Filed
12 June 11 P3:16
Amalia Rodriguez-Mendoza
District Clerk
Travis District
D-1-GN-11-003130

CAUSE NO. D-1-GN-11-003130

TEXAS TAXPAYER & STUDENT FAIRNESS COALITION, *et al.*,	§	IN THE DISTRICT COURT OF
Plaintiffs,	§	
VS.	§	
ROBERT SCOTT, TEXAS COMMISSIONER OF EDUCATION, *et.al.*,	§	
Defendants	§	
Consolidated Case:	§	
FORT BEND INDEPENDENT SCHOOL DISTRICT, *et al.*,	§	
Plaintiffs,	§	
VS.	§	TRAVIS COUNTY, TEXAS
ROBERT SCOTT, TEXAS COMMISSIONER OF EDUCATION, *et. al.*,	§	
Defendants.	§	200TH JUDICIAL DISTRICT

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FORT BEND ISD PLAINTIFFS' SECOND AMENDED PETITION

TO THE HONORABLE JUDGE OF THE COURT:

The Plaintiffs named below are 81 public school districts that collectively educate approximately 1.8 million Texas children, almost forty percent (40%) of the student population in Texas. The Fort Bend ISD Plaintiffs bring the claims in this Second Amended Petition against Robert Scott, in his official capacity as Texas Commissioner of Education; the Texas Education Agency; Susan Combs, in her official capacity as the Texas Comptroller of Public Accounts; and the Texas State Board of Education; respectfully showing the Court as follows:

I.
DISCOVERY CONTROL PLAN

1. Plaintiffs respectfully submit that the parties' discovery in this case should be conducted in accordance with a Discovery Control Plan under the provisions of Track 3 of Rule 190.4 of the Texas Rules of Civil Procedure.

II.
PARTIES

Plaintiffs

2. Plaintiff Fort Bend Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

3. Plaintiff Abilene Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

4. Plaintiff Allen Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

5. Plaintiff Amarillo Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

6. Plaintiff Angleton Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

7. Plaintiff Austin Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

8. Plaintiff Balmorhea Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

9. Plaintiff Bluff Dale Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

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10. Plaintiff Brazosport Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

11. Plaintiff Carthage Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

12. Plaintiff Channelview Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

13. Plaintiff Clear Creek Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

14. Plaintiff Cleveland Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

15. Plaintiff College Station Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

16. Plaintiff Coppell Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

17. Plaintiff Crosby Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

18. Plaintiff Cypress-Fairbanks Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

19. Plaintiff Dallas Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

20. Plaintiff Damon Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

21. Plaintiff Decatur Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

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22. Plaintiff Denton Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

23. Plaintiff East Central Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

24. Plaintiff Edna Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

25. Plaintiff Fort Worth Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

26. Plaintiff Hardin-Jefferson Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

27. Plaintiff Hays Consolidated Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

28. Plaintiff Hempstead Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

29. Plaintiff Highland Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

30. Plaintiff Houston Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

31. Plaintiff Huffman Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

32. Plaintiff Humble Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

33. Plaintiff Katy Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

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34. Plaintiff Keller Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

35. Plaintiff Kenedy Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

36. Plaintiff Kingsville Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

37. Plaintiff Klein Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

38. Plaintiff La Marque Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

39. Plaintiff La Porte Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

40. Plaintiff Lamar Consolidated Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

41. Plaintiff Leggett Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

42. Plaintiff McKinney Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

43. Plaintiff Midland Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

44. Plaintiff New Caney Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

45. Plaintiff North East Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

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46. Plaintiff Northside Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

47. Plaintiff Pampa Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

48. Plaintiff Pasadena Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

49. Plaintiff Pearland Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

50. Plaintiff Perrin-Whitt Consolidated Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

51. Plaintiff Pleasant Grove Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

52. Plaintiff Rice Consolidated Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

53. Plaintiff Rockdale Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

54. Plaintiff Round Rock Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

55. Plaintiff Royal Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

56. Plaintiff Santa Fe Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

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57. Plaintiff Sheldon Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

58. Plaintiff Spring Branch Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

59. Plaintiff Stafford Municipal School District is a public municipal school district and has the authority to bring this action by and through its board of trustees.

60. Plaintiff Sweeny Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

61. Plaintiff Trent Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

62. Plaintiff Waco Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

63. Plaintiff West Orange Cove Consolidated Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

64. Plaintiff Woodville Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

65. Plaintiff Albany Independent School is a public independent school district and has the authority to bring this action by and through its board of trustees.

66. Plaintiff Beaumont Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

67. Plaintiff Corsicana Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

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68. Plaintiff Deer Park Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

69. Plaintiff Dumas Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

70. Plaintiff Duncanville Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

71. Plaintiff Ector County Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

72. Plaintiff Galena Park Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

73. Plaintiff Goose Creek Consolidated Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

74. Plaintiff Graford Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

75. Plaintiff Liberty Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

76. Plaintiff Sharyland Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

77. Plaintiff Schertz-Cibolo-Universal City Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

78. Plaintiff Splendora Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

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79. Plaintiff Sudan Independent School District is a public independent school district and has the authority to bring this action by and through pits board of trustees.

80. Plaintiff Weatherford Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

81. Plaintiff Pine Tree Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

82. Plaintiff Troup Independent School District is a public independent school district and has the authority to bring this action by and through its board of trustees.

Defendants

83. Defendant Texas Education Agency (referred to herein as "the TEA") is a governmental agency under the laws of the State of Texas and can be served through Robert Scott, Texas Commissioner of Education, at the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701-1494.

84. Defendant Robert Scott, Texas Commissioner of Education, is named in his official capacity and can be served at the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701-1494.

85. Defendant Susan Combs, Texas Comptroller of Public Accounts, is named in her official capacity and can be served at the Lyndon B. Johnson State Office Building, 111 East 17th Street, Austin, Texas 78701.

