HARLEY CLARK
DISTRICT JUDGE
250TH DISTRICT COURT

County of TRAVIS
STATE OF TEXAS

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August 27, 1987

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Re: Edgewood I.S.D., et al v. Kirby, et al
Cause No. 362,516;
Findings of Fact and Conclusions of Law (filed August 27, 1987).

Dear Lawyers:

Enclosed is a copy of my findings and conclusions filed today.

A few changes were made in my handwriting. I see no reason to type the whole thing over. A new and "prettified" version would simply require several more hours of editing by me.

I truly appreciate the help from Mr. Kauffman and Mr. Turner.

There should be no comeback to me for additions, deletions, changes, etc. This is it.

Good luck to you all.

Very truly yours,

Harley Clark

HARLEY CLARK
Judge, 250th District Court
Travis County, Texas

HC/bjv

Final
8.27.87
Harley Clark

NO. 362,516

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, et al.,	§	IN THE DISTRICT COURT
Plaintiffs,	§	
ALVARADO INDEPENDENT SCHOOL DISTRICT, et al.,	§	
Plaintiff-Intervenors	§	
VS.	§	250TH JUDICIAL DISTRICT
WILLIAM N. KIRBY, et al.	§	
Defendants.	§	COUNTY OF TRAVIS, TEXAS

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This case came on for trial on January 20, 1987. At the end of Plaintiffs' and Plaintiff-Intervenors' cases, the Court denied Defendants' and Defendant-Intervenors' Motions for Summary Judgment and Judgment. The trial concluded April 8, 1987, after approximately 10 weeks of trial, approximately 40 witnesses and the introduction and review of several hundred exhibits. The Plaintiffs and Plaintiff-Intervenors allege that Texas' public school finance system violates (a) the Texas Equal Protection Clause, TEX. CONST. Art. 1, §3; (b) the Texas Equal Rights Amendment, TEX. CONST. Art. 1, §3(a); (c) the Texas Education Clause, TEX. CONST. Art. 7. §1; (d) and the Texas Uniform Taxation Provision, TEX. CONST. Art. 8, §1. After a review of the evidence, pleadings, and arguments and briefs of counsel, the Court makes its findings of fact and conclusions of law as follows:

FILED
1987 AUG 27

John Dickson

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I.
INTRODUCTION

There are three million public school children in Texas.

The Texas Constitution guides the response our state government must make in regard to the education of these young citizens. In Article 7, section 1 it provides:

> "A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the state to establish and make suitable provision for the support and maintenance of an efficient system of public free schools."
>
> Our basic law also states, in Article 1, section 3:
>
> "All free men, when they form a social compact, have equal rights...."

As well, by statute in the Texas Education Code, section 16.001, the Legislature has set policy regarding these matters:

> "It is the policy of the State of Texas that the provision of public education is a state responsibility and that a thorough and efficient system be provided and substantially financed through state revenue sources so that each student enrolled in the public school system shall have access to programs and services that are appropriate to his or her educational needs and that are substantially equal to those available to any similar student, notwithstanding varying local economic factors."

I hold that under our state constitution education is a fundamental right for each of our citizens.

It is clear that public education is a cornerstone of the Texas Constitution, and providing public education is one of the central reasons for the very existence of the State of Texas. Applying the same rationale as the United States Supreme Court

applied in San Antonio I.S.D. v. Rodriguez, 93 S.Ct. 1278 (1973) and Plyler v. Doe, 102 S.Ct. 2382 (1982) the Court concludes that education is indeed a fundamental right, guaranteed by the explicit terms of the Texas Constitution. Furthermore, as detailed below in the fact findings, it is apparent that as a factual matter education is fundamental to the welfare of the State and is a guardian of other important rights.

To expound a bit, by these edicts then the state is required to devise and continually sponsor a system of finance for our public schools that will give each school district the same ability as every other district to obtain, by state legislative appropriation or by local taxation or both, funds for educational expenditures including facilities and equipment. As a consequence, each student by and through his or her school district would have the same opportunity to educational funds as every other student in the state, limited only by discretion given local districts to set local tax rates. Equality of access to funds is the key and is one of the requirements of this fundamental right.

The Court does not detect in the evidence or the law a compelling reason or objective that would justify continuation of the discrimination set forth in my findings below.

It has been maintained by the state with evidence and argument that there is not a direct relation between educational expenditures and learning by students as reflected on academic tests such as the TEAMS tests used in this state. This Court, however, does not sit to resolve disputes over educational theory

but to enforce our constitution. If one district has more access to funds than another district, the wealthier one will have the best ability to fulfill the needs of its students. The question of discrimination in educational quality must be deemed to be an objective one that looks to what the state provides its children and their school districts, not what the students or the districts are able to do with what they receive. (Mr. Justice Marshall's thoughts, Rodriguez, 93 S.Ct. 1278, 1322)

The facts I have recited and found below indicate that our system of financing public education which includes the combination of state and local funds as they currently act in tandem, does not yet meet the requirements of our constitution.

II.
THERE IS A FUNDAMENTAL RIGHT IMPLICATED IN THIS CASE

A. Legal Standards

1. The Texas Equal Protection Clause, TEX. CONST. Art. 1, §3, states:

> §3. Equal Rights
> Sec. 3. All free men, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services.

2. The Texas Education Clause, TEX. CONST. Art. 7, §1 states:

> §1. Support and maintenance of system of public free schools
> Section 1. A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable

provision for the support and maintenance of an efficient system of public free schools.

3. The Texas Equal Rights Amendment, TEX. CONST. Art. 1, §3a, states:

§3a. Equality under the law

Sec. 3a. Equality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin. This amendment is self-operative.

4. The Supreme Court in San Antonio Independent School District v. Rodriguez, 93 S.Ct. 1278, 1297 (1973) described its method of determining whether an issue is fundamental in the following passage: "The answer lies in assessing whether there is a right to education explicitly or implicitly guaranteed by the Constitution ..."

5. The Supreme Court restated this test in another Texas case, Plyler v. Doe, 102 S.Ct. 2382, 2395 n.15 (1982): "In determining whether a class-based denial of a particular right is deserving of strict scrutiny under the Equal Protection Clause, we look to the Constitution to see if the right infringed has its source, explicitly or implicitly, therein,."

6. The Supreme Court also confirmed that fundamental right analysis was extended to other areas, such as voting, because "we have explained the need for strict scrutiny as arising from the significance of the franchise as the guardian of all other rights." Plyler v. Doe, 102 S.Ct. 2382, 2395 n.15 (1982).

7. In Plyler v. Doe, the Supreme Court found unconstitutional Texas' denial of public education to alien children, noting with respect to education: "education has a

fundamental role in maintaining the fabric of our society. We cannot ignore the significant social cost borne by our Nation when select groups are denied the means to absorb the values and skills upon which our social order rests." 102 S.Ct. at 2397.

8. The Texas Declaration of Independence in reciting the list of grievances against the Mexican Government which justified the Texas Revolution gave paramount importance to the issue of education, making the provision of public education a right of equal stature with the right of trial by jury and the right to worship according to one's conscience. The Declaration recited:

> It has failed to establish any public system of education, although possessed of almost boundless resources, (the public domain;) and although it is an axiom in political science, that unless people are educated and enlightened, it is idle to expect the continuance of civil liberty, or the capacity for self government.

9. The first Texas Constitution adopted shortly thereafter provided that it shall "be the duty of Congress, as soon as circumstances will permit, to provide by law a general system of education."

10. The Texas Attorney General in 1983 in Opinion JM-60 concluded that:

> Unlike the federal Constitution, the Texas Constitution does explicitly provide a right to an education. TEX. CONST. Art. 7, §1. Accordingly, if, in determining whether an asserted right is "fundamental" under our constitution, our courts would apply the same test used by courts in determining whether rights are fundamental under the federal constitution, then the right to an education would, under the Texas Constitution, have to

> be deemed "fundamental." And if our courts would also analyze the questions raised under the state equal protection clause by applying the same test used by courts in analyzing federal equal protection questions, then state constitutional challenges to Texas statutes affecting education would be resolved by applying the "compelling need" test.

11. Education in Texas is by Constitution and statute a function of the State Government and school districts are mere creatures of the State, established by the State for its convenience in discharging its responsibility to establish and maintain a system of free public education. Lee v. Leonard I.S.D., 24 S.W. 2d 449 (Tex. Civ. App. -- Texarkana 1930, writ ref'd).

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~~12. The U. S. Supreme Court has found that Mexican Americans in Texas comprise a "class" for Equal Protection Purposes. See Hernandez v. Texas, 347 U.S. 475 (1954) and Castaneda v. Partida, 430 U.S. 482 (1977).~~

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~~13. This Court has also noted the class nature of the history of Mexican Americans in the State of Texas in recent litigation concerning the Texas Workmen's Compensation Statutes and Texas Unemployment Compensation Statutes.~~

14. Wealth is a suspect category in the context of discrimination against low-income persons by a state school finance system. Serrano v. Priest, 557 P.2d 929, 957 (Cal. 1976). Wealth is a suspect category when a fundamental right is denied because of wealth. Shapiro v. Thompson, 394 U.S. 618 (1969).

15. The California Supreme Court in Serrano v. Priest, 557 P.2d 929 (Cal. 1976), found that education was a fundamental right under its state constitution. After consideration in detail the public policy implications of education, the California Supreme Court held:

> We declare ourselves at a loss to understand how this provision [California constitutional provision requiring "a system of common schools"] can be said to authorize the creation of a system which conditions educational opportunity on the taxable wealth of the district in which the student attends school.

Serrano, 557 P.2d at 957.

16. The Serrano opinion summarized the bases for its findings as follows:

> (1) education is essential in maintaining a "free enterprise democracy" where an individual's opportunity to compete successfully in the economic marketplace is preserved despite a disadvantaged background; (2) education is universally relevant in that every person benefits from education; (3) public education is a government service with a lengthy, intensive contact with the recipient; (4) public education actively shapes a child's personal development in a manner chosen not by the child or his parents but by the state; and (5) education is so important that the state makes compulsory attendance requirements and assignments to particular districts and schools.

Serrano, 487 P.2d at 1258-59.

17. Education is also a fundamental right under the Constitution of Washington, Seattle School District No. 1 of King

County v. State, 90 Wash. 2d 476, 485 P.2d 71 (1978); Connecticut, Horton v. Meskill, 172 Conn. 615, 376 A.2d 359 (1977); Wyoming, Washakie County School District No. 1 v. Herscler, 606 P.2d 310 (1980); and West Virginia, Pauley v. Kelly, 255 S.E. 2d 859 (W.Va. 1979).

18. Each of these state supreme courts found education to be a fundamental right under their respective state constitutions, after Rodriguez, supra.

19. Arkansas, Dupree v. Alma School District No. 30, 651 S.W. 2d 90 (Ark. 1983) found its school finance system unconstitutional without deciding the fundamental-rational basis issue.

