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Amalia Rodriguez-Mendoza
District Clerk
Travis District
D-1-GN-11-003130

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

THE TEXAS TAXPAYER & STUDENT FAIRNESS COALITION; ALIEF I.S.D., CANUTILLO I.S.D., ELGIN I.S.D., GREENVILLE I.S.D., HILLSBORO, I.S.D., HUTTO I.S.D., LAKE WORTH I.S.D., LITTLE ELM I.S.D., NACOGDOCHES I.S.D., PARIS I.S.D., PFLUGERVILLE I.S.D., QUINLAN I.S.D., SAN ANTONIO I.S.D., STAMFORD I.S.D., TAYLOR I.S.D., VAN I.S.D.; RANDY PITTENGER; CHIP LANGSTON; NORMAN BAKER; BRAD KING; and SHELBY DAVIDSON, as Next Friend of CORTLAND, CARLI AND CASI DAVIDSON,	§	IN THE DISTRICT COURT
Plaintiffs	§	
vs.	§	
ROBERT SCOTT, COMMISSIONER OF EDUCATION, IN HIS OFFICIAL CAPACITY; SUSAN COMBS, TEXAS COMPTROLLER OF PUBLIC ACCOUNTS, IN HER OFFICIAL CAPACITY; TEXAS STATE BOARD OF EDUCATION,	§	200TH JUDICIAL DISTRICT
Defendants.	§	TRAVIS COUNTY, TEXAS

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PLAINTIFFS' THIRD AMENDED ORIGINAL PETITION AND REQUEST FOR DECLARATORY JUDGMENT

NOW COME Plaintiffs and bring this Third Amended Original Petition and Request for Declaratory Judgment and would show the Court as follows:

DISCOVERY LEVEL

1. Discovery will proceed under level 3 of the Tex. R. Civ. P. 190.

PARTIES

2. Plaintiff, THE TEXAS TAXPAYER AND STUDENT FAIRNESS COALITION is a Texas non-profit composed of school districts, students, parents, and businesses in Texas directly affected by the school finance system. There are 416 districts in the Coalition and those districts educate over 1.3 million students. The following school districts are members of the Coalition:

1. Academy ISD
2. Agua Dulce ISD
3. Aldine ISD
4. Aledo ISD
5. Alice ISD
6. Alief ISD
7. Alpine ISD
8. Anahuac ISD
9. Anson ISD
10. Anthony ISD
11. Anton ISD
12. Apple Springs ISD
13. Aquilla ISD
14. Aransas Pass ISD
15. Archer City ISD
16. Arlington ISD
17. Athens ISD
18. Atlanta ISD
19. Aubrey ISD
20. Avalon ISD
21. Axtell ISD
22. Azle ISD
23. Balmorhea ISD
24. Banquete ISD
25. Bartlett ISD
26. Beeville ISD
27. Bellevue ISD
28. Bells ISD
29. Belton ISD
30. Benjamin ISD
31. Big Sandy ISD (Upshur)
32. Bland ISD
33. Blanket ISD
34. Blue Ridge ISD

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35. Blum ISD
36. Boles ISD
37. Bonham ISD
38. Bosqueville ISD
39. Brackett ISD
40. Bridge City ISD
41. Brock ISD
42. Brookesmith ISD
43. Brownfield ISD
44. Brownwood ISD
45. Bruceville-Eddy ISD
46. Bryan ISD
47. Bullard ISD
48. Buna ISD
49. Burkburnett ISD
50. Burkeville ISD
51. Burleson ISD
52. Burnet Cons ISD
53. Bynum ISD
54. Caddo Mills ISD
55. Calallen ISD
56. Callisburg ISD
57. Campbell ISD
58. Canton ISD
59. Canutillo ISD
60. Canyon ISD
61. Carrizo Springs Cons ISD
62. Castleberry ISD
63. Celina ISD
64. Center ISD
65. Centerville ISD (Trinity)
66. Central ISD
67. Chapel Hill ISD (Smith)
68. Cherokee ISD
69. Childress ISD
70. Chillicothe ISD
71. Chilton ISD
72. Chisum ISD
73. Christoval ISD
74. Clarendon ISD
75. Cleburne ISD
76. Clint ISD
77. Coldspring-Oakhurst Cons ISD
78. Coleman ISD
79. Colorado ISD
80. Columbia-Brazoria ISD

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81. Commerce ISD
82. Community ISD
83. Connally ISD
84. Coolidge ISD
85. Cooper ISD
86. Corpus Christi ISD
87. Corrigan-Camden ISD
88. Cotton Center ISD
89. Cotulla ISD
90. Coupland ISD
91. Covington ISD
92. Crandall ISD
93. Crosbyton Cons ISD
94. Crowell ISD
95. Crystal City ISD
96. Cuero ISD
97. Culberson County-Allamore ISD
98. Danbury ISD
99. Dekalb ISD
100. Denison ISD
101. Desoto ISD
102. Detroit ISD
103. Devine ISD
104. D'Hanis ISD
105. Diboll ISD
106. Dickinson ISD
107. Dilley ISD
108. Dodd City ISD
109. Donna ISD
110. Dublin ISD
111. Early ISD
112. Ector ISD
113. Edgewood ISD (Van Zandt)
114. Edinburg Cons ISD
115. El Paso ISD
116. Elgin ISD
117. Ennis ISD
118. Era ISD
119. Etoile ISD
120. Eula ISD
121. Eustace ISD
122. Evant ISD
123. Everman ISD
124. Excelsior ISD
125. Fabens ISD
126. Falls City ISD