86. Defendant Texas State Board of Education is a governmental agency under the laws of the State of Texas and can be served through its Chairwoman, Barbara Cargill, at the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701-1494.

87. The Honorable Greg Abbott, Attorney General of the State of Texas, has been served with notice in accordance with Section 37.006(b) of the Texas Civil Practice and

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Remedies Code and can be served with appropriate notice at the Texas Supreme Court Building, 209 West 14th Street, Austin, Texas 78701.

III.
JURISDICTION

88. This Court has original jurisdiction to adjudicate the Plaintiffs' claims or causes of action under the Texas Uniform Declaratory Judgments Act in Section 37.001, *et seq.,* of the Texas Civil Practice and Remedies Code.

IV.
VENUE

89. Venue is proper in the district court of Travis County because Defendant Scott is a resident of Travis County. Venue is also proper as to all remaining Defendants under Section 15.005 of the Texas Civil Practice and Remedies Code.

V.
OVERVIEW

90. On four separate occasions over the last twenty-three years, the Texas Supreme Court has declared various public school funding systems adopted by the Texas Legislature unconstitutional, most recently in *Neeley v. West Orange Cove Consolidated ISD*, 176 S.W.3d 746 (Tex. 2005) ["*West Orange Cove II*"]. The Texas Supreme Court has warned the Legislature repeatedly that absent significant structural change, the state funding system will continue to teeter on the edge of constitutional infirmity. Unfortunately, the Texas Legislature has failed repeatedly to heed the Supreme Court's warnings. Instead of true structural change, the State has fallen back on temporary fixes that ultimately fail to support the increasing expectations Texas has set for a student population that is rapidly growing and disadvantaged. After a series of opportunities missed by the Legislature in the years following *West Orange Cove II*, Texas public school districts once again find themselves compelled to seek relief from an unconstitutional school finance system.

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91. The march toward unconstitutionality began not long after *West Orange Cove II*. During its third special session in the spring of 2006, the 79th Texas Legislature passed House Bill 1, ostensibly to address the Supreme Court's concerns about public school finance. The Legislature reduced local property tax rates for maintenance and operations for most school districts by one-third (from $1.50 to $1.00 per $100 of property valuation), gave school districts some capacity to raise local tax rates above that level, and increased State public education spending for the 2006-2007 school year by approximately $1.8 billion. Any relief under this remedy, however, was short-lived. A revised business margins tax and cigarette tax increase failed to raise enough revenue to replace the funds lost in the property tax rate reduction, creating a lasting structural deficit in state budgets. To avert a state budget crisis for the 2010-2011 biennium, the Texas Legislature filled the gap with one-time revenue, including federal stimulus funds. Currently, the Legislature is filling the gap by diverting state general revenue (more than $9 billion in the current legislative biennium) that otherwise would be available for public education and other state needs.

92. During this time, the Legislature also failed to address the structural failings that were identified in *West Orange Cove II*. As a result, districts are left with two distinct, problematic state funding mechanisms: (1) so-called "target revenue," which locks many districts into static and arbitrary funding levels regardless of increased needs; and (2) a long-standing, formula-based system that has not been validated or updated in decades. Neither mechanism is tied to the actual cost of educating Texas students in accordance with the standards set by the Texas Legislature and as required by the Texas Constitution. Together, they have left Texas public schools underfunded and created funding differences among districts that are difficult if not impossible to justify.

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93. Most recently, the Legislature's historic cuts in public education funding once again have forced the State's public school finance system into a constitutional crisis. In June 2011, the 82nd Legislature cut $5.4 billion from public education for the 2012-2013 biennium — a move that will dramatically impact school districts' ability to provide an adequate education to all Texas students. Each Texas student is now valued at an average of over $500 less per year than in the 2010–2011 school year. The amount lost is desperately needed in order to pay for teachers, instructional materials, technology, and other resources crucial to adequately educating a rapidly growing and changing student population in an environment of increasingly demanding educational standards and expectations.

94. Moreover, the Legislature's financial approach is wholly unrelated to actual changes in student demographics in the years following *West Orange Cove II*. Since 2005, enrollment in Texas public schools has increased by an average of almost 90,000 students per year. Nearly all of that growth has been among economically disadvantaged students, who now make up almost 60 percent of student enrollment. The State has cut, and in some cases eliminated entirely, its investment in programs that are specifically focused on the needs of at-risk students. Likewise, declining state financial support for facility construction necessary to accommodate rapid growth, along with state mandates regarding the manner in which school districts incur debt, has exacerbated the financial pressure on school districts, particularly those that are "fast growing".

95. Despite unprecedented cuts in education funding, since 2005 the Legislature provided little or no relief from accountability standards and other state mandates imposed on school districts. On the contrary, the Legislature dramatically increased both the standards that all Texas students must meet and the mandates that all Texas school districts must follow. Texas students and school districts face significantly expanded curriculum requirements, more rigorous

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testing standards, increased graduation requirements, and heightened accountability measures—all designed to ensure that students graduate from public school "college-ready" or "career-ready." Although school districts consider these increased educational standards beneficial in many ways, their efforts to implement them are hampered by the State's failure to uphold its duty to adequately fund and support them.