20. The U. S. Supreme Court summarized the importance of education in Brown v. Board of Education, 347 U.S. 483, 493 (1954):

> Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. 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. [emphasis added]

21. As stated in by the U. S. Supreme Court in the Rodriguez case, "Texas virtually concedes that its historically

rooted dual system of financing education could not withstand the strict judicial scrutiny that the Court has found appropriate in reviewing legislative judgments that interfere with fundamental constitutional rights or that involve suspect classifications," Rodriguez, 411 U. S. at 16.

22. According to Rodriguez v. San Antonio I.S.D., 93 S.Ct. at 1288, and Dunn v. Blumstein, 405 U. S. 330, 343 (1972), the strict scrutiny standard requires that:

1. the state system is not entitled to the usual presumption of validity;
2. the state rather than the Plaintiffs must carry a heavy burden of justification;
3. the state must demonstrate that its educational system has been structured with "precision;"
4. the state must demonstrate that its school finance system is "tailored" narrowly to serve legitimate objectives;
5. the state must show that it has "selected the [least] drastic means" for effectuating its objective in the area of school finance.

23. Under the Texas Supreme Court's model of strict judicial scrutiny, discrimination against a suspect class or implicating a fundamental interest "is allowed only when the proponent of the discrimination can prove that there is no other manner to protect the state's compelling interest." In the

Interest of Unnamed Baby McLean, 725 S.W. 2d 696, 698 (Tex. 1987), Mercer v. Board of Trustees, North Forest I.S.D., 538 S.W. 2d 201 (Tex. Civ. App. - Houston [14th Dist.] 1976, writ ref'd n.r.e.)

B. Summary of Standard To Be Applied

First, the system must be examined to determine if the system of funding public education has an adverse impact or impinges upon the educational opportunities afforded children in this State; if such adverse impact is found then the State must justify the existence of such impact by showing a compelling state interest that mandates such adverse impact.

C. Facts Demonstrating That The Texas System of Funding Public Education Does Have an Adverse Impact And Impinges Upon the Educational Opportunities Afforded Children

The facts in this case support the court's holding that the current system is unconstitutional based on the legal conclusions on fundamental rights, lack of compelling state interests, lack of rational state interest and lack of efficiency. For purposes of organization and reference the facts will be summarized in this section in categories relating to:

1. Education as a fundamental interest in Texas;
2. An overview of the school finance system;
3. Wealth disparities;
4. Variations in expenditures;

5. Variations in tax rates and ability to raise funds at certain tax rates;
6. Effects of wealth differences on expenditures and taxes;
7. Effects of insufficient funds;
8. Facilities;
9. Concentration of low-income ~~and Mexican-American~~ students in low-wealth districts;
10. Historical inequities;
11. How the Foundation School Program (FSP) formulas deny equality of access to education funds;
12. District boundaries.

The system must be looked at as an inter-related whole and the listing of a fact in this section of the findings or in any particular subsection does not imply that the fact relates only to one legal conclusion or to one fact issue.

1. Education is Fundamental

1. Education is a fundamental interest of the state, and the state has both the authority and the responsibility for education, including the methods of raising revenues and allocating funds for schools. Moreover, all school property is state property, all school funds are state funds, and all school taxes are state taxes. (Walker and Kirby, The Basics of Texas School Finance, PX 235 at 62).

2. In Texas, education is fundamental. (Kirby, Sawyer)

~~3. Education is to Texas what national defense is to the United States. (Collins)~~

2. Overview of the System

1. Financial support for education is an important factor determining ~~determines~~ the quality of the educational program that can be offered to students attending Texas public schools. The amount of money spent on a student's education has a real and meaningful impact on the educational opportunity offered that student.

2. The Texas public education system is a State system which includes both state appropriations and revenues from local ad valorem taxes. The Texas system in 1985-86 was funded at approximately $11,000,000,000, 42% of which was provided by the State and 49% of which was provided by local district taxes. The balance was furnished by other sources including federal government funds, which the Court finds to be irrelevant for purposes of determining the issues. Of the total expenditures for public education in 1985-86 almost $3,000,000,000 was expended by local districts from their tax base for enrichment over and above the Foundation School Program. (PX 235, Walker, Kirby)

3. There are 1,063 school districts in Texas educating approximately 3 million students. There is a vast disparity in local property wealth among the school districts. The wealthiest school district in Texas has over $14,000,000 of property wealth per student. The poorest district has approximately $20,000 of property wealth per student. The 1,000,000 Texas public school students in the districts at the upper range of property wealth have more than 2 1/2 times as much property wealth to support

their schools as the 1,000,000 students in the bottom range of the districts; the 300,000 students in the lowest-wealth schools have less than 3% of the State property wealth to support their education, while the 300,000 students in the highest property wealth schools have over 25% of the State's total property wealth to support their education. (Foster, Hooker, PX 102, PX 214, 215, 216)

4. This wealth disparity between districts is based on nothing more than the irrational accident of school district lines and in many instances wealthy and poor districts are to be found in the same county and/or are contiguous to one another.

5. By agreement of the parties, the case was tried using 1985-86 data as the determinative year.

6. For 1985-86 on average there was $250,000 of local tax base per student attending public schools in Texas. (PX 205).

7. For 1985-86, the average operational expenditure per student for school districts in Texas was $3,300. (PX 205)

8. For 1985-86, the average tax rate for school districts in Texas was $.66 (PX 104)

3. Wealth Disparities

1. North Forest, a black (90%) district in Harris County has $67,630 of property value per student while the adjoining Houston I.S.D. has $348,180; the largely Mexican-American (95%) Edgewood District has $38,854 per student, Alamo Heights in the same county has $570,109 per student; Wilmer-Hutchins, a predominantly black (82%) district in Dallas County, has $97,681

per student while Carrolton-Farmers Branch has $512,259 per student. (Foster, Hooker, Collins, PX 33, 210, 214)

2. The wealth disparities with the corresponding expenditure disparities adversely affect a very significant number of students and are not isolated to any particular area, but rather are found statewide as well as within each of the large counties. (PX 210, 211).

3. The average wealth for the 150,000 students in the top range of wealth is more than eighteen times as much as the average wealth for the 150,000 students in the bottom range of wealth. (PX 102)

4. The average wealth for the 300,000 students in the top range of wealth is more than eleven times as much as the average wealth for the 300,000 students in bottom range of wealth. (PX 102)

5. The average wealth in the 100 districts in the top range of wealth is more than twenty times as much as the average wealth in the 100 districts in the bottom range of wealth. (PX 102)

6. The average wealth in the 200 districts in the top range of wealth is just under eight times as much as the average wealth in the 200 districts in the bottom range of wealth. (PX 102)

4. Variations in Expenditures

1. The rate of expenditure per student in 1985-86 was from $2,112 per student in the district that spent the least per

student to $19,333 per student in the district that spent the most per student. (PX 216)

2. There are disparities in the levels of expenditures per pupil between wealthy and poor districts. The 200 school districts at the upper end of the wealth spectrum spent over twice as much per student in 1985-86 as the 200 districts at the lower end of the wealth spectrum, the 150,000 students at the upper end of school district wealth had more than twice as much spent on their education as the 150,000 students at the lower end of school district wealth, and the 600,000 students in the State's wealthiest school districts had 2/3 more spent on their education than the 600,000 students in the State's poorest districts. (PX 214, 215, 216, Hooker)

3. The Texas school finance system spends an average of $2,000 more per year on the 150,000 students (5% of total) in the state's wealthiest districts than on the 150,000 students in the state's poorest districts. ~~Ninety-five percent (95%) of the students in the poorest districts are Mexican American.~~ (Foster, PX 105, PX 214-216, PX 47)

4. The Texas school finance system spends an average of nearly $1,300 more on the 600,000 students (20% of students) in the wealthier districts in the state than on the 600,000 students in the poorer districts in the state. (Foster, PX 105, PX 214-216)

5. One relevant way to consider the expenditure of various school districts in Texas is to consider the expenditures per weighted student or per student unit. This method accounts for

the extra costs of educating certain types of students in certain types of districts. (Foster, Verstegan, Kirby)

6. There is a range of expenditures per student unit in Texas of from $9,523 to $1,060, a ratio of 9 to 1. (PX 103, Foster)

7. The approximately 150,000 students attending the highest spending districts in the state have more than twice as much per student unit spent on them as do the 150,000 students attending the lowest spending districts in the state; the approximately 600,000 students in the state attending higher spending districts have 2/3 more per student unit spent on their education than do the approximately 600,000 student in the state attending lower spending districts. (PX 103, Foster)

8. The differences in expenditure levels found throughout the state are significant and meaningful in terms of the educational opportunities offered to students and the effect of these differing levels of expenditure is to deprive students within the poor districts of equal educational opportunities. (Hooker, Cardenas, Zamora, Walker, Sybert, Boyd, Wise)

5. Variations in Tax Rates and Ability to Raise Funds At Certain Tax Rates

1. The range of local tax rates in 1985-86 was from $.09 to $1.55 per $100 valuation. (PX 215)

2. The lower expenditures for education in the property poor districts are not the result of lack of tax effort by these districts. Poor districts exert a greater tax effort than the

wealthier districts, e.g., the average tax rate in the high wealth districts is 8 cents lower than the average tax rate in the low wealth districts. (Moak, DX 44, Foster)

3. As a result of the wide variations in school district wealth in Texas there are vastly differing burdens imposed upon district taxpayers to support public education. In the poorest districts it costs taxpayers a tax rate of more than 20 cents per $100.00 valuation to raise $100 per student, while the wealthiest districts can raise such sums per student with tax rates of less than 2 cents per $100 valuation. (PX 102, 209, Foster, Hooker)

4. Hundreds of thousands of families live in Texas school districts and pay in excess of $1.00 per $100.00 of property wealth on their homes, and hundreds of thousands of families in Texas live in districts where their tax rates are less than $.50 per $100.00 of property wealth. (PX 104, Foster)

5. Taxpayers in high-wealth districts get significantly more expenditures per student for each penny of tax rate than do taxpayers in low-wealth districts. (PX 110, Foster, Hooker)

6. For example, to raise $100 revenue:

a. The average rate required for the 150,000 students in the bottom range of wealth is more than eighteen times as much as the average rate required for the 150,000 students in the top range of wealth.

b. The average rate required for the 300,000 students in the bottom range of wealth is more than eleven times as much as the average rate required for the 300,000 students in top range of wealth.

c. The average rate required in the 100 districts in the bottom range of wealth is more than twenty times as much as the average rate required in the 100 districts in the top range of wealth.

d. The average rate required in the 200 districts in the bottom range of wealth is just under eight times as much as the average rate required in the 200 districts in the top range of wealth.

7. The denial of equal education opportunity for equal tax effort is also illustrated by the fact that the tax rates required to raise the local share of Foundation School Program Allotments, including the 30% add-on for enrichment (Tex. Educ. Code §16.157) vary widely across the wealth spectrum under the State's current funding formulas (PX. 102, 120):

a. The average rate required for the 150,000 students in the bottom range of wealth is approximately two times as much as the average rate required for the 150,000 students in the top range of wealth.

b. The average rate required for the 300,000 students in the bottom range of wealth is approximately one and two-thirds times as much as the average rate required for the 300,000 students in the top range of wealth.

