Frontera Olvidada: An Examination of the Relationship between NAFTA, School Finance, and the Legacy of Inattention to the Needs of Border Communities, La

Aaron A. Hayes

Follow this and additional works at: https://scholarship.law.berkeley.edu/blrlj

Part of the Law Commons

Recommended Citation

Link to publisher version (DOI)
https://doi.org/10.15779/Z38959K

This Article is brought to you for free and open access by the Law Journals and Related Materials at Berkeley Law Scholarship Repository. It has been accepted for inclusion in Berkeley La Raza Law Journal by an authorized administrator of Berkeley Law Scholarship Repository. For more information, please contact jcera@law.berkeley.edu.
La frontera olvidada: An Examination of the Relationship between NAFTA, School Finance, and the Legacy of Inattention to the Needs of Border Communities

Aaron A. Hayes†

As it was in the early 1990s, the public school finance system in Texas is at the brink of an onslaught of litigation. Within the past five months, the Texas state legislature has gone into special session twice in order to consider the Governor's order to remedy problems with the public school finance system. The controversial finance system as it currently stands is a direct result of the Edgewood decision and subsequent Supreme Court of Texas orders to legislators to end the massive disparity in public school funding between rich and poor districts. Nowhere have such inequalities been more prevalent than in border areas, particularly El Paso, Texas, a city drastically changed since the enactment of NAFTA. This paper examines the socioeconomic changes that have shaken El Paso since the enactment of NAFTA and considers the impact of proposed changes to the school finance system on the notoriously underfunded and overburdened El Paso public schools. Specifically, this paper analyzes how the proposed changes to the public school finance system currently being considered by the legislature and the governor dramatically threaten the ability of El Paso schools to provide acceptable education, a viable future workforce, and contribute to a positive reinvention of El Paso post-NAFTA.

Consequently, this paper posits that by failing to address the plight of El Paso's public education system, Texas stands to lose economically by not fostering the truly conceivable formation of a "San Diego" style community in El Paso as a strong alternative to corporate relocation to Asian countries. El Paso on the brink of reinventing itself, post-NAFTA, should create an attractive community for corporate relocation by forming a viable "production ecosystem" alongside the maquiladoras of Northern Mexico and its sister city Juarez. The issue of school finance, considered from the lens of NAFTA, plays a significant role in this positive reinvention of the border as El Paso comes of age in a free market hemisphere.

† J.D. California Western School of Law 2005 (expected). My deepest thanks to Professor Gloria Sandrino for her untiring devotion to students and amazing abilities, my grandmother Juanita, for teaching me to love la cultura hispana, and the Imandousts for teaching me what family is all about.
I.
INTRODUCTION

A. NAFTA: Results and Realities

Heading Southwest on Interstate 10, one travels through a vast expanse of flat land, home only to roving antelope and the occasional oil derrick. A United States (U.S.) Border Patrol checkpoint, between the heart of Texas and the historic city of El Paso, serves as a gateway between Texas and Mexico. Since the enactment of the North American Free Trade Agreement (NAFTA), El Paso and its adjoining sister city, Juarez, Mexico, have become centerpieces in the NAFTA experiment. They serve as an example of cross-border cooperation in a free-market system and form an historic alliance that joins both cities fast at the hip as they move into the future.

While NAFTA has generally been a success, one need not look beyond the border to see that NAFTA’s success was not bought without a cost to certain U.S. communities. For El Paso, this price has been a burgeoning population, the loss of jobs and the creeping elimination of its heavily relied upon manufacturing industries which have sustained this community for decades. Yet, NAFTA has also presented opportunities for growth in the El Paso economy, and the general outlook is not one of decline but one of change. The culmination of this change has the potential to make the “doormat” region of the U.S. economy into a vibrant example of the prosperity and transnational cooperation that can occur between nations as a result of NAFTA-type pacts.

To achieve and sustain this reinvention, it is necessary however that El Paso, with a predominantly minority and impoverished population, be given legislative guidance and support to mitigate the harms inherent in any such transition. This guidance, more importantly, will also contribute to the overall success of NAFTA. If El Paso is to become an economically viable conduit for

1. Aside from the initial growth of maquiladoras and economic expansion in Northern Mexico (which has abated in recent years), the successes of NAFTA lie beyond this immediate knee-jerk boom and revolve around the opportunities for economic integration and cross-border investment which have clearly occurred between the United States, Mexico, and Canada. See, e.g., Katherine Yung, NAFTA’s Shining Star? Texas Benefits from the Trade Agreement, but at the Price of Border Jobs, DALLAS MORNING NEWS, Nov 9, 2003, at 1D; and see generally Stanford Gaines, NAFTA as a Symbol on the Border, 51 UCLA L. REV. 143 (2003) (distinguishing sad stories of displacement from the realities of the gains that NAFTA has made).
import/export in the NAFTA experiment, it must also become a community to which corporations, in an effort to oversee Mexican maquila operations, can confidently and comfortably relocate their administrative offices and personnel.\(^7\)

However, El Paso is currently failing to become such a community. As State Senator Eliot Shapleigh of El Paso points out, “At the state level, policies on funding and taxation can no longer be called neglect. Rather, such policies are systematic, pervasive and intentional state actions that have thwarted for a whole region the development of a sound economic foundation.”\(^8\) As a result, El Paso has consistently ranked among the lowest nationally in terms of health care, income, housing, and education.\(^9\) These grim statistics make it essential that the legislature and government organs of Texas take the lead in assisting El Paso to meet the challenges of reinventing its economy. By helping El Paso, and more generally its section of la frontera, fit into the NAFTA puzzle, the legislature will be ensuring that Texans benefit statewide even more greatly from free trade, and it will also allow economic integration to eventually answer many of the social problems confronting the border area.

