

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

THE TEXAS TAXAPAYER AND STUDENT
FAIRNESS COALITION, *ET AL.*,

IN THE DISTRICT COURT

Consolidated Case:

EDGEWOOD INDEPENDENT SCHOOL
DISTRICT, MCALLEN INDEPENDENT
SCHOOL DISTRICT,
SAN BENITO CONSOLIDATED
INDEPENDENT SCHOOL DISTRICT,
LA FERIA INDEPENDENT SCHOOL DISTRICT,
HARLINGEN CONSOLIDATED
INDEPENDENT SCHOOL DISTRICT,
YOLANDA CANALES, INDIVIDUALLY AND
AS NEXT FRIEND FOR HER MINOR
CHILDREN, EK. AND EA. CANALES,
ARTURO ROBLES, INDIVIDUALLY
AND AS NEXT FRIEND FOR HIS MINOR
CHILD, A. ROBLES, ARACELI VASQUEZ,
INDIVIDUALLY AND AS NEXT FRIEND
FOR HER MINOR CHILDREN,
J.L. AND A.L. AND A.D. VASQUEZ,
JESSICA ROMERO, INDIVIDUALLY AND AS
NEXT FRIEND FOR HER MINOR CHILDREN,
B. AND G. ROMERO

Plaintiffs,

v.

MICHAEL WILLIAMS, in his Official Capacity
as the COMMISSIONER OF EDUCATION,
THE STATE OF TEXAS BOARD OF
EDUCATION, AND SUSAN COMBS,
in her Official Capacity as the TEXAS
COMPTROLLER OF PUBLIC
ACCOUNTS

Defendants,

TRAVIS COUNTY, TEXAS

200th JUDICIAL DISTRICT

PLAINTIFFS' SECOND AMENDED PETITION

COME NOW, Plaintiffs Edgewood Independent School District, McAllen Independent School District, San Benito Consolidated Independent School District, Harlingen Consolidated

Independent School District, La Feria Independent School District, Yolanda Canales, Arturo Robles, Araceli Vasquez, and Jessica Romero, individually and on behalf of their minor children, in the above-styled action and file this Second Amended Petition against Defendants Michael Williams in his official capacity as Commissioner of Education, the State of Texas Board of Education and Susan Combs in her official capacity as the Texas Comptroller of Public Accounts, challenging the constitutionality of the Texas public school finance system. Since the passage of House Bill 1 in 2006, the Texas Legislature has retreated from its obligation to provide an efficient public school finance system while at the same time, it has continued to ratchet up accountability and curriculum standards for individual students and school districts. The end result is an arbitrary system that has increased the inequity for low-wealth school districts to pre-1993 levels, forcing those districts to tax higher but yield less revenue compared to higher-wealth school districts. In addition, Plaintiffs complain of the arbitrary and inadequate funding for low income and English Language Learner students, as well as the overall insufficient funding for lower-wealth school districts which has stripped Plaintiff school districts from exercising meaningful local control, forcing them to make unnecessary cuts to their educational programs and tax at or near the \$1.17 cap simply to satisfy State mandates. In support, Plaintiffs would respectfully show the Court the following:

I. DISCOVERY CONTROL PLAN

1. Discovery in this case is intended to be conducted under Level 3 pursuant to Texas Rules of Civil Procedure 190 and 190.4.

II. PARTIES

2. Plaintiff Edgewood Independent School District is a public independent school district located in Bexar County, Texas.

3. Plaintiff McAllen Independent School District is a public independent school district located in Hidalgo County, Texas.
4. Plaintiff San Benito Consolidated Independent School District is a public independent school district located in Cameron County, Texas.
5. Plaintiff La Feria Independent School District is a public independent school district located in Cameron County, Texas.
6. Plaintiff Harlingen Consolidated Independent School District is a public independent school district located in Cameron County, Texas.
7. Plaintiff Yolanda Canales is an individual and parent and natural guardian of minor plaintiff children, Ek. and Ea. Canales, and pays local property taxes in the Pasadena Independent School District.
8. Plaintiff Arturo Robles is an individual and parent and natural guardian of minor plaintiff child, A. Robles, and pays local property taxes in the Pasadena Independent School District.
9. The minor plaintiff children of Ms. Canales and Mr. Robles, presently attend, or will soon attend, public schools in the Pasadena Independent School District.
10. Plaintiff Araceli Vasquez is an individual and parent and natural guardian of minor plaintiff children, J.L. Vasquez, Al. Vasquez, and Ad. Vasquez, and pays local property taxes in the Amarillo Independent School District.
11. Plaintiff Jessica Romero is an individual and parent and natural guardian of minor plaintiff children, B. and G. Romero, and pays local property taxes in the Amarillo Independent School District.