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127. Fannindel ISD
128. Farmersville ISD
129. Ferris ISD
130. Flatonia ISD
131. Floresville ISD
132. Floydada ISD
133. Frost ISD
134. Fruitvale ISD
135. Ft Davis ISD
136. Ft Hancock ISD
137. Gainesville ISD
138. Ganado ISD
139. Gladewater ISD
140. Gonzales ISD
141. Goodrich ISD
142. Gorman ISD
143. Grandview ISD
144. Granger ISD
145. Grape Creek ISD
146. Greenville ISD
147. Gregory-Portland ISD
148. Groom ISD
149. Groveton ISD
150. Gunter ISD
151. Hale Center ISD
152. Hamilton ISD
153. Hamlin ISD
154. Hardin ISD
155. Harlandale ISD
156. Harleton ISD
157. Hart ISD
158. Haskell Cons ISD
159. Hawley ISD
160. Hearne ISD
161. Hedley ISD
162. Hemphill ISD
163. Henrietta ISD
164. Hereford ISD
165. Hico ISD
166. Hidalgo ISD
167. High Island ISD
168. Hillsboro ISD
169. Hitchcock ISD
170. Honey Grove ISD
171. Howe ISD
172. Hubbard ISD (Hill)

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173. Huckabay ISD
174. Hudson ISD
175. Huntington ISD
176. Huntsville ISD
177. Hutto ISD
178. Idalou ISD
179. Ingram ISD
180. Iola ISD
181. Italy ISD
182. Jacksonville ISD
183. Jasper ISD
184. Joaquin ISD
185. Joshua ISD
186. Jourdanton ISD
187. Judson ISD
188. Karnes City ISD
189. Kaufman ISD
190. Kemp ISD
191. Kenedy ISD
192. Kennedale ISD
193. Kerens ISD
194. Kilgore ISD
195. Kirbyville Cons ISD
196. Knippa ISD
197. Knox City-O'Brien ISD
198. Kopperl ISD
199. La Pryor ISD
200. La Vega ISD
201. La Vernia ISD
202. La Villa ISD
203. Lake Dallas ISD
204. Lake Worth ISD
205. Lampasas ISD
206. Lasara ISD
207. Latexo ISD
208. Leonard ISD
209. Leveretts Chapel ISD
210. Lindale ISD
211. Little Cypress-Mauriceville Cons ISD
212. Little Elm ISD
213. Littlefield ISD
214. Livingston ISD
215. Lockney ISD
216. Lometa ISD
217. Longview ISD
218. Lorena ISD

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219. Los Fresnos Cons ISD
220. Louise ISD
221. Lubbock ISD
222. Lueders-Avoca ISD
223. Lufkin ISD
224. Lyford Cons ISD
225. Lytle ISD
226. Mabank ISD
227. Madisonville Cons ISD
228. Mansfield ISD
229. Marfa ISD
230. Martins Mill ISD
231. Mathis ISD
232. Maud ISD
233. McDade ISD
234. McLeod ISD
235. Meadow ISD
236. Mercedes ISD
237. Mesquite ISD
238. Milano ISD
239. Miles ISD
240. Milford ISD
241. Miller Grove ISD
242. Millsap ISD
243. Mineola ISD
244. Mineral Wells ISD
245. Morton ISD
246. Motley County ISD
247. Mount Pleasant ISD
248. Muenster ISD
249. Muleshoe ISD
250. Mumford ISD
251. Munday Cons ISD
252. Nacogdoches ISD
253. Navarro ISD
254. Navasota ISD
255. Needville ISD
256. New Boston ISD
257. New Diana ISD
258. New Home ISD
259. Newcastle ISD
260. Newton ISD
261. Nixon-Smiley Cons ISD
262. North Forest ISD
263. North Lamar ISD
264. Northside ISD (Wilbarger)

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265. Novice ISD
266. Nueces Canyon Cons ISD
267. Odem-Edroy ISD
268. Oglesby ISD
269. Olfen ISD
270. Olney ISD
271. Olton ISD
272. Onalaska ISD
273. Ore City ISD
274. Paducah ISD
275. Palestine ISD
276. Palmer ISD
277. Panther Creek Cons ISD
278. Paradise ISD
279. Paris ISD
280. Patton Springs ISD
281. Peaster ISD
282. Penelope ISD
283. Petersburg ISD
284. Petrolia ISD
285. Pettus ISD
286. Pflugerville ISD
287. Pharr-San Juan-Alamo ISD
288. Pilot Point ISD
289. Poolville ISD
290. Poteet ISD
291. Poth ISD
292. Prairiland ISD
293. Presidio ISD
294. Priddy ISD
295. Princeton ISD
296. Quanah ISD
297. Queen City ISD
298. Quinlan ISD
299. Rains ISD
300. Ralls ISD
301. Ramirez CSD
302. Ricardo ISD
303. Rice ISD
304. Rio Hondo ISD
305. Rising Star ISD
306. River Road ISD
307. Robinson ISD
308. Robstown ISD
309. Rogers ISD
310. Roosevelt ISD

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311. Ropes ISD
312. Rosebud-Lott ISD
313. Rotan ISD
314. Roxton ISD
315. Royse City ISD
316. Rule ISD
317. Rusk ISD
318. S and S Cons ISD
319. Sabine ISD
320. Sam Rayburn ISD
321. San Angelo ISD
322. San Antonio ISD
323. San Augustine ISD
324. San Elizario ISD
325. San Perlita ISD
326. San Saba ISD
327. San Vicente ISD
328. Sanford-Fritch ISD
329. Santa Anna ISD
330. Santa Rosa ISD
331. Santo ISD
332. Savoy ISD
333. Schulenburg ISD
334. Scurry-Rosser ISD
335. Seguin ISD
336. Seymour ISD
337. Shallowater ISD
338. Shamrock ISD
339. Sidney ISD
340. Silsbee ISD
341. Simms ISD
342. Sinton ISD
343. Skidmore-Tynan ISD
344. Slaton ISD
345. Smithville ISD
346. Smyer ISD
347. Snook ISD
348. Socorro ISD
349. Somerville ISD
350. South San Antonio ISD
351. Southland ISD
352. Southside ISD
353. Southwest ISD
354. Spring Hill ISD
355. Spring ISD
356. Springlake-Earth ISD