96. The current finance system violates the Texas Constitution in three distinct but related ways. First, as was the case before *West Orange Cove II*, the Legislature's failures and missteps have resulted in what amounts to an unconstitutional state property tax. Over time, increased state requirements coupled with reduced state financial support have stripped school districts of any meaningful discretion over local tax rates. Districts have no other choice than to tax at high rates in order to meet state requirements. Consequently, and just as in *West Orange Cove II*, the system now operates as a state property tax in violation of Article VIII, Section 1-e of the Texas Constitution. Second, the State has failed to adequately provide resources so school districts can meet the high standards it has set for all Texas students and has failed to provide a suitable funding system as required by Article VII, Section 1 of the Texas Constitution. Third, the system fails to efficiently and equitably fund Texas school districts at the level necessary for a "general diffusion of knowledge," which is the standard imposed by Article VII, Section 1. Because the entire system is underfunded, none of these constitutional violations can be remedied by simply "leveling down"—a shifting of resources from some districts to others. Rather, the State must do what Texas courts have repeatedly and consistently said it must do: make fundamental, structural and lasting changes to ensure a state funding system that adequately and equitably funds public schools to the high standards established by both the Texas Constitution and the Texas Legislature without depriving local school districts of meaningful discretion over local property tax rates.

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VI.
A CONSTITUTIONAL CRISIS

A. *The Texas Constitution*

97. Two provisions of the Texas Constitution are at the center of school finance litigation. The first, Article VII, section 1 – the "education" clause – provides:

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

TEX. CONST. art. VII, § 1.

98. The second, Article VIII, section 1-e, provides:

> **"No State ad valorem taxes shall be levied upon any property within this State."**

TEX. CONST. art. VIII, § 1-e.

99. According to the Texas Supreme Court, Article VII, section 1 obligates the Legislature to meet three standards in providing for a public school system. First, the education provided must be adequate, i.e., the public school system must accomplish "that general diffusion of knowledge essential to the preservation and liberties and rights of the people," and "must reflect changing times, needs, and public expectations." *West Orange Cove ISD II*, 176 S.W.3d at 753. Second, the means adopted must be "suitable." *Id.* Third, the system itself must be "efficient." *Id.* at 752. The Legislature must satisfy these obligations without relying on constitutionally-prohibited state ad valorem taxes. *Id.* at 751.

<u>The Purpose of Public Education – To Provide a General Diffusion of Knowledge</u>

100. Article VII, Section 1 establishes the *reason* Texans have created a public education system: to provide for a general diffusion of knowledge essential to the preservation of liberties and rights of the people. This great Jeffersonian idea – that a healthy democratic society depends on an educated citizenry – is at the heart of *why* the people of Texas have always

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supported and required the Texas Legislature to provide free public schools. Whether the Texas public education system is constitutionally adequate in fulfilling this purpose, according to the Supreme Court, depends on whether school districts are reasonably able to provide:

> "*all Texas children* . . . *access* to a quality education that enables them to achieve their potential and fully participate now and in the future in the social, economic, and educational opportunities of our state and nation." TEX. EDUC. CODE § 4.001(a) (emphasis added). Districts satisfy this constitutional obligation when they [are reasonably able to] provide all of their students with a *meaningful opportunity* to acquire the essential knowledge and skills reflected in . . . curriculum requirements . . . such that upon graduation, students are prepared to "continue to learn in postsecondary educational, training, or employment settings." TEX. EDUC. CODE § 28.001 (emphasis added).

Id. at 787.

101. The Texas Legislature has substantial policy discretion to determine, at any given time in Texas history, the knowledge that should be generally diffused to all children. Having made such a determination, however, the Legislature must suitably provide for an efficient system of public schools. This is a dynamic standard, and in order to meet it the Texas Legislature must respond and adapt to changing times and circumstances. *Edgewood Indep. Sch. Dist. v. Meno*, 917 S.W.2d 717, 722 (Tex. 1995) ["*Edgewood IV*"].

<u>How the System Must Be Structured</u>

102. Once the Texas Legislature has exercised its policy discretion to determine the knowledge to be provided to all Texas children, Article VII, Section 1 imposes a clear duty on the Texas Legislature to provide the means to accomplish this great purpose – in essence, the Legislature has a duty to provide the "how" to accomplish the "why" of a general diffusion of knowledge for all Texas children.

103. The Legislature must provide for a "suitable" public education system. "'[S]uitable provision' requires that the public school system be structured, operated, and funded

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so that it can accomplish its purpose for all Texas children." *West Orange Cove II*, 176 S.W.3d at 753.

104. The system must also be "efficient." *Id.* at 752. There are two aspects to the efficiency requirement. First, the system must be "effective or productive of results and connotes the use of resources so as to produce results with little waste." *Id.* at 752. It also means that "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." *Id.* at 753.

105. Finally, to avoid an impermissible state property tax, the Legislature's system must afford local school districts "meaningful discretion" over local tax rates. "If school districts are forced to tax at or near maximum rates to meet constitutional and statutory requirements, then control over local ad valorem tax rates and spending effectively shifts to the State, depriving school districts of any meaningful discretion to tax below the rate cap set by the State or to spend on programs other than those required by the State and the Constitution." *Id.* at 770 (citing *West Orange-Cove Consol. Indep. Sch. Dist. v. Alanis*, 107 S.W.3d 558, 580 (Tex. 2003) ["*West Orange Cove I*"]).

<u>The System Cannot be Arbitrary</u>

106. Within these parameters, the Legislature is afforded significant discretion, both in determining the level of education that achieves a general diffusion of knowledge and in establishing the means for providing that education. *Id.* at 784. But the Supreme Court has emphasized that the Legislature's discretion is not unlimited, and the choices of the Legislature cannot be arbitrary. As the Court stated:

> "It would be arbitrary, for example, for the Legislature to define the goals for accomplishing the constitutionally required general diffusion of knowledge, and then to provide insufficient means for achieving those goals."

Id. at 785.

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B. ***Neeley v. West Orange Cove (West Orange Cove II)***

107. Six years ago, the Texas Supreme Court declared the Texas school funding system unconstitutional in *West Orange Cove II*. A broad and diverse group of school districts, including many of the districts that have filed this lawsuit, brought *West Orange Cove* to challenge the system on two grounds: first, that the system was based on an unconstitutional state property tax and second, that the State's funding system was constitutionally inadequate.