12. The minor plaintiff children of Ms. Vasquez and Ms. Romero presently attend, or will soon attend, public schools in the Amarillo Independent School District.
13. Defendant Michael Williams is the Commissioner of Education. He is the chief executive of the Texas Education Agency, which oversees the state's 1,200 school districts and charter schools, and can be served with process at his place of business located at 1701 North Congress Avenue, Austin, Texas 78701.
14. Defendant State of Texas Board of Education is an elected 15 member board, and together with the Commissioner of Education, oversees the public education system of Texas in accordance with the Texas Education Code, and can be served with process by serving its Chair, Barbara Cargill, at her place of business located at 1701 North Congress Avenue, Austin, Texas 78701.
15. Defendant Susan Combs is the Texas Comptroller of Public Accounts. She is chief steward of the state's finances, acting as tax collector, chief accountant, chief revenue estimator and chief treasurer for all of state government, and can be served with process at her place of business located at 111 East 17th Street, Austin, Texas 78774.

III. JURISDICTION & VENUE

16. Jurisdiction is proper in this Court because the petition questions the legal relations affected by "statute, municipal ordinance . . . or franchise" and the validity of those statutes, municipal ordinances, or franchises. TEX. CIV. PRAC. & REM. CODE § 37.002(b).
17. Venue is proper in Travis County pursuant to §37.006(b) of the TEX. CIV. PRAC. & REM. CODE because the relevant governmental entities must be made parties when a claim challenges the validity of ordinances or statutes.

IV. BACKGROUND

18. Article VII, section 1 of the Texas Constitution (“the Education Clause”) mandates that “a general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.”
19. The Education Clause is a judicially enforceable constitutional mandate to the Legislature to provide an adequate, suitable and equitable system of free public education.
20. Pursuant to its authority to enforce the Education Clause, the Supreme Court of Texas ordered the defendants in *Edgewood I* and its progeny¹ to remedy the glaring inequities in the school finance system resulting from 1) the system’s reliance on local property tax revenue and 2) the wide disparities between districts in property wealth and the unequal access to the revenue derived therefrom. The Court declared that unequal access to similar revenue per pupil at similar levels of local tax effort rendered the system inefficient under the Education Clause.
21. Following *Edgewood III*, in 1993 the Legislature enacted Senate Bill 7 (“SB 7”). With SB 7, the Legislature continued to anchor the Texas school finance system in local property tax revenue but introduced a revenue-sharing feature, also known as recapture, in which high-wealth school districts were required to return a small portion of their local property taxes in order to help equalize the system.

¹ *Edgewood Indep. Sch. Dist. v. Kirby*, 804 S.W.2d 491 (Tex. 1991) (“*Edgewood II*”); *Carrollton-Farmers Branch Indep. Sch. Dist. v. Edgewood Indep. Sch. Dist.*, 826 S.W.2d 489 (Tex. 1992) (“*Edgewood III*”); *Edgewood Indep. Sch. Dist. v. Meno*, 917 S.W.2d 717 (Tex. 1995) (“*Edgewood IV*”).

