs claimed that the school funding system violated the equal protection clause of the Fourteenth Amendment, informed in large part by the legal framework developed by John Coons and colleagues.

II. *SERRANO* DECISIONS

Serrano v. Priest refers to three cases decided by the California Supreme Court: *Serrano v. Priest*, 487 P.2d 1241 (1971) (*Serrano I*); *Serrano v. Priest*, 557

³ Oscar Jimenez-Castellanos, M. Kelly & L. Carranza, *Pre and Post Serrano: Systemic Racism, School Funding Disparities and Mexican-American Communities*, 6 Educ. L. & Pol’y R. 49 (2021).

P.2d 929 (1976) (*Serrano II*); and *Serrano v. Priest*, 569 P.2d 1303 (1977) (*Serrano III*).⁴ In 1971, the California Supreme Court ruled that California's funding scheme discriminated against low-income students because it made the quality of a child's education a function of the wealth of their community, thus violating the state's equal protection clause. The court stated:

We find that such a financing system as presently constituted is not necessary to the attainment of any compelling state interest. Since it does not withstand the requisite 'strict scrutiny,' it denies to the plaintiffs and others similarly situated the equal protection of the laws. If the allegations of the complaint are sustained, the financial system must fall and the statutes comprising it must be found unconstitutional.⁵

This was the first successful school finance lawsuit against any state. The court focused on wealth disparities, instead of race, as a strategy to be able to have a broader impact. In *San Antonio Independent School District v. Rodriguez* (1973), the Supreme Court of the United States reversed a similar decision by a Federal Texas District Court, which, like *Serrano I*, had been decided on Fourteenth Amendment equal-protection grounds.⁶ In *Serrano I*, however, the California Supreme Court had also relied on California's constitution, and in *Serrano II* they affirmed that basis, protecting the

⁴ *Serrano I*, 487 P.2d 1241; *Serrano v. Priest*, 557 P.2d 929 (1976) (*Serrano II*); *Serrano v. Priest*, 569 P.2d 1303 (1977) (*Serrano III*)

⁵ *Serrano I*, 487 P.2d 1241, 1263.

⁶ *San Antonio Independent School District v. Rodriguez*, 411 US 1 (1973).

Serrano decisions from *Rodriguez*. The *Serrano II* decision also held that the legislative response to *Serrano I* was insufficient and affirmed the trial court's order requiring that wealth-based funding disparities between districts be reduced to less than \$100 by 1980. *Serrano III* dealt primarily with attorneys' fees, but in passing affirmed the trial court's response to the *Serrano II* decision, including a six-year timetable for bringing the funding system into compliance.

III. IMPACT OF *SERRANO*

There have been many state – and even some federal – school finance litigation lawsuits since *Serrano*. In fact, over 40 states have now faced lawsuits questioning the constitutionality of their state's finance mechanism, with the majority of them succeeding.⁷ This is a major legacy of the *Serrano* case. The impact on California is much more complicated. The lack of sufficiency (funding) established by the courts led to the development of Assembly Bill (AB) 65 in 1977, in direct response to the *Serrano II* ruling. AB 65 would have reallocated some of the wealth of rich districts to the poor districts, provided state aid to the poorest districts, and placed limits on revenue for the richest districts.⁸ However, AB 65 was not implemented, due to Proposition 13.

Proposition 13, as a constitutional amendment, overrode AB 65. This was the initial step in shifting school funding from local funding to state control of

⁷ Michael A. Rebell, *The Courts' Consensus: Money Does Matter for Educational Opportunity*,

674 *Annals Am. Acad. Pol. Sci.* 184, 186, 190–91 (2017).

⁸ Oscar Jimenez-Castellanos, *School Finance and English Language Learners: A Legislative*

Perspective, 4 *Ass'n Mexican-American Educ. J.* 12 (2010).

school funding. Throughout the 1970s, property values were increasing rapidly, which meant that there was an influx of new tax revenue. This influx of new tax revenue led anti-tax advocates to support Proposition 13 in order to avoid the costly implications of the *Serrano* decision. Proposition 13 complicated the fulfillment of the requirements set in the *Serrano II* case because of the limitations that it put on taxpayers and the legislature.

