

**No. 14-0776**

---

**IN THE SUPREME COURT OF TEXAS**

---

**MICHAEL WILLIAMS, COMMISSIONER OF EDUCATION, IN HIS OFFICIAL  
CAPACITY; GLENN HEGAR, COMPTROLLER OF PUBLIC ACCOUNTS OF THE STATE  
OF TEXAS, IN HIS OFFICIAL CAPACITY; THE STATE BOARD OF EDUCATION; AND  
THE TEXAS EDUCATION AGENCY,  
APPELLANT/CROSS-APPELLEES**

**v.**

**CALHOUN COUNTY INDEPENDENT SCHOOL DISTRICT *ET. AL.*,  
Appellees/Cross-Appellants/Cross-Appellees,**

**v.**

**TEXAS CHARTER SCHOOLS ASSOCIATION, *ET AL.*, AND JOYCE COLEMAN, *ET AL.*,  
Appellees/Cross-Appellants**

**v.**

**THE TEXAS TAXPAYER AND STUDENT FAIRNESS COALITION, *ET. AL.*;  
EDGEWOOD INDEPENDENT SCHOOL DISTRICT, *ET. AL.*; AND  
FORT BEND INDEPENDENT SCHOOL DISTRICT, *ET. AL.*,  
Appellees/Cross-Appellees**

---

ON DIRECT APPEAL FROM THE 200TH JUDICIAL DISTRICT COURT OF  
TRAVIS COUNTY, TEXAS  
CAUSE No. D-1-GN-11-003130

**BRIEF OF AMICUS ALBERT KAUFFMAN**  
**ON FINANCIAL EFFICIENCY ISSUES**

Albert Kauffman  
St. Mary's University School of Law  
One Camino Santa Maria  
San Antonio, Texas 78228  
(210) 431-2297  
[albert.kauffman@gmail.com](mailto:albert.kauffman@gmail.com)  
Pro Se

## Table of Contents

Table of Contents.....	i
Identity of Parties and Counsel .....	iii
Index of Authorities.....	iii
Statement of the Case.....	v
Issues Presented.....	v
Interest of the Amicus.....	v
I.    INTRODUCTION AND SUMMARY OF ARGUMENT.....	1
II.   THE VAST DISPARITIES OF WEALTH IN DISTRICTS HAVE SIGNIFICANT DIRECT EFFECTS ON THE EFFICIENCY AND EQUITY OF THE SYSTEM.....	3
III.  INEQUALITIES IN ABILITY TO RAISE TAX REVENUES PROFOUNDLY AFFECT THE EDUCATIONAL OPPORTUNITIES OF STUDENTS.....	9
IV.  LOW-WEALTH DISTRICTS HAVE GREATER CONCENTRATIONS OF LOW INCOME AND ENGLISH LANGUAGE LEARNER CHILDREN WITH THE GREATER COSTS NECESSARY TO EDUCATE THESE CHILDREN..	13
V.   THIS COURT SHOULD CLARIFY ITS STANDARD FOR FINANCIAL EFFICIENCY TO FOLLOW ITS PRECEDENTS IN <i>EDGEWOOD I</i> AND <i>EDGEWOOD II</i> .....	13
VI.  CONCLUSION AND PRAYER.....	21
Certificate of Compliance.....	23
Certificate of Service.....	23

## Identity of Parties and Counsel

Amicus adopts the Identity of Parties and Counsel of the Brief of Appellants

Michael Williams, et al.

## Index of Authorities

### CASES

*Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391 (Tex. 1989) (*Edgewood I*).....*passim*

*Edgewood Indep. Sch. Dist. v. Kirby*, 804 S.W.2d 491 (Tex. 1991) (*Edgewood II*).....*passim*

*Carrollton-Farmers Branch Indep. Sch. Dist. v. Edgewood Indep. Sch. Dist.*, 826 S.W.2d 489 (Tex. 1992) (*Edgewood III*).....*passim*

*Edgewood Indep. Sch. Dist. v. Meno*, 917 S.W.2d 717 (Tex. 1995) (*Edgewood IV*).....*passim*

*W. Orange-Cove Consol. Indep. Sch. Dist. v. Alanis*, 107 S.W.3d 558 (Tex. 2003) (*WOC I*).....*passim*

*Neely v. W. Orange-Cove Consol. Indep. Sch. Dist.*, 176 S.W.3d 746 (Tex. 2005) (*WOC II*).....*passim*

*E.I. DuPont v Robinson*, 923 S.W. 2d 549 (Tex. 1996).....1

*Ortiz v. Jones*, 917 S.W.2d 770 (Tex. 1996).....1

*Anderson v City of Seven Points*, 806 S. W. 2d 791 (Tex. 1991).....1

### CONSTITUTIONAL AND STATUTORY PROVISIONS

TEX CONST. art. I Sec. 3.....1

TEX CONST. art. VII, Sec. 1.....*passim*  
TEX. EDUC. CODE Section 42.001 (b).....22

## **Statement of the Case**

Amicus adopts the statement of the case of Appellees Edgewood ISD, et al.

## **Issues Presented**

Financial Efficiency (State Issue 6 and State Argument IV; CCISD Issues 1-2)

1. Did the trial court err in concluding that the school finance system violates the financial efficiency requirement of article VII, section 1 of the Texas Constitution?