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357. Springtown ISD
358. Spurger ISD
359. Stamford ISD
360. Star ISD
361. Stephenville ISD
362. Stockdale ISD
363. Strawn ISD
364. Sweetwater ISD
365. Taft ISD
366. Tahoka ISD
367. Taylor ISD
368. Temple ISD
369. Terlingua CSD
370. Texline ISD
371. Thorndale ISD
372. Thrall ISD
373. Timpson ISD
374. Tioga ISD
375. Tolar ISD
376. Tornillo ISD
377. Trenton ISD
378. Trinity ISD
379. Troy ISD
380. Tulia ISD
381. Tyler ISD
382. Union Grove ISD
383. United ISD
384. Valentine ISD
385. Valley View ISD (Cooke)
386. Van ISD
387. Venus ISD
388. Veribest ISD
389. Vernon ISD
390. Vidor ISD
391. Warren ISD
392. Waskom ISD
393. Water Valley ISD
394. Wells ISD
395. West Hardin County Cons ISD
396. West Oso ISD
397. West Sabine ISD
398. Westphalia ISD
399. Westwood ISD
400. Wharton ISD
401. White Oak ISD
402. Whitesboro ISD

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403. Whitewright ISD
404. Whitharral ISD
405. Whitney ISD
406. Wichita Falls ISD
407. Windthorst ISD
408. Winnsboro ISD
409. Winona ISD
410. Woden ISD
411. Woodsboro ISD
412. Woodson ISD
413. Wortham ISD
414. Ysleta ISD
415. Zavalla ISD
416. Zephyr ISD

3. Plaintiffs, ALIEF I.S.D., CANUTILLO I.S.D., ELGIN I.S.D., GREENVILLE I.S.D., HILLSBORO I.S.D., HUTTO I.S.D., LAKE WORTH I.S.D., LITTLE ELM I.S.D., NACOGDOCHES I.S.D., PARIS I.S.D., PFLUGERVILLE I.S.D., QUINLAN I.S.D., STAMFORD I.S.D., SAN ANTONIO I.S.D., TAYLOR I.S.D., and VAN I.S.D. are school districts in Texas who are funded through the school finance system.

4. Plaintiff, RANDY PITTENGER owns property in the Belton Independent School District and pays property taxes in the district. His children are no longer in the district schools.

5. Plaintiff, CHIP LANGSTON owns property in the Kaufman Independent School District and pays property taxes in the district. His children are no longer in the district schools.

6. Plaintiff, NORMAN BAKER, owns property in the Hillsboro I.S.D. and pays property taxes in the district. His daughter attends school in the Hillsboro I.S.D.

7. Plaintiff, BRAD KING, owns property in the Bryan I.S.D. and pays property taxes in the district. He does not have children attending school in the district.

8. Plaintiff, SHELBY DAVIDSON is a parent of Cortland, Carli and Casi Davidson who are students in the Van I.S.D., and brings this in his individual capacity and as next friend of

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Cortland Davidson, Carli Davidson, and Casi Davidson. Cortland Davidson is a junior high student, and Carli and Casi are elementary school students.

9. Defendant, ROBERT SCOTT is the Texas Commissioner of Education and has appeared through the Texas Attorney General.

10. Defendant, SUSAN COMBS is the Texas Comptroller of Public Accounts and has appeared through the Texas Attorney General.

11. Defendant, THE STATE BOARD OF EDUCATION is an elected body that sets policy for the Texas Education Agency. The Board has appeared through the Texas Attorney General.

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JURISDICTION AND VENUE

12. This Court has jurisdiction pursuant to Tex.Const. art. 5 § 8 and pursuant to the Texas Uniform Declaratory Judgment Act, § 37.001, *et seq.* of the Texas Civil Practices and Remedies Code.

13. Venue is proper in Travis County, Texas pursuant to § 15.002 (2) (3) and § 15.005 of the Texas Civil Practices and Remedies Code.

INTRODUCTION

14. Before the 82nd Legislature convened in January of 2011, Texas' funding for public education had already become an arbitrary hodge-podge of approaches rather than a coherent system and was inadequate to meet constitutional standards. The hodge-podge was built around a hold-harmless scheme adopted in 2006 called "Target Revenue," that resulted in huge differences in yields for similar tax effort and gave property-wealthy districts unconstitutionally greater access to educational dollars. This constitutional inefficiency was compounded in 2011 by SB1 passed by the 82nd Legislature which reduced school funding

formulas by $4 billion dollars in addition to other cuts in excess of $1 billion. In FY 2012, SB 1 makes across-the-board percentage reductions to districts' regular program funding. These losses in already low-funded districts have a harsher impact than similar cuts to a much higher funded district. In FY 2013, SB 1 cuts more from districts with Target Revenue, but limits their losses so that they will still have greater resources than the lower wealth districts.