B. Trade and Textbooks: The Interrelatedness of NAFTA and School Finance

This Comment focuses on the Texas public school finance system and the proposed changes that threaten to undermine the minimal gains that economically depressed school districts have gained after decades of civil rights litigation against the state. These proposed changes pose disaster for El Paso’s coming of age in the NAFTA reality. Though not an exhaustive analysis of NAFTA itself, this Comment contends that El Paso represents a city and region on the cusp of economic change. El Paso, as a key piece of the NAFTA puzzle, offers to benefit the state greatly if nurtured and developed. However, the legacy of inattention to the needs of El Paso and la frontera threaten this future.\(^10\) Consequently, it is essential that Texas maintain its current “Robin Hood” system of public school funding\(^11\) in order to ensure that El Paso grows into its NAFTA role as an attractive community with the high-skilled and educated population that the restructured economy demands.

This Comment is structured in five parts. Part II examines NAFTA and its

\(^7\) If El Paso can build itself into an attractive community, companies will likely choose, as they have in San Diego, slightly higher wages for Mexican labor in exchange for having safe, attractive communities in which to live and manage their Mexican operations just across the border. If El Paso can capitalize on this, it stands to benefit the entire NAFTA region by stemming the tide of maquiladora relocation out of the NAFTA zones and encouraging the growth that characterized the area in the late 1990s.


\(^9\) State Senator Eliot Shapleigh points out in his “Five Star Agenda” that if ranked as the 51st state, the border counties of Texas would have the lowest per capita income of any state in the nation. See Shapleigh, supra note 8; see also Van Schoik, supra note 5, (discussing the various socioeconomic challenges facing the border region).

\(^10\) For much of Texas, both politically and socially, the border is a “world apart” from mainstream Texas, primarily because of its Democratic population and Spanish lingual-culture.

\(^11\) The “Robin Hood” system of school funding was a legislative response to a Texas Supreme Court order. See Edgewood v. Kirby, 777 S.W.2d 391 (Tex. 1989). This system reduces the disparity between rich and poor schools in Texas through a wealth sharing program in which poor districts receive monies raised by wealthy districts in excess of a legislatively established cap.
effects generally to provide the context for the current state of El Paso and la frontera. Within this context, Part III discusses the controversial state of Texas school finance from the perspective of the El Paso Independent School District and addresses the proposed changes to the system, which threaten poorer districts. Part IV emphasizes the current state of transition and reinvention that is reshaping El Paso. Finally, Part V highlights the need for action at the state level and offers suggestions for such action and proposes judicial remedies should it not be forthcoming. Specifically, this Comment argues that economic incentives exist for Texas to maintain its current “Robin Hood” system of public school funding and illustrates the urgency of such legislative attention as a prerequisite to the complete realization of the potentials of NAFTA and a significant component of remedying the woes of la frontera.

II. ORIGINS AND EFFECTS OF NORTH AMERICAN FREE TRADE

A. Background

Recognizing the wide-ranging benefits of a free trade union, Mexico, Canada, and the United States agreed to free trade, and implemented NAFTA in 1994. For Mexico, such a step was a delayed acknowledgment by then Mexican President Carlos Salinas de Gortari of the new global order in which Mexico’s isolationist policies, coupled with looming sociopolitical problems, could no longer survive. For the United States, this agreement was a natural extension of the longstanding free trade ties it had enjoyed with Canada and, more importantly, an opportunity to address many of its complaints and concerns with its southern neighbor under cover of a trade pact. As Michael Gordon points out, “On its face NAFTA will appear to be exclusively about trading relationships, ... But the NAFTA means much more than trade. It will be a document governing relationships.” This agreement has the potential to be the “lens” through which the United States and Mexico can focus on “pre-existing patterns of economic and population growth accompanied by environmental degradation” which threaten North America generally. NAFTA provides the economic incentive to solve these problems while allowing for a framework of political as well as economic integration through which the sovereign participants can make demands of each other and seek accountability through enumerated and agreed to dispute resolution processes.