## **Interest of the Amicus**

Amicus Albert Kauffman wrote the original petition in this case in 1984, and was lead counsel for Edgewood parties in the trial of this case in *Edgewood I* in 1987, *Edgewood II* in 1990, *Edgewood III* in 1992, and *Edgewood IV* in 1994. He argued *Edgewood I*, *Edgewood II* and *Edgewood IV* before this Court. Mr. Kauffman has testified before the Texas legislature regarding school finance on numerous occasions including before the entire Senate and entire House. Albert Kauffman is a professor of law teaching courses in Education Law, Texas School Finance, Texas Civil Procedure and the Texas Legislature at St. Mary's University School of Law. As were his father and paternal grandparents, he is also the product of Texas public schools and the father of former Texas public school students. Mr. Kauffman has not been retained or paid by any of the parties, or anyone else, for his work on this brief and the opinions here are strictly his own.

## I. INTRODUCTION AND SUMMARY OF ARGUMENT

The Texas Constitution guarantees “Equal Rights”<sup>1</sup> and an “efficient system of public free schools”<sup>2</sup> to guarantee a “general diffusion of knowledge”<sup>3</sup> that is “essential to the preservation of the liberties and rights of the people.”<sup>4</sup> We Texans have not yet met those standards. In *Edgewood I* and *Edgewood II*, this Court held that the school finance system clearly violates the Texas Constitution, article VII, section 1. After weakening the test for financial efficiency, this Court held that the system barely meets that weakened standard in *Edgewood IV* in 1995 and *West Orange Cove II* in 2005. The parties have produced a very rich and complete record of present violations of these constitutional provisions, and the district court made findings and conclusions of great detail. The fact findings by the district court in this case are entitled to the same deference due a jury verdict.<sup>5</sup> This brief is

---

<sup>1</sup> TEX. CONST.art.I sec. 3 states: EQUAL RIGHTS. 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.

<sup>2</sup> TEX.CONST.art.VII sec. 1 states: SUPPORT AND MAINTENANCE OF SYSTEM OF PUBLIC FREE SCHOOLS

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.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> E.I. DuPont v Robinson, 923 S.W. 2d 549 (Tex. 1996); Ortiz v. Jones, 917 S.W.2d 770 (Tex. 1996); Anderson v City of Seven Points, 806 S. W. 2d 791, 794 (Tex. 1991). The trial court entered over 5,000 exhibits in the case, heard competing testimony from nearly one-hundred expert and lay witnesses, and was in the best position to weigh the credibility of the witnesses and accompanying evidence during nearly four months of trial. Following trial, the judge painstakingly examined the evidence as a whole over several months before issuing findings of fact and conclusions of law on the many difficult issues before him. In this case, this Court can only reverse on the basis of incorrect fact findings if it finds no evidence to support the findings. A finding of insufficient evidence, though this

an effort to return to some of the original concepts behind the financial efficiency theory and to explain, in non-technical language, what that record means in Texas today.

From a crazy quilt of 6,000 school districts early last century,<sup>6</sup> over 1,000 districts remain. The borders of these districts are the result of political and economic forces as well as simple geography.<sup>7</sup> Populations and resources were purposefully included or excluded based on the property wealth of the area and the desirability of undesirability of the population there.<sup>8</sup> State law controls the creation, dissolution or change of the borders of the districts. Regardless of the wisdom of the creators of the districts, vast differences of access to both financial and political resources remain. And the tension between the better-resourced and politically powerful districts on one hand and the less-resourced and less-powerful districts on the other has provided the basis for the present wide disparities in resources and power between the low-wealth and high-wealth districts. The state has discretion whether to place the greater burden of supporting the public schools

---

Court does not have direct authority to make such a holding, would lead to remand to the district court for a new trial.

“The Gilmer-Aikin laws reduced administrative costs by consolidating 6,409 Texas school districts into 1,539 by 1960.” <https://tshaonline.org/handbook/online/articles/mjg01>.

<sup>7</sup> Dr. Catherine Drennon has written a thoroughly researched article on the reduction of numbers of school districts in Bexar County, and the relationship of those reductions to the racial and economic history of the county. See Drennon, C. 2006. Social Relations Spatially Fixed: Construction and Maintenance of the School Districts of San Antonio. *Geographical Review*, Volume 91, 567-593.

<sup>8</sup> *Id.*

on the state as a whole or on local school district tax bases. The state does not have discretion to violate the Texas Constitution; the present system does just that.

This brief will describe the basic elements of the finance system and how those elements relate to the resources available to school districts. It will focus on the importance of financial efficiency in the system and will recommend a refocus on the importance of efficiency and equity in the system and the reasons why that refocus is both practical and required in the present status of this litigation.

