

No. 14-0776

In the Supreme Court of Texas

MICHAEL WILLIAMS, COMMISSIONER OF EDUCATION,
IN HIS OFFICIAL CAPACITY, *ET AL.*,
Appellants/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, Travis County

**BRIEF FOR THE GOVERNOR OF TEXAS AS AMICUS CURIAE SUPPORTING
APPELLANTS/CROSS-APPELLEES MICHAEL WILLIAMS, *ET AL.***

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INTEREST OF AMICUS CURIAE¹

“[I]t’s time to put school finance litigation behind us. It’s time to stop fighting about school finance and start fixing our schools.” Governor Greg Abbott, 2015 State of the State Address (Feb. 17, 2015).

Both as a matter of constitutional law and as a matter of responsible policymaking, the courts are not the appropriate forum for making decisions about statewide education policy. But an end to school finance litigation does not mean an end to the push for a public school system that better serves Texas students, parents, and taxpayers. That is the Legislature’s constitutional responsibility. The 84th Legislature performed its duty admirably by enacting several important reforms that will increase funding for schools and improve outcomes for students—all while reducing the tax burden on property owners and preserving parent, teacher, and taxpayer control over local school districts.

The Legislature is uniquely suited to balance the many competing voices that seek to be heard in the school-finance debate. The courts, by contrast, are particularly unsuited to second-guess legislative choices in this area. This Court should recognize that fact and dismiss all claims in these cases. At the very least, this Court should allow the reforms enacted by the 84th

¹ No fee will be paid for the preparation of this amicus brief. See TEX. R. APP. P. 11(c).

Legislature to be tested in the real world before passing judgment on the constitutionality of Texas's public-school system.

As the State's chief executive officer, Governor Greg Abbott files this amicus brief to: (1) support the Legislature's constitutional prerogative to establish and provide for Texas's public schools and the executive branch's constitutional prerogative to carry out the will of the Legislature; (2) defend the separation-of-powers principles, embodied in the political-question doctrine, under which the judicial branch must defer to the legislative and executive branches when the Constitution assigns policymaking decisions to those branches and provides no judicially administrable standards by which courts can judge those decisions; and (3) inform the Court of important reforms enacted during the 2015 Legislative Session that, if they do not require dismissal of all claims, at least require remand for consideration of whether the current school-finance system complies with the Texas Constitution.

SUMMARY OF ARGUMENT

The Governor agrees with the State Defendants that:

(1) As a general matter, challenges to the State's school-funding system raised under article VII, section 1 of the Texas Constitution present non-justiciable political questions. As the last two decades have proven, there

are no manageable standards under which courts can assess whether the Legislature has carried out its duty to “make suitable provision for the support and maintenance of an efficient system of public free schools,” TEX. CONST. art. VII, § 1. State Br. 49–61; State Reply Br. 3–9;

(2) The particular school-funding claims raised by plaintiffs and intervenors also must be dismissed because the relief sought and obtained—an injunction defunding Texas’s public schools—would do obvious and significant damage to the Texas school system, State Br. 61–66; State Reply Br. 9–16. Plaintiffs and intervenors therefore have no standing to seek such relief from this or any other Texas court, especially under the guise of an article VII, section 1 claim asserting that the Legislature has inadequately funded schools; and

(3) Challenges to the current funding system are unripe. This is true for at least two reasons. First, at the time the district court invalidated the then-current funding system (the system as it stood following the reforms enacted by the 83rd Legislature) there was insufficient data to address the adequacy, efficiency, or suitability—and therefore the constitutionality, under the Court’s previous guidance—of that system. State Br. 66–70; State Reply Br. 16–17. Second, the 84th Legislature enacted important additional education reforms to improve student outcomes; provided voters with an op-

portunity to reduce local school district property taxes by \$2 billion; and significantly increased state spending on public education. These reforms and their impact on the plaintiffs' claims have not been considered by the district court. State Reply Br. 17–21.