Excessive Control by the State

108. In November 2005, the Texas Supreme Court upheld the trial court ruling that the system was built on an unconstitutional state property tax, in violation of Article VIII, Section 1-e. The Supreme Court's rationale in declaring a state property tax violation is important to understanding the flaws in the current system. First, the Court stated that because the Legislature relies so heavily on local school districts to discharge the State's constitutional duty to provide a general diffusion of knowledge, school districts are compelled to tax at levels necessary to meet the constitutional mandate as well as other statutory requirements. *Id.* at 770. Second, the Court reiterated prior warnings that when school districts are forced to tax at or near maximum rates to meet these constitutional and statutory requirements, control over local taxes effectively shifts to the State, resulting in an impermissible state property tax. *Id.* Third, to avoid such a violation, school districts must have meaningful discretion to tax below caps set by the State *or* to tax at higher rates "to spend on programs other than those required by the State and Constitution." *Id.* Fourth, the Court rejected the State's arguments that all or most districts have to be at absolute maximum rates to demonstrate a violation. Rather, the Court explained that "the concern is not over the pervasiveness of the tax but the State's control of it." *Id* at 795.

109. The record before the Court in *West Orange Cove II* readily demonstrated that school districts lacked meaningful discretion over tax rates under these principles, resulting in an

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impermissible state property tax. The Court pointed out that significant growth in student population, particularly among economically disadvantaged and limited English proficient students, had significantly increased the need for resources over time. Moreover, increased state standards, including more rigorous tests and accountability measures, also forced districts to increase taxes. This enrollment growth and these increased standards occurred during a time of budget cuts, teacher shortages, and increasing operation costs, such that school districts had no choice but to increase tax rates simply to provide a general diffusion of knowledge and satisfy other state requirements. As such, the Supreme Court found it was not even a "close question" as to whether school districts had the type of meaningful discretion required by the Texas Constitution. The Court issued a mandate enjoining the operation of the school funding system if the Legislature did not adopt a constitutional plan by June 1, 2006.

On the Verge of Constitutional Inadequacy

110. Although the Supreme Court reversed the trial court's ruling that the system was constitutionally inadequate, it did warn of an impending violation. In rejecting the State's argument that the constitutional matter of adequacy is a non-justiciable, purely political question, the Court adopted the following standard of adequacy as reflected in state statute:

> To fulfill the constitutional obligation to provide a general diffusion of knowledge, districts must provide "*all Texas children . . . access* to a quality education that enables them to achieve their potential and fully participate now and in the future in the social, economic, and educational opportunities of our state and nation." TEX. EDUC. CODE § 4.001(a) (emphasis added). Districts satisfy this constitutional obligation when they [are reasonably able to] provide all of their students with a *meaningful opportunity* to acquire the essential knowledge and skills reflected in . . . curriculum requirements . . . such that upon graduation, students are prepared to "continue to learn in postsecondary educational, training, or employment settings." TEX. EDUC. CODE § 28.001 (emphasis added).

Id. at 787.

111. The Court acknowledged that the record in the case demonstrated serious problems in the finance system, noting there was:

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> much evidence . . . that many schools and districts are struggling to teach an increasingly demanding curriculum to a population with a growing number of disadvantaged students, yet without additional funding needed to meet these challenges. There are wide gaps in performance among student groups differentiated by race, proficiency in English, and economic advantage. Non-completion and dropout rates are high, and the loss of students who are struggling may make performance measures applied to those who continue appear better than they should. The rate of students meeting college preparedness standards is very low. There is also evidence of high attrition and turnover among teachers statewide, due to increasing demands and stagnant compensation.

Id. at 789.

112. However, based on indications of continued forward progress by Texas students and school districts on state assessments and the national NAEP test, the Court stopped short of declaring the system inadequate. Nonetheless, the Court clearly warned the Legislature that the system was on the verge of "an impending constitutional violation" and questioned "whether the system's predicted drift toward constitutional inadequacy will be avoided by legislative reaction to widespread calls for changes." *Id.* at 790.

C. House Bill 1 – A Short Term Fix

113. In April and May of 2006, the 79th Texas Legislature passed House Bill 1 to respond to the Supreme Court's decision in *West Orange Cove II*. House Bill 1 was signed by the Governor just days before the Court's mandate was scheduled to take effect on June 1, 2006.

114. In order to address the Supreme Court's decision that the Texas school finance system had deteriorated into unconstitutional state property tax, House Bill 1 appropriated state funds to replace approximately one-third of local school districts' maintenance and operations taxes, effectively "buying down" or "compressing" local M&O tax rates for most school districts from $1.50 to $1.00 in the the 2006–2007 and 2007–2008 school years. After the 2007-2008 school year, the compression percentage is set in the State's general appropriations act and is a function of the amount of state money appropriated for the purpose of "buying down" or "compressing" local M&O property tax rates.

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115. Importantly, in House Bill 1 the Texas Legislature recognized that simply reducing local school districts' M&O property tax rates would not address the Supreme Court's finding that the system had devolved into an unconstitutional state property tax if local districts still did not have "meaningful discretion" over their own tax rates and revenues. After all, if school districts still were forced to tax at the new lower M&O maximum rate to meet state requirements, then the same constitutional failing would continue to exist, just at different M&O tax rates.