## **II. THE VAST DISPARITIES OF WEALTH IN DISTRICTS HAVE SIGNIFICANT DIRECT EFFECTS ON THE EFFICIENCY AND EQUITY OF THE SYSTEM**

The fundamental reason for the financial inefficiency of the system is the combination of the extreme disparities in tax wealth per student among the school districts in the state and the state's decision to use a system that requires local districts to contribute more than half the funding (55%<sup>9</sup> in 2014-2015) to support the state's school finance system. School districts in the state vary from \$30,000 property value per student in average daily attendance (called ADA) to \$15,800,000 property value per ADA. At the tax rates of \$.01/\$100 value used in Texas, at a \$1.00 tax rate, the poorest district can raise \$300 per student and the

---

<sup>9</sup> Texas Comptroller's Office, <http://www.fastexas.org/about/funding.php> (last accessed August 7, 2015)

richest district can raise \$158,000 per student. Some examples of these disparities<sup>10</sup> are displayed here:

DISTRICT NAME	PROPERTY WEALTH/ ADA <sup>11</sup> (rounded for simplicity)	LOCAL FUNDS RAISED PER \$.01 TAX RATE	LOCAL FUNDS RAISED PER \$1.00 TAX RATE	TAX TO RAISE \$10,000/ADA (per \$100 property)	TAX ON \$240,000 HOUSE/YEAR TO RAISE \$10,000/ADA FROM LOCAL FUNDS <sup>12</sup>
Boles	\$30,000	\$3	\$300	\$33.33 <sup>13</sup>	\$79,992
Laredo	\$100,000	\$10	\$1,000	10.00	\$24,000
Spur	\$1,000,000	\$100	\$10,000	\$1.00	\$2,400
Highland Park (Dallas)	\$1,800,000	\$180	\$18,000	\$.56	\$1,344
Rankin	\$15,800,000	\$1,580	\$158,000	\$.06	\$144

In light of Texas history and politics, a review of this data shows us these essential difficulties in creating an efficient system of school finance:

<sup>10</sup> This data is 2014-2015 data from the TEA website, [http://tea.texas.gov/Finance\\_and\\_Grants/State\\_Funding/State\\_Funding\\_Reports\\_and\\_Data/Average\\_Daily\\_Attendance\\_and\\_Wealth\\_per\\_Average\\_Daily\\_Attendance/](http://tea.texas.gov/Finance_and_Grants/State_Funding/State_Funding_Reports_and_Data/Average_Daily_Attendance_and_Wealth_per_Average_Daily_Attendance/) (accessed July 29, 2015). The computations were performed by the author of the brief.

<sup>11</sup> Average Daily Attendance (ADA) rather than Weighted ADA (WADA) is used in these examples for simplicity. Amicus strongly supports funding based on WADA.

<sup>12</sup> This figure is computed by dividing the value of the property by \$100 and then multiplying that quotient by the tax in the district to raise \$10,000/ADA (per \$100 property). So for Boles this is \$240,000/\$100 X \$33.33, i.e. 2400 X \$33.33=\$79,222. For Rankin the computation is \$240,000/\$100 X \$.06=\$144.

<sup>13</sup> The “\$33.33 tax rate” required in Boles and the “\$10.00 tax rate” in Laredo are far greater than the maximum M&O tax rate of \$1.17 allowed by state law and far greater than the maximum tax rate for M&O and I&S added together of \$1.67.

1. Low-wealth and mid-wealth districts cannot possibly afford to support schools without significant state funding; the need for state funding decreases as the wealth of the district increases.
2. The ratio of the wealth per student in the wealthiest district to the wealth per student in the poorest is about 527 to 1, similar to the 700 to 1 ratio at the time of *Edgewood I*, 777 S.W.2d at 392<sup>14</sup> and the 450 to 1 ratio in *Edgewood II*, 804 S.W.2d at 496.<sup>15</sup>
3. The burden of convincing the Legislature and the Governor, and the population as a whole, to increase state funds for public schools falls most heavily on the poorer districts. And these poorer districts have the least political power to address these disparities. The fight for more funds has been between wealthy suburban and mineral-rich districts on the one hand, who have opposed increased state taxes for schools, and, on the other hand, border, San Antonio and poor East and North Texas districts, who have supported additional state taxes for schools. It has not been a fair fight, and this difference in power is one reason the same wealthy districts still have advantages over the rest of the state in the state system of school finance.
4. The wealthiest districts can afford to support schools without state funding or with minimal state funding; therefore they have not historically supported

---

<sup>14</sup> *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391,392 (Tex. 1989) (*Edgewood I*).

<sup>15</sup> *Edgewood Indep. Sch. Dist. v. Kirby*, 804 S.W.2d 491,496 (Tex. 1991) (*Edgewood II*).

raising more state money for schools and often actively discouraged raising state money for schools. The recapture system, which prevents the wealthy districts from raising much more than their requirements from their local tax base, has encouraged them to join in efforts, like this lawsuit, to increase funding for all districts.

5. Poorer districts cannot yield any meaningful funds for their schools at any taxes for which there is no state share.<sup>16</sup> At any tax rate allowed under the state system for which there is no state share, there is perfect inequality in access to funds, i.e. the 527 to 1 ratio in yield per penny tax rate from local funds for the highest wealth compared to the lowest wealth district. If there is recapture, but no state share, at the tax level, the ratio of yield per student between wealthy districts and poor districts per penny tax rate is still very high.<sup>17</sup>

The wide disparities in wealth per student obviously reflect the vast disparities in total taxable ad valorem wealth in districts.<sup>18</sup> Some districts must have

---

<sup>16</sup> State share is short hand for a funding formula that guarantees a district a set amount of funding for each penny of tax rate, with the difference between the district's local tax yield and the guaranteed amount to be paid by the state. This is also called guaranteed yield or power equalizing.