8. The unequal tax burdens imposed by the State's system of funding public education is exemplified by the varying amounts of tax paid on a $80,000 house in 1985-86. The highest tax with no exemptions was $1,206 in Leveretts Chapel (a poor district) as compared to $59 in Iraan-Sheffield (a wealthy district). Considering homestead exemptions, the highest tax was in Crystal City I.S.D. (a poor district) levying $1,106 compared to $38 in Iraan-Sheffield. (PX 205).

6. Effects Of Wealth Differences On Expenditures and Taxes

1. There is a direct positive relationship between the amount of property wealth per student in a district and the amount the district spends on education. Generally speaking, expenditures in a district are a function of property wealth in the district. (Hooker, Foster, Cardenas, Verstegan, PX 105, 107, 116, 214-216)

2. The 50 poorest districts had an average tax rate of 71.96 cents (per hundred dollars of property value) and spent on average $2,941.36 per student compared to the 50 richest districts which taxed at 37.26 cents on average and spent $8,700.70 per student on average. (PX 207).

3. The average tax rate in the State's 100 poorest districts is 74.45 cents contrasted with 47.19 cents in the 100 wealthiest; in those same districts the average expenditure per pupil in the poorest districts was $2,978.00 as contrasted with $7,233.22 in the 100 wealthiest. (PX 207, Hooker)

4. The 200 poorest districts had an average tax rate of 74.82 cents and spent on average $3,005.32 per student compared to the 200 richest districts which taxed at 58.79 cents on average and spent $6,017.33 per student on average. (PX 207).

5. The 300 poorest districts had an average tax rate of 75.27 cents and spent on average $3,023.17 per student compared to the 300 richest districts which taxed at 63.24 cents on average and spent $5,320.14 per student on average. (PX 207).

6. The 400 poorest districts had an average tax rate of 74.88 cents and spent on average $3,077.36 per student compared to the 400 richest districts which taxed at 67.17 cents on average and spent $4,936.45 per student on average. (PX 207).

7. The 500 poorest districts had an average tax rate of 75.40 cents and spent on average $3,133.74 per student compared to the 500 richest districts which taxed at 68.64 cents on average and spent $4,648.27 per student on average. (PX 207).

8. The 159 districts with market value of taxable property less than $100,000 per student spent on average $117.00 per student above the Foundation School Program while the 143 districts with taxable values of more than $500,000 per student spent on average $2,287.00 per student above the Foundation School Program. (PX 205).

9. In 1985-86 Edcouch-Elsa I.S.D. with a tax base of $21,293.00 per student taxed at 84.45 cents and spent $2,607.00 per student compared to Santa Gertrudis I.S.D. with a tax base of $14,661,861.00 per student which taxed at 8.62 cents and spent $12,840.00 per students. (PX 214).

10. In 1985-86 the wealthy Highland Park district in Dallas County taxed at 35.16 cents and spent $4,836.00 per student while its poor neighbor Wilmer-Hutchins taxed at $1.05 yet was only able to raise and spend $3,513.00 per student. (PX 214).

11. In 1985-86 the wealthy Lago Vista I.S.D. in Travis County taxed at 36.82 cents and spent $4,473.00 per student while its poor neighbor Taylor I.S.D. taxed at $1.05 yet was only able to raise and spend $3,104.00 per student. (PX 214).

12. In 1985-86 the wealthy Alamo Heights District in Bexar County taxed at 56.76 cents and spent $4,127.00 per student while its poor neighbor Southside I.S.D. taxed at $1.10 yet was only able to raise and spend $2,853.00 per student. (PX 214).

13. In 1985-86 the wealthy Deer Park I.S.D. in Harris County taxed at 64.37 cents and spent $4,846.00 per student while its poor neighbor North Forest I.S.D. taxed at $1.05 yet was only able to raise and spend $3,182.00 per student. (PX 214).

14. The taxpayers in the Highland Park District have almost twice as much to spend per student than do the taxpayers in the Laredo District; Laredo with its high concentration of minority and low income youth has, according to the state's own formulas, significantly greater need for funding than do the students in the Highland Park District. (PX 214-215, 103, 105, Kirby)

15. North Forest I.S.D. and San Elizario I.S.D. maintain tax rates of $1.05 and $1.07 respectively, well above the State average tax rate; each district has far above average costs per student, yet neither district can provide a full range of educational offerings to their students. (PX 116, Sawyer, Boyd, Cardenas)

16. If every district in the state were making the average total tax effort, the combined amounts of state aid and local tax revenue would vary widely across the wealth spectrum under the State's current funding formulas. The result would be:

> a. State and local revenue available for the 150,000 students in the top range of wealth would be more than <u>two</u> times as much as state and local revenue available for the 150,000 students in the bottom range of wealth.

b. State and local revenue available for the 600,000 students in the top range of wealth would be more than one and one-half times as much as state and local revenue available for the 600,000 students in the bottom range of wealth. (Foster, PX 110)

17. The denial of equal educational opportunity is not based on any rational consideration or policy. Rather these differences in educational opportunity are attributable either to the place of birth or where one's parents choose to live. While children of wealthy and middle-class families may have mobility as their parents are able to move into wealthy districts and acquire for them a superior education, such opportunities are by-and-large not available to the children of the poor and disadvantaged who lack such mobility and are for the most part consigned to inferior school districts.

7. Effects of Insufficient Funds

1. The biggest challenge facing Texas education today is a need to increase financial support at the State level. (DX 68)

2. "As in so many things, in education, you get what you pay for" and "the quality of our education system is directly related to the amount of money spent on it." (Kirby, PX 38)

3. Districts that have the available local tax base to significantly enrich their school programs almost inevitably do so; with the result that educational programs in the wealthier school districts are financed at levels substantially higher than the Foundation School Program. (Foster, Hooker, Long, Verstegan, PX 107, 105, 214-216)

4. Increased financial support enables wealthy school districts to offer much broader and better educational experiences to their students, including such matters as a more extensive curriculum and more co-curricular activities, enhanced educational support through additional training materials and technology, improved libraries and library professionals, additional curriculum and staff development specialists and teacher aides, more extensive counseling services, special programs to combat dropouts, parenting programs to involve the family in the student's educational experience, lower pupil-teacher ratios and the ability to attract and retain better teachers and administrators. (Cardenas, Zamora, Valverde, Kirby, Bergin, Long, Hooker, Wise, Boyd, Sybert, Sawyer)

5. Districts which have more property wealth can afford to and do offer higher teacher salaries than other districts in their areas. This allows these wealthier districts to recruit, attract and retain better teachers for their students. Better facilities, more amenities and more support personnel also make high wealth districts better able to compete for, hire and retain high quality teachers. (Wise, Zamora, Valverde, Kirby, Bergin, Hooker, Sawyer, Boyd, Sybert)

6. High wealth districts can afford to and do hire more curriculum specialists, support personnel, counselors, and offer broader curriculum - characteristics that are especially important for low-income and high risk students who predominately live in low wealth districts. (Valverde, Zamora, Cardenas, Sawyer, Boyd, Sybert, Hooker)

7. North Forest I.S.D. in Harris County had the highest failure rate in Texas on the TECAT exam, but is unable to compete with its wealthier neighbors for teachers because it cannot match their salary offerings. Socorro I.S.D. in El Paso County, because of its high growth rate and inadequate facilities has been forced to build new buildings and the district now is unable to make payment on principal and faces potential bankruptcy. San Elizario I.S.D. is so poor that it cannot provide an adequate curriculum for its students; it offers no foreign language, no pre-kindergarten program, no college preparatory program and has virtually no extracurricular activities. (Sawyer, Sybert, Boyd).

8. The system of public education in Texas does not provide an adequate education to students attending low wealth districts. (Cardenas, Zamora)

9. Many low wealth school districts cannot afford to provide an adequate education for all their students. (Cardenas, Zamora, Sybert, Sawyer, Boyd)

10. "The educational preparation of over one-third of the state's population is inadequate." (DX 68, p.8)

11. One-third of the school districts in Texas do not meet the state's standards for maximum class size. (Moak, Bergin, PX 212)

12. A great majority of the Texas school districts which cannot meet the class size requirements in Texas are low wealth districts. (Bergin, Moak, PX 212)

13. The great majority of school districts in Texas which are not fully accredited because of inability to meet state standards are low wealth districts. (Bergin, PX 35)

14. A majority of the Texas school districts which are unable to meet the state's pre-kindergarten program requirements are low wealth districts. (PX 35, PX 212)

15. Texas has 44 professional personnel to review the accreditation as well as compliance with curriculum mandates of the 1,063 school districts, the 6,000 school buildings, the approximately 175,000 classrooms and teachers and the 3,000,000 students in the state. (Bergin)

16. The Foundation School Program (F.S.P.) does not guarantee to each eligible student a basic instructional program suitable to his or her educational needs. (Hooker, Foster, Sybert, Sawyer, Boyd, Padilla, Ortiz, Cardenas, Zamora)

17. Students in low wealth districts do not have an equal opportunity to obtain instruction under the state's requirements. (Cardenas, Hooker, Zamora, Sybert, Boyd, Sawyer)

8. Facilities

1. Money spent on facilities in Texas public schools is raised virtually exclusively from local school district tax money. The Texas finance formulas do not include the costs of facilities. (Kirby, Hooker, Foster, PX 235)

2. A significantly greater portion of low wealth than high wealth districts' tax rates go to pay off bonds for construction. (PX 114, 116, Foster, Hooker)

3. Forty of the 50 states participate in the funding of public school district facilities in some way. Texas does not. (Hooker)

4. Low wealth districts cannot afford to and do not provide as high a quality of facilities as do high wealth districts; this has a negative effect on the educational opportunity of children in those districts. (Hooker, Walker, Sayer, Zamora, Foster, Cardenas, Boyd, PX 303-305)

5. School facilities in Texas will present a major problem during the next decade. The problem is a state problem and it will probably require state as opposed to only local district resources to produce an adequate solution. (Lutz, PX 237)

Stanley Clark

9. Concentrations of Low-Income ~~and Mexican-American~~ Students in Low-Wealth Districts

1. Unequal opportunity to raise funds is exacerbated by the fact that the children with the greatest educational needs are heavily concentrated in the State's poorest districts, because there is a significantly higher percentage of families below the poverty level in low wealth districts than in high wealth districts. (Cortez, Cardenas, PX 47)

Stanley Clark

~~2. In 1985-86, 30% of the students in Texas public schools were Mexican-American, 95% of the students in the lowest wealth (5% of total students in state) districts in Texas were Mexican-American, and 60% of the students in the poor districts were Mexican-American. (Cortez, Cardenas, PX 47)~~

3. According to the 1980 census, 21% of the total Texas population was Mexican-American; 84% of the population in the poorest districts were Mexican-American. (Cortez, Cardenas, PX 47)