Given the 1000+ pages of briefing filed in this case, this brief will not re-argue all of the points compellingly presented by the State Defendants. Rather, we will briefly address the Court's jurisdiction and then highlight the education provisions enacted by the 84th Legislature that would compel a remand in the event that the Court determines that article VII, section 1 of the Constitution presents justiciable questions.

ARGUMENT

I. THE SCHOOL-FINANCE PROVISIONS OF THE TEXAS CONSTITUTION DO NOT PRESENT QUESTIONS WITHIN THE JURISDICTION OF THE COURTS

The Texas Constitution assigns to the Legislature the authority to devise the State's budget, subject to the Governor's veto power.² Budget-making is an inherently political undertaking in which a finite amount of

² *E.g.*, TEX. CONST. art. III, § 1 (“The Legislative power of this State shall be vested in a Senate and House of Representatives”); *id.* § 35(a) (“No bill, (except general appropriation bills, which may embrace the various subjects and accounts, for and on account of which moneys are appropriated) shall contain more than one subject.”); *id.* art. IV, § 14 (“If any bill presented to the Governor contains several items of appropriation he may object to one or more of such items, and approve the other portion of the bill.”); *see also* TEX. GOVT. CODE § 401.0445(a) (“The governor shall compile the biennial appropriation budget.”); *id.* § 316.009 (authorizing the Governor to prepare a general appropriations bill and present it to the Legislature).

money is available and competing interests must be balanced against one another. Funding the public school system is and always will be of vital importance, but it is just one significant piece of the budget. During the 2016-17 biennium, 27.9% of all funds and 38.6% of state general revenue in the Texas budget will be spent on public education,³ and billions more will be spend as a result of property taxes at the local level.⁴ Every choice to spend money on one budget item affects the ability to spend on the remaining budget items. Any school-finance budget decision (whether legislatively or judicially made) must therefore account for the remaining areas of the budget, making the entire exercise particularly unsuited to the judicial process.

The district court implicitly acknowledged that the school-finance puzzle is one that courts cannot solve. *E.g.*, 12.CR.199 (staying its injunction “to give the Legislature a reasonable opportunity to cure the constitutional deficiencies in the finance system”); 12.CR.203, 205–08 (in the context of the erroneous attorneys’-fees awards, recognizing that these issues

³ LEGISLATIVE BUDGET BOARD, SUMMARY OF CONFERENCE COMMITTEE REPORT FOR HB 1, at 3-4, available at http://www.lbb.state.tx.us/Documents/Budget/Session_Code_84/Summary_of_Conference_Committee_Report_HB1.pdf.

⁴ TEX. EDUC. AGENCY, COMPARISON OF AGENCY BUDGET BY MAJOR COMPONENT, available at <http://tea.texas.gov/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=25769822448&libID=25769822547>

will be resolved in “the public debate on school finance”). The litigants likewise acknowledge in this Court that the school-finance system will ultimately be devised by the Legislature alone. *E.g.*, Calhoun Br. 82 (arguing that “the court’s declaratory and injunctive relief judgment will . . . impel the Legislature to consider new statutory approaches that comply with the Texas Constitution”); Fort Bend Br. 59 (“It is reasonable to infer that the Legislature will respond . . . and take steps to bring the system into constitutional compliance.”); Goldwater Institute Br. 12 (seeking a court order that will “direct the Legislature to . . . remedy [any] defects” and suggesting that “[i]f there is a financial component to those remedies, that would necessarily be a part of the overall legislative response”). And this Court’s explanation that it is for the Legislature alone to determine the methods by which to satisfy the duty to fund public schools, *Neeley v. W. Orange-Cove Consol. ISD*, 176 S.W.3d 746, 777, 798–99 (2005), is a recognition that legislative solutions, not judicial solutions, are required. This universally recognized truth—that no court order can fund the multi-billion dollar system of public education used each year to educate 5.1 million students⁵—should end this litigation. *Heckman v. Williamson County*, 369 S.W.3d 137, 154 (Tex. 2012) (explain-

⁵ TEXAS EDUCATION AGENCY, ENROLLMENT IN TEXAS PUBLIC SCHOOLS 2013–14, ix, 4, 6 (Nov. 2014), available at http://tea.texas.gov/acctres/Enroll_2013-14.pdf

ing that state courts are forbidden by the Texas Constitution to entertain disputes about injuries that cannot be redressed by a judicial order.)