<sup>17</sup> There is recapture in Tier 1 (up to \$1.00 tax rate) for most districts above \$476,500/WADA, no recapture at all in the golden penny tier (roughly \$1.00 to \$1.06), recapture for most districts above \$319,500 in the copper pennies (roughly \$1.06 to \$1.17 tax rates) and no recapture at the tax levels above \$1.17 (or lower depending on the compressed rate for the district) for I & S taxes. So in Tier I the ratio would be as high as 16 to 1 (\$47.65/WADA/\$3.00/WADA (Boles yield) the ratio would be higher in the golden pennies where there is no recapture and in the I & S rates where there is no recapture.

<sup>18</sup> This data is 2014-2015 data from the TEA website, [http://tea.texas.gov/Finance\\_and\\_Grants/State\\_Funding/State\\_Funding\\_Reports\\_and\\_Data/Average\\_Daily\\_Attend](http://tea.texas.gov/Finance_and_Grants/State_Funding/State_Funding_Reports_and_Data/Average_Daily_Attend)

significant state funding to raise any reasonable amount of funds. Very wealthy districts have the ability to raise funds far in excess of what they need to provide an adequate education for their students at the tax allowed in state law.

District Name	Property Wealth/ ADA (rounded for simplicity)	ADA (round off)	TOTAL WEALTH (rounded to \$100,000)	TOTAL LOCAL REVENUE AT \$1.00 TAX RATE	REVENUE NECESSARY TO GENERATE \$10,000 <sup>19</sup> /ADA	EXCESS OR (DEFICIT)-AMOUNT PER ADA FROM LOCAL TAXES <sup>20</sup>
Boles	\$30,000	530	\$15,900,000	\$159,000	\$5,300,000	<b>(\$5,141,000)</b> <b>(\$9,700/ADA)</b>
Laredo	\$100,000	22,400	\$2,240,000,000	\$22,400,000	\$224,000,000	<b>(\$201,600,000)</b> <b>(\$9,000/ADA)</b>
Spur	\$1,000,000	250	\$250,000,000	\$2,500,000	\$2,500,000	\$0 \$0/ADA
Highland Park (Dallas)	\$1,800,000	6,900	\$12,420,000,000	\$124,200,000	\$69,000,000	\$55,200,000 \$8,000/ADA
Rankin	\$15,800,000	240	\$3,792,000,000	\$37,920,000	\$2,400,000	\$35,520,000 \$148,000/ADA

This chart reveals that low-wealth districts cannot come close to raising the level of funding average in the state (approximately \$10,000/ADA/year) based solely on their local tax bases. Specifically:

1. Boles and Laredo districts, and in general all the low-wealth and many medium-wealth districts must rely on state funds for the great majority of their funds, up to 95% of the cost of an education program in these districts is borne by the state.

---

[ance and Wealth per Average Daily Attendance/](#) (accessed July 29, 2015). The computations were performed by the author of this brief.

<sup>19</sup> \$10,000/ADA is a rough estimate of the average total spent per student in Texas public schools in 2015.

<sup>20</sup> This figure is merely the difference between the total local revenue raised by the district at a \$1.00 tax rate and the revenue necessary to generate \$10,000/ADA from local funds. For Boles, this is \$159,000-\$5,300,000= -\$5,141,000, a deficit of more than \$5,000,000. For Rankin it is \$37,920,000-\$2,400,000=\$35,520,000, an excess of \$35,520,000.

2. There are great concentrations of property wealth in the very wealthy districts and, at the same tax rates as other districts in the state, these wealthy districts can raise revenue far in excess of that necessary to generate the average cost of a per student education in Texas.
3. The disproportionate (to number of students) concentrations of property wealth in the wealthy districts and the historically lower tax rates applied to those properties are the basis of the finding of inefficiency as explained in *Edgewood II*, 804 S.W. 2d at 496.
4. The amount of the excess revenues in the examples Highland Park (Dallas) and Rankin, as well as the other wealthy districts, at average tax rates for districts, support both the concept and the actual funding of the recapture system. This recapture system generates about \$1 billion per year to support the school finance system as a whole. Recapture, when correctly applied, also greatly increases the efficiency of the system by forcing the wealthy districts to tax at rates near the average for the state and therefore utilizing more of the property of the state to support the state school finance system, exactly the point of the unanimous holding in *Edgewood II*. Recapture also increases the equity of the system by preventing wealthy districts from raising funds in excess of the funds available to the majority of districts.

5. *Edgewood II* unanimously held that the great concentrations of 15% of the state's wealth in the districts educating 5% of the students in the state was inefficient and a violation of TEX. CONST. art. VII. Sec. 1, specifically that "the 170,000 students in the wealthiest districts are still supported by local revenues drawn from the same tax base as the 1,000,000 students in the poorest districts," *Edgewood II* 804 S.W. 2d at 496, and that "as a matter of law, the state has made inefficient use of its resources", *Id.*

### **III. INEQUALITIES IN ABILITY TO RAISE TAX REVENUES PROFOUNDLY AFFECT THE EDUCATIONAL OPPORTUNITIES OF STUDENTS**

State subsidies do offset some of the financial disadvantage of the lower-wealth districts. However, there are still unacceptable disparities in the educational resources available to districts, and these disparities negatively affect the education of students in lower wealth districts.