13. Id. at 158.
14. Id. at 158-59.
15. Michael Gordon, Economic Integration in North America—An Agreement of Limited Dimensions but Unlimited Expectations, 56 MOD. L. REV. 157 (1993). NAFTA allows the United States to address many of its concerns with Mexico that otherwise would be impossible by virtue of Mexican sovereignty. NAFTA provides a “carrot and stick” approach by which the United States can get Mexican assent and ultimately seek to remedy many of its concerns, particularly the tide of illegal immigration into the United States.
16. Id. at 158.
17. Gaines, supra note 1, at 159.
Ten years since its enactment, NAFTA’s record reflects surprising gains and even more surprising losses.\textsuperscript{19} For the purposes of this analysis, this mixed bag of results present El Paso and la frontera with distinct opportunities threatened by even more pressing economic problems.

One of the undeniable hopes for NAFTA was to limit the amount of undocumented immigration into the U.S. by providing opportunities for workers in Mexico such that a Mexican economy could sustain its workers without them having to seek a tedious and illegal existence in the United States.\textsuperscript{20} It was intended that this process would move maquiladoras away from border areas, or at least encourage new maquiladoras to open within the interior of Mexico, thus alleviating environmental and population strains on both sides of la frontera.\textsuperscript{21}

This has not been the case on either count. As undocumented migration has increased,\textsuperscript{22} so has the tendency for maquiladoras to locate and operate within the frontera zones.\textsuperscript{23} In fact, by 1997, the number of workers in maquiladoras along the border had increased by 20%.\textsuperscript{24} Consequently when U.S. agriculture introduced its products into Mexican markets, rendering Mexican agriculture obsolete, many farmers from the interior of Mexico fled to the border areas in search of jobs in the growing maquiladoras.\textsuperscript{25} The end result was the creation of numerous “shanty towns” in Juarez and other Mexican border cities.\textsuperscript{26}

Over time, however, this “boom” period has slowed as many companies have begun looking for even cheaper labor in Asia and other markets.\textsuperscript{27} The result has been that many maquila operations in cities like Juarez have shrunk, leaving unemployment and instability behind.\textsuperscript{28} As Mark Stevenson explains, “The jobs came … but they often left again for China, or wherever wages were lower.”\textsuperscript{29} This undoubtedly accounts for the growth in undocumented Mexican migration into the United States from an estimated 2 million people in 1990 to almost 5 million in 2000.\textsuperscript{30} Workers and industries concentrated along the border, having been drawn from the interior,\textsuperscript{31} have reacted to the stark downturn in maquila operations by doing what generations before them have done: seek a better life across the border in the United States. In recent years, NAFTA’s “subsistence-level” gains in Mexican

\textsuperscript{20} Gordon, supra note 15.
\textsuperscript{22} Stevenson, supra note 19.
\textsuperscript{23} Matthiesen, supra note 21, at 5.
\textsuperscript{24} Id. at 5.
\textsuperscript{25} Ken Bensinger, Trade Bandwagon Sweeps Up Mexico/But Critics Say Pacts Create Mixed Results, HOUSTON CHRONICLE, Apr. 2, 2004, (Business), at 1. Mexican agriculture, primarily based on small farms and local operations, has been unable to compete with the highly organized network of American growers and corporate farms. As a result, Mexican farmers in the interior of Mexico have been unable to produce alternatives to lower-priced American agricultural products imported duty free under NAFTA. See also, NAFTA at 10, supra note 2.
\textsuperscript{26} Anthony, et al., supra note 4.
\textsuperscript{29} Stevenson, supra note 19.
\textsuperscript{30} Id.
\textsuperscript{31} Ferriss, supra note 28, at H4.
industry have proven to be "a poor counterweight for the lure of migration."\textsuperscript{32}

B. El Paso Realities

For El Paso, the boom in northern Mexican \textit{maquila} operations decimated its apparel manufacturing industries as companies post-NAFTA slipped across the border to take advantage of cheap labor and lax regulatory enforcement. The result was a loss of over 29,000 jobs for the city and the loss of over $1 billion in local wage and sales revenues.\textsuperscript{33} Furthermore, over half of all Texas petitions for NAFTA job loss benefits are attributable to losses of manufacturing jobs along the border, which suggests how profoundly El Paso has been affected.\textsuperscript{34} These facts, coupled with a proven trend of increased Mexican migration and the recent downturn in \textit{maquiladora} operations in favor of overseas markets, have placed tremendous strain on a city with a per capita income 30% less than the state average and nearly a quarter of its population below the poverty line.\textsuperscript{35}

El Paso has responded by recognizing its plight and beginning the process of conversion.\textsuperscript{36} Despite the rise of Asian markets, \textit{maquiladora} operations continue, as the area still has distinct advantages for growth over Asian relocation.\textsuperscript{37} Aside from allowing executive operations to oversee Mexican production facilities from the comfort and security across the border, the El Paso area "boasts some natural advantages over China for U.S. manufacturers" in that its "proximity to the United States cuts transportation cost and time, and its participation in NAFTA allows companies tax-free exports to the U.S. market."\textsuperscript{38} Seizing this opportunity, El Paso has begun to restructure itself as a cooperative partner of the \textit{maquiladora} operations by filling the service and hi-tech roles that complement the low-skilled production economy of Juarez.\textsuperscript{39} As a result, exports from El Paso into northern Mexico doubled after 1994 to supplement maquila operations.\textsuperscript{40} Further, El Paso has also attempted to bill itself as the high-tech sister city to Juarez. With the accessibility of both cities, companies can have a complete "production ecosystem"\textsuperscript{41} in which lower-skilled labor generates employment and opportunity in Juarez and hi-end, skilled labor in El Paso offers an attractive package for manufacturers and industry.