Prior to Proposition 13, property tax allocations were determined locally, and each jurisdiction was able to set its own tax rate with voter approval. Property owners' property tax bills included the sum of the individual rates set by each taxing entity. Proposition 13 limited the amount of property tax that could be collected on every parcel. It capped property tax rates at one percent and limited the growth in assessed values of taxed property. It also required approval of two thirds of the legislature to increase state taxes, and two thirds of the voters in a jurisdiction to increase local taxes. It also prohibited increasing the general ad valorem property tax of one percent (although parcel taxes, measures to pay for bonds, and funding for some special districts is allowed with a two-thirds vote). Proposition 13 reduced funding levels for schools for years, led to the passage of a state lottery, but did little to allow California school funding to keep up with other states, despite arguably greater need for EL and low-income children than most states.

In 1983, plaintiffs went to court alleging that the state was not compliant with the *Serrano II* order. The trial judge decided that legislators had done their best to reduce the per-pupil disparities. Moreover, the courts allowed a residual number of basic aid districts to retain a higher level of funding based on well-above-average local property taxes. As a result, school funding in California declined relative to other states, leaving it with one of the lowest rates of spending per pupil and

spending as a percent of personal income of any state in the country.

Proposition 98 passed the voters in 1988 and set a minimum annual funding level for K-12 schools and community colleges. It also cemented the role of the Legislature in determining the level and allocation of school funding. An economic recession which occurred in the late 1990s and early 2000s added to the fluctuations in funding, which affected how public schools in California were financed from its general fund.

Because *Serrano* called for reduction in wealth-related funding disparities, over time nearly 100 categorical funding programs were implemented by the Legislature. The goal of these programs was often to skirt the equal spending requirements of *Serrano* and distribute funds to a limited number of school districts. This process, including one grant program known as Supplemental Grants, which funded school districts with limited funding from other categorical programs, reduced the effectiveness of the overall *Serrano* goal of equity. In the meantime, by 2014 Latinos had become California's largest racial or ethnic group in the state; and by 2021, 75 percent of California's students were non-White. Moreover, 60 percent of the state's students now qualify for the Free and/or Reduced Lunch Program.

IV. RECENT ATTEMPTS TO REMEDY FUNDING DISPARITIES

California fundamentally reformed its school funding mechanisms via the Local Control Funding Formula (LCFF) in 2013–14. The intent of this policy was to provide funds to school districts that have high needs. Students in the targeted categories include: low-income children, foster youth, and English learners.

Districts receive a base funding level per pupil. For the targeted categories, districts receive an additional 20% in funding; and, when the percentage of targeted students exceeds 55 percent, the additional funding increases to 50 percent more for each student above the 55 percent threshold. The LCFF also comes with the provision that parents, community members, employees, and educators develop Local Control and Accountability Plans (LCAP), which are intended to provide for accountability of the LCFF. The LCAP establishes a space for each school district to develop a plan with a vision for students, annual goals, along with a concrete explanation of how the school district plans to achieve their its goals (Jimenez-Castellanos et al., 2019). However, the LCFF does not necessarily create more equity for the high-need students, because the money is given to the entire district and is not allocated per student per school.

In 2020, Proposition 15 was put on the California ballot and narrowly failed, with 51.8% of voters in opposition. This proposition would have maintained the one percent property tax limitation but would have allowed commercial and business property to be reassessed at market value every three years and would have directed 40 percent of the revenue to K-12 schools and community colleges, with the remaining 60 percent allocated to counties, cities, and special districts.

The COVID-19 pandemic appears to have increased inequities among students in California. A recent lawsuit, *Cayla J. v. State of California*, filed by African-American and Latinx students, claims that school districts and the state of California have not provided adequate resources for students to access emergency distance-learning content and resources.⁹ Additional groups also facing barriers to their education,

⁹ *J. v. State of California*, No. RG20084386 (Cal. Super. Ct. Jun. 15, 2021).

as cited in this case, include homeless students, students that cannot speak English, as well as those who do not have access to devices that allow them to “functionally attend” school during the COVID-19 pandemic. Most importantly, this case alleges that these conditions would not be acceptable in wealthier, Whiter communities. It is not clear how this lawsuit will impact California school finance in the future, but COVID- 19 is forcing educators and policy makers to rethink how education is provided, and, in particular, how schools address racial inequities.

Although the intent of *Serrano* was to remove the wealth disparities from the distribution of funding to California’s schools, many of these inequities persist. The judicial system recognized the inequities that existed, and continue to exist, in school funding; but ensuring that governmental institutions are held accountable for creating the necessary changes is not easily accomplished.