The parties differ on the correct analysis to use to determine whether wealthy districts have more access to educational resources than do poorer districts, and the differences in tax rates between wealthy districts and poor districts to raise those funds. But every group of school districts and the state agree that the wealthy districts, however defined, have greater resources than the poorer districts, and at lower tax rates. (See State's brief

at pp. 123-132, Calhoun County ISD Plaintiffs Brief at pp. 25-28, Fort Bend Appellee's brief at pp. 164-166, TTFSC brief at pp. 31-40, and Edgewood brief regarding financial efficiency *passim*). For example, the Texas Taxpayer and Student Fairness Coalition expert, Dr. Pierce, found that at the maximum allowable tax rate of 1.67% the wealthiest 15% of districts would generate \$7,946 per WADA more than the districts in the poorest 15% of districts. (\$14,771/WADA compared to \$6,825/WADA). The district court credited the plaintiff school districts' financial efficiency experts.<sup>21</sup>

However, in all the various analyses of the adequacy issues by the parties in the case, the state is allowing one group of students--those in the wealthy districts--to have more resources than another group--those in the low-wealth districts-- even though the poorer districts have substantially higher tax rates. The students in the wealthy districts, as they have since before this litigation began, continue to have access to more resources for their education than do the students in the lower-wealth districts. This is why these gaps are so important:

1. The districts with more resources can offer higher salaries to hire and retain the most qualified teachers and administrators. More than 60%

---

<sup>21</sup> See generally district court FOF and COL, pp. 262-310.

of all school finance funds are spent on salaries<sup>22</sup> and the ability to offer better packages of salaries and benefits are determinative in attracting talented teachers in the teacher market. This lack of ability to compete is exacerbated by the dearth of quality teachers and the lack of competitive salaries in Texas.<sup>23</sup>

2. The ability to offer higher salaries and better benefits offers the wealthier districts the opportunity to recruit proven high-quality teachers from surrounding districts by offering better salaries and benefits, better facilities in which to teach and, very often, students with fewer educational needs and more supportive families.
3. The disadvantage in poorer districts is even greater when the additional needs of these students for expanded opportunities in English Language learning and compensatory education are considered.
4. There are also significant differences in the positions of the parties on the financial costs of an adequate education. However, all the analyses of the level of adequacy for Texas districts show that low-wealth districts are at an increasing disadvantage as the cost of an adequate education increases. And indeed, the low-wealth districts cannot

---

<sup>22</sup> “Salaries, wages and benefits for school district employees account for 62.5 percent of all spending on public education.” Texas Comptroller’s website, <http://www.fastexas.org/about/spending.php> (accessed August 3, 2015)

<sup>23</sup> FOF 526-549.

legally raise taxes sufficient to generate funds for an adequate education.<sup>24</sup> The district court credited these analyses of the tax rates required to raise the funds necessary for an adequate education under different definitions of adequacy. But the pattern is again clear: lower-wealth districts do not have substantially similar access to revenues at any of the different levels of adequacy.

5. Even under the state's favored analysis of revenues and tax rates,<sup>25</sup> the yield of total revenue per penny in the wealthiest districts is 31% higher than the yield in the poorest districts.<sup>26</sup> The yield in the wealthiest decile is \$66.48 per penny tax rate and the yield in the poorest decile is \$50.60 per penny tax.<sup>27</sup>
6. Amicus supports the adequacy amounts proved up by the school district plaintiffs, and credited by the district court. However, the higher the correct number, the greater disadvantage for the poorer districts; and the poorer the district, the greater the disadvantage. That is why the analysis produced of the funds available to districts at the maximum tax rate allowed under the system, \$1.67, is particularly instructive.

---

<sup>24</sup> Edgewood Plaintiffs' Exhibit 4000 at 20.

<sup>25</sup> State brief at 123 in which they tried to show minimal differences using Dr. Cortez analysis, Ex. 4000.

<sup>26</sup> The yield in the wealthiest districts is \$66.48 (\$6715/101 cents) and yield in poorest districts is \$50.60 (\$5617/111 cents).  $\$66.48/\$50.60 = 1.313$

<sup>27</sup> *Id.*

**IV. LOW-WEALTH DISTRICTS HAVE GREATER CONCENTRATIONS OF LOW-INCOME AND ENGLISH LANGUAGE LEARNER CHILDREN WITH THE GREATER COSTS NECESSARY TO EDUCATE THESE CHILDREN.**

All of the school district parties describe the great need for additional funding, in great part because of the significant increases in the numbers and percentages of low income and English Language Learner children in the state. (Fort Bend Appellee’s brief at pp. 122-143, TTFSC brief at 48-49, and Edgewood appellee brief at 91-96 and 99-106). Yet it is undisputed that the poorest districts have the greatest concentration of low-income and English Language Learner children<sup>28</sup> and low wealth districts are even more prejudiced than the wealthier districts because of their inability to provide for these children. The district court made significant findings on the extra costs of educating these ELL and compensatory-education children and declared the weights given to these children in the state’s formulas to be inadequate to account for the extra costs of giving these children access to an adequate education.<sup>29</sup>

**V. THIS COURT SHOULD CLARIFY ITS STANDARD FOR FINANCIAL EFFICIENCY TO FOLLOW ITS PRECEDENTS IN *EDGEWOOD I* AND *EDGEWOOD II*.**

Following an extensive review of the history and interpretation of the Texas Constitution, in *Edgewood I* and *Edgewood II* this Court adopted the following definition of efficiency in Texas school finance:

---

<sup>28</sup> FOF 475-476.