The inability of the courts—both as a practical and legal matter—to craft an order that redresses the plaintiffs’ alleged injury is not the only reason the Court should stay its hand. Despite the Court’s best efforts, it has not devised a judicially manageable standard for evaluating the adequacy, efficiency, and suitability of the public-education system. State Br. 55–61; State Reply Br. 3–9. The hopelessly indeterminate legal standards applicable to these cases put the Legislature to the unenviable task each session of shooting blindly at a concealed target. And this indecipherable legal landscape encourages litigants and district courts to embrace wildly varying claims, each of which may or may not be good for students. Because the potential legal challenges to the education system are nearly infinite, and in many cases contradictory, there is no way for the Legislature to pass a set of laws that will stave off further litigation. *Compare, e.g.,* 12.CR.574 (COL 32) (the district court’s suggestion that the provision of a constitutionally adequate education might require schools to supply additional nurses, security guards, paraprofessionals, and counselors), *with* Goldwater Institute Br. 8–10 (arguing that expenditures on non-teaching personnel for K–12 in the Texas school system produced an inefficiency-prong constitutional viola-

tion); *compare, e.g.*, 12.CR.573–74 (COL 31) (the district court’s admonition that the State’s failure to maintain manageable class sizes suggests an inadequacy-prong violation), *with* Efficiency Intervenors Br. 29 (“**State-imposed class-size limits lead to inefficiency.** Statutes requiring small class sizes also impose great expense with minimal impact on student outcomes.”).

These are just two examples, but as this case demonstrates, the only limit on school finance litigation as it is currently practiced is the scope of the plaintiff lawyers’ imagination. Given the myriad opposing interests and viewpoints that seek to have their voices heard in the school-finance arena, it should be for the Legislature, not the courts, to decide which of the competing proposals is in the best interests of Texas students, parents, and taxpayers. And it should be for the Legislature, not the courts, to balance such proposals against countervailing interests, such as the need to maintain local control at the school-district level. But as long as this Court continues to entertain these claims, it lends credence to the notion that courtroom factfinding conducted by lawyers and judges under the rules of procedure and evidence is an appropriate way to resolve these intractable and extravagantly complex policy questions. Merely to state this ambitious conceit is to expose its overreach.

The bottom line is that there is no way for the Legislature to provide a school-funding system that will bring an end to decades of wasteful litigation. This Court should end the unproductive cycle of perpetual school finance litigation by recognizing the natural limits on the judicial process and on judicial power.

Finally, the futility of litigating school-finance challenges without a judicially manageable standard dovetails with another reason that the Court should dismiss these claims: ripeness. The ripeness doctrine presents both jurisdictional and prudential considerations for the court to address. *Waco Independent School District v. Gibson* is instructive. 22 S.W.3d 849 (2000). In *Gibson*, the Court held that a challenge to a school district's new student-promotion policy was not yet ripe because the policy had not yet been implemented. Thus, the alleged harm "was only hypothetical . . . may not occur as anticipated, or may not occur at all." *Id.* at 851–52. The Court explained that because the policy had not been fully implemented at the time of the lawsuit, "the evidence required [to demonstrate the program's success or failure] did not exist. Indeed, that is exactly why the claim [was] not ripe." *Id.* at 853.

In deciding whether a case is ripe, a court must ask not only whether it can act, "but prudentially, whether it *should*." *Perry v. Del Rio*, 66 S.W.3d

239, 250 (Tex. 2001); *see also Atmos Energy Corp. v. Abbott*, 127 S.W.3d 852, 857–58 (Tex.App.—Austin 2004, no pet.) (explaining that the prudential considerations are “particularly important” when considering constitutional claims, and that ripeness “is both a question of timing, that is, when one may sue [and] a question of discretion, whether the court *should* hear the suit and not whether it *can* hear the suit.”) (citing *Perry*, 66 S.W.3d at 249–50) (additional internal citations omitted). The prudential aspect of ripeness requires courts to ask whether judicial involvement would intrude on the policymaking domains of other branches of government. *Patterson v. Planned Parenthood of Houston and S.E. Texas. Inc.*, 971 S.W.2d 439, 442–43 (Tex. 1998).