116. In an attempt to provide school districts with the constitutionally required "meaningful discretion," House Bill 1 included three provisions. First, the State provided districts with an increase in state funds, in addition to the amount needed to "buy down" or "compress" local M&O tax rates, of about $1.8 billion for the 2006-2007 school year, an average increase of about 8 percent. However, much of this new money was immediately required to be used by districts for new state mandates, thereby reducing the intended local discretion. For example, the State mandated that districts use about one-half of any new money for an across–the–board pay increase for teachers, and full-time nurses, counselors, librarians and speech pathologists.

117. Second, House Bill 1 allowed local school boards to raise up to 4 cents of M&O taxes above the compressed rate. These four pennies commonly were referred to as "golden" pennies, because they were equalized to a much higher level than other components of the school finance system – to the wealth level of Austin Independent School District - and because they were not subject to recapture. As with the new state aid, these optional pennies initially provided some temporary capacity and discretion for most school districts, but were subsequently needed to meet increasing state mandates and performance requirements.

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118. Third, House Bill 1 authorized districts with a compressed M&O tax rate of $1.00 to raise up to 13 cents of M&O taxes above the compressed rate and the 4 cents. The first two of these 13 cents also were "golden" pennies, the same as the 4 cents that local boards had discretion to raise. The remaining 11 cents were equalized to a lower level than either the first $1.00 of M&O tax effort or the "golden" pennies, and these 11 cents were subject to recapture at a higher percentage than the first $1.00 of M&O tax effort. However, these 13 cents may only be levied by a district if approved by the district's voters at a special election called for that purpose, known as a tax ratification election ("TRE"). If districts do not have reasonable access to these 13 cents, or if these pennies now are necessary to meet increasing State mandates and performance requirements, or to replace state funding cuts, then these 13 cents do not provide the constitutionally required "meaningful discretion."

119. The compression of local property taxes in House Bill 1 dramatically reduced the capacity of the overall school finance system to generate revenue needed to educate a growing population of students to higher state standards. The Legislative Budget Board estimated that House Bill 1's compression of local M&O tax rates by one-third would reduce local school districts' revenues by $6.58 billion in 2008.

120. In order to replace this significant loss of local revenue, in the same special session the 79th Texas Legislature enacted a restructured business margins tax and increased cigarette taxes. From the very outset, the State recognized that the new taxes would not fully fund the compression of local school taxes, and state funds would be needed from other sources for this purpose. This difference between the cost of compressing school districts' M&O property taxes and the revenue generated by the increased taxes is referred to as a "structural deficit."

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121. Crucially, in special session in 2006 the 79th Legislature did not revise the formulas that distributed funds to school districts in a rational manner to reflect the actual costs of meeting rising state performance requirements for a diverse student population and school districts. Ultimately, in House Bill 1 the Legislature resorted to creating massive new hold-harmless provisions, commonly known as "target revenue," that locked most districts in at either their 2005-2006 level of state and local revenue per weighted student, or at the level of state and local revenue per weighted student that a district would have generated in 2006-2007 under the pre-House Bill 1 funding system, whichever was greater. To this day, in the 2011-2012 school year, funding for most school districts still is set by this massive "target revenue" hold-harmless provision.

122. The Texas school finance system as created in the Texas Education Code, Chapters 41 and 42, contains numerous adjustments (commonly referred to collectively as "weighs and adjustments") that are at least in theory intended to recognize the additional costs associated with specific groups of students, specific instructional arrangements, or specific district characteristics. For example, students needing accelerated instruction or special language education receive an additional funding weight, students needing special education services receive additional weights or adjustments depending on their disability or instructional arrangement, all districts receive a cost of education adjustment to reflect costs beyond districts' control, smaller districts receive weights or adjustments based on their small size and/or sparsity, and so on.

123. Unfortunately, most of these weights and adjustments have not been reviewed or updated in many years, and they do not reflect adequately or equitably the true cost of educating students to the State's rising performance requirements. Some of these weights and adjustments have not been reviewed or updated since before the fall of the Berlin Wall. Studies of the true

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costs of meeting state performance requirements have not been completed by the Legislative Budget Board since House Bill 1. Such studies have been done prior to that time and can be done in a way that reliably reflects the true cost of the state's performance requirements. Special legislative committees have not produced any recommendations to update the weights and adjustments. The State has failed to keep its funding system current with its own performance requirements. As a result of this longstanding inattention, the weights and adjustments now are merely one more significant component of a structurally unsound school finance system. Because the State has not made any effort to ensure that the existing weights and adjustments actually are related to the true cost of meeting the State's own rising performance requirements for all students and all districts, the weights and adjustments now are inadequate, inequitable, arbitrary, and inefficient.

124. In 2009, the 81st Texas Legislature increased funding for public education by slightly more than $1.8 billion for the 2010-2011 biennium. However, all of this increase resulted from a one-time infusion of federal funds provided to the State through the American Recovery and Reinvestment Act of 2009 (the "ARRA"), commonly referred to as "stimulus" funds. State general revenue support for public education actually declined by about $3.2 billion for the biennium. Also, the State mandated that school districts use about one-half of these one-time federal funds for an across-the-board pay increase for teachers, and full time nurses, counselors, librarians and speck pathologists.

D. The Aftermath of House Bill 1

125. The Legislature's failure to make the necessary fundamental structural changes to the public school finance system in the wake of *West Orange Cove II* has created a constitutional crisis in Texas. A number of factors have brought the State to this point.

Texas is Still Growing and Changing

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126. At the time of the Supreme Court's decision in *West Orange Cove II* in 2005, total enrollment in Texas public schools was just over 4.5 million students. For the 2010-2011 school year, total enrollment had risen to more than 4.9 million students and is expected to exceed 5 million students in the current school year. Over the last five years, on average, student enrollment in Texas public schools has increased by nearly 90,000 students per year. Over the last decade, the Texas student population has increased by a total of 862,184 students, or by 21.2 percent, which is nearly fourfold the national rate of student enrollment growth during the period of 1998 through 2008 (5.9 percent). This rapid growth has driven the need for more resources for Texas schools—including teachers, support staff, equipment, instructional materials, technology, facilities, transportation, and others that are essential to providing students with a reasonable opportunity to meet current state standards.