<sup>29</sup> FOF & COL, pp. 87-145.

There must be a direct and close correlation between a district's tax effort and the educational resources available to it; in other words, districts must have substantially equal access to similar revenues per pupil at similar levels of tax effort. Children who live in poor districts and children who live in rich districts must be afforded a substantially equal opportunity to have access to educational funds.

*Edgewood I*, 777 S.W. 2d at 397, *Edgewood II*, 804 S.W. 2d at 498.

In *West Orange Cove II*, the Court modified this test to hold that:

[T]he constitutional standard of efficiency requires substantially equivalent access to revenue only up to a point, after which a local community can elect higher taxes to “supplement” and “enrich” its own schools. That point, of course, although we did not expressly say so in *Edgewood I*, is the achievement of an adequate school system as required by the Constitution. Once the Legislature has discharged its duty to provide an adequate school system for the State, a local district is free to provide enhanced public education opportunities if its residents vote to tax themselves at higher levels. The requirement of efficiency does not preclude local supplementation of schools.

*WOC II*, 176 S.W.3d at 791.

This is both a much weaker and less enforceable standard. A brief summary of the development of the financial efficiency standard is important to put the newest test in perspective.

In June 1987, the district court decided the first *Edgewood* case and held the Texas school financing system unconstitutional:

because it fails to insure that each school district in this state has 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, such that 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.<sup>30</sup> (emphasis added)

This standard of “same” ability was modified by the unanimous decision in *Edgewood I* to require a “direct and close correlation between a district's tax effort and the educational resources available to it,” and that “districts must have *substantially* equal opportunity to have access to educational funds.”<sup>31</sup> (emphasis added).

That standard was interpreted in *Edgewood II* to require that all the state’s resources be used to support the state system of school finance. *Edgewood II* implied that either significant consolidations or recapture was required to make the system efficient.<sup>32</sup> Chief Justice Phillips in his unanimous *Edgewood II* opinion held that the factors in that case “compel the conclusion as a matter of law that the state has made an unconstitutionally inefficient use of its resources,” *Edgewood II*, 804 S.W. 2d at 496.

After the unanimous opinion was issued, a motion for rehearing was filed. This Court then for the first time went back to the dual system of the

---

<sup>30</sup> June 1, 1987 judgment in *Edgewood v Kirby*, published in Cardenas, Jose A., TEXAS SCHOOL FINANCE REFORM, AN IDRA PERSPECTIVE, (Intercultural Development Research Association (IDRA 1997) (Cardenas). Dr. Cardenas’s school finance volume includes the full texts of the original decision, pp. 221-224, judgment, pp. 224-226, and Findings of Fact and Conclusions of Law pp. 226-254.

<sup>31</sup> See page 14, *supra*.

<sup>32</sup> *Edgewood II* at 496

past. Specifically, the five judge majority on rehearing held that there must be only substantially the same access to an efficient education.

*Edgewood III*<sup>33</sup> did not directly address the financial efficiency issue, though Justice Cornyn did write a concurring and dissenting opinion in the case, *Edgewood III*, 826 S.W. 2d at 525-527 which effectively predicted the standard he developed in the *Edgewood IV*<sup>34</sup> case.

In *Edgewood IV*, the Court first upheld a Texas school finance system. The parties have argued extensively whether the system has gotten better or worse since that opinion. But several important differences between the system under review in that case (called SB 7) and the present system have not been clarified:

1. SB 7 required recapture at all tax rates available to school districts, i.e. wealthy district tax revenues were recaptured above the equalized level set in the statute at any tax rate, including both Maintenance & Operations (M&O) and Interest & Sinking (I&S) fund rates.

---

<sup>33</sup> *Carrollton-Farmers Branch Indep. Sch. Dist. v. Edgewood Indep. Sch. Dist.*, 826 S.W.2d 489 (Tex. 1992) (*Edgewood III*).

<sup>34</sup> *Edgewood Indep. Sch. Dist. v. Meno*, 917 S.W.2d 717 (Tex. 1995) (*Edgewood IV*).

2. The focus of the litigation was the system at the maximum M & O tax rate of \$1.50. The court determined that there was not a sufficient record on the facilities issues.

3. The *Edgewood IV* court assumed that the statute would, as it was written, remove all the hold harmless provisions in three years (hold harmless provisions “phase” in changes in state funds to allow school districts to maintain more funding than the system would normally allow those districts; they have consistently been used to continue to give wealthy districts advantages over poorer districts; they have been “phased out” in theory, but never in practice). The Court concluded that “the state’s duty to provide districts with substantially equal access to revenue applies only to the provision of funding necessary for a general diffusion of knowledge,” *Edgewood IV*, 917 S.W. 2d at 731.