22. Despite a \$600 funding gap per student between low-wealth and high-wealth school districts taxing at the maximum rates under the then-current school funding formulas, the Supreme Court of Texas ignored that analysis in *Edgewood IV*. *Edgewood IV* at 726. The Court, instead, analyzed the financial efficiency of the system between groups of 15% of students by weighted average daily attendance, or "WADA," in the lowest wealth and highest wealth districts, noted a 9-cent gap in attempting to generate an amount needed to provide a general diffusion of knowledge, and found the system to be "minimally acceptable," primarily when viewed against the historical inequity and inefficiency. *Id.*
23. Following *Edgewood IV*, the Supreme Court of Texas heard the *West Orange-Cove*² case, and held that the State mandates forced school districts to tax at or near the cap of \$1.50 on property taxes in order to provide only a minimally adequate education, stripping school districts of meaningful local control.
24. Consequently, *West Orange-Cove II* held that the tax cap, which became a floor and a ceiling, operated as a State *ad valorem* tax in violation of Article VIII, Section 1-e of the Texas Constitution.³ *Id.* at 794. The Court further noted, however, that simply lifting the cap would not be an option so long as the State continued to rely substantially on local property taxes because of the inequities that would result from such action. *West Orange-Cove II*, 175 S.W.3d at 798.

² *West Orange-Cove Consol. Indep. Sch. Dist. v. Alanis*, 107 S.W.3d 558 (Tex. 2003) ("*West Orange-Cove I*"); *Neeley v. West Orange-Cove Consol. Indep. Sch. Dist.*, 176 S.W.3d 746 (Tex. 2005) ("*West Orange-Cove II*").

³ This provision states: ABOLITION OF AD VALOREM PROPERTY TAXES. No State ad valorem taxes shall be levied upon any property within this State.

25. While *West Orange-Cove II* required the school finance formulas be changed so as not to constitute a State *ad valorem* tax, it reaffirmed many of the essential constitutional mandates articulated in the *Edgewood* cases. The Court held that the public school system must be “efficient,” requiring 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;” it must be “adequate” so that a public education achieves a “general diffusion of knowledge,” and it must be “suitable” so that the system is structured, operated, and funded to accomplish its purpose for all Texas children. *Id.* at 752-53 (quoting *Edgewood I*; 777 S.W.2d at 395, 397).
26. Despite finding that the evidence presented failed to support an equity claim, the *West Orange-Cove II* Court maintained that Defendants must afford all public school districts with “substantially equal access to similar revenues per pupil at similar tax effort.” *Id.* at 790 (citing *West Orange-Cove I*, 101 S.W.3d at 566 (quoting *Edgewood I*, 777 S.W.2d at 397)).

V. FACTS

Current School Finance System

27. Texas school finance law states:

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

See TEX. EDUC. CODE ANN. § 42.001 (Vernon Supp. 2002).

28. State law further provides:

(b) The public school finance system of this state shall adhere to a standard of neutrality that provides for substantially equal access to similar revenue per student at similar tax effort, considering all state and local tax revenues of districts after acknowledging all legitimate student and district cost differences.

Id.

29. Local property tax revenue currently provides over 55% of the revenue in the system.

Insofar as disparate property values remain a source of revenue in the system, constitutional efficiency requires equalization measures to ensure substantially equal access to similar tax revenue for similar tax effort across district lines.

30. The equalized measures under Chapter 41 of the Texas Education Code include: 1) equalized access to revenue for lower wealth school districts in the form of guaranteed allotments or yields for tax effort; 2) an equalized wealth level for property-wealthy school districts to bring taxable property and property-rich districts efficiently into the system as a whole; 3) recapture and distribution of revenue from property wealth above the equalized level; and 4) a cap on local tax rates meant to ensure that low property wealth and high property wealth school districts remain within the equalized structure as a whole.

31. Following the Court's remand in *West Orange-Cove II*, the Governor called a special session in 2006. The Texas Legislature sought to remedy the legal deficiency in the school finance system with the passage of House Bill 1, but also sought to provide property tax relief. Consequently, HB 1 essentially compressed the property tax rates for maintenance and operations ("M&O") from \$1.50 to \$1.33 for the 2006-07 school year.

The compressed rates for those taxing at \$1.50 in 2005-06 eventually went down to \$1.00 for the 2009-10 school year and beyond.