Stanley Clark

~~4. There is a pattern of a great concentration of Mexican-Americans in the lower property wealth districts of Texas and an even greater and almost total concentration of Mexican-Americans in the lowest property wealth districts in Texas. (Cortez, Cardenas, PX 47)~~

5. In 1985-86, 36% of the students in Texas schools were low-income; 85% of the students in the lowest-wealth districts (with 5% of students) were low-income; and 60% of the students in the low-wealth districts were low income. (Cortez, Cardenas, PX 48)

6. According to the 1980 census, the median family income in Texas was $19,760 and 14% of the families were below poverty levels; in the poorest districts (5% of total students) the median family income was $11,590 and 35% of the families were below poverty levels. (Cortez, PX 48)

7. There is a pattern of a great concentration of both low-income families and students in the poor districts and an even greater concentration of both low-income students and families in the very poorest districts. (Cortez, Cardenas, PX 48)

Stanley Clark

~~8. There has been a concentration of Mexican-Americans and low-wealth families and children in low wealth districts in Texas for many years. (Cortez, Cardenas, Zamora, PX 47, 48)~~

9. It is significantly more expensive to provide an equal educational opportunity to low-income children and Mexican American children than to educate higher income and non-minority children. (Cardenas, Zamora, Kirby)

~~10. There has been long term underfunding of districts which are seeking to educate Mexican-American and low income persons, and this underfunding has caused these groups a special disadvantage under the school finance systems in Texas. (Zamora, Cardenas, PX 47, 48, 33, DX 68)~~

~~11. Texas will not support a system of school finance that sends too much money to minority and poor districts. (Kirby, PX 39)~~

12. Forty-five percent (45%) of Hispanic ninth grade students in public schools in Texas are dropping out of school before graduation; 34% of Blacks and 27% of Whites are dropping out. (Cortez, PX 49)

13. Hispanic youth, age 16 to 19, were twice as likely, and youth age 20 to 24, nearly three times as likely to have left school prior to the completion of the twelfth grade as their White couterparts. (Cortez, PX 49)

14. Nearly half of Hispanic dropouts complete less than ninth grade when they discontinue schooling compared to 18 percent of White and Black dropouts who discontinue schooling before ninth grade. (Cortez, PX 49)

10. Historical Inequities

~~1. Before House Bill 72 in 1984-85, education in the low wealth districts was inadequate. (Kirby)~~

2. Historically, there has been a pattern of a wide variation of property wealth per pupil, expenditure per pupil, and tax rates in school districts in Texas. These variations have consistently worked against the children attending low wealth districts, the districts themselves and the taxpayers in those districts. (Walker, Moak, Cardenas)

3. There has been a consistent historical underfunding of low wealth districts in Texas. (Hooker, Walker, Cardenas)

4. The buildings and teachers and programs which low wealth districts are presently using to educate their children were bought or developed with inadequate funding; this inadequate funding has a negative effect on present day operations. (Cardenas, Hooker)

5. The Texas school finance system has and continues to deny equal educational opportunity to students in low wealth districts, especially atypical students. (Cardenas, Hooker)

6. The Texas school finance system has had and continues to have a negative impact on the education of students in low-wealth districts in terms of their ability to learn, ability to master basic skills, ability to acquire saleable skills, and their quality of life. (Cardenas, Walker, Sybert, Boyd, Hooker)

11. How the Foundation School Program (FSP) Formulas Deny Equality of Access to Education Funds

1. The Foundation School Program (FSP) does not cover the real cost of education and virtually all districts spend above the Foundation School Program to enrich the educational program and these expenditures are necessary to provide students an adequate educational opportunity. (Hooker, Foster)

2. Approximately $3,600 (excluding federal funding, debt and facilities) per student is expended to provide the education programs which are available to (1) the students in the districts which meet the criteria for "quality" established by the State's Advisory Committee on Accountable Costs, and (2) the 600,000 students in the state's wealthiest school districts. At least this level of expenditure is necessary to provide an adequate educational opportunity, including basic and enrichment programs. (Hooker, Foster, PX 212, PX 105-E)

3. The formulas and factors which determine Foundation School Program (FSP) allotments do not fully state the real cost of providing adequate education programs. Some program costs are unstated, e.g., implementation of maximum salary schedule and maximum class. The program costs which are acknowledged are understated, most notably the Basic Allotment and the weights for Compensatory and Bilingual Education. (Hooker)

4. The acknowledged program costs, i.e., the FSP allotments, average just under $2700 per student, including $600 indirectly acknowledged through the Enrichment Equalization Allotment. The difference between adequate program expenditures and acknowledged program costs is, therefore, at least an average $900 per student. (PX 101-B, PX 105-E)

5. There are no FSP allotments for facilities. All costs of facilities, including debt service on bonds issued for facilities, are unstated costs. Debt service averages just under $300 per student. (PX 105-H)

6. The tax rates required to meet the local share of FSP allotments, including the Enrichment Equalization Allotment, range from less than $.02 in the richest district to $.86 in the fourth poorest district; from $.38 on the average for the 600,000 students in the richest districts to $.55 for the 600,000 students in the poorest districts. (PX 120-A)

7. The additional tax rates required to fund unstated and understated program costs vary widely among school districts as a function of their taxable property wealth. The tax rates required on the average to raise $900 per student range from less than $.01 in the richest district to more than $4.00 in the poorest district; from $.18 on the average for the 600,000 students in the richest districts to $1.23 for the 600,000 students in the poorest districts. (PX 102-A)

8. The further additional tax rates required to fund current bonded debt service range from about $.08 on the average for the 600,000 students in the richest districts to $.21 for the 600,000 students in the poorest districts. (PX 106-A)

9. When the tax rates required to raise unstated and understated program costs, as well as the rates needed for debt service, are added to the rates required to raise the local share of FSP allotments, the combined tax rates range from less than $.03 in the richest district to more than $5.00 in the poorest district; from $.64 on the average for the 600,000 students in the richest districts to nearly $2.00 for the 600,000 students in the poorest districts. (PX 101, 102, 105, 106, 120)

10. The failure of the FSP formula allotments to include the real costs of providing an adequate educational opportunity means that at least an average $900 of program costs, and all facilities costs, are totally unequalized and are therefore funded only to the extent that local taxpayers are willing and able to assume the additional burden. (Foster, Hooker, PX 101, 102, 105, 106, 120)

11. More than 200 of the state's poorest school districts, which serve over 400,000 students, cannot legally raise an additional $900 per student for programs, because to do so would require tax rates in excess of the $1.50 statutory limit. (PX 102-A)

12. Actual program expenditures per student range from $400 below the acknowledged cost level in the poorest district to $8,000 above in the richest district; from an average of $100 below the acknowledged cost level for the 600,000 students in the poorest districts to nearly $900 above for the 600,000 students in the richest districts. (PX 105)

13. The failure to acknowledge the real costs of providing an adequate educational opportunity is disadvantageous for poor districts, advantageous for rich districts, and serves the interests of those who seek to minimize state expenditures for public education. Understating costs actually has the effect of distributing more state aid to rich districts than they would otherwise receive. Further, rich districts can fund unacknowledged but necessary costs at modest tax rates and are therefore better able to attract better personnel and more new

taxpayers. Acknowledging the real costs would flow more state funds into poor districts, which would then be able to compete more favorably for personnel and taxpayers. (Foster, Hooker, Walker)

14. The Basic Allotment purports to represent the true accountable cost of providing a suitable education program for a regular student. Instead, the $1,350 Basic Allotment adopted for 1985-86 in House Bill 72 was established on the basis of a predetermined level of appropriation for the Foundation School Program. The amount recommended by the Select Committee on Public Education was nearly $600 higher; the amount approved by the Senate in Senate Bill 4 (68th Leg., 2nd C.S.) was almost $500 higher. (Hooker, Foster)

15. A research report published by the Accountable Cost Advisory Committee in 1986, pursuant to T.E.C. §16.202, indicates that the Basic Allotment for 1985-86 should have been at least $2,000 - more than $600 above the adopted amount (Hooker, PX 212)

16. Because the Foundation School Program special program allotments (Special Education, Compensatory Education, Vocational Education, and Gifted and Talented Education) are determined by multiplying the Basic Allotment by special program weights specified in T.E.C. Chapter 16, these allotments understate the cost of the special programs at least to the same degree that the Basic Allotment understates the cost of the regular program. (Hooker, Foster)

17. School district budgetted expenditures for 1985-86 were greater than the corresponding Foundation School Program

allotments, by 46% on the average and by 87% at the 95th percentile of students ranked by expenditures per student.

18. TEX. EDUC. CODE (T.E.C.) §16.004, "Scope of Program," is inadequate because it does not include the costs of facilities or debt service and the amount of state aid to each school district is based on factors other than the district's ability to support its public schools.

19. T.E.C. §§16.055 & 16.056, "Compensation of Professional and Paraprofessional Personnel," require districts to pay minimum graduated salaries to teachers while the school finance system does not provide low-wealth districts with sufficient funding to compete for teachers and meet other needs of their educational programs. The state program specifically does not increase F.S.P. Allotments to cover annual increments in the salary schedule.

20. T.E.C. §16.057 and 16.158, "Career Ladder Salary Supplement," is underfunded by the state program. The state program specifically does not increase F.S.P. Allotments to fully cover increments in career ladder costs.

21. T.E.C. §16.101, "Basic Allotment," is the major cause of the inadequacy of the state program. The Basic Allotment is significantly below the actual costs it purports to represent.

22. T.E.C. §§16.102, "Adjusted Basic Allotment," 16.103 "Small District Adjustment," and 16.104 "Sparsity Adjustment" are inadequate since they are based on an inadequate Basic Allotment, T.E.C. §16.101.

23. T.E.C. §16.151, "Special Education," is inadequate since it is based on an inadequate Basic Allotment, T.E.C. §16.101.

24. T.E.C. §16.152 "Compensatory Education Allotment," is inadequate since it is based on an inadequate Basic Allotment, and the program weight does not reflect the actual additional costs of compensatory education.

25. T.E.C. §16.153 "Bilingual Education Allotment," is inadequate since it is based on an inadequate Basic Allotment, T.E.C. §16.101. Also, the program weight does not reflect the actual additional costs of bilingual programs.

26. T.E.C. §16.155 "Vocational Education Allotment" is inadequate since it is based on an inadequate Basic Allotment, T.E.C. §16.101.

27. T.E.C. §16.156 "Transportation Allotment" is inadequate because it is below the actual costs of transportation, and does not include costs of replacing school buses.

28. T.E.C. §16.157 "Enrichment Equalization Allotment" does not equalize either actual program enrichment or the 30% program enrichment which it purports to equalize. (Foster, PX 103, 112)

29. T.E.C. §§16.159 "Gifted and Talented Student Allotment," is inadequate since it is based on an inadequate Basic Allotment, T.E.C. 16.101.

30. T.E.C. §16.251 "Financing; General Rule" is inadequate for each of the reasons stated in the other findings. The true costs of an adequate educational opportunity are not included in the Foundation School Program and cannot be funded by an equalized local school district effort.

