Court to Review Property Tax As Base for School Funding

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The Supreme Court agreed yesterday to decide whether states violate the Constitution by financing their public schools through a system based primarily on local property taxes.

Set for full-scale review was the decision of a lower federal court that Texas is discriminating against the poor and other minorities with its arrangement of local property taxation fortified by state aid. The lower court held that the system widens the gap in educational quality between "rich" and "poor" districts.

Announcement that the Texas case will be heard in the fall came on a day in which the court, far behind in delivery of pending decisions, produced results in 10 cases, some of them on highly controversial issues which divided the justices in several directions.

The day's output reduced the backlog to 55 undecided cases, including many of the most divisive cases on the docket, dimming still further the prospects for a June adjournment.

In the school case, half the states supported the Texas appeal, contending that a recent wave of court decisions won by education "reformers" must be halted. The states failed, however, in their bid for outright reversal as the justices decided to take a closer look at the evidence.

Only one state—Hawaii, with its single school district—would be unaffected if the court affirms the ruling of a federal district court in San Antonio that the equal protection clause of the 14th Amendment limits the way states allocate school funds to districts.

The string of court victories has spurred some states and the Nixon administration to study alternatives to the local property tax as the basis for local school funding. Reformers, fearing that a more conservative Supreme Court might kill the momentum, have tried to litigate on a state-by-state basis.

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A common theme among reformers is that no matter how steep the taxes in a poor community, it can't raise adequate school money. A prosperous locality, they argue, can support good schools with relative ease.

Arthur Gochman, attorney for a low-income San Antonio school district, contends that evidence of severe economic discrimination requires the lower court to be upheld even if the Supreme Court justices are unwilling to issue a broad ruling with nationwide application.

In other action:

Right to Counsel

By a 5 to 4 margin the court sharply restricted the scope of one of the most controversial criminal law decisions of the past decade as it held that a suspect in an unsolved crime does not have a right to counsel when taken before a witness for identification.

In 1967 the court said that a police lineup or "show-up" was a critical stage in a prosecution at which an accused is entitled to a lawyer, at public expense if he was indigent.

But a few state courts, including the highest court in Illinois, noted that the lineups in the 1967 decisions occurred after indictments had been returned. They refused to require counsel before that stage was reached.

The high court upheld the Illinois courts in the case of two convicted robbers, Thomas Kirby and Ralph Bean of Chicago. It refused to exclude identification evidence obtained when the suspects were under arrest without lawyers.

Four of the five-man majority were Nixon appointees: Chief Justice Warren E. Burger and Justices Harry A. Blackmun, William H. Rehnquist and Lewis F. Powell. They voted with Justice Potter Stewart, a dissenter in 1967, although Powell did not join in Stewart's written opinion.

Another 1967 dissenter, Justice Byron R. White, dissented again yesterday, contending that the decisions five years ago governed the case. A stronger dissent was registered by Justice William J. Brennan Jr., author of the earlier decision, joined by William O. Douglas and Thurgood Marshall.

According to the dissenters, the issue was not whether the 1967 ruling would be extended but whether its reasoning would be rejected. The court's action resembled other recent criminal law rulings that contained or curtailed decisions of the Warren Court without directly overruling them.

Virginia's highest court has ruled against similar claims in criminal cases, including the case of John Patler of Arlington, who is appealing his conviction for the 1967 murder of George Lincoln Rockwell, leader of the American Nazi

Party.

Witnesses

In a Tennessee criminal case the court, over three dissents, extended a 1965 decision that state courts may not infringe a defendant's privilege against self-incrimination by making it harder for him to refrain from taking the witness stand.

In 1965 the court held that prosecutors may not comment on the defendant's refusal to testify in his own behalf. Yesterday the Supreme Court said that courts may not insist that a defendant testify first, ahead of all other defense witnesses, if he is to testify at all.

Justice Powell, who criticized the 1965 ruling when he was a lawyer-member of the National Crime Commission, joined Justices Brennan, Douglas, White and Marshall in yesterday's majority. Justice Stewart concurred in the result, while Burger, Blackmun and Rehnquist dissented.

Death Penalty

The court dismissed the case of multiple murderer Earnest Aikens of California, on an appeal involving capital punishment, because the state's supreme court has outlawed the death penalty there. But the court did not disclose its decision concerning another murderer and two condemned rapists, whose cases were chosen as the vehicles for a ruling on the constitutionality of executions.

Mental Competency

In a unanimous decision delivered by Justice Blackmun, the court held that states may not keep defendants in indefinite confinement on grounds of incompetency to stand trial but must, after a "reasonable time," seek civil commitment or release them.

Welfare

The court ruled, 9 to 0, that states may not deny federally financed welfare benefits to "military orphans," the destitute children of servicemen. California and 21 other states cut children of military families from welfare rolls.

Aliens

The court agreed to take up a challenge to a Connecticut court ruling and decide whether states may allow only citizens of the United States to practice law. In another case, the court ruled unanimously that an alien may be sued for patent infringement in any federal district court in the country.

International Law

In a break with a traditional hands-off policy in international disputes, the court ruled, 5 to 4, that certain legal claims against Cuba can be tried in American courts.

An attempt by the National City Bank of New York to recoup damages for seizure of its branch banks by the Castro government had been rejected by the 2d U.S. Circuit Court of Appeals, but the high court reversed.

Rehnquist, Burger and White said domestic courts were free to decide the legality of the Cuban seizures if the State Department said there were no foreign policy objections. Powell said courts should decide for themselves whether they should act. Douglas said U.S. courts could act in cases where Cuba sued here.