4. The *Edgewood IV* decision did uphold the recapture provisions of SB 7 against strong opposition from the wealthy districts. The wealthy districts have continued to litigate against financial efficiency in the system.

*West Orange Cove I*<sup>35</sup> supported the ability of districts to challenge the maximum tax rates available under the SB 7 and set the structure for *West*

---

<sup>35</sup> *W. Orange-Cove Consol. Indep. Sch. Dist. v. Alanis*, 107 S.W.3d 558 (Tex. 2003) (*WOC I*).

*Orange Cove II*,<sup>36</sup> which significantly expanded and restructured the law in these cases. The *West Orange Cove I* case did offer this weaker version of its previous tests of financial efficiency:

As long as efficiency is maintained, it is not unconstitutional for districts to supplement their programs with local funds, *even if* such funds are unmatched by state dollars and *even if* such funds are not subject to statewide recapture. We caution, however, that the amount of “supplementation” in the system cannot become so great that it, in effect, destroys the efficiency of the entire system. The danger is that what the Legislature today considers to be “supplementation” may tomorrow become necessary to satisfy the constitutional mandate for a general diffusion of knowledge. (emphases in original)

*WOC I*, 107 S.W. 3d at 571-572.

*West Orange Cove II* then applied this test and found the system barely efficient. Yet the Court was clearly concerned with the system, *WOC II*, 176 S.W. 3d at 789. And the Court noted the significant need for change, “that the public education system has reached the point where continued improvement will not be possible absent significant change, whether that change take the form of increased funding, improved efficiencies, or better methods of education,” *WOC II*, 176 S.W. 3d at 790.

The confusion generated by the changes in the standard and the changes in approach in this series of cases support the argument that the original standards in

---

<sup>36</sup> *Neely v. W. Orange-Cove Consol. Indep. Sch. Dist.*, 176 S.W.3d 746 (Tex. 2005) (*WOC II*).

*Edgewood I* were both more in line with the demands of the Texas Constitution and more jurisprudentially sound:

1. The basis of the arguments in the *Edgewood* cases on efficiency is that the state had long created two systems within the school finance system. One system created roughly equal access to a lower level of funding defined through the years as the Minimum Foundation Program, or the Foundation School Program, or the Tier I program or the Tier I and Tier 2 program. The other system was at a higher level to which districts had access only with their own tax wealth. The access to these funds was perfectly inequitable, i.e. up to the 527 to 1 ratio in ability to raise funds for each penny of tax applied to these tax rates<sup>37</sup> for which state matching is not available. Even after recapture, the access to these funds was easily accessible to the wealthier districts and almost impossible to obtain for the low wealth districts.<sup>38</sup> This court unanimously rejected the dual system theory in *Edgewood I* and *Edgewood II*, holding that the school finance system is one system to which all students should have substantially equal access.

---

<sup>37</sup> This ratio is the ratio of the wealth per ADA in the wealthiest district to the wealth per ADA in the poorest district, explained in section I of this brief, *supra*.

<sup>38</sup> A wealthy district recaptured to \$48/WADA (recapture level in Tier 1), after recapture, still generates 16 times more for each penny tax rate than a district that generates \$3/WADA. This assumes that the poorer district does not get a state share at that tax rate.

2. The weaker standard adopted in this Court's later cases goes back to the old dual system of roughly equal access to some defined level of funding and no reasonable access by poor districts above what is now defined as an "adequate" system.
3. One weakness of this standard is that it is based on significantly different definitions of what is adequate and requires the court to make that threshold decision on adequacy before determining the financial efficiency of the system.
4. Using adequacy as a threshold requirement also gives the discretion to the Legislature to define away an inefficient system by redefining the level of education it considers adequate and relying on the deference given the Legislature by the courts. This is not just a theoretical concern. Even during the trial process in this case, the Legislature and TEA made changes to the accountability system that sometimes increased and sometimes decreased the standards for school districts. The state chooses the measurements of accountability and sets the passing scores and percent of passing requirements.
5. Determining the efficiency of facilities funding is more difficult because of the different situations on the quality of facilities in districts and the significant differences between facilities needs in

districts with rapidly increasing student counts and districts with the same or even fewer students than in years past. A system that requires substantially equal access to funds in the whole system will by necessity require the legislature and the courts to include the funding for facilities as an integral part of the system, *Edgewood IV*, 804 S.W. 2d at 746-747. Facilities are certainly an integral part of the system and the Court's "substantially equal access to an "adequate" system does not acknowledge this fact.

6. The new test does not explicitly include the requirement that the substantially equal access, be at "similar levels of tax effort," *Edgewood I*, 777 S.W. 2d at 397.
7. The jurisprudential weakness of the new standard is that it is much more difficult to define and to determine. It is much easier and possible for the Legislature, the public, and ultimately this Court, to determine substantially equal access to whatever funding is available in the system than to first determine what is adequate before determining what substantially equal access is.