127. Importantly, the Texas student population is not just growing—it is changing. By far the largest increase in student enrollment has been in Hispanic students. Over the last decade, Hispanic student enrollment increased by 829,440 students, or more than fifty percent. For the first time in state history, Hispanic students accounted for more than fifty percent of the total student population in Texas for the 2010-2011 academic year.

128. The State's student population is changing in another way: it is getting poorer. Over the last decade, the number of students characterized as "economically disadvantaged" increased by 911,395 students, or by more than forty-five percent. This rate of growth doubles that of statewide enrollment growth generally, and as a result today almost sixty percent of Texas students are economically disadvantaged.

129. These changes are occurring throughout the State. Many school districts in what were once characterized as middle-class, homogenous communities now serve some of the most diverse populations in the State, with high numbers of students requiring extra support,

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remediation, and other programs in order to afford them a reasonable opportunity to meet the State's standards and expectations. Plaintiff Fort Bend ISD, for example—one of the largest districts with rapid growth—has experienced remarkable change as well. In 1992, Fort Bend ISD had just over 40,000 students, the largest percentage of whom were white (45.71 percent). The remainder identified themselves as 28.56 percent African American, 14.42 Hispanic, and 11.25 percent Asian/Pacific Islander. Now, less than two decades later, the Fort Bend ISD student population is almost 70,000 students strong and comprises one of the most diverse and balanced ethnic populations in the State: 22.57 percent of students are white, 30.95 percent African-American, 24.48 percent Hispanic, and 22.57 Asian/Pacific Islander. Similarly, plaintiffs Austin ISD, La Porte ISD, and Amarillo ISD are three very different districts in terms of geography, total student enrollment, and wealth levels under the present funding system. Yet all three educate increasingly diverse and economically disadvantaged student populations, and all have been significantly impacted by the failure of the State to adequately fund public education.

130. The importance of these changes to Texas' future cannot be overstated. In *West Orange Cove*, the trial court made key findings based on the testimony of Dr. Steve Murdock, who was the official state demographer at the time, that are as relevant today as they were six years ago. Dr. Murdock concluded that if gaps between Whites and minorities in educational attainment levels and household income remain in place Texas will "have a population that not only will be poorer, less well educated, and more in need of numerous forms of state services than its present population but also less able to support such services." Findings of Fact and Conclusions of Law, *West Orange Cove, et al. v. Neeley, et al.,* November 30, 2004, FOF 70. Conversely, closing this gap through increased education and other means could mean that Texas' population growth will be a source of increased private and public sector growth in the

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future. *Id.*, FOF 71. A more educated population is more economically productive and competitive, less dependent on social services, and less likely to commit crimes. The converse is true for less educated population. The choice between these two paths remains before Texas today.

Standards are on the Rise

131. This growing and changing student population faces the highest academic standards and expectations in Texas history. Beginning with the 2011-2012 school year, the State of Texas Assessments of Academic Readiness (STAAR) testing program will replace the Texas Assessment of Knowledge and Skills (TAKS) as the measure of how well Texas students are meeting state standards. For the first time, the Texas testing system will focus on "increasing postsecondary readiness of graduating high school students and helping to ensure that Texas students are competitive with other students both nationally and internationally." *See* TEA's "State of Texas Assessments of Academic Readiness Questions and Answers" (Updated October 31, 2011) at http://www.txetests.com/FAQS/index.asp?c=`11`&p=`2`. This post-secondary readiness standard has been approved by the State Commissioner of Education and incorporated in the State Board of Education's state curriculum standards.

132. STAAR includes annual exams for students in grades 3 through 8, and a series of end-of-course ("EOC") exams that high school students must pass in order to graduate. By the State's own admission and by design, STAAR is a much more rigorous testing system than TAKS. The total number of questions under STAAR has been increased and, unlike under TAKS, students will take the test in a time-limited environment. Moreover, STAAR questions will be more difficult, "assessing skills at a greater depth and level of cognitive complexity. In this way the tests will be better able to measure a greater range of student achievement and establish strong links to postsecondary readiness." *Id.*

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133. Public schools have worked diligently to help Texas students be successful. For the high school graduating class of 2010, 84.3 percent graduated within four years, including 81.9 percent of low income students. However, of this graduating class, only 52 percent were designated as "college ready" by TEA, including only 38 percent of economically disadvantaged students. Only 26.9 percent of the 2010 graduating class had ACT or SAT scores above the State standard for college readiness, and only 16 percent reached the commended performance level on all TAKS test taken. In short, in spite of significant progress made in the past and the outstanding performance of some Texas students, a significant challenge is confronting public schools to help all students meet the State's new post-secondary readiness performance requirements. As the Supreme Court observed in WOC II, for the State to ask schools to achieve more without resources is equivalent to asking people to make bricks with straw. Unfortunately, that is precisely the path the State has chosen to take.

Facilities

134. Districts that are experiencing significant student growth are hard hit by the State's failure to make the required structural changes envisioned by the Supreme Court. Facilities clearly are part of the overall resources needed to provide students the constitutionally required general diffusion of knowledge.