15. Taxpayers in low wealth districts who are willing to tax themselves at the highest rates allowed are unable to access the same dollars for education as taxpayers in high wealth districts who tax themselves at lower rates. Nacogdoches ISD adopted the $1.17 maximum M&O tax rate in 2010-11, earning $5,487 per WADA, at the same time that Eanes ISD adopted a $1.04 tax rate and received $6,881. In return for a 13 cent higher tax rate paid by Nacogdoches ISD taxpayers, the state funding system rewarded Nacogdoches school children with $1,394 fewer dollars per WADA and over $10,000,000 fewer dollars total than they would have had at the Eanes funding level.

16. In 2010-11, at $1.00 tax rate in Tier 1, Austin I.S.D. with approximately 100,000 WADA was funded at $6,100 per WADA and Fort Worth I.S.D. at the same tax rate with similar WADA was funded at $5,100 per WADA, an overall funding gap of $1,000 per WADA. This difference in funding provides Austin I.S.D. with about $100 million per year more than the same tax effort makes available to Fort Worth I.S.D.

17. Substantial funding gaps exist throughout the system, with districts taxing at lower rates but receiving substantially more than corresponding districts taxing at higher rates. This is true for both Maintenance and Operations as well as Interest and Sinking funds for facilities.

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18. The weights utilized in the system have not been updated for years and significantly understate the true costs of educating children, particularly ESL and Comp Ed children. Low wealth districts tend to have a greater percentage of these types of children, making the funding gap even greater.

19. Many low wealth districts cannot legally access the same funding level as their wealthier counterparts due to the 1.17 cap on M&O tax and the limitations on I&S tax.

20. The operations funding gap is further exacerbated by the ability of high wealth districts to effectively use I&S funds for M&O purposes, an ability that the less wealthy districts do not have.

21. Over 300 school districts in Texas have adopted an M & O tax rate at the $1.17 tax cap in 2010-11 and do not have the capacity to rebound from the 2011 failure to fund. Additionally the lack of state funding will push more districts to the cap.

THE PUBLIC SCHOOL FINANCE SYSTEM IS UNCONSTITUTIONAL

Taxpayer Equity:

22. As Justice Hecht noted in his 2005 opinion "citizens who were willing to shoulder similar tax burdens, should have similar access to revenues for education." *West Orange Cove v. Neely*, 176 S.W.3d at 757 (Tex. 2005) (*West Orange Cove II*) (citing *Carrollton-Farmers Branch I.S.D. v. Edgewood I.S.D.*, 826 S.W.2d 489, 497 (Tex. 1992) (*Edgewood III*). Indeed, article VIII, § 1(a) of the Texas Constitution requires that all taxes be equal and uniform which requires that all persons in the same class be taxed alike. *Sharp v. Caterpillar, Inc.* 932 S.W.2d 230, 240 (Tex. App.—Austin, 1996, writ denied). There is no rational basis to justify why taxpayers in five hundred and forty-six districts (53%), even if they taxed themselves at the maximum of $1.17, could not access the state and local funding that is available at $1.04 to even

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the lowest funded of the 91 "net recapture" districts.[1] Further, the inequity associated with the "golden pennies"[2] means that taxpayers in low wealth districts willing to tax themselves above Tier 1 levels do not get the same benefit for their tax effort as the taxpayers in the highest wealth districts.

> The 1876 Constitution provided a structure whereby the burdens of school taxation fell equally and uniformly across the state, and each student in the state was entitled to exactly the same distribution of funds.
>
> . . . . .
>
> The framers opposed any schemes that would allow any classes of people to avoid an equal burden of taxation. (citations omitted.)

Edgewood I, 777 S.W.2d at 396 and n 5.

23. Plaintiff, taxpayer Randy Pittenger, owns property in the Central Texas district of Belton I.S.D. and is taxed at $1.17 for M & O, which tax rate raises $5,947 per WADA. On the other hand, a similarly situated taxpayer in another Central Texas district, Glen Rose I.S.D., with an M & O rate of $0.825, raises $8,895 per WADA. In other words, Randy Pittenger pays forty-two percent (42%) higher taxes while Glen Rose received fifty percent (50%) more in revenue per WADA.

24. Plaintiff, taxpayer Chip Langston, owns property in the Kaufman I.S.D. and is taxed at $1.17 for M &O, which tax rate raised $6,192 per WADA in 2010-11. In the next county, a taxpayer in Lovejoy ISD was taxed at $1.06, which tax rate raised $7,969. In other words, Chip Langston pays ten percent (10%) higher taxes while Lovejoy I.S.D. received nearly thirty percent (30%) more in revenue per WADA.

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[1] A "net recapture" district is one whose calculated recapture amount exceeds the amount of state funds it received. After recapture, these districts remain among the highest funded districts.

[2] The first six pennies of M&O tax rate above the district's compressed tax rate (CTR created by HB1 in 2006) constitute Tier 2, level 1 of the school finance formula. These pennies are known as the "golden pennies" because their guaranteed yield is tied to the wealth level of Austin I.S.D. (about 95 percentile or 24% higher than the Tier 1 yield) and are uncapped for any district wealthier than Austin.

25. Taxpayers in Texas can live on the same street, own a house of the same value, and because they are in different school districts, pay different amounts of school taxes and have a considerable gap in revenue available to their school districts. For example, a taxpayer living in the Pasadena I.S.D. on Fairhope Oak Street and owning a house appraised at $107,000, taxed at $1.07 M&O rate will see $5,327 per WADA available for students in Pasadena I.S.D. while another taxpayer on the same street with a house valued at $107,000, taxed at $1.1067 in the Deer Park I.S.D. will see $6,252 per WADA available for students in Deer Park I.S.D. Likewise, a taxpayer in Little Elm I.S.D. who lives on Saddlehorn Drive and owns a house appraised at approximately $180,000, and who is taxed at $1.04 for M&O will see $5,718 per WADA available for students in Little Elm I.S.D. while another taxpayer on the same street in the Frisco I.S.D. with a house also appraised at approximately $180,000 and taxed at $1.00 for M&O will see $6,419 per WADA available for students in Frisco I.S.D. Similar examples abound throughout the state.