When the district court permitted the plaintiffs and intervenors to litigate challenges to the school-funding system before there was adequate time to assess the system’s results, the district court impermissibly intruded upon the legislature’s policymaking choices. At this time, the record is necessarily incomplete regarding relevant student-performance data under the school-funding system that was put in place by the Legislature in 2013 and almost immediately rejected by the district court. Worse still, the district court decision pre-dates the reforms enacted by the 84th Legislature in 2015, *see infra* Part II, yet plaintiffs and intervenors urge the Court to affirm the district

court's decision. When courts second-guess the Legislature's education statutes before those statutes have been implemented and given an opportunity to succeed, courts necessarily usurp the policymaking authority the Texas Constitution provides to the Legislature.

Thus, even if the Court believes jurisdiction exists, as a general matter, over article VII, section 1 challenges to the State's system of financing public education, it should still dismiss the present challenges as unripe in order to afford a meaningful opportunity for the 83rd and 84th Legislatures' policy choices to take effect.

* * *

Litigation over Texas's system of school finance has persisted for decades as courts and litigants have grappled with imprecise constitutional provisions touting the necessity of "[a] general diffusion of knowledge" and commanding the Legislature "to establish and make suitable provision for the support and maintenance of an efficient system of public free schools." So long as this Court subjects these provisions to the judicial process, plaintiffs and their attorneys will subject the State to endless and needless litiga-

tion.⁶ School-finance litigation to date has benefited plaintiffs’ attorneys at the expense of the State and to the detriment of our students.

The Court should put an end to this futile exercise and hold that the school-funding provisions of the Texas Constitution present non-justiciable political questions in general, and that in particular, these plaintiffs’ claims fall outside the jurisdiction of Texas courts.⁷ It bears repeating that “[i]t’s

⁶ Any notion that the plaintiffs or their lawyers will *ever* voluntarily cease challenging the Legislature’s funding decisions can be laid to rest, as demonstrated by MALDEF’s reaction to a bill filed this legislative session that would have increased funding for approximately 94 percent of Texas school children. *See* Terrence Stutz, *Texas House Leaders Move to Boost School Funds; Senate Eyes Vouchers*, Dallas Morning News, April 7, 2015, available at <http://www.dallasnews.com/news/politics/state-politics/20150407-house-leaders-move-to-boost-school-funds-senate-eyes-vouchers.ece>. Undeterred, MALDEF charged that the legislation would *increase the inequity* in the school-finance system. Morgan Smith, *School Finance Plan Praised in Capitol Hearing*, Texas Tribune (Apr. 15, 2015), <https://www.texastribune.org/2015/04/15/school-finance-plan-gets-house-hearing/>.

⁷ In doing so, the Court would join a number of its sister courts in recognizing that school-finance litigation falls outside the jurisdiction of state courts. *See, e.g., Ex parte James*, 836 So.2d 813, 815–16 819 (Ala. 2002) (per curiam) (dismissing the “equity funding cases” after issuing four decisions in less than a decade, and explaining that “it is the Legislature, not the courts from which any further redress should be sought” because “we now recognize that any specific remedy that the judiciary could impose would, in order to be effective, necessarily involve a usurpation of that power entrusted exclusively to the Legislature.”); *Coalition for Adequacy and Fairness in School Funding, Inc. v. Chiles*, 680 So. 2d 400, 405–06 (Fla. 1996) (per curiam) (affirming the dismissal of constitutional challenges brought under the “adequate provision” requirement of the Florida Constitution; explaining that “there is no textually demonstrable guidance in Article IX, section 1, by which the courts may decide, a priori, whether a given overall level of state funds is adequate”) (internal quotation omitted); *id.* at 406–07 (“to decide such an abstract question of ‘adequate funding, the courts would necessarily be required to subjectively evaluate the Legislature’s value judgments as to the spending priorities to be assigned to the state’s many needs, education being one among them. In short, the Court would have to usurp and oversee the appropriations power, either directly or indirectly, in order to grant the relief sought by Plaintiffs.”) (internal quotation omitted); *id.* at 408 (recognizing the separation-of-powers problem given that “there are no judicially man-

time to put school finance litigation behind us. It's time to stop fighting about school finance and start fixing our schools.” Governor Greg Abbott, 2015 State of the State Address (Feb. 17, 2015) (prepared remarks available at <http://gov.texas.gov/news/press-releases/20543>).