The plight of border communities aside, NAFTA generally has been a qualified success on a macro level, resulting in an undeniable acceleration of "economic linkages" between the U.S. and Mexico.\textsuperscript{42} As has been observed, "their economies and markets are inextricably linked—exports from Mexico to the United States accounted for about twenty-five percent of Mexico's economy in 2001, up

\textsuperscript{32} Stevenson, supra note 19.

\textsuperscript{33} \textit{NAFTA} at 10, supra note 2.

\textsuperscript{34} Id.; see also Yung, supra note 1.

\textsuperscript{35} These figures were calculated using U.S. Census 2000 data, available at http://www.census.gov.

\textsuperscript{36} Anthony, et al., supra note 4.

\textsuperscript{37} O'Boyle, supra note 27.

\textsuperscript{38} Ferriss, supra note 28, at H4.

\textsuperscript{39} Anthony, et al., supra note 4.

\textsuperscript{40} Id.

\textsuperscript{41} Id.

thirteen percent from 1993.\textsuperscript{43} In addition, over $85 billion in direct foreign investment has found its way into the Mexican economy post-NAFTA.\textsuperscript{44} However, the negative effects have located themselves predominantly in areas such as El Paso.\textsuperscript{45} As local newspapers have reported, "Just about all of the state’s manufacturing industries have benefited from NAFTA, which enabled them to sell more of their products to Mexico and Canada and created thousands of jobs in the process."\textsuperscript{46} However, drawbacks have been experienced, "the most glaring of which have been the job losses that have disproportionately affected the border region."\textsuperscript{47}

In response, El Paso must continue to restructure its economy to create the “production ecosystem” it sees as being vital to the region’s competitiveness. Equally as important, El Paso must ensure that it becomes an attractive community with the resources that will attract corporate headquarters, while at the same time providing tools to its present population so that they may fill the ranks of the emerging hi-tech, skilled El Paso workforce. An essential component of this effort to benefit the region is adequate public schools—both as a means of attracting hi-tech workers from other regions and as a means of educating local people so they may rapidly acquire the needed skills and/or pursue higher education.

III. THE TEXAS SCHOOL FINANCE SYSTEM: LEARNING AND LITIGATION

A. Lessons of the Past: An Overview of the System

Education is at the center of a community’s viability, and government has accordingly taken an active role in ensuring that communities have the resources to meet their educational needs. Simply put, there is a direct correlation between poverty rates in a community and the overall level of educational attainment of community members, such that “where fewer adults are high school graduates, more families live in poverty.”\textsuperscript{48} Further, schools and districts such as El Paso with higher percentages of economically and socially disadvantaged children require even greater resources “to provide them the special attention they need for success.”\textsuperscript{49} However, in the case of border communities such as El Paso, these poverty-stricken areas are often the least capable of raising funds locally to meet their unique educational needs and must rely on state and federal funds for even their most basic needs.

Accordingly, long term solutions to these issues and unique community needs must be aimed at building economic infrastructure in these areas to allow them to gradually become less dependent on outside aid and more capable of generating local revenues. State support, both in the form of funds and policy, is a critical

\textsuperscript{43} Id. at 451.
\textsuperscript{44} Id.
\textsuperscript{45} Yung, supra note 1; see also NAFTA at 10, supra note 2.
\textsuperscript{46} Yung, supra note 1.
\textsuperscript{47} Id.
\textsuperscript{48} Keith Curry Lance, The Impact of School Library Media Centers on Academic Achievement, ERIC DIGEST, May 1994, at 1.
\textsuperscript{49} Ron Renchler, Poverty and Learning, ERIC DIGEST, May 1993, at 1.
component in allowing poverty-stricken communities to meet their long term funding goal of greater self-dependency. Such support serves as essential investment capital in these communities.

Educational finance has a tenuous history in Texas politics, and border communities have long found themselves begging for aid. The very system which has given them only minimal support faces constant attack by politicians and more prosperous communities that have little interest in the border and much less interest in sharing resources with border communities so far away.

On May 17, 2004, a special legislative session to revamp Texas’s public school finance system came to an unsuccessful close leaving intact the current “Robin Hood” property tax-based system.\(^5\) It was Republican Governor Rick Perry,\(^5\) an outspoken conservative who has championed the effort against the “Robin Hood” “share-the-wealth” system and simultaneously advocated lower property taxes, who called the session. Despite the obvious insufficiency of current property taxes in poor counties and cities to raise the funds needed to provide equitable education throughout the state, “Robin Hood” has been consistently targeted by the Governor and his party.\(^5\)\(^2\) The “Robin Hood” system, as described below, is the result of years of litigation over equitable educational access.\(^5\)\(^3\) Thus far, this system has been the only means for remedying, to at least some extent, the unreasonable disparities between wealthy districts and those, such as El Paso, with limited sources of local revenue.