V. SYNTHESIS OF MANUSCRIPTS IN THIS SPECIAL ISSUE

This special issue reviews the historical development of *Serrano* and considers some implications that were previously not studied. The first manuscript is authored by John Coons, a legendary school finance scholar, UC Berkeley Professor Emeritus, and co-author of *Private Wealth and Public Education* (1970)¹⁰ – the book credited for developing the legal theory behind *Serrano*. He writes a reflective essay titled “A Tale of Serrano: Three v. Priest,” about his involvement in the *Serrano* case. This manuscript takes us behind the curtain of Coons and colleagues as they attempt to make an impact on school finance litigation in the late 1960s and early 1970s.

¹⁰ John E. Coons, *Private Wealth and Public Education* (1970).

The second manuscript, titled “Reflections of a Litigator: Serrano v. Priest Goals and Strategies” is also a reflective essay, written by Sid Wolinsky, the legendary lead lawyer on behalf of the plaintiffs (i.e., John Serrano), and the co-founder of Public Advocates. He also takes us behind the curtain to understand the strategic thinking of the then 31-year-old lawyer entrusted with the responsibility to litigate this novel school finance case – which ended up being one the most important school finance cases in the history of the United States.

The third manuscript was written by Bill Fischel, Professor of Economics and Robert C. and Hilda Hardy Professor of Legal Studies Emeritus at Dartmouth College. Dr. Fischel is a premier expert on land use and zoning laws. Most germane to the topic of this special issue, he previously published two manuscripts related to Serrano – “Did *Serrano* Cause Proposition 13?”¹¹ and “How *Serrano* Caused Proposition 13”¹² – which have been widely cited and have prompted much debate over the years. His manuscript in this special issue is titled “John Serrano Did Not Vote for Proposition 13,” which provides a retrospective analysis of his musing and writings over the past 25 years related to *Serrano*.

The fourth manuscript, “Segregation and School Funding Disparities in California: Contemporary Trends 50 Years after Serrano,” is co-authored by David Knight, of the University of Washington, Nail Hassairi, Postdoctoral Scholar, University of Washington, and David Martinez, University of South Carolina. This article takes an empirical look at the intersection of segregation and school funding disparities.

¹¹ William A. Fischel, *Did Serrano Cause Proposition 13?*, 42 Nat’l Tax J. 465 (1989).

¹² William A. Fischel, *How Serrano Caused Proposition 13*, 12 J.L. & Pol. 607 (1996).

Michael Rebell, Professor of Law and Educational Practice and Executive Director, Center for Educational Equity, Teachers College – Columbia University, prepared the fifth chapter in this volume. He is one of the nation’s foremost school finance legal scholars, and his manuscript, “State Courts and Education Finance: Past, Present and Future,” provides a comprehensive analysis of school finance litigation over the past 50 years, beginning with *Serrano*.

The last manuscript, “Surfing the Waves: An Examination of School Funding Litigation from *Serrano v. Priest* to *Cook v. Raimondo* and the Possible Transition to the Fourth Wave,” is co-authored by Christine Rienstra Kiracofe, Professor and Director, University of Purdue, and Spencer Weiler, Associate Professor, Brigham Young University, and current president of the National Education Finance Conference. Their manuscript juxtaposes some of the first school finance litigation (i.e., *Serrano*) with some of the most recent litigation. Their analysis suggests that we may be returning to a time in which federal challenges may become more frequent, and, possibly, successful. After spending the past 50 years litigating school finance issues primarily in the state courts, the authors argue that today there is a greater potential for a challenge that will provide a constitutional guarantee of education for all children in the United States than at any time since *Rodriguez*.

CONCLUSION

In the *Serrano* cases, school funding was challenged in order to ensure that students in all districts in California were given the same opportunity to access their right to education, regardless of property wealth. Fifty years have passed since the California Supreme Court issued its ruling, and California students are still searching for equity in K-12 Public Schools. Decades of

litigation and reform have sought to make the distribution of educational resources and opportunities in California more equitable. In California, school funding is still largely a function of state revenues; and the likelihood of another, longer, recession in the near future is likely to wreak substantial havoc on school funding. Identifying a stable basis for funding schools, that is not as dependent on the State's elastic income tax, is essential for the future. LCFF, along with the reduction of most categorical programs, and in combination with new accountability standards, has improved the equity of the distribution of funds to California school districts. Meanwhile, influx of Federal COVID stimulus funding has left school districts flush with cash on a temporary basis, but there are many challenges remaining in the continuing effort to equitably fund the state's diverse schools. *Serrano* was just the start. Today, 50 years later, much remains to be done.