II. IF THE COURT DETERMINES THAT PLAINTIFFS PRESENT JUSTICIABLE CLAIMS, REVERSAL AND REMAND IS THE APPROPRIATE RESOLUTION OF THIS APPEAL

In January 2014, the district court reopened the evidence to consider challenges to public-education legislation enacted during the legislative session in 2013. Challenges to Texas's school-funding system were not ripe then and are not ripe now, but the district court's maneuvering did highlight a jurisdictional problem that would be present should this Court go forward with this case on the present record. In 2013, any opinion the district court

ageable standards available to determine adequacy” that “would not present a substantial risk of judicial intrusion into the powers and responsibilities assigned to the legislature, both generally (in determining appropriations) and specifically (in providing *by law* for an adequate and uniform system of education”); *Committee for Educational Rights v. Edgar*, 672 N.E. 1178, 1192 (Ill. 1996) (affirming the dismissal of the complaint; explaining that “we will not under the guise of constitutional interpretation, presume to lay down guidelines or ultimatums for the legislature”) (internal quotation omitted); *id.* at 1191 (“To hold that the question of educational quality is subject to judicial determination would largely deprive the members of the general public of a voice in a matter which is close to the hearts of all individuals in Illinois. . . . [A]n open and robust public debate is the lifeblood of the political process in our system of representative democracy. Solutions to problems of educational quality should emerge from a spirited public dialogue between the people of the State and their elected representatives.”); *Penn. Sch. Bds. Ass'n, Inc. v. Commonwealth Ass'n of Sch. Adm'rs*, 805 A.2d 476, 490–91 (Pa. 2002) (holding that the constitutional provision requiring the “maintenance and support of a thorough and efficient system of public education” presented a non-justiciable political question with no judicially manageable standard).

could have offered on the education system as it existed in 2011 and before would have been merely advisory because that system no longer existed. Likewise, any opinion this Court could offer as to the school-finance system evaluated by the district court would be merely advisory because that system will no longer exist as of September 1, 2015, the date of the oral argument in this case.

The 2015 legislative session produced significant changes to the school-finance system. If the Court rejects the State Defendants' arguments that this case is non-justiciable, the proper course would be to reverse the district court's judgment and remand the case for a review of the current school-finance system, which includes the reforms enacted by the 84th Texas Legislature.

In 2015, the Legislature substantially increased funding for the State's school finance system and specifically addressed issues that were causing disparities in formula funding between school districts. The Legislature also reduced local property taxes by an estimated \$1.24 billion, which will be financed by a permanent increase in the State's obligation to pay formula costs currently paid on the local level. These increases in state contributions, along with increases in local funding, have improved the school fi-

nance system's equity, adequacy, and suitability. These changes to the school-finance system during the 2016-17 biennium include:

- Numerous school districts being moved from the “target revenue” system (also called ASATR) to the State’s formula funding system during the 2016-17 biennium, which will improve funding equity among districts.⁸
- All schools being required to be funded by the State’s formula system, instead of the “target revenue” system on September 1, 2017, which will improve funding equity among districts.⁹
- An increase of \$8 billion (or 8 percent) to overall public education funding, from \$98.6 billion to \$106.7 billion between 2014-15 and 2016-17 biennia.¹⁰
- An increase of \$7.7 billion (or 9 percent) to formula funding (state and local), from \$86.8 billion to \$94.5 billion, including a \$1.2 billion increase in the basic allotment based on student attendance.¹¹

⁸ LEGISLATIVE BUDGET BOARD, SUMMARIES: FOUNDATION SCHOOL PROGRAM ENTITLEMENT ACTIONS TAKEN BY THE 84TH LEGISLATURE (MODELS 84497 AND 95129), available at http://www.lbb.state.tx.us/Document/Teams/Public_Education/Models_84497_and_95129_Summaries.pdf.