B. The Birth of “Robin Hood”

The basic mechanics of the school finance system outlined in the Texas Education Code seem quite simple, though their application has been historically problematic. The modern state public education finance system was established in 1949 by the reforms of the Gilmer-Aiken Act which provided a minimum amount of funds per student, but did not ensure that equal funds be available to provide a minimum standard of quality in all districts. Under this regime, districts in wealthy areas were able to spend revenues raised through taxes on elegant and exceptional education in wealthy areas, while poorer areas could not even guarantee a minimum level of quality instruction.\(^5\)\(^4\)

In 1971, Demetrio Rodriguez filed suit against the San Antonio Independent School District in the Federal District Court for the Western District of Texas.\(^5\)\(^5\) This suit was the first among several to allege that the system of financing public schools

---

51. Conservative Republican Governor Rick Perry is the successor to former Governor George W. Bush.
52. Moritz, supra note 50, at 5B.
53. Texas public school finance law has been shaped as much by case law as by legislative action. It is the product of numerous suits, most prominently the Edgewood suits as discussed below.
in Texas violated students’ equal protection rights. This line of litigation has shaped Texas schools and politics since. In Rodriguez the plaintiffs successfully argued that the Texas system, which relied heavily on local funds raised from local property taxes, created a disparity among rich and poor districts amounting to a 14th Amendment, equal protection violation. The system in place at the time arose from the state constitutional mandate, which required the creation of an “efficient and free system” of public schools. Overturing the district court, the United States Supreme Court, in a 5-4 decision, ruled that education was not a fundamental right under the purview of the 14th Amendment. The Court stated, “Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected.”

Despite minor changes by the legislature in subsequent years, insufficiencies in the system continued, resulting in the famous suit, Edgewood v. Kirby, filed by the Mexican American Legal Defense and Education Fund in state court in 1987. There the state district court vindicated the critics of the system by holding that the system, primarily based on local property taxes, violated Article I, Section 3 of the Texas Constitution, guaranteeing equal protection, and ran afoul of the “efficiency” requirements set forth in the public school mandate of the state constitution.

In 1989, the Texas Supreme Court unanimously upheld the district court’s decision, reversing the Court of Appeal, holding that education is a fundamental right under the Texas Constitution. Justice Mauzy of the Texas Supreme 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.” In addition, the court noted that lower spending abilities inherent in property-poor districts trap schools and students in a “cycle of poverty from which there is no opportunity to free themselves.” Consequently, the court then ordered the legislature to take action to achieve a constitutional funding scheme that would provide a “suitable” and “efficient” system for public schools.

In response to Edgewood, the state legislature passed Senate Bill 1 which made changes to aid poorer districts. However, since the bill did not restructure the system, it was rejected on re-trial in 1990, with the rejection affirmed by the Texas Supreme Court in 1991. After subsequent legislative shuffling, continued litigation

58. TEX. CONST. art VII, § 1.
60. Id. at 35.
63. See TEX. CONST. art VII, § 1.
64. Kirby, 777 S.W. 2d, at 392.
65. Id. at 393.
66. Id. at 394; see also TEX. CONST. art VII, § 1.
67. See LEGISLATIVE BUDGET BD., FINANCING PUBLIC EDUCATION IN TEXAS,
over conformity with Edgewood, and interpretation of the Texas Supreme Court's mandate and the legislature's compliance, the Texas Supreme Court gave the legislature until June of 1993 to finally enact a system that would address the state constitutional requirements and the court's holding requiring statewide equity.\textsuperscript{68} The result of this effort was Senate Bill 7, which created the controversial "Robin Hood" system that remains in place today.\textsuperscript{69} This was a desperate legislative response after the voters of Texas failed to amend the constitutional prohibitions against a statewide ad valorem property tax, and overwhelmingly rejected the notion of a statewide tax to provide funds for education throughout the state.\textsuperscript{70}

\section{Rich and Poor: The Current System and "Robin Hood"}

The current system is a disjointed response to years of litigation and legislation. As of 2001,\textsuperscript{71} public education in Texas is funded by a three-tier system that is designed to ensure "a school district access to revenue based on the district's tax effort."\textsuperscript{72} The first tier ensures a "foundation level" of funding for all districts and allows districts to tax local property at a rate of $.86 per $100 of property value to generate $2,537 per student in the district for each school year (as of 2001).\textsuperscript{73} If local revenues are insufficient, the state will attempt to equalize the difference with state funds.\textsuperscript{74} Tier two is called the "enrichment tier" and allows districts to assess taxes on local property in addition to the $.86 for tier one up to a total assessment for both tiers of $1.50.\textsuperscript{75} For this tier, the state guarantees $25.81 per "weighted"\textsuperscript{76} student for every penny of the local district's tax effort in tier two.\textsuperscript{77} Finally, tier three is a state program designed to help local districts with facilities costs.\textsuperscript{78} Wealthier districts need little state funds and are able to far exceed these state minimums. In contrast, poorer districts depend largely on state aid, such as "Robin Hood" because their limited property values do not yield the funds needed to provide a minimum standard of education.