26. The Legislature's reliance on local property taxes to discharge their constitutional responsibility under article VII, § 1 necessitates that they create a school finance system that compensates for the disparities in property wealth among districts "so that property owners in property-poor districts are not burdened with much heavier tax rates than property owners in property-rich districts to generate substantially the same revenue per student for public education." *West Orange Cove II* 176 S.W.3d at 756. The responsibility for any inequity falls directly on the Legislature, which has the power to create school districts and draw boundary lines and the responsibility to maintain an efficient public free school system. *Lee v. Leonard I.S.D.*, 24 S.W.2d 449, 450 (Tex.App.-Texarkana 1930, no writ).

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Efficiency/Equity:

27. In its 2005 decision, the Texas Supreme Court acknowledged that "the Legislature's decision to rely so heavily on local property taxes to fund public education does not in itself violate any provision of the Texas Constitution," but it does make it difficult to achieve an efficient system "meaning 'effective or productive of results and conserv[ing] the use of resources so as to produce results with little waste as required by article VII, § 1 of the Constitution.'" *Id.* (citing *Edgewood Independent School District v. Kirby*, 777 S.W.2d 391, 395 (Tex. 1989) (*Edgewood I)* and *Edgewood I.S.D. et al. v. Meno*, 917 S.W.2d 717, 735-37 (Tex. 1950 (*Edgewood IV).* The Court recognized, as did all previous courts to consider the issue, that the system is inefficient if districts "that must achieve a general diffusion of knowledge do not have substantially equal access to available revenues to perform their mission." *Id.* at 783.

28. The changes made after Edgewood III have been eroded over the years. In H.B. 1 (2006) the Legislature, after compressing tax rates to give property tax relief to local taxpayers, established the concept of a "Target Revenue" hold-harmless to ensure all districts continued to receive at least the same overall level of funding as they did in the 2005-06 school year.

29. The two-stage thirty-three percent (33%) compression in school district M&O property tax rates resulted in a reduction in formula funding for education.

30. The State's failure to adjust the basic allotment in 2007 to compensate for the one-third (1/3) reduction in local property tax revenues caused by the compressed tax rate, reduced formula funding to such an extent that no district was funded under the formula system, and every district in the state was funded under the arbitrary, irrational and inequitable Target Revenue hold harmless scheme both in 2007-08 and 2008-09.

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31. In 2009, the Legislature increased the basic allotment, but never to a level that resulted in more than twenty-five percent (25%) of districts being funded under the formula system.

32. The basic allotment of Tier 1, meant to equalize the cost of a basic education, was set so low that more than seventy-five percent (75%) of all school districts in 2009-10 were funded at their Target Revenue amount, not by the basic allotment and the equalized formulas. Projections for 2011-12 suggest that about eighty-five percent (85%) of districts will be funded at their Target Revenue hold-harmless amount.

33. The State's reliance on Target Revenue and other "outside the system" funding has created an unsustainable, indefensible, inefficient and unacceptably inequitable system where in 2010-11, at its $1.00 compressed tax rate in Tier 1, Austin I.S.D., with approximately 100,000 WADA, was funded at $6,100 per WADA and Fort Worth I.S.D., at the same compressed tax rate with similar WADA, was funded at $5,100 per WADA, creating a Tier 1 funding gap of $1,000 per WADA or a total gap of $100,000,000 per year. The size of this gap widens as these districts grow. For every one percent (1%) increase in WADA, the gap between these districts grows by another $1,000,000.

34. Austin I.S.D and Fort Worth I.S.D. are not isolated examples nor do they present the worst comparisons. Northwest I.S.D. at its $1.00 compressed tax rate in Tier 1 was funded at $6,830 per WADA while Edgewood I.S.D. at the same compressed tax rate was funded at $5,070, a gap of $1,760 per WADA. At Northwest's WADA of approximately 17,000, they enjoy almost $30 million additional dollars. With each one percent (1%) growth in WADA this gap will grow by $300,000.

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35. Crane I.S.D., at a Tier 1 compressed tax rate of $1.00 with approximately 1450 WADA, was funded at $9,500 per WADA, while Floydada I.S.D., at the same tax rate and similar WADA, was funded at $5,000 per WADA, creating a funding gap of over $6.5 million, or a funding advantage for Crane I.S.D. of almost 2 to 1. Even at its adopted M&O tax rate, the maximum $1.17, Floydada I.S.D.'s funding level was only $5,727, while Crane I.S.D. at its adopted $1.04 rate was funded at $10,141.00.

36. Wink-Loving I.S.D., at a Tier 1 compressed tax rate of $1.00 with approximately 570 WADA, was funded at $12,500 per WADA, while Chireno I.S.D., at a similar tax rate and WADA, was funded at $5,030 per WADA, a gap of about $7,500 per WADA, a funding advantage for Wink-Loving of 2.5 to 1. Again, as each of these districts grows the dollar amount of the inequity is perpetuated and increases proportionately.

37. The across-the-board percentage cuts to the regular program allotment made by the 82nd Legislature for 2011-12 have the effect of taking funding from low wealth districts with higher local tax rates and using it to protect the funding available to higher wealth districts.