31. T.E.C. §16.252 "Local Share of Program Cost" is inadequate to the extent that the percentage of the total Foundation School Program costs included in the statewide local share is so low that it dilutes state funding by sending monies to high wealth districts when those monies could increase the equity of the system by being sent to low wealth districts. The "local share" percentage ("N") in §16.252 does not maximize the equalization of the distribution of the state share of the Foundation School Program.

32. T.E.C. §16.253 "Excess of Local Funds Over Amount Assigned" is inadequate to the extent that it allows wealthy districts discretion to raise enrichment monies for their districts without allowing equal discretion for low wealth districts and for each of the reasons stated in the other findings.

33. T.E.C. §16.254(d) results in a disequalizing distribution of state aid shortfalls. The average tax rate required to replace prorated state aid reduction for the 300,000 students in the poorest districts is more than eleven times as much as the average tax rate required to do so for the 300,000 students in the richest districts; for the 600,000 students in the poorest districts the average rate is nearly seven times as much as the average rate for the 600,000 students in the richest districts. (PX 108)

34. The State does not adjust Foundation School Program allotments to take into account mandated increases in the minimum salary schedule and the cost of expanding maximum class size

mandates to higher grades; Foundation School Program allotments understate the true costs of meeting State requirements; and there are no State funds provided for facilities. In each instance this means that the necessary funds can only be raised through local property taxes, and the tax rates required to raise each $100.00 of such funds vary widely across the wealth spectrum under the State's current funding formulas. (PX 108)

> a. The average rate required for the 150,000 students in the bottom range of wealth is more than eighteen times as much as the average rate required for the 150,000 students in the top range of wealth.
>
> b. The average rate required for the 300,000 students in the bottom range of wealth is more than eleven times as much as the average rate required for the 300,000 students in top range of wealth.
>
> c. The average rate required in the 100 districts in the bottom range of wealth is more than twenty times as much as the average rate required in the 100 districts in the top range of wealth.
>
> d. The average rate required in the 200 districts in the bottom range of wealth is just under eight times as much as the average rate required in the 200 districts in the top range of wealth.

12. District Boundaries

1. Texas, in its creation and development of school district boundaries, did not follow any rational or articulated policy. Neither in their creation nor in their perpetuation has an effort been made to equalize local tax bases. There is no underlying rationale in the district boundaries of many school districts in Texas and there are many districts that are pure tax havens. (Hooker, Moak, PX 25, 26, 239)

2. Historically, there has been a pattern of a wide variation of taxable property wealth per pupil among the state's school districts. These variations have consistently worked against the children attending low wealth districts by restricting the ability of these districts to raise funds from local sources. (Cardenas, Hooker)

3. Texas contains many counties with both very low and very high property wealth districts. (Hooker, Moak, Kirby, PX 1, 214, 215, 216, 241, 242, 243, 244, 245, 246)

4. Tax haven districts exist in many counties in the state. A tax haven district exists mainly to protect the high property wealth of a district from taxation. (Hooker, Collins, Kirby, Foster, Moak, PX 2, 214-216, 241-246)

5. Many school districts in the state cross county lines. (PX 1, Kirby, Long)

6. The Carrollton-Farmers Branch district includes parts of more than five cities and two counties. (PX 1, Long)

7. Property poor school districts are trapped in a cycle of poverty from which there is no opportunity to free themselves. Because of their inadequate tax base, property poor districts typically must tax at significantly higher rates than their wealthier neighbors to meet minimum educational requirements, and their education programs are typically inferior. The location of new industry and development is strongly influenced by tax rates and the quality of the schools. Thus, the property poor districts with their high tax rates and inferior schools have little or no opportunity to improve their tax base by attracting new industry or development. (Foster, Wise, Sawyer, Sybert)

8. The funds of the Available School Fund are sent to many budget balanced districts which, at less than average tax rates, could still spend above the state average expenditure without these funds. Sending the Available School Fund monies to the counties for distribution to districts according to need would be a fairer allocation of these monies. (Hooker)

9. Present district configurations produce wholly unjustifiable disparities in the expenditures per student in Texas depending upon the wealth of the districts in which the student resides and similarly produce unjustifiable disparities in tax burdens depending upon the accident of property wealth per district.

D. Facts Demonstrating That the Adverse Impact Found to Exist as a Result of the State System of Public School Finance is not Justified by a Compelling State Interest

The State and Defendant-Intervenors have offered two justifications for the adverse impact found in the State System of Public School Finance, local control and preservation of community interest.

1. Local Control

1. The State has proffered the preservation of local control as a justification for the State's funding scheme. This justification is not embodied in statute or Constitution. The Court, based on the following fact findings, concludes that the claim of local control is factually insufficient to justify the

discrimination found in the State's system of funding public education.

2. Local control of school district operations in Texas has diminished dramatically in recent years, and today most of the meaningful incidents of the education process are determined and controlled by state statute and/or State Board of Education rule, including such matters as curriculum, course content, textbooks, hours of instruction, pupil teacher ratios, training of teachers, administrators and school board members, teacher testing and review of personnel decisions and policies. (Bergin, Long, Kirby)

3. The one element of local control that remains undiminished is the power of wealthy school districts to fund education at virtually any level they choose as contrasted with the property poor districts who enjoy no such local control. The property poor districts have little or no local control because of their inadequate property tax base; the bulk of the revenues they generate are consumed by the building of necessary facilities and compliance with State mandated requirements. (Foster, Hooker, PX 107)

4. Local control is largely meaningless except to the extent that wealthy districts are empowered to enrich their educational programs through their local property tax base, a power which is not shared equally by the State's property poor districts. (Sawyer, Sybert, Boyd, Hooker, Foster)

5. Local control would not be compromised by a funding system which insured equalized opportunity for local districts to fund their educational programs. (Wise, Hooker)

6. Local control could exist in a funding system that assured equality of educational opportunity. (Wise, Hooker)

7. "The State Board of Education is the primary policy-making body for public education and directs the public school system in accordance with law." TEX. EDUC. CODE §11.26(a)

8. TEX. EDUC. CODE, §11.13, "Appeals," creates an extremely broad appeal by "persons" to the Commissioner of Education for any matter arising from an action or decision of a local school board.

> §11.13. Appeals
>
> (a) Persons have any matter of dispute among them arising under the school laws of Texas or any person aggrieved by the school laws of Texas or by actions or decisions of any board of trustees or board of education may appeal in writing to the commissioner of education, who, after due notice to the parties interested, shall hold a hearing and render a decision without cost to the parties involved, but nothing contained in this section shall deprive any party of any legal remedy.

9. "State-level school authorities, of which the Commissioner is the executive officer, have discretionary power that supersedes local authority in such matters as textbooks, course requirements, and numerous functions and activities included within the Foundation School Program which the State subsidizes." Spring Independent School District v. Dillon, 683 S.W. 2d 832, 389 (Tex. Civ. App. - Austin, 1984, no writ)

10. "State-level school authorities claim, by regulations set forth in 19 Tex. Admin. Code, supra, a similar power over

local school authorities in an astonishing array of other matters" Spring I.S.D., Id.

11. "State-level school authorities have or claim discretionary power in numerous matters that pertain to local school operation, management and government...," Spring I.S.D., supra at 840.

12. The Court concludes that local control, as it exists in Texas, is not a compelling interest sufficient to support the state's school finance system. This conclusion is based on the testimony at trial as well as the following partial list of state requirements on local districts. The Court does not find these requirements unconstitutional, but only illustrative of the lack of effective local control in Texas. State Statutes, regulations, interpretations and monitoring intrude on every aspect of school district operation. Illustrative examples of the scope and detail of these rules from the Texas Education Code (TEC) and Texas Administrative Code (TAC) in the areas of administration and finance, students and personnel follow. Local school districts must:

(a) Administration, finance and record-keeping

1. Be accredited by the TEA (TEA 16.053 and TEC 21.751)

2. Publish an annual performance report and file it with the State Board of Education (SBOE) in conformance with rules established by the SBOE to include by campus, scores on tests national norms; performance trends; costs for instruction, instructional administration, and central administration;

attendance; date; dropout ratios; reports on discipline; data on employees; reports on employee turnover; reports on pupil-teacher ratios by grade groupings and by program. (TEC 21.258)

3. Start school on or after September 1 of each year. (TEC 21.001)

4. Spend no more than 15% of compensatory education funds for administrative costs. (TAC 89.191c)

5. Spend no more than 15% of bilingual funds for administrative costs. (TAC 77.362b)

6. Submit a year end report on bilingual program expenditures in accord with guidelines developed by the TEA. (TAC 77.362d)

7. Limit announcements on the public address system in public schools to one during the school day except for emergencies. (TEC. 21.923)

8. Utilize funds allotted for vocational education for programs, services, and activities specifically approved by the Central Education Agency. (TAC 78.69a)

9. Enroll a minimum number of students in vocational program units specified by the Central Education Agency in order to be allotted funds. (TAC 78.69c)

10. Have approval by the Central Education Agency of all vocational program units in order for them to be counted for vocational program allotment purposes. (TAC 78.69a)

11. Keep auditable data on participation in free and reduced priced meal programs in order to qualify for compensatory funds. (TEC 16.152b)

12. Have all fiscal accounts audited annually by an external auditor. (TEC 21.256)

13. Have a school day of not less than seven hours each day. (TEC 21.004)

14. Seek competitive bids on all purchases of $5,000 or more. (TEC 21.901)

15. Have the State Property Tax Board conducts annual studies of school district taxable property values, and it is the results of those studies, rather than locally assessed values, that are used in determining how much state aid each district is entitled to. (TEC 11.86, TEC 16.252)

16. Meet minimum standards established by the SBOE for the operation of libraries to include library personnel, acquisition of materials, and development of learning resource programs. (TEC 11.36)

17. Have their Boards of Trustees complete a minimum of twenty hours of training by sponsors approved by the TEA to gain a working knowledge of all the Statewide Standards on the Duties of a School Board Member. Further requires minutes to reflect the members who have and have not completed the required training and making this information available to the local media. (TEC 23.33b and TAC 61.174k)

18. Require the president of the local board of trustees to prepare, or cause to be prepared, not later than August 20 of each year, a budget covering all estimated receipts and proposed expenditures of the district for the next succeeding fiscal year. (TEC 23.41, 23.42)

19. File copies of the adopted budget in the office of the county clerk in the county or counties in which the district is located and with the Central Education Agency. (TEC 23.46)

20. File copies of any amendment or supplementary budget, when adopted, with the county clerk in the county or counties in which the district is located and with the Central Education Agency on forms provided by that Agency. (TEC 23.47b)

21. Follow extensive procedures for seeking and awarding the bid for the depository of the district's funds. (TEC 23.74, 23.76, 23.77, 23.78 and 23.79)

22. Establish a local advisory council for vocational education. (TAC 78.6)

23. Comply with numerous and specific provisions in notices for board meetings, the keeping of minutes, executive sessions, emergency sessions, etc.