The "Robin Hood" system is a key component of the current school finance system. It established an incrementally increasing per-student cap on the value of taxable property within a district. This base value was $280,000 when the bill was passed ($300,000 for 2001-02),\textsuperscript{79} and required districts with property values in excess of this amount to reduce their taxable wealth by one of five options:

\begin{itemize}
\item \textsuperscript{68}Id. at 29.
\item \textsuperscript{69}Id.
\item \textsuperscript{70}Id.
\item \textsuperscript{71}This represents the post-Robin Hood era, discussed infra, and the system described herein represents the system as it has adapted in response to the Supreme Court's mandate in Edgewood.
\item \textsuperscript{72}LEGISLATIVE PRIMER, supra note 67, at 3.
\item \textsuperscript{73}Id.
\item \textsuperscript{74}Id.
\item \textsuperscript{75}Id.
\item \textsuperscript{76}The weighting system assigns weights or adjustments to certain students or districts based on particular needs, such as Bilingual, Gifted and Talented, etc.
\item \textsuperscript{77}LEGISLATIVE PRIMER, supra note 67, at 3.
\item \textsuperscript{78}Id.
\item \textsuperscript{79}Id. at 4.
consolidating with a poorer school district, ceding property to another district for purposes of taxation, providing the state with offsetting funds, contracting with a poorer district to educate students in that district, or consolidating tax bases with other districts. The system was to have been fully in place by 2000, with wealthy districts given until that time to change their tax bases in excess of $280,000 per student, under a "hold harmless" provision for these affluent districts. The Texas Supreme Court upheld in its original form, Senate Bill 7 and held that Senate Bill 7 did remedy many of the disparities by providing equal district access to funds to provide accredited programs of education. Subsequent legislation, however, has extended the "hold harmless" period indefinitely, and accordingly, litigation was later begun to challenge the dilution of Senate Bill 7 by legislative alterations of the original bill and concessions made for wealthy districts. As of 2004, "The [Robin Hood] system requires 134 school districts with 500,000 students to surrender $1.2 billion. The remaining 897 districts with 3.7 million students either keep all their money or receive some of the $1.2 billion." Despite concessions, these numbers form the heart of the controversy as wealthier districts have sought a judicial decree that the system amounts to a statewide property tax in violation of the Texas Constitution, and poorer districts have begged for more money to meet the particular needs of poorer children and communities.

As has been noted, "In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms." This has not been the case in Texas, however, and the Texas government has become accustomed to controversy over public education. Although controversial and insufficient, the "Robin Hood" plan has provided desperately needed funds for poorer districts and, in the case of El Paso, it provides additional support for its impoverished community and its unique educational mission. As State Senator Rodney Ellis wrote in the Houston Chronicle earlier this year, "Robin Hood has actually worked. According to the Texas Business and Education Coalition, increased equity has improved Texas schools."
IV.

EL PASO: TRANSITION AND REINVENTION

A. An Uncertain Future

Districts like El Paso have benefited greatly from the changes brought by Senate Bill 7, 88 despite legislative watering-down of its effects and provisions. All nine school districts in El Paso County benefit from the "Robin Hood" system and in 2004, these districts together received nearly $52 million in funds from wealthier parts of the state. 89 These funds, though controversial, are designed to help reduce the disparity between El Paso and wealthier districts. For El Paso, however, these funds do not achieve equity, though they do reduce the funding disparity. 90 Without "Robin Hood," 867 school districts that currently benefit from "Robin Hood," including El Paso, would stand to lose $940 million in funding resulting in a per-student average of $230 per pupil per year for poor districts as compared to an average of $1,969 in wealthier areas. 91 Indeed, without "Robin Hood," El Paso schools would have to exceed the legally permissible local property tax rate in order to maintain its "Robin Hood" funding level, 92 and unable to legally do so, the only alternative would be to increase class sizes and cut resources to control costs. Even the federal government has recognized that poorer districts with economically challenged students require more funds to render adequate educational services, as evidenced by the government's creation of the Title I funding program which provides federal funds to aid these districts. 93 In El Paso alone, 67.4% of students are classified as "economically disadvantaged" by the Texas Education Agency. 94 As well, 30.5% of the district's students are not proficient in English. 95 These facts alone create a significantly different task for El Paso educators than presented in many other parts of the state, requiring decidedly different funding priorities.

With looming elections and falling approval numbers, the current system, as well as the high property taxes authorized at the state level and imposed at the

88. The districts of El Paso County receive over $52 million as a result of the Robin Hood program; many border residents and legislators fear losing the benefits of Robin Hood, a system that has kept rich and poor schools in the same boat. See Gary Scharrer, Tax Reform May Not Aid Border, Some Say, EL PASO TIMES, May 11, 2004, at 1B.