38. In a 2010-11 comparison of the 216 districts at or above $1.17 and the 216 districts with the lowest tax rates, the districts at the highest tax rate have an average yield of approximately $50 per penny per WADA while the districts with the lowest tax rate have an average yield of about $63 per penny per WADA – a twenty-six (26%) funding advantage.

39. The "copper pennies"[3] have a static yield of $31.95, and a corresponding equalized wealth level of $319,500, which provides only two-thirds of the Tier 1 yield per

[3] Copper Pennies refer to local enrichment taxes above the first 6 pennies levied above a district's CTR They have no driver and have a guaranteed yield of $31.95, which is below the state average for district wealth per WADA per penny.

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WADA per penny. As a result many districts, that have gotten voter approval to tax at the maximum of $1.17, are still underfunded.

40. For the 2011-12 school year, the data indicate that about forty-five percent (45%) of districts cannot regain funds lost by the cuts made by the 82nd Legislature, even if their taxpayers are willing to pay the maximum M&O rate of $1.17. On the other hand, the system created by the 82nd Legislature allows 61 high-wealth districts to not only regain the money lost, but actually increase funding by over $200 per WADA above the pre-cut levels if their taxpayers are willing to tax at a $1.17 tax rate.

41. The state facilities funding system guarantee has not changed from the original $35 yield per penny per ADA adopted in 1999 although the cost of construction has doubled since then. It was originally set at the 91st percentile of wealth (per ADA basis) and has fallen to equal about the 55th percentile. In 2010-11, low-wealth districts would have to levy an I&S tax rate that is at least 2.5 times the levy that would be required of the average district in the top ten percent (10%) of wealth to access the same revenue. Since 2002-03 the state's share of total facility payments has dropped from 29.8% to 13.5%.

42. The Existing Debt Allotment equalizes only 29 of the 50 pennies available for facilities taxation. None are recaptured, meaning that wealthier districts can build whatever facilities they desire for a fraction of the tax effort required by low funded districts. Additionally, wealthy districts are able to fund traditional M&O expenditures (new buses, technology, HV/AC replacements, and so forth) with non-recaptured I&S pennies, in effect allowing access to additional M&O revenue at much higher revenue per penny per WADA than they would be able to access using remaining M&O pennies. In effect, this practice would also provide wealthy districts additional M&O revenue beyond the maximum M&O tax rate of $1.17.

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43. The public education funding system in Texas is arbitrary and therefore cannot be efficient.

Local Supplementation:

44. In *Edgewood IV*, Justice Cornyn noted that an efficient system did not precluded unequalized local supplementation. *Edgewood*, 917 S.W. 2d at 729. However, the Court reiterated its holding in *Edgewood I.S.D. v. Kirby*, 804 S.W.2d 491, 500 (Tex. 1991) (*Edgewood II)* that "once the Legislature provides an efficient system in compliance with article VII, § 1, it may, so long as efficiency is maintained, authorize local school districts to supplement their educational resources if local property owners approve an additional local property tax. *Id.* at 732 (emphasis added). We have reached the point where local supplementation has again created an unequalized system and, therefore, an inefficient system.

45. Because the first six pennies (dubbed the "golden pennies") of additional taxing rate above Tier 1 that a district adopts have a guaranteed yield that is tied to the wealth level of the Austin I.S.D. they generate significantly higher levels of funding than the next pennies (dubbed the "copper pennies") a district might levy and a higher rate than Tier 1 levies. In 2010-11, the guaranteed yield on these six golden pennies was $59.97 per WADA per penny. The golden pennies are not recaptured which means that the 109 high-wealth districts with a wealth per WADA that exceeded Austin I.S.D. enjoyed an average yield on these pennies that was more than twice the yield of lower-wealth districts. Because Tier 1 funding for low-wealth districts is typically insufficient to fund the basic educational program the reality is that revenue from these pennies are primarily used for that purpose rather than for enrichment.

46. Studies and expenditure data have shown that transportation and student weights are undervalued and therefore underfunded. Additionally, funding for compensatory and

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bilingual/ELL students has not been adjusted in over a decade when it was set below recommendations made by experts. Because low funded districts lack the discretionary funding levels of the more highly funded districts and tend to have a higher concentration of students needing compensatory services and of those who speak English (if at all) as a second language the underfunding of these programs has a much greater impact on them. This underfunding further dis-equalizes the system.

State Ad Valorem Tax:

47. The result of the inefficiencies and inequities detailed above is that the Legislature has not solved the constitutional problems found by the Texas Supreme Court. Moreover, by failing in its responsibility to adequately fund education in 2011, the State has passed the burden of raising funds to support education to the districts. By the 2010-11 school year, over 200 school districts in Texas were taxing at the $1.17 tax cap.

48. Even at the maximum rate, the revenue per WADA for eighty percent (80%) of these districts is below the average revenue per WADA for all districts not at the cap. These districts do not have the discretion to set lower rates, because even at the maximum they cannot recoup losses from the 2011-12 cuts, increase revenue to meet increasing accountability standards and community expectations, or offset inflation.

49. The $1.17 tax cap is both a floor and a ceiling leaving the districts with no meaningful discretion. This lack of meaningful discretion has converted these taxes into a state property tax prohibited by Article VIII, §1-e of the Texas Constitution. *West Orange Cove II*, 176 S.W.3d 746 (Tex. 2005). The Court in *West Orange Cove v. Alanis* 107 S.W.3d 558, 578 (Tex. 2003) (*West Orange Cove I)* noted that it is not necessary that most school districts be forced to tax at the cap for the tax to be characterized as a State ad valorem tax. "A single

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district states a claim under article VIII, section 1-e if it alleges that it is constrained by the State to tax at a particular rate." *Id.* at579.

