



Center for Public Policy Priorities

McCown: Learning to share; justices could ensure Texas children get more than crumbs

If you have two boys, one big and one small, and you give the big boy a cookie and ask him to share, the little boy will get crumbs. And as long as the big boys are allowed to "share" this way, they won't throw in their nickels to buy a big enough cookie for all of the kids. When it comes to school finance, Texas needs a really big cookie.

On Wednesday, however, the attorney general asked the Texas Supreme Court to let the big boys divide the cookie. The attorney general dressed up his argument in some fancy legalisms, but the ugly naked truth is that he asked the Supreme Court to take a walk.

Frankly, the Supreme Court put on its walking shoes when it amended its original ruling in the first Edgewood case that districts must have substantially equal access to funding and instead ruled that funding could be unequal as long as it was adequate.

Now, the justices are being asked to actually take a hike by deferring to the Legislature in defining adequacy, or finding funding to be adequate when it is not. Under either scenario, the big boys get the cookie.

The Supreme Court, however, is in a tough spot. On the one hand, if it rules that funding is adequate, it will be so far from the truth as to have transparently abdicated what it has boldly declared to be its judicial responsibility. On the other hand, if it rules that funding is inadequate, it will have necessitated a judicially imposed tax increase.

There is a way off the spot, however. The Supreme Court need only rule that when funding is equal, the court will defer to the Legislature about adequacy. But when funding is unequal, the state has the burden to prove that funding is adequate — and the state has not met that burden.

The Supreme Court can then give the Legislature two choices: Equalize funding or increase funding. Under this ruling, the court has neither abdicated its responsibility nor imposed a tax increase. Rest assured, given these two choices, the big boys will pull together a few nickels to buy a slightly bigger cookie, and they will divide it more fairly.

We have a large, rapidly growing child population, a high percentage of whom are economically disadvantaged and many of whom do not speak English. By 2040, enrollment in our public schools will double, from over four million to about eight million. To maintain a working democracy and our economic prosperity, we must ensure that these children have an education. Although that will be costly in the short run, it will more than pay for itself in the long run.

After I retired from the bench, a young law student approached me at a reception at the law school and asked if I had been the Edgewood judge. When I said yes, he told me he was from Socorro school district, which is a very poor district in El Paso County. Of its 30,000 students, about 72 percent come from economically disadvantaged homes. Socorro has less than \$100,000 of taxable property value per student.

I remembered the moving testimony at the Edgewood trial of the Socorro superintendent about the district's struggles. The law student shook my hand while telling me, "Edgewood made it possible for my brother and me to move into the middle-class." For the sake of the children behind him, we can only pray the Supreme Court doesn't take a walk.

F. Scott McCown was the trial judge in the Edgewood II – IV cases and West Orange Cove I. He retired in 2002 to become the director at the Center for Public Policy Priorities in Austin.