89. Id.

90. There certainly remains disparity in the provision of education across Texas. However, "Robin Hood" provides funds that were unattainable before the system and are especially essential to border communities with an even greater educational task than the more affluent, primarily English-speaking schools away from the border region. See Ellis, supra note 87, at 4.


92. Id.


95. Id.

96. See Christy Hoppe, State GOP Delegates Expected to Cheer Perry, DALLAS MORNING NEWS, June 3, 2004, at 8A.
local level for the maintenance and operation of schools, have become the targets of Governor Perry and Texas politicians. The effort is to garner support from the more affluent, and traditionally conservative base of constituents that swept Perry into power following on the heels of now-President George Bush. Unfortunately, the state has not been able to come up with an alternative that will secure necessary funds for districts like El Paso and please fiscal conservatives in wealthier areas.

The 2004 election year has witnessed a rhetorical attack on the “Robin Hood” system from all sides, those saying it goes too far and those saying it does too little. For example, David Hoff comments in Education Week that, “Texas leaders are united in wanting to scrap the state’s ‘Robin Hood’ school finance scheme—they just can’t agree on what will replace it.” With his approval ratings hovering at a low of 37%, Governor Rick Perry is a leading rhetorical advocate of changing the system, all the while demanding that the legislature lower the tax rate that school districts can assess on local property to raise revenues. As the Star Telegram comments, “Proposals like these make good political rhetoric, but they make disastrous state policy.” In the last legislative session, the state faced a $10 billion deficit and responded by balancing the state budget through significant cuts in statewide programs, including $800 million in payments due to public schools.

Similarly, the governor and some legislators have proposed reductions in the state-authorized, district-imposed property tax rates that in some proposals would reduce rates by 84%. These tax-reduction proposals are undoubtedly popular in wealthier areas with adequate schools, high property values, and higher voter turnout, but in those areas of the state often forgotten by legislators, these proposals raise important concerns. In two legislative sessions initiated by the governor earlier this year, legislators have struggled with how to lower property tax caps, provide equity in education, and eliminate the “Robin Hood” plan altogether. Proposed initiatives have considered options ranging from the conservatively unpopular use of state-regulated gaming industry (as favored by the Governor), to the widely unpopular statewide income tax and/or property tax proposal to make up for the $6 billion that would be necessary to fund education and concomitantly to lower property tax rates. With this talk of overhaul and radical change, however, the specter of losing any of the gains made under the “Robin Hood” plan has rallied border politicians to decry legislative initiatives aimed at changing the system. These proposals, coupled with the fact that a legislative commission found that at least $1 billion more needs to be expended for new programs in education statewide and the situation seems
even more precarious.

With these contexts established, it is possible to understand the future of El Paso in terms of its past. As in any community in its position, El Paso has responded to its post-NAFTA reality by revamping its industrial economy to accommodate for the loss of manufacturing, particularly apparel. Specifically, plastics manufacturing has been pushed heavily by El Paso leaders to create a “bi-national plastics production” industry in which components are manufactured in El Paso and then moved to maquiladora facilities in Juarez where the finished products are assembled. Even before the passage of NAFTA, the “El Paso community recognized the value of the plastics industry and began to build infrastructure around this business to make it one of the country’s areas of concentrated expertise. Business, the educational community, and the local governments have worked together to ... support the advancement of the plastics industry.” As well, El Paso is actively pursuing metal and hi-tech industries, and the “rise in the maquiladora industry is expected to create a growth in El Paso’s metal industry much like the growth experienced in the plastics industry.” This is the essence of a “production ecosystem” and the heart of El Paso’s reinvention.

B. The Role of Adequate Public Schools

For El Paso to accomplish these tasks and continue to draw industry to the region, it must have the resources to attract companies and investment. With the growing tendency of companies to “race to the bottom” in search of even lower wage labor, particularly in Asia, with a predominant emphasis in China, El Paso must present a compelling image of stability, potential, and corporate suitability to promote its “production ecosystem” and to attract new investment. San Diego, California, has long recognized this fact and has dedicated substantial resources of the San Diego County Association of Governments to entice “companies ... to incorporate and locate their United States headquarters in San Diego County,” while providing community and governmental resources to facilitate “U.S.-Mexico joint ventures.” As well, San Diego touts its safe, stable community and educational resources as advantageous for families and companies moving to San Diego, and also as a source of competent labor and management. Indeed, for those seeking to relocate businesses or careers to San Diego, the Regional Chamber of Commerce makes quite clear the educational opportunities available to families and touts the public educational system as a component of the community’s attractiveness. This is the route that El Paso must take, and it has long been recognized that the potential

---

108. Id.
109. Id.
110. Id.
111. SANDAG is the San Diego County Association of Governments and exists as a working forum for the governments of the county to solve regional problems and coordinate regional development.
exists for it to do so. If it can achieve this, certainly the entire state of Texas would
greatly benefit, not only from continued and increased NAFTA trade, but also from
the reduced social concerns such as rampant poverty and widespread lack of
healthcare coverage that devour many financial resources in the area.