⁹ TEX. EDUC. CODE § 42.2516.

¹⁰ TEX. EDUC. AGENCY, COMPARISON OF AGENCY BUDGET BY MAJOR COMPONENT, available at <http://tea.texas.gov/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=25769822448&libID=25769822547>

- An estimated 25 percent increase in the yield used for formula funding to school districts for each “golden penny” of local property tax effort by 2017.¹²
- As detailed below, new TEA initiatives designed to improve student results, including \$118 million for a High Quality Prekindergarten Grant Program, \$17.8 million for Literacy Achievement Academies to train kindergarten thru 3rd grade teachers, and \$22.8 million for Math Achievement Academies to train kindergarten thru 3rd grade teachers.

The magnitude of the funding increases for the 2016–17 biennium are even more evident when compared to the levels when this litigation began during the 2012–13 biennium.¹³

¹¹ *Id.*

¹² Tex. S.B. 1, 83rd Leg., R.S. (2013) at III-6 (For purposes of distributing the Foundation School Program enrichment tier state aid . . . the Guaranteed Yield is \$59.97 in fiscal year 2014 and \$61.86 in fiscal year 2015.”); Tex. H.B. 1, R.S. (2015) at III-5 (“For purposes of distributing the Foundation School Program enrichment tier state aid . . . the Guaranteed Yield is \$74.28 in fiscal year 2016 and \$77.53 in fiscal year 2017.”).

¹³ Funding-level data were compiled from TEA’s “Comparison of Agency Budget by Major Component”, which is available at <http://tea.texas.gov/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=25769822448&libID=25769822547>. The average daily attendance data used to calculate the annual, per student spending figure are available in “Pupil Projections ADA Spreadsheet” and “Average Daily Attendance (ADA) and Weighted Average Daily Attendance (WADA) 2004–2005 through 2014–2015” at http://tea.texas.gov/Finance_and_Grants/State_Funding/State_Funding_Reports_and_Data/State_Funding_Reports_and_Data/.

	2012–13 funding	2016–17 funding	% increase
overall funding	\$ 91.2 billion	\$ 106.7 billion	17 %
formula funding	\$ 80.4 billion	\$ 94.5 billion	18 %
State program-matic funding	\$ 1.0 billion	\$ 1.8 billion	77 %
annual, per student	\$ 9,771.07	\$ 10,672.37	9 %

In addition to these financial changes, the following significant education reforms enacted by the 84th Legislature will improve student outcomes:

- requiring students in grades 7–8 to receive high-school-preparation instruction, college and career readiness training, and personal graduation plans (House Bill 18);
- increasing by \$118 million the funding for high-quality pre-kindergarten education during the 2016–17 biennium (House Bill 4);
- establishing new math and literacy training academies for K–3 teachers, with a priority on teachers at campuses with economically disadvantaged students (Senate Bill 925 and Senate Bill 934);
- establishing training academies for grade 4–5 teachers who teach reading comprehension (Senate Bill 972);

- reforming the state’s accountability system and sanctions to better student outcomes, providing districts and schools with more options to deliver quality instruction (House Bill 1842).
- increasing each high school students’ access to college (dual credit) courses while they are in high school (House Bill 505).
- creating outreach materials in English, Spanish, and Vietnamese to communicate curriculum changes to students and parents (House Bill 18).