24. Maintain documents in support of data submitted to TEA for financial and sick leave purposes. (TAC 121.11)

25. Maintain current and complete personnel records of all employees. (TAC 121.11)

26. Report annually to the State Health Dept. on the examinations and re-examinations of tuberculosis results. (Texas Board of Health under authority granted by Art. 4477-12, Sec. 5(a), V.A.T.S.)

27. At the end of each school year to file a report with TEA setting out total number of days of sick leave utilized by qualified district personnel. (TEC 13.904b)

28. Establish advisory committee for public participation of community members concerned with educational programming for the handicapped. (TAC 89.244d)

29. Give homestead exemptions on residence homesteads in the amount of $5,000 and an additional $10,000 exemption for adults who are sixty-five or older. (Tax Code 11.13 b,c)

30. Limit their tax bond indebtedness to 10% of the assessed valuation of taxable property in the district. (TEC 20.04b,c)

31. Have a public hearing if the board adopts a tax rate that exceeds the effective rate by more than 3%. (Tax Code 26.05c)

32. Adopt a standard school fiscal accounting system, keyed to budget classifications with respect to the purposes of disbursements and the sources of receipts. (TEC 23.48 a)

33. Operate their school buses on TEA approved routes, and no variations shall be made from such approved routes. (TEC 21.276)

34. Furnish the commissioner of education a list of all bus routes and transportation systems for review. (TEC 21.177 a)

35. Follow specific procedures of the Purchasing and General Services Commission in disposing of used school buses. (TEC 21.167)

36. Use academic achievement record (transcript) form adopted by the State Board. Their form shall serve as the academic record for each student and shall be maintained permanently by the districts. (TAC 75.153a)

37. Attach to the academic record of students who complete high school graduation requirements the State Board approved seal indicating which high school program was completed. (TAC 75.153c)

38. Develop procedures for determining student progress and reporting to parents for students at the kindergarten and prekindergarten level (TAX 75.191)

39. Determine student academic achievement using a numerical score on a scale of 0-100. (TAC 75.191)

40. Maintain a student achievement record on each student enrolled in the district. (TAC 61.163, 75.153 a)

41. Give written notice to parents of students' grades in each class or subject at least once every six weeks. The report shall include the number of times the student has been absent. The notice shall provide for the parent's signature and must be returned to the District. If the notice is not returned to the district, the district shall mail notice to the parent. (TEC 21.7222)

42. Submit description of courses to be designated as honors courses to the commissioner of education for review and approval within the time periods specified by State Board rule. (TAC 75.152d)

43. Report grades in grades 7-12 to parents as numerical grades and in grades K-6 as letter grades, and may use pluses or minuses. (TAC 75.191)

44. Record a 50 for any numerical grade earned that is lower than 50. (TAC 75.191)

45. Use numerical scores on all academic achievement records and maintain them in the permanent records. (TAC 75.191)

46. Display the flag of the State of Texas regularly and prominently on or about school premises, as a prerequisite for receiving allocations of state funds appropriated to the Texas Education Agency. (Appropriations Act, 69th Legislature, Reg. Sess., 1985, House Bill 20, Article III, Rider No. 14.)

(b) Curriculum and students

The State Board of Education has promulgated 350 pages of regulations that detail the content of every course in every year in every school district in the state. (Chapter 75). For example pre-kindergarten students must learn to "develop pincher control," TAC 75.21 (c)(2)(B)(ii), and homemaking students must learn to "identify principles of pleasing interior decoration," TAC 75.83(b)(4)(c), and "recognize commitments made in marriage vows." TAC 75.83(d)(2)(c). Furthermore, state laws and regulations require school districts to:

1. Maintain free public kindergartens for all children who are at least five years of age. (TEC 21.131)

2. Offer free pre-kindergarten classes on a 1/2-day basis for children who are at least four years of age if the district identifies 15 or more eligible children. (TEC 21,136)

3. Offer a curriculum that includes 12 specified areas of study. (TEC 21.101)

4. Use SBOE approved methods for screening students for dyslexia and providing instructional services to those students. (TEC 21.924)

5. Deny course credit if a student has more than five days of unexcused absences during a semester. (TEC 21.041)

6. Administer state criterion referenced tests (TEAMS test) designed by the TEA in grades 1, 3, 5, 7, 9, and 11. (TEC 21.551)

7. Meet qualifications prescribed by State Board of Education (SBOE) for "instructional arrangements" for special education children. (TEC 16.151d)

8. Have SBOE approval of all day contract placements for special education children (TAC 89.227e)

9. Have a comprehensive special education program approved by SBOE. (TAC 89.250d)

10. Provide a TEA approved bilingual or special language program if the district has an enrollment of 20 or more students of limited English proficiency of any language classification in the same grade level. (TEC 21.453c)

11. Comply with SBOE rules on bilingual education regarding program content and design, program coverage, identification procedures, classification procedures, staffing, learning materials, and testing materials. (TEC 21.461)

12. Have approved by TEA any gifted and talented program. (TEC 21.654)

13. Adopt and implement an SBOE approved discipline management program with a designated person with special training

to lead the program on each campus. Requires two parent conferences be held each year, parent training workshops to be offered, and written statement signed by each parent acknowledging and implying consent to the discipline management plan. (TEC 21.701 and 21.702)

14. Comply with SBOE rules limiting participation in extracurricular activities. (TEC 21.920)

15. Limit students to no more than ten days of absence from any one class for purposes of extracurricular activities. (TAC 97.113)

16. Enforce suspension from extracurricular activities for a period of six weeks if a student fails to achieve a grade of 70 or better in any one course. (TAC 97.113)

17. Prohibit social promotion for students who have not maintained a grade average of at least 70. (TEC 21.721)

18. Provide not less than 175 days of instruction and not less than eight days of inservice and preparation for teachers. (TEC 21.001)

19. Operate an SBOE approved alternative education program for pupils found guilty of incorrigible conduct. (TEC 21.301k)

20. Force all students to take a final examination in any class in which any other student is required to take a final examination. (TEC 21.723)

21. Select textbooks from a list adopted by the SBOE. The list typically has only five possible selections from which to choose.

22. Follow extensive procedures when considering the suspension of expulsion of a student. (TEC 21.301 and 21.3001)

23. Teach only courses approved by the TEA. (TAC 91.114)

24. Certify as graduates only those who have completed a course of study prescribed by the SBOE. (TAC 97.116)

25. Provide a minimum of 160 hours of instruction in a course in grades 9-12 in order for credit to be granted. (TAC 97.114)

26. Offer in grades 1-3 no less than 600 minutes per week of instruction in language arts, 300 minutes in mathematics, 100 minutes in social studies. (TAC 75.141)

27. Administer TEA approved advanced placement examinations for grades 1-5 and academic subjects in grades 6-12, as designated by the commissioner of education (TAC 75.172a)

28. Annually to appoint a textbook committee composed of no fewer than five and not more than fifteen members. (TAC 81.131a2)

29. Give written notice to the student's parent within ten days after the student's classification of limited English proficient, requesting approval to place the student in an ESL program. (TAC 77.360c)

30. Provide students an opportunity to complete subject or courses begun but not successfully completed during the regular school term during summer school. Such courses shall include all state-required essential elements specified for the course. Student progress shall be evaluated according to the same

achievement standards as those used during the regular term. (TAC 75.168)

31. Ensure that students participating in honors courses or programs are instructed in all essential elements and demonstrate an acceptable degree of mastery of those elements. (TAC 75.152c)

32. Submit descriptions of courses to be designated as honors courses to the commissioner of education for review and approval within the time periods specified by State Board rule. (TAC 75.152d)

33. Award credit for a full-year (1 unit) course on a semester-by-semester basis. (TAC 75.192c)

34. Ensure that students participating in honors courses or programs are instructed in all essential elements and demonstrate an acceptable degree of mastery of those elements. (TAC 75.152c)

35. Devote the equivalent of 112 minutes per week, in grades four-six, to both physical education and fine arts, provided that districts may choose to alternate two and three periods of instruction weekly by dropping to the equivalent of 90 minutes one week and increasing to the equivalent 135 minutes the next week for each subject on a rotating basis. (TAC 75.141(e)(5)

36. Devote no less than 40 percent of the instructional day, in kindergarten, to the teaching of English language arts. (TAC 75.141(c)(1)

37. Teach language arts in grades one-three daily and no less than 600 minutes per week. (TAC 75.141(d)(1)

38. Implement secondary curriculum based on units which, at grade six, shall constitute a minimum of 45 minutes of academically engaged time per day for a subject during a 175-day school year. (TAC 75.142(a)(2)

39. Permit a student to take a locally developed elective, not to exceed one semester, during grade seven or eight or both. (TAC 75.142(b)(10)

(c) Personnel and School Boards

1. Pay certified personnel no less than a specified minimum salary based upon years of experience. (TEC 16.056c)

1.5. Maintain student-teacher ratios for bilingual or special language programs not to exceed 18-1. (TEC 21.458)

2. Assign teachers to a level on the career ladder and to pay those teachers on level two no less than a $1,500 supplement, level three - $3,000, level four - $4,500. (TEC 13.301)

3. Utilize an SBOE-adopted appraisal instrument and to use two different appraisers for each appraisal. The appraisal process must guarantee a conference between appraisers and appraisees and the conference must be both diagnostic and prescriptive. Must have a minimum of two appraisals per school year. (TEC 13.302 and 13.303)

4. Assign classroom teaching duties of not less than four hours per day to each teacher who is identified for purposes of Texas Education Code as a teacher. (TEC 13.907)

5. Provide each teacher with at least 45-minute planning period during the seven-hour day.

6. Provide each teacher with a 30-minute duty-free lunch period. (TEC 13.909)

7. Provide each district administrator with training in management skills in an SBOE approved program. (TEC 13.353)

8. Provide administrators and others who supervise teachers an SBOE approved training program in order to become a certified appraiser. (TEC 13.301)

9. Maintain a pupil-teacher ratio of not more than 20/1 as a district-wide average. (TEC 16.054a)

10. Maintain a pupil-teacher ratio of not more than 22/1 in kindergarten, first, and second grades from the 1986-86 school year on and in grades three and four beginning in 1988-89. (TEC 16.054b)

11. Employ teachers and other professionals who are certified by the TEA. (TEC 13.045)

12. Assign teachers to teach only those courses for which they meet the preparation requirements established by the SBOE. (TAC 97.117)

13. Have an evaluation system that provides periodic written evaluations of a full-time, certified, professional employees, as defined in Education Code 21.202 (1) and/or as classified in Education Code 16.056, at annual or more frequent intervals. (TEC 21.201(1), 21.202, and TAC 149.41a)

14. Adopt policies specifying the duties of each of its professional and paraprofessional positions of employment. (TEC 21.912, TAC 121.1)

15. Establish a comprehensive system of personnel development that includes development of a plan to meet identified personnel training needs for education of the handicapped. (TAC 89.226b)

2. Preservation of Community of Interest

The State has also asserted that the existing System of Public School Finance based on the existing districts is justified by notions of preservation of community of interest. This justification is not embodied in statute or Constitution.

The Court, based on the following fact findings, concludes that the claim of preservation of community of interest is insufficient to justify the discrimination found in the State's system of funding public education.