Suitability/Adequacy:

50. Texas Constitution article VII, § 1 requires that the State make suitable provision for the support and maintenance of an efficient system of public free schools. The Texas Supreme Court has noted that this provision requires that the public school system be structured, operated, and funded so that it can accomplish its purpose for all Texas children. *West Orange Cove II*, 176 S.W. 3d at 753 (emphasis added). The Court stated that "if the Legislature substantially defaulted on its responsibility such that Texas school children were denied access to that education needed to participate fully in the social, economic, and educational opportunities available in Texas, the 'suitable provision' clause would be violated." *Id.*

51. The Court in West Orange Cove noted that "the Legislature is entitled to determine what public education is necessary for the constitutionally required (general diffusion of knowledge)". *Id. At 784.* The State has defined what level of education is necessary to meet constitutional requirements. In §28.001 of the Education Code, the Legislature has delegated to the State Board of Education the task of defining what constitute the essential knowledge and skills. "The essential knowledge and skills shall … prepare and enable all students to continue to learn in post secondary educational training, or employment settings." Tex. Educ. Code §28.001. (emphasis added) "The mission of the public education system of this state is to ensure that all Texas children have 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) "This mission is grounded in the constitutional promise to achieve a general diffusion of knowledge

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because it is essential to the welfare of the state and for the preservation of the liberties and rights of citizens." Id.

52. The standards set by the Board of Education are enforced by the accountability standards developed by the Texas Education Agency. That agency, in response to legislative mandates, has strengthened those standards and will begin testing student performance against the State of Texas Assessments of Academic Readiness (STAAR) tests, which are more rigorous than the previous TAKS tests. According to the TEA, the STAAR tests have been designed to assess academic skills at a greater depth and level of cognitive complexity. These more rigorous tests reflect the goal of the educational system, as set by the Legialature in 2006: "college and career readiness."

53. The Texas Higher Education Coordinating Board ("THECB") adopted the College and Career Readiness Standards ("CCRS") in 2008. These standards were incorporated into state curriculum standards by the State Board of Education. According to the THECB:

> The CCRS are designed to represent a full range of knowledge and skills that students need to succeed in entry-level college courses, as well as in a wide range of majors and careers. According to research, over 80 percent of 21st century jobs require some postsecondary education. By implementing these standards, secondary school and postsecondary faculty in all academic disciplines will advance the mission of Texas: college career ready students.[4]

In 2009, the Legislature required that college readiness be reflected in passing standards for end-of-course exams.

54. In 2006 when the Legislature compressed tax rates in an attempt to give property tax relief, it passed a Margins Tax as the principal source of revenue to offset the revenue lost from the compression. This source of revenue was woefully inadequate. The actions of the

[4] Texas College and Career Readiness Standards at p. iii, *available at* http://www.thecb.state.tx.us/files/dmfile/CCRS081009FINALURevisions.pdf (visited Nov. 22, 2011).

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Legislature in 2006 created a structural deficiency in the system of school finance estimated to have created a recurring deficit of over $4.6 billion annually.

55. At the same time that it compressed tax rates, the Legislature established "Target Revenue" hold harmless to ensure that all districts did not fall below their 2005-06 school year level for overall funding. The State failed to adjust the basic allotment in 2007 to compensate for the 1/3 reduction in local property tax revenues caused by the compressed tax rates which reduced formula funding to the extent that no district was funded under the formula system; rather, every district was funded under the Target Revenue scheme. In 2009, the Legislature increased the basic allotment, but only to a level that resulted in bringing twenty-five percent (25%) of the districts back into the Foundation Program. Revenues have basically been frozen at 2005-06 levels and, these frozen revenue levels are inadequate to meet the challenges of the 21st century.

56. As Senator Steve Ogden observed on the Senate floor on January 11, 2011, "the Foundation School Program (FSP) has serious structural problems... And the biggest problem with public school finance is the term called "Target Revenue."[5] Projections for 2011-12 suggest that about eighty-five percent (85%) of districts will be funded at their Target Revenue hold harmless amounts.

57. To meet constitutional standards the funding system for public schools must provide adequate funds for instructional facilities necessary to deliver the required level of education. *Edgewood IV*, 917 S.W.2d 747 n. 37 cited by *West Orange Cove II*, 176 S.W.3d at 764. The Legislature made some strides in improving funding facilities after Edgewood IV, but that process has been eroded. The level of state support for the Instructional Facilities Allotment

[5] The FSP is itself a poor reflection of what it costs to achieve a general diffusion of knowledge because it has not been updated in decades.

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(IFA), created in 1997, and the Assistance with Payment of Existing Debt (EDA) created in 1999 has decreased dramatically even though construction costs have doubled. When these programs began, ninety-one percent (91%) of the student population was in districts receiving assistance from the IFA and EDA. In 2002-03 this assistance had been reduced to the level that the State was bearing only 29.8% of the cost of payments for facilities. In 2010-2011, the State bore only 12.3% of the cost of payments for facilities.

58. The Legislature did not heed Senator Ogden's warning. At the same time that it has required higher standards to meet new mandates, the 82nd Legislature underfunded the FSP by at least $4 billion dollars. Additionally, it cut $1.4 billion from grant programs designed to assist at-risk students.

59. The amounts lost as a result of these budget cuts directly affect the quality of education in that they have resulted in districts not replacing needed teachers, firing teachers, requesting class size waivers, cutting budgets for instructional materials, teacher training, support staff and technology resources. One estimate suggests that Texas districts are employing 32,000 fewer staff then they did before the budget cuts. About one-third of these were teaching positions. For the first time in 60 years the Legislature did not fund growth, despite data that show that Texas public school enrollment has increased by 90,000 students per year over the last five years.