135. The Texas Constitution, Article VII, Section 3, authorizes the legislature to establish laws allowing school districts to issue debt, subject to a vote of their residents, to build and equip facilities. In accordance with the Texas Education Code, Section 45.003, school districts may issue either unlimited tax rate debt, or limited tax rate debt. If a district ever approved unlimited tax rate debt, then any subsequent proposed bonds must be for unlimited tax rate debt. Most school districts in Texas issue unlimited tax rate debt. The portion of a district's total tax rate that is necessary to pay the principal and interest on bonds commonly is referred to

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as the interest and sinking fund ("I&S") component of the total tax rate.

136. In addition to authorizing school districts to issue I&S debt to build and equip needed facilities, the Legislature has enacted three distinct methods to provide State assistance with facilities. First, the Texas Constitution, Article VII, Section 5, and the Texas Education Code, Chapter 45, Subchapter C, authorize school districts' bonds to be guaranteed by the corpus of the Permanent School Fund, thereby securing higher credit ratings and lower interest rates for Texas school bonds. Since its inception in 1983, the bond guarantee program has saved school districts and taxpayers tens of millions of dollars in interest costs.

137. Second, in 1997 the Legislature created the Instructional Facility Allotment ("IFA"), through which appropriated State funds are distributed to qualifying school districts to help pay the principal and interest on qualifying bonds to construct, acquire, renovate or improve an educational facility.

138. Third, in 1999 the Legislature created the Assistance with Payment of Existing Debt ("EDA"), through which appropriated State funds are provided to school districts to reduce the I&S tax rate necessary to pay the principal and interest on existing debt.

139. Collectively, the three methods to assist school districts with debt could provide a comprehensive mechanism for the State to help make safe and appropriate facilities available to Texas school children. Unfortunately, these methods, particularly the IFA and EDA programs, have suffered from the same neglect and inattention over the years that has characterized the State's support for instructional programs and other operating costs. When originally created in 1997 and 1999, the IFA and EDA provided some assistance to school districts in which ninety-one percent of the State's school children were enrolled. The level of State support for the IFA and EDA has not increased since their creation. Consequently, only fifty-seven percent of the State's school children now are in districts eligible for assistance through the IFA or EDA.

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140. Although most school districts issue unlimited tax rate debt, as a practical matter there is a fifty cent I&S limit set by state statute. In order to receive approval of bonds by the Attorney General of Texas, which is necessary for the bonds to be sellable in the market, a school district must demonstrate that it can pay the principal and interest on all outstanding bonds with an I&S tax rate of fifty cents or less.

141. Because of the erosion of State support for facilities through the IFA and EDA, many school districts now are being forced to issue bonds for longer maturities, sometimes up to forty years, in order to keep their annual I&S tax rates at fifty cents or less. These longer maturities that are necessary to meet state requirements are increasing total payments by school districts over the life of the bonds by tens of millions of dollars.

142. In 2011, the Legislature completely eliminated funding for the New Instructional Facilities Allotment ("NIFA"), which was intended to assist growing school districts with the added operating costs associated with opening new facilities.

143. The State program to assist school districts with the necessary costs of providing appropriate facilities for the State's growing student population now is part of an inadequate and inefficient funding system.

E. The 2011 Legislative Session

144. Despite a number of compelling factors in favor of increasing state funding for public education—including rapid student population growth, a demographic that is increasingly economically disadvantaged, the growing needs of students generally, heightened standards, and rising education costs—in 2011 the 82nd legislative session closed with historic cuts to public education funding. Legislative appropriations for public education spending were reduced by approximately $5.4 billion. Of this cut, approximately $4.0 billion consisted of amounts to which districts were formerly entitled under the "foundation school program" (either formula or

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hold-harmless) in order to fund current services.

145. Of the approximately $1.4 billion in additional cuts, many were made by reducing or eliminating special programs, grants, and allotments designed to afford at-risk students the opportunity to meet Texas standards. Grants for full-day prekindergarten were eliminated, and funding was reduced for tutoring, credit recovery, drop-out prevention, and other programs. These cuts in state aid to school districts amount to an average of about 5.2 percent of state and local funds for the 2011-2012 academic year and about 5.8 percent for 2012-2013.

F. The Sum of Legislative Choices is an Unconstitutional System

146. The Legislature's cuts to education spending have had, and will continue to have, a profound effect on school districts' ability to deliver a high-quality education and to provide all students with the opportunity to meet Texas standards. Because almost eighty percent of school district operating expenses relate to personnel—and much of the remaining twenty percent is tied to fixed expenses such as utilities, insurance and the like—districts' budget cuts on the scale of those made this year invariably impact teacher and staffing ratios. Many school districts have already eliminated many teaching positions, as well as staff positions that provide direct support to students. Not surprisingly, these reductions have led to a significant increase in the number of school district requests for waivers from state-mandated class size limits. Because the level of state funding drops even further for many school districts in the 2012-2013 school year, additional staff cuts and class size waivers are inevitable. This trend is exactly the opposite of what is needed for the rapidly growing, changing student population to meet new, higher standards in Texas.

147. Despite original intentions, the tax ratification election mechanism established by the Legislature in House Bill 1 does not save the finance system from unconstitutionality. TREs were designed to provide school districts with the discretion to raise tax revenue locally in order

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to supplement or exceed state curriculum and performance minimums. More than a quarter of Texas school districts, including some of the plaintiffs named herein, have tax rates that exceed the $1.04 cap set by House Bill 1. Significantly, these districts held TREs not to supplement state requirements but rather merely to meet them while struggling under increasing financial strain. For those districts that have declined to hold elections thus far—or worse, that have tried and failed—the TRE option is illusory. Today, if all districts were to undertake successful TREs the revenue generated would mainly just replace the funds lost as a result of the most recent Legislative cuts. The TRE process simply fails to provide the meaningful discretion required by *West Orange Cove II*. Forcing local tax rate increases to make up for the State's failure to support the standards it has set is hardly the kind of meaningful discretion required by the Texas Constitution.