1. No particular community of interest is served by the crazy quilt scheme that characterizes many of the school district lines in Texas. (PX 1, Moak, Collins)

2. School district boundaries frequently cross city and county boundaries in a random and inexplicable fashion. (PX 1)

3. In many instances it appears that district lines actually fragment communities of interest, e.g., in El Paso County, the Ysleta District is broken into three non-contiguous parts and the extremely wealthy Whiteface District is in three Texas counties, with parts of its portions seemingly unconnected. A review of the school district maps of Texas reveals numerous instances of similar fragmentations. (PX 1)

4. Some school districts are nothing more than tax havens. (Hooker, Collins, Moak)

E. Conclusions

1. Public School education is a fundamental interest under the Texas Constitution.

2. In order to determine the constitutionality of the Texas System of funding public education, it is necessary to examine the system in its entirety, including both State funding formulas as well as local district configurations and the wealth of those districts and how these factors interact to create the State system of funding public education.

3. Education in Texas is by Constitution and statute a function of the State Government and school districts are mere creatures of the State, established by the State for its convenience in discharging its responsibility to establish and maintain a system of free public education. Lee v. Leonard I.S.D., 24 S.W.2d 449 (Tex. Civ. App. --- Texarkana 1930, writ ref'd).

4. The wealth disparities among school districts in Texas are extreme, and given the heavy reliance placed upon local property taxes in the funding of Texas public education, these disparities in property wealth among school districts result in extreme and intolerable disparities in the amounts expended for education between wealthy and poor school districts with the result that children in the property poor school districts suffer a denial of equal educational opportunity and are the victims of

discrimination in the allocation of education dollars. Thus, the fundamental right to equal educational opportunity is impinged upon by the funding scheme created and maintained by the State of Texas, a scheme which classifies students on the basis of the wealth of the district in which they reside. I conclude that the existing State funding system for public education is in violation of the Equal Protection guarantee of Article 1, Section 3 of the Texas Constitution. In this connection, I note that the United States Supreme Court would have reached a similar conclusion under the United States Constitution had it determined that education was a fundamental right under the federal constitution: "We must decide, first, whether the Texas system of financing public education. . . impinges upon a fundamental right explicitly or implicitly protected by the Constitution, thereby requiring strict judicial scrutiny. If so, the judgment of the district court should be affirmed." San Antonio I.S.D. v. Rodriguez, 93 S.Ct. at 1288.

5. The Court does not detect in the evidence or the law a compelling reason or objective that would justify continuation of this discrimination.

6. It has been maintained by the state with evidence and argument that there is not a direct relation between educational expenditures and learning by students as reflected on academic tests such as the TEAMS tests used in this state. This Court, however, does not sit to resolve disputes over educational theory but to enforce our constitution. If one district has more access to funds than another district, the wealthier one will have the

best ability to fulfill the needs of its students. The question of discrimination in educational quality must be deemed to be an objective one that looks to what the state provides its children and their school districts, not what the students or the districts are able to do with what they receive. (Mr. Justice Marshall's thoughts, Rodriguez, 93 S.Ct. 1278, 1322).

7. The facts I have recited and found indicate that our financial system, which includes the combination of state and local funds as they currently act in tandem, do not yet meet the requirements of our constitution.

8. With all due respect to history and to the legislature for its recent generous and thoughtful efforts to rectify this situation, by order of this Court the current system will be set aside.

9. In order to cure this Constitutional infirmity, a system for funding public education must be adopted that either eliminates or fully compensates for disparities in local district wealth. This standard requires that the quality of public education may not be a function of disparate local district wealth. The State's financing system must insure equality of access to funds.

III.
THERE IS NO RATIONAL OR SUBSTANTIALLY JUSTIFIED BASIS FOR THE PRESENT TEXAS SCHOOL FINANCE SYSTEM

A. Legal Standards

1. The two principal Texas cases applying the rational basis test are Sullivan v. University Interscholastic League, 616

S.W.2d 170 (Tex. 1981); and Whitworth v. Bynum, 699 S.W.2d 984 (Tex. 1985). In both instances the Texas Supreme Court invalidated State regulations, in the first instance a rule prohibiting transfer players from participating in U.I.L. sponsored athletics and in the second case the Texas Guest Statute, a statute that had been held constitutional by earlier Texas decisions.

2. Where a State classification causes an adverse discriminatory impact but does not impinge on a fundamental right the State must demonstrate that its classification is rationally related to a legitimate state purpose. Whitworth, supra; Sullivan, supra.

3. The rational basis analysis requires that "similarly situated individuals must be treated equally under the statutory classification unless there's a rational basis for not doing so" and "even when the purpose of a statute is legitimate, equal protection analysis still requires a determination that the classifications drawn by the statute are rationally related to the statute's purpose." Whitworth v. Bynum, 699 S.W.2d at 197. Is the discrimination in educational opportunities suffered by students in property poor districts rationally related to a valid State purpose?

4. To make this determination, we look to see how the State has expressed its statutory purpose and then determine whether the funding scheme is rationally related to this State purpose. Whitworth v. Bynum, 699 S.W.2d 194.

5. The stated constitutional purpose, contained in Article VII, Section 1, is: "A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools."

The question becomes, does the random and often chaotic allocation of wealth among school districts and the resulting discrimination against students in the provision of education rationally serve the stated purposes of Article VII, Section 1? Is this funding scheme rationally related to the "support and maintenance of an efficient system" of public education or to accomplish the "general diffusion of knowledge."

6. Section 16.001 of the Texas Education Code expresses the State policy to be that "provision of public education is a State responsibility and that a thorough and efficient system be provided and substantially financed through State revenue sources so that each student enrolled in the public school system shall have access to programs and services that are appropriate to his or her educational needs and that are substantially equal to those available to any similar student, notwithstanding varying local economic factors." The question becomes, does the random and often chaotic allocation of wealth among school districts and the resulting discrimination against students in the provision of education rationally serve the stated purposes of Section 16.001?

7. "School districts are but subdivisions of the state government, organized for convenience in exercising the governmental function of establishing and maintaining public free schools for the benefit of the people." Lee v. Leonard I.S.D., 24 S.W. 2d 449 (Tex. Civ. App. -- Texarkana 1930, error ref'd). And "the Legislature has authority to enlarge or consolidate school districts in such a manner as it deems fit." North Common School District v. Live Oak County Board, 199 S.W. 3d 764 (Tex. 1946).

8. The Texas Supreme Court in applying Article 1, Section 3 of the Texas Constitution does not consider itself bound by decisions of the United States Supreme Court under the Fourteenth Amendment and the Texas courts are "free to accept or reject federal holdings" in formulating a body of law under the State's own Constitution. Whitworth v. Bynum, 699 S.W. 2d at 196.

9. The Court must consider whether a statute is overbroad, over-inclusive or harsh when considering its constitutionality under the rational basis standard. Sullivan v. University Scholastic League, 616 S.W. 2d 170 (Tex. 1981); Whitworth v. Bynum, 699 S.W. 2d 194 (Tex. 1985)

10. In Plyler v. Doe, 457 U.S. 202 (1982), the Supreme Court struck down Sec. 21.031 of the Texas Education Code which effectively barred undocumented children from Texas schools. While noting that education was not a fundamental interest under the Fourteenth Amendment, the Court held that a confluence of factors, including the implication of educational interest, compelled the state to show it had a "substantial" interest in its scheme. Id. at 231. Among the factors weighed in raising the level of justification of the state was the existence of

innocent children who were burdened, as well as a nexus between those children and traditionally suspect classes, alienage and race.

B. The Defendants' Obligations

The State must demonstrate that its system of school finance is rationally related to a legitimate state purpose.

C. Facts Demonstrating That the Texas System of Funding Public Education Does Have an Adverse Impact and Impinges Upon the Educational Opportunities Afforded Children

The Court has listed its findings on this issues in Section II, supra.

D. Findings of Fact Demonstrating that the Existing System of Funding Public Education is Not Rationally Related to the Purposes Expressed By Article 7, Section 1 of the Texas Constitution and/or Section 16.001 of the Texas Education Code

The Court has listed its findings on this issue in Section II, supra and Section IV infra.

E. Facts Demonstrating That the Adverse Impact Found to Exist as a Result of the State System of Public School Finance is not Justified by Local Control or Preservation of Community of Interest

The Court has listed its findings on this issue in Section II, supra and Section IV, infra.

F. Legal Conclusion

The system of public school finance in Texas creates and enforces classifications which have an adverse impact on

plaintiffs. The system is not rationally related to legitimate state purposes and violates Article I §§3 and 3(a) of the Texas Constitution.

IV.
THE TEXAS SCHOOL FINANCE SYSTEM IS NOT AN EFFICIENT SYSTEM

Plaintiffs and Plaintiff-Intervenors further contend that the Texas system for funding public education violates Article VII, Section 1 of the Texas Constitution.

A. Legal Standards

1. The Texas Constitution provides in Article VII, Section 1:

> A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.

2. The word efficient as defined in Webster's New Collegiate Dictionary means "productive without waste."

3. The Oxford American Directory defines efficient as "acting effectively; producing results with little waste of effort."

4. The West Virginia Supreme Court has defined a thorough and efficient education as one that:

> develops, as best the state of education expertise allows, the minds, bodies, and social morality of its charges to prepare them for useful and happy occupation, recreation and citizenship, and does so economically.

> Legal recognized elements in this definition are development in every child to his or her capacity of (1) literacy; (2) ability to add, subtract, multiply and divide numbers; (3) knowledge of government to the extent that the child will be equipped as a citizen to make informed choices among persons and issues that affect his own governance; (4) self-knowledge and knowledge of his or her total environment to allow the child to intelligently choose life work -- to know his or her options; (5) work-training and advanced academic training as the child may intelligently choose; (6) recreational pursuits; (7) interests in all creative arts, such as music, theatre, literature, and the visual arts; (8) social ethics, both behavioral and abstract, to facilitate compatibility with others in this society.
>
> Implicit are supportive services: (1) good physical facilities, instructional materials and personnel; (2) careful state and local supervision to prevent waste and to monitor pupil, teacher and administrative competency.

Pauley v. Kelly, 255 S.E. 2d 859 (W.Va. 1979).

5. The West Virginia Education Article, W.VA. CONST. Art. XII §1 states:

> The legislature shall provide, by general law, for a thorough and efficient system of free schools.

Based on this Article, the West Virginia Supreme Court held:

> the Thorough and Efficient Clause requires the development of certain high quality educational standards, and it is in part by these quality standards that the existing educational system must be tested.

Pauley v. Kelly, 225 S.E. 2d 859, 878 (W.Va. 1979).

6. Based upon their respective "thorough and efficient" clauses, the Supreme Courts of Arkansas, Dupree v. Alma School

District No. 30, 651 S.W. 2d 90 (1983); New Jersey, Robinson v. Cahill, 303 A.2d 272 (N.J. 1973); and Wyoming, Washokie County School District No. 1 v. Herschler, 606 P.2d 310 (Wyoming 1980) found their respective school finance systems unconstitutional.