60. Texas' growing student population contains a much larger percentage of students for whom English is a second language and about forty-five percent more "economically disadvantaged" students than it did a decade ago. Data for 2010-11 shows that sixty percent (60%) of Texas public school students fall into the low-income category and seventeen percent (17%) are ELL students. These populations present significant challenges to educators and

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require the expenditure of greater resources to achieve state standards for a general diffusion of knowledge.

61. It is "arbitrary . . . 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." *West Orange Cove II*, 176 S.w.3d at 784. The structure of the system, designed to deliver a general diffusion of knowledge, is irrationally flawed and unable to deliver a constitutional level of education to all the children of Texas in violation of the suitability provision of article VII, §1. Further, the Legislature's failure to meet its responsibility to adequately fund the system and provide for fair distribution of the available funds has crippled the system. The Legislature has substantially defaulted on its responsibility to provide a suitable, adequate and efficient system of education in Texas.

Arbitrariness:

62. In *West Orange Cove II*, the Texas Supreme Court, for the first time, addressed the standard of review when addressing a school finance challenge. The Court said that State "action is arbitrary when it is taken without reference to guiding rules or principles." The Court further held that Article VII of our Constitution "does not allow the Legislature to structure a public school system that is inadequate, inefficient, or unsuitable, regardless of whether it has a rational basis or even a compelling reason for doing so."

63. The 82nd Legislature's failure to fully fund the FSP was not a decision based on educational policy, but a decision based on politics and budgetary issues.

64. The funding disparities among school districts cited above demonstrate that there are no "guiding rules or principles" used by the Legislature to construct the existing funding system for our public schools. The system, if it can be called one, is *ad hoc*; resulting in

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differences in funding for districts that cannot be explained without resorting to an answer that is nothing more than "that's the way we (the Legislature) wanted to do it." Section 42.007 of the Education Code requires the Legislative Budget Board to adopt rules subject to public comment for the calculation for each year of a biennium the qualified funding elements in accordance with subsection (c) which are necessary to achieve the policy under Section 42.001 of the Education Code. That section requires the LBB to present a report on the equalized funding elements including the basic allotment, the cost of education index and the various weights and adjustments. On information and belief the LBB has not complied with this statutory mandate for approximately 15 years. Having a system that has been demonstrated to be so inefficient, the burden rests with the State to show that such inefficiency is not arbitrary. This the State cannot do.

Equal Protection:

65. In Edgewood I, the court disposed of the plaintiffs' equal protection claim by noting that "because we have decided that the school financing system violates the Texas Constitution's 'efficiency provision, we need not consider petitioner's other constitutional arguments.'" (Plaintiff Alvarado, et al. pleaded an equal protection claim on behalf of students in low-wealth districts). However, the court in Edgewood II on rehearing and continuing through West Orange Cove II gave approval to local supplementation with the caveat that such supplementation was only acceptable after "an efficient system in compliance with Tex. Const. art. VII, § 1" was created and as long as "efficiency is maintained." *Edgewood II*, at 500 (*see also* fn. 2 where the court is clear that Edgewood I controls).

66. As indicated above, the school funding system is neither efficient, suitable, nor equitable. As such, in addition to violating art. VII § 1, it violates the equal protection rights of

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students in low-wealth districts. Texas Constitution art. 1, § 3 makes it clear that "all free men ... have equal rights, and no man or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services." "The Equal Protection Clause of the Texas Constitution requires that all persons similarly situated should be treated alike ..." *Kohout v. City of Fort Worth*, 292 S.W.3d 703, 711 (Tex. App. – Fort Worth 2009, no pet.). "The mission of the public education system of this state is to ensure that all Texas children have 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)

CAUSES OF ACTION

67. Plaintiffs incorporate all facts set forth above as if restated herein. Plaintiffs rely on these facts as set forth below.

Declaratory Judgment:

68. Plaintiffs ask the Court to declare that the school finance system violates the "efficiency" provisions of art. VII, §1 of the Texas Constitution in that it fails to provide substantially equal access to revenues necessary to provide a general diffusion of knowledge (*see* paragraphs 14, 15, 16, 17, 18, 19, 20, 30-43, 45-46, 55, 56); that the school finance system is not adequately funded and therefore fails to make suitable provision for the support and maintenance of the system in violation of Article VII, §1 of the Texas Constitution (*see* paragraphs 51-61, 63); that the system imposes a tax that is unequal and not uniform in violation of art. VIII, §1(a) of the Texas Constitution (*see* paragraphs 15, 16, 22-26); that the system has created a state ad valorem tax in violation of art. VIII, § 1-e of the Texas Constitution (*see* paragraphs 21, 47-49);

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and that the system fails to provide equal protection to students in low-wealth districts in violation of art. 1 § 3 of the Texas Constitution (*see* paragraphs 14-20, 30-43, 45-46, 55-56).

Injunction:

69. Pursuant to its declaration under the Texas Declaratory Judgment Act, Plaintiffs ask the Court to enjoin the state and its officials from distributing any funds under the current school finance system until an efficient adequate and equitable system is created.

70. 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.

71. 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.

ATTORNEYS' FEES

72. Pursuant to Chapter 37 of the Texas Civil Practices and Remedies Code, Plaintiffs are entitled to their reasonable attorneys' fees and costs.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs request the Court grant the relief set forth above and all other relief to which they may show themselves entitled in equity or law.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on August 20, 2012, a true and correct copy of the foregoing was served upon the following counsel of record in accordance with the Texas Rules of Civil Procedure and the Texas Local Rules:

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