Governor Abbott proudly signed these bills, explaining that “we are providing our education system with the tools and resources necessary to build the strongest possible foundation for [Texas’s] early education programs and subsequently, Texas’s future.” Governor Abbott Signs Early Education Bills (May 28, 2015), *available at* <http://gov.texas.gov/news/signature/29054>. Students returning to school this fall will not be educated under the funding system as it existed when the district court prematurely declared it unconstitutional. Thus, a declaration from this court that the old system is unconstitutional could not offer relief to any student.¹⁴

¹⁴ Courts have routinely refrained from adjudicating constitutional challenges to statutory schemes that have been amended during the course of litigation. *See, e.g., Lewis v. Cont’l Bank Corp.*, 494 U.S. 472, 474 (1990) (amendments to banking statutes rendered moot a Commerce Clause challenge); *Chem. Producers & Distribs. Ass’n v. Helliker*, 463 F.3d 871, 878 (9th Cir. 2006) (noting the “near categorical rule of mootness” in “cases of statutory amendment”); *Fed’n of Adver. Indus. Reps., Inc. v. City of Chicago*, 326 F.3d

Finally, it is critical that the 84th Legislature’s revisions to the education system are considered in the context of the strides in education that Texas has made in recent years, given the Court’s view that any judicial review of the system’s adequacy “is plainly result-oriented” as measured in student achievement. *Neeley v. W. Orange-Cove Consol. ISD*, 176 S.W.3d 746, 788 (2005). For example, the U.S. Department of Education’s most-recent data show that Texas’s public high school graduation rate of 88 % far exceeded the national average of 81.4 %; indeed, Texas exceeded all but three States. *See* U.S. Department of Education, *Achievement Gap Narrows as High School Graduation Rates for Minority Students Improve Faster than Rest of Nation*, Table 2 (Mar. 16, 2015), *available at* <http://www.ed.gov/news/press-releases/achievement-gap-narrows-high-school-graduation-rates-minority-students-improve-faster-rest-nation> (hereafter USDOE Achievement Gap). Texas led the nation with a graduation rate of 84.1 % for Black students (compared to 70.7 % nationally) and

924, 930 (7th Cir. 2003) (explaining that “the [Supreme] Court has [consistently] upheld the general rule that, repeal, expiration, or significant amendment to challenged legislation ends the ongoing controversy and renders moot a plaintiff’s request for injunctive relief”); *Ky. Right to Life, Inc. v. Terry*, 108 F.3d 637, 645 (6th Cir. 1997) (holding that amendment to the challenged statute mooted the claim); *see also Citizens for Responsible Gov’t State Political Action Comm. v. Davidson*, 236 F.3d 1174, 1182 (10th Cir. 2000) (A “declaratory judgment on the validity of a repealed [statute] is a textbook example of advising what the law would be upon a hypothetical state of facts.”). The amendments to the public-education system enacted by the 84th Legislature should foreclose any opportunity for the Court to affirm the district court’s injunction of a system that no longer exists.

85.1 % for Hispanic students (compared to 75.2 % nationally); *id.*; *see also Feds: Texas led U.S. in Black, Hispanic 2013 graduation rates*, The Dallas Morning News, Mar. 19, 2015, *available at* <http://www.dallasnews.com/news/education/headlines/20150319-feds-texas-led-u.s.-in-black-hispanic-2013-graduation-rates.ece>. And the Texas graduation rate of 85.2 % for economically disadvantaged students trailed only Kentucky (85.4 %), and compared quite favorably to the national average of 73.3 %. *See* USDOE Achievement Gap.

Assuming the plaintiffs' claims are not dismissed, the district court is the appropriate forum in which to review all of the recent changes to Texas law and the recent data reflecting the school system's successes. If the Court asserts jurisdiction over the plaintiffs' claim, it should reverse the final judgment and instruct the district court that, on remand, it must review the education system as it presently exists in order to fairly and accurately assess adequacy, efficiency, and suitability of Texas's school-finance system.

CONCLUSION

The Court should reverse the final judgment of the district court and dismiss the case for lack of subject-matter jurisdiction. Alternatively, the Court should reverse the final judgment and remand the case to the district court for additional proceedings.

Respectfully submitted.

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As required by Texas Rule of Appellate Procedure 9.4(i)(3), I hereby certify that this brief contains **4,672** words, according to the word count of the word-processing software used to prepare this brief.

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I certify that this document has been filed with the clerk of the court and served via the Court's electronic service or certified mail on August 26, 2015, upon:

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