B. The State's Requirement in View of the Law

Article VII, Section 1 of the Texas Constitution requires the State to maintain a cost-efficient/non-wasteful system of public free schools.

C. Facts Demonstrating That the Texas School Finance System Does Not Meet Its Obligations Under TEX. CONST. Art. 7, §1

The Court has made its findings on this issue in Section II, supra and in addition finds as follows:

1. The school district configurations in Texas, harboring as they do vast disparities in wealth among the districts, are neither efficient nor equitable and result in significantly different educational opportunities for children and widely varying tax burdens for taxpayers. (Hooker, Walker, Foster)

2. There is no underlying rationale in the district boundaries of many school districts in Texas and there are many districts that are pure tax havens. (Hooker, Walker, Foster, Moak)

3. There are tax haven districts with very few students that shelter substantial property wealth that could and should be used as a tax base to support public education. (Foster, Walker, PX 1)

4. The system is not financially efficient. (Foster, Hooker)

5. If district organizational lines were reorganized the financial efficiency of the system could be greatly increased. (Moak, Hooker)

6. Those individuals of political influence who could impact the political process by and large reside in districts of above average wealth. (Ward, Hooker, Foster)

7. The advantage of wealth and influence are enjoyed by the wealthy districts while the poor districts must survive with greatly limited resources and little or no means to improve their situation. (Ward, Boyd, Sawyer, Sybert, Hooker)

8. There are school districts operating within the State of Texas with full accreditation privileges and recognized by the Texas Education Agency and the State of Texas for all purposes with as few as four students. (Bergin)

9. State monies are channeled to "tax haven districts" either via the current funding formula or though the manner in which the State chooses to disburse monies from the Available School Fund. (Hooker, Foster, Collins, Moak)

10. The State of Texas has allowed many small districts to exist which because of diseconomies of scale are inefficient. Many of these small districts are also property poor. (Kirby, Hooker, Moak, PX 239)

11. Regardless of size some districts are inefficient because of lack of wealth which prevents them from providing a fully adequate educational program. (Hooker, Boyd, PX 239)

12. The existing funding system creates "budget balanced districts" whose total property wealth is not available for the funding of public education; at average tax rates this loss to public education exceeds $200,000,000 annually. (Foster, PX 110)

13. Geographic anomalies exist in the pattern of district lines that result in unnecessary transportation costs and other inefficiencies; the Governor's committee, appointed by Governor Connally, in 1965, recommended that for purposes of efficiency and equity in distribution of funds, the legislature should pursue consolidation of inefficient districts. No legislative action has ever been taken on this recommendation. (Hooker, Moak, PX 239)

14. ~~If one takes into account district lines no one could argue that the system was financially efficient and~~ If district organizational lines were reorganized financial efficiency of the system could be greatly increased. (Moak, PX 239)

15. By taxing from larger areas of the state, the state could create and use for taxing purposes areas of similar property values for students. This would greatly reduce the existing large variations in expenditures per pupil, tax rates, inefficiency of many small districts and loss to budget-balance of other very wealthy districts. (Hooker, Moak, Ward)

D. Legal Conclusion

The system of public school finance in Texas is not an efficient system and violates the Legislature's duty required by Art. 7, §1 of the Texas Constitution.

V.
ATTORNEYS' FEES CLAIMS

A. Legal Standards

1. In proceedings under the Uniform Declaratory Judgment Act, TEX. CIV. PRAC. & REM. CODE §37.001, et seq., the Court may award costs and reasonable and necessary attorney's fees.

2. In actions under TEX. CIV. PRAC. & REM. CODE §106.001, the Court may award the prevailing party reasonable attorneys fees as part of its costs.

B. Requirements In View of the Law

If Plaintiffs and Plaintiff-Intervenors are prevailing parties in this litigation, they are entitled to reasonable attorneys fees and costs against Defendants and Defendant-Intervenors. However, these attorneys fees can be barred by sovereign immunity or denied under the Court's discretion.

C. Facts Supporting Plaintiffs and Plaintiff-Intervenors Claims For Attorneys Fees

1. Plaintiffs and Plaintiff-Intervenors are prevailing parties in this litigation.

2. This is a case of supreme public importance.

3. Defendant-Intervenors have adopted the State's position in this litigation.

4. The reasonable and prevailing hourly rate for Plaintiffs and Plaintiff-Intervenors attorneys Albert Kauffman, Richard

Gray, David Richards, Peter Roos and Roger Rice is $150 per hour. The reasonable rate for the other attorneys is the litigation in $120 per hour. all of the "compensable hours" mentioned hereafter are found to be reasonable and necessary.

Hartley Clarke

5. Albert Kauffman expended 2,607.4 compensable hours in this litigation for which ~~he is entitled to a~~ a reasonable fee ~~of~~ is $391,110.00.

6. Richard Gray expended 729.1 compensable hours in this litigation for which ~~he is entitled to a~~ a reasonable fee ~~of~~ is $109,365.00.

7. David Richards expended 484.8 compensable hours in this litigation for which ~~he is entitled to a~~ a reasonable fee ~~of~~ is $72,720.00.

8. Peter Roos expended 333.8 compensable hours in this litigation for which ~~he is entitled to a~~ a reasonable fee ~~of~~ is $50,070.00.

9. Roger Rice expended 508.4 compensable hours in this litigation for which ~~he is entitled to a~~ a reasonable fee ~~of~~ is $76,260.00.

10. Norma Cantu expended 520.7 compensable hours in this litigation for which ~~she is entitled to a~~ a reasonable fee ~~of~~ is $62,484.00.

11. Camilo Perez expended 436 compensable hours in this litigation for which ~~he is entitled to a~~ a reasonable fee ~~of~~ is $52,320.00.

12. Renita Browning expended 271.1 compensable hours in this litigation for which ~~she is entitled to a~~ a reasonable fee ~~of~~ is $20,925.50.

13. Steve Martin expended 513.3 compensable hours in this litigation for which ~~he is entitled to a~~ a reasonable fee ~~of~~ is $61,596.00.

14. Jose Garza expended 45 compensable hours in this litigation for which ~~he is entitled to a~~ a reasonable fee ~~of~~ is $5,400.00.

15. Jose Roberto Juarez expended 60.5 compensable hours in this litigation for which ~~he is entitled to a~~ a reasonable fee ~~of~~ is $7,260.00.

16. Ken Shepherdson expended 12.85 compensable hours in this litigation for which ~~he is entitled to a~~ a reasonable fee ~~of~~ is $1,542.00.

17. Phil Durst expended 13.0 ~~hours~~ compensable hours in this litigation for which ~~he is entitled to a~~ a reasonable fee ~~of~~ is $1,560.00.

18. Mitch Green expended 27.5 ~~hours~~ compensable hours in this litigation for which ~~he is entitled to a~~ a reasonable fee ~~of~~ is $3,300.00.

19. A reasonable rate for paralegal costs in this litigation is $25 per hour. MALDEF expended 4,333.50 of the compensable paralegal time on this litigation for which ~~it is entitled to a~~ a reasonable fee ~~of~~ is $108,337.50.

20. Richard Gray's law firm expended 315.1 hours of the paralegal - law clerk time for which ~~it is entitled to a~~ a reasonable fee ~~of~~ is $7,877.50.

21. MALDEF's ~~is entitled to reimbursement for~~ reasonable & necessary expenses (exclusive of Court costs) ~~of~~ are $62,760.96.

22. Attorney Gray's ~~is entitled to reimbursement for~~ reasonable & necessary expenses (exclusive of Court costs) ~~of~~ are $26,284.34.

23. Attorney Rice's ~~is entitled to reimbursement for~~ reasonable & necessary expenses (exclusive of Court costs) ~~of~~ are $13,642.00.

24. Attorney Browning's ~~is entitled to reimbursement for~~ reasonable & necessary expenses (exclusive of Court costs) ~~of~~ are $390.83.

D. Legal Conclusions

1. An award of attorneys fees to Plaintiffs and Plaintiff-Intervenors against both the Defendants and the Defendant-Intervenors is barred by the doctrine of sovereign immunity.

2. In addition, the Court holds that an award of attorneys fees against Defendant-Intervenors would be neither equitable nor

just under the terms of the Declaratory Judgment Act, TEX. CIV. PRAC. & REM. Code §37.009, and that even if Plaintiffs had prevailed under TEX. CIV. PRAC. & REM. Code §§106.001-003, the Court would decline to exercise its discretion to award fees against Defendant-Intervenors under TEX. CIV. PRAC. & REM. Code §106.002.

3. Were it not for the doctrine of sovereign immunity the Court would enter Judgement against Defendants for Plaintiffs and Plaintiff-Intervenors' attorneys fees and costs.

VI.
REMEDY

A. Declaratory Judgment

Plaintiffs and Plaintiff-Intervenors are entitled to a Declaratory Judgment that the Texas School Financing System (Texas Education Code §§16.01, et seq., implemented in conjunction with school district boundaries that contain unequal taxable property wealth for the financing of public education) violates the Texas Constitution, Art. 1 §3 and Art. 7 §1; as provided for in Tex. Civ. Prac. & Rem.. Code §§37.001 et seq.

B. Injunctive Relief

1. Plaintiffs and Plaintiff-Intervenors will suffer irreparable harm if Defendants are not enjoined from continuing to enforce the present Texas School Financing System (Texas Education Code §16.01 et seq., implemented in conjunction with local school district boundaries that contain unequal taxable property wealth for the financing of public education).

2. Plaintiff and Plaintiff-Intervenors have an inadequate remedy at law, making injunctive relief appropriate.

3. The Court has balanced the equities, considering the importance of education and the constitutional rights protected by this Court's Judgment and the interests of Defendants and finds that the balance of equities favors the granting and staying of injunctive relief as ordered by the Court in its June 1, 1987 Judgment.

4. The school children of Texas who do not receive an equal access to educational funds are irreparably harmed because the school districts in which they reside do not have the constitutionally guaranteed choice or ability to provide educational services and programs available to students of wealthier districts. The denial of equal educational opportunities under the present system results in a harm to school chilren that would be extremely difficult to calculate and allocate under the traditional law of money damages. Alternatives to an injunction could result in a multiplicity of lawsuits and unacceptable delay, all to the permanent and irreparable detriment of the educational advancement of hundreds of thousands of school children in Texas.

5. The Court orders an injunction under Tex. Civ. Prac. & Remedies Code §65.001 et seq., Tex. Gov. Code §24.011 and the general equity powers of the Court, as expressed in this Court's June 1, 1987 Judgment.

VII.
CONCLUSION

The Texas system of public school financing violates the Texas Constitution, Art. 1 §3, Art. 1 §3a, and Art. 7 §1. Plaintiffs and Plaintiff-Intervenors are entitled to declaratory and injunctive relief.

FILED AND ENTERED this 27th day of August, 1987.

Harley Clark

JUDGE HARLEY CLARK
250TH DISTRICT COURT
TRAVIS COUNTY, TEXAS