This cannot and will not be accomplished, however, unless Texas nurtures
the region during its coming of age. Furthermore, it will certainly be impossible if El
Paso does not have the means to provide adequate public education. The obvious
desire of anyone moving to a new area, especially those contemplating a business
investment, is to find a home in a good neighborhood in a thriving community, with
“good public schools” ranking as an essential quality that the area must have. Not
only do “good public schools mean strong property values,” as the Stamford
Advocate points out, “educating children is a … priority, for an enlightened society.
The price of ignorance is high crime, extraordinary social costs and an unskilled,
uncommitted work force that would represent the death-knell of American business.
It’s that simple.” With this considered, strong public schools are a lynchpin in the
success of El Paso’s change. If El Paso cannot provide sufficient schools, it will not
shake its image as a challenged border town, companies will not invest there, and
they certainly will not relocate. It is that simple.

Border legislators undoubtedly realize this and have rallied to the aid of El
Paso fighting legislative changes that would threaten the area. However, certain
political realities must be acknowledged, even by border legislators: the goal must
be to secure funds for schools as a paramount part of El Paso’s reinvention process.
Simply put, Texas voters living in mainstream Texas have only minimal knowledge
of El Paso in general, and know much less about its potentials and role in securing a
brighter NAFTA future. Unfortunately, as history has shown, these voters will not
approve the creation of a statewide property tax for educational funding, and Texas
voters are overwhelmingly opposed to a state income tax. Arguments against such
an idea are strong political ammunition in the conservative state that the Bush family
calls home. As reporters and commentators such as Glenn Evans have noted, “An
income tax has never been easy to sell and it often seems to cost its proponents more
than its worth. When celebrated Lieutenant Governor Bob Bullock … floated that
idea as a way to fund schools, the political backlash prompted him to sponsor the
constitutional amendment that prevents a state income tax.”

Despite this political reality, some legislators tout the idea of a state income
tax as a promising means to fund schools. State Senator Earl Shapleigh of El Paso
even argues that such a proposal should be considered instead of the “Robin Hood”
plan to more greatly benefit border districts. Though the idea clearly has merit,
the political realities of Texas make it impossible today. As with legalized gaming,
widely unpopular among Texas’s powerful conservative elements, it seems that
reinforcement of the “Robin Hood” plan is the only politically viable means of
assuring poorer districts of needed funds and some modicum of equality. This is the
position of many border residents, legislators, and educators and seems to be the only

114. Schools are a Community Obligation, STAMFORD ADVOCATE, Mar. 23, 2003, at A13.
115. Id.
116. Id.
117. Id.
118. Id.
119. Evans, supra note 102.
legitimately feasible option given Texas’ political landscape.

As the *Dallas Morning News* asserted at the 2004 Texas Republican Convention, “Republican’s will dine along San Antonio’s River Walk, wear funny hats and blow their whistles this weekend. That’s fine. But some of them need to ask how they can change this mess.” For El Paso, more is at stake than the education of its children, although this should be weighty enough. El Paso’s ability to compete and grow as a key NAFTA region, and thereby provide needed jobs and infrastructure to address many local problems while also benefiting the state through increased NAFTA trade, is wholly dependent on its public schools. Effective public education and its ability to produce competent workers and future professionals will attract businesses to the border to cooperate with the Juarez production market and provide a key component of raising the overall socioeconomic status of the community generally. Thus, Texas as a whole stands to lose if it cannot create a viable finance system that will support El Paso in its time of change.

V.

CONCLUSION: UP FROM THE BOOTSTRAPS: THE RESPONSIBILITIES OF BORDER LEADERS

El Paso has a responsibility to its citizens to capitalize on the advantages created by NAFTA by becoming a center of prosperity in North American free trade. This is a challenge to which El Paso must rise and, if the legislature persists in its inattention to the needs of the area, may be the only opportunity for El Paso to “pull itself up by the bootstraps,” propel itself into mainstream commerce, and be taken seriously by the rest of the state.

This paper has described the dual NAFTA and public school finance contexts to provide a framework for properly viewing El Paso’s plight and potential. Statewide educational funding of El Paso (and other border) schools is essential to the prosperity of these communities. The “Robin Hood” plan, despite its limitations, is the only plan that currently meets the unique needs of these communities, as discussed herein. With other options unlikely, Texas must be made to recognize its economic interest in seeing to it that El Paso succeeds. More importantly, El Paso must maintain vigilance in fulfilling its reinvention.

If the government of Texas alters the “Robin Hood” plan or threatens the stability of El Paso schools, El Paso and other similarly-situated districts will find themselves with little recourse. Their only viable option will be to seek equity in the courts and appeal to the wisdom of judges and juries to overcome the obstacles of a legacy of inattention to the people and communities of *la frontera*.

120. Editorial, *Texas GOP Party Doesn’t Have Much To Celebrate*, *DALLAS MORNING NEWS*, June 3, 2004, at 14A.