148. Finally, the funding system overall has become arbitrary, difficult for the public to understand, and inefficient. In addition to systemic underfunding of districts on the whole, there are now fixed differences among districts that are inexplicable and simply cannot be justified. Each district's funding is locked at either a "target revenue" or a formula-based maximum, neither of which is tied in any real way to the actual costs of providing the general diffusion of knowledge required by the Texas Constitution. There is no way that such a system, with all of its flaws and shortcomings, could possibly afford all Texas students an opportunity to meet state education standards.

149. The solution, as the Supreme Court has presciently warned, is not to simply level the system down to some pre-determined "funds available" amount. The solution must be a rational system that both adequately and equitably lifts all schools and children to the high performance requirements the State has set, and that preserves "meaningful discretion" for communities to supplement the State requirements with choices of their own. By ignoring and

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understating the true cost of its own determination of "general diffusion of knowledge", the State has harmed both the adequacy and equity of the system, and has cynically pitted school districts and communities against each other in a zero-sum conflict in which some only gain at the expense of others. This broken system simply does not meet the high expectations and clear duties of the Texas Constitution.

VI.
CAUSES OF ACTION

Declaratory Judgment

150. Plaintiffs bring the following claims under the Uniform Declaratory Judgment Act. *See* TEX. CIV. PRAC. & REMEDIES CODE, § 37.001 *et seq.*

151. All of the foregoing factual allegations are incorporated herein by reference.

152. The Texas Constitution requires a public school finance system that (1) permits districts to raise and receive sufficient funds to provide a general diffusion of knowledge, i.e., a constitutionally adequate education (article VII, section 1), (2) in an efficient system that provides districts a substantially equal opportunity to have access to educational funds (article VII, section 1), and (3) leaves districts "meaningful discretion" to set their property tax rates in order to provide local enrichment programs to their students, if they so choose (article VIII, section 1-e). The current system is in violation of all of these requirements, including with respect to the plaintiffs named in this Petition.

1. Adequacy Claim

153. For the reasons stated above, Plaintiffs request that the Court enter a judgment declaring that the current school finance system violates article VII, section 1 of the Texas Constitution in that it is inadequate and fails to provide for the general diffusion of knowledge.

154. In the alternative, Plaintiffs request such a declaration as to their particular districts.

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2. Efficiency Claim

155. For the reasons stated above, Plaintiffs request that the Court enter a judgment declaring that the current school finance system violates article VII, section 1 of the Texas Constitution in that it is inefficient, and arbitrarily funds districts at different levels below the constitutionally required level of general diffusion of knowledge.

156. In the alternative, Plaintiffs request such a declaration as to their particular districts.

3. State Property Tax Claim

157. Plaintiffs also request that the Court enter a judgment declaring that the current system of school finance prevents districts from exercising "meaningful discretion" in setting their tax rates, thereby violating article VIII, section 1-e of the Texas Constitution. School districts, including Plaintiffs, have lost meaningful discretion to set their M&O tax rates, as their current rates effectively serve as a floor (because they cannot lower taxes without further compromising their ability to meet state standards and requirements) and a ceiling (because they are either legally or practically unable to raise rates further). Further, to the extent any plaintiff district could raise taxes to the statutory maximum rate, the district would still remain unable to meaningfully use local tax dollars for local enrichment beyond the level required for a constitutionally adequate education, in violation of the prohibition on state ad valorem taxes.

158. In the alternative, Plaintiffs request such a declaration as to their particular districts.

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VII.
RELIEF REQUESTED

159. Plaintiffs respectfully request that the Court grant the following relief:

A. Plaintiffs request that the Court grant the declaratory relief described above.

B. Plaintiffs seek a permanent injunction prohibiting Defendants from giving any force and effect to the sections of the Texas Education Code relating to the financing of public school education (Chapters 41 and 42 of the Texas Education Code) and from distributing any money under the current Texas school financing system until the constitutional violation is remedied. Plaintiffs request that the Legislature be given a reasonable opportunity to cure the constitutional deficiencies in the finance system before the foregoing prohibitions take effect.

C. Plaintiffs request that the Court retain continuing jurisdiction over this matter until the Court has determined that the Defendants have fully and properly complied with its orders.

D. Plaintiffs request that the Court require the Defendants to determine, in accordance with a Court-approved methodology and with the input and participation of the Plaintiffs, the true costs of meeting the State's performance requirements for all school districts and students, including appropriate weights and adjustments to accurately reflect the cost associated with specific groups of students, specific instructional arrangements, and/or specific district characteristics.

E. Plaintiffs seek recovery of their reasonable attorneys' fees, costs, and expenses as provided by Section 37.009 of the Texas Civil Practices and Remedies Code and as otherwise allowed by law.

F. Plaintiffs request that they be awarded such other relief at law and in equity to which they may be justly entitled.

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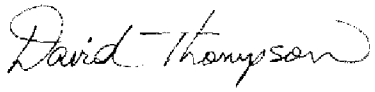
CONCLUSION AND PRAYER

For the foregoing reasons, Plaintiffs respectfully request that the Court grant the declaratory and injunctive relief sought above, that Plaintiffs be awarded their attorneys' fees, costs and expenses, and that Plaintiffs be awarded such other relief at law and in equity to which they may be justly entitled.

Respectfully submitted,

THOMPSON & HORTON LLP



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document has been forwarded on this 11th day of June, 2012 to counsel of record in accordance with Rule 21a of the Texas Rules of Civil Procedure, as follows:

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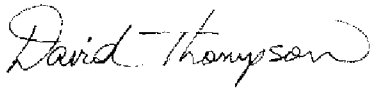

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