## **VI. CONCLUSION AND PRAYER**

The low-wealth districts have the least resources, the greatest needs and the least ability to redress their grievances. This Court's opinions in *Edgewood I* and

*Edgewood II* and the Legislature's responses to these opinions led to some improvement in the lot of the low wealth districts. The present school finance system violates article VII, Sec 1 of the Texas Constitution. Amicus urges this court to affirm the district court's decision. This Court should return to its original standards of financial efficiency in the earlier cases. There must be substantially equal access to funds, accounting for student and district costs, at all tax rates allowable under state law, in order to provide objective standards for the Legislature and this Court to follow.<sup>39</sup>

Respectfully submitted,

/s/Albert Kauffman

Albert Kauffman

St. Mary's University School of Law

One Camino Santa Maria

San Antonio Texas 78228

[albert.kauffman@gmail.com](mailto:albert.kauffman@gmail.com)

(210) 431-2297

Pro Se

---

<sup>39</sup> State law actually sets it out fairly clearly, TEX EDUC. CODE sec 42.001 (b): "The public school finance system of this state shall adhere to a standard of neutrality that provides for substantially equal access to similar revenue per student at similar tax effort, considering all state and local tax revenues of districts after acknowledging all legitimate student and district cost differences."

Certificate of Compliance

According to Microsoft Word, this brief contains 5133 words, excluding the portions of the brief exempted by Texas Rules of Appellate Procedure 9.4 (i)

/s/Albert Kauffman

**CERTIFICATE OF SERVICE**

In accordance with the Texas Rules of Appellate Procedure, I hereby certify that a true and correct copy of the Brief of Amicus Albert Kauffman has been sent to the following counsel of record via E-Service on or before the 10<sup>th</sup> day of August, 2015, and E-mail on this 8<sup>th</sup> day of August, 2015:

*Counsel for Michael Williams,  
Commissioner of Education, et al.:*

Rance Craft  
OFFICE OF THE ATTORNEY GENERAL  
P.O. Box 12548 (MC 059)  
Austin, Texas 78711-2548  
[rance.craft@texasattorneygeneral.gov](mailto:rance.craft@texasattorneygeneral.gov)

*Counsel for Calhoun County  
I.S.D., et al.:*

Mark R. Trachtenberg  
HAYNES & BOONE, LLP  
1221 McKinney, Suite 2100  
Houston, Texas 77010-2007  
[Mark.Trachtenberg@haynesboone.com](mailto:Mark.Trachtenberg@haynesboone.com)

John W. Turner  
HAYNES & BOONE, LLP  
2323 Victory Ave., Suite 700  
Dallas, Texas 75219  
[John.Turner@haynesboone.com](mailto:John.Turner@haynesboone.com)

***Counsel for Joyce Coleman, et al.:***

J. Christopher Diamond  
THE DIAMOND LAW FIRM, PC  
17484 Northwest Freeway, Suite 150  
Houston, Texas 77040  
[christopherdiamond@yahoo.com](mailto:christopherdiamond@yahoo.com)

Craig T. Enoch  
ENOCH KEVER PLLC  
600 Congress, Suite 2800  
Austin, Texas 78701  
[cenoch@enochkever.com](mailto:cenoch@enochkever.com)

***Counsel for Texas Charter  
Schools Association, et al.:***

Robert A. Schulman  
SCHULMAN LOPEZ & HOFFER LLP  
517 Soledad Street  
San Antonio, Texas 78205-1508  
[rschulman@slh-law.com](mailto:rschulman@slh-law.com)

James C. Ho  
GIBSON, DUNN & CRUTCHER LLP  
2100 McKinney Avenue,  
Suite 1100  
Dallas, Texas 75201  
[jho@gibsondunn.com](mailto:jho@gibsondunn.com)

***Counsel for Texas Taxpayer &  
Student Fairness Coalition, et al.:***

Richard E. Gray, III  
GRAY & BECKER, P.C.  
900 West Avenue  
Austin, Texas 78701  
[rick.gray@graybecker.com](mailto:rick.gray@graybecker.com)

Randall B. Wood  
RAY & WOOD  
2700 Bee Caves Road, Suite 200  
Austin, Texas 78746  
[buckwood@raywoodlaw.com](mailto:buckwood@raywoodlaw.com)

***Counsel for Fort Bend ISD, et al.:***

J. David Thompson  
THOMPSON & HORTON LLP  
Phoenix Tower, Suite 2000  
Houston, Texas 77027  
[dthompson@thompsonhorton.com](mailto:dthompson@thompsonhorton.com)

Wallace B. Jefferson  
Rachel Ekery  
ALEXANDER DUBOSE JEFFERSON &  
TOWNSHEND  
515 Congress Avenue, Suite 2350  
Austin, Texas 78701  
[wjefferson@adjtlaw.com](mailto:wjefferson@adjtlaw.com)  
[rekery@adjtlaw.com](mailto:rekery@adjtlaw.com)

**Counsel for Edgewood ISD, et al.**

Marisa Bono

State Bar No. 24052874

Celina Moreno

State Bar No. 24074754

110 Broadway, Suite 300

San Antonio, Texas 78205

Telephone: (210) 224-5476

Telecopier: (210) 224-5382

[mbono@maldef.org](mailto:mbono@maldef.org)