32. For school districts that were not taxing at the \$1.50 cap in 2005, their tax rates were similarly compressed down by approximately one-third.
33. Following the enactment of HB 1, the Legislature authorized school districts to tax up to \$1.17 (with a few exceptions in which a select group of districts are allowed to tax above \$1.18), adding seventeen cents intended for local enrichment for those districts which had been compressed down to \$1.00.
34. The first four pennies above the 2006 compressed tax rate for those districts compressed down to \$1.00 can be raised without a local election by the voters and are not subject to recapture. Low wealth districts are guaranteed a yield at the Austin rate for each of these pennies, which was approximately \$59 per student in weighted average daily attendance ("WADA") in 2010-11.
35. The next two pennies are also not subject to recapture and are equalized up to the Austin yield for lower wealth districts, but those pennies cannot be raised without a local voter election, known as a Taxpayer Ratification Election. The election requirement does not apply to school districts unless those pennies are above \$1.04. The six cents of tax effort (Tier II-A) are commonly referred to as "golden" pennies.
36. For those districts compressed down to \$1.00, the remaining eleven cents in Guaranteed Yield, referred to as Tier II-B, are also available to all districts but at a yield of only \$31.95 per WADA for each of those pennies, with exceptions for some high wealth districts that are able to yield in excess of \$31.95. This same yield applies to all pennies

of tax effort above Tier II-A. Any district whose property wealth yields revenue in excess of \$31.95 is subject to having most of that excess revenue recaptured.

37. Since 2006, the State has not fully funded the formulas existing in statute for many districts. Instead, many districts are funded at 2005-06 or 2006-07 levels based on an arbitrary, alternative funding mechanism known as “Target Revenue.”
38. Target Revenue is a specific amount of funding, based on a certain amount of money per WADA, that the State guarantees a school district in exchange for the mandatory reduction of the district’s M&O tax rate. The target revenue amount is based on the state and local M&O revenue a district would have earned had it not lowered its tax rate, and is different for each school district.
39. During a special session held in June 2011, the Texas Legislature cut over \$5 billion dollars from the education budget and passed more severe, disproportionate cuts to low-wealth school districts during the first biennium. This occurred despite Texas ranking as one of the wealthiest states but only 47th in revenue raised per capita and 43rd in funding per student.
40. As a result of the budget cuts and the current structure of the school finance system, the equity gaps have increased to their highest levels since the early 1990s.
41. For example, in the Rio Grande Valley, Plaintiff McAllen I.S.D. taxes at \$1.04 for maintenance and operations (M&O) but after the budget cuts is expected to yield only \$5,088⁴ in the 2011-2012 school year; Plaintiff San Benito I.S.D. taxes at the maximum of \$1.17 but is expected to yield only \$5,513 per WADA; La Feria I.S.D. also taxes at the maximum of \$1.17 but is expected to yield only \$5,204 per WADA. In contrast, Point

⁴ The revenues per WADA reported in this petition reflect those amounts projected by the Legislative Budget Board under SB 1.

Isabel I.S.D., also located in the Valley, taxes at \$.95 but is expected to yield \$5,915 per WADA and Kenedy Countywide C.I.S.D. taxes at \$1.06 but is expected to yield \$10,737 per WADA.

42. In Bexar County, Edgewood I.S.D. taxes at \$1.17 but is expected to yield only \$5,475 per WADA in the 2011-12 school year; meanwhile, Alamo Heights I.S.D., also located in Bexar County, taxes at \$1.04 but is expected to yield \$6,242 per WADA.

43. In the Harris County area, Pasadena I.S.D. taxes individual Plaintiffs at \$1.07 but is expected to yield only \$5,036 per WADA in the 2011-12 school year; Cypress Fairbanks I.S.D. taxes at \$1.04 but is expected to yield only \$4,829 per WADA and Galena Park I.S.D. taxes at \$1.18 but is expected to yield only \$5,435 per WADA. In contrast, neighboring Tomball I.S.D. taxes at \$1.01 but is expected yield \$6,082 per WADA and nearby Sheldon I.S.D. taxes at \$1.04 and yields \$6,431 per WADA.

44. In the Texas Panhandle region, Amarillo I.S.D. taxes individual Plaintiffs at \$1.08 but is expected to yield only \$5,139 per WADA in the 2011-12 school year; Lamesa I.S.D. taxes at \$1.17 but is expected to yield only \$5,464; and Canyon I.S.D. taxes at \$1.04 but is expected to yield only \$5,110. In contrast, neighboring Sudan I.S.D. taxes at \$.95 but is expected to yield \$5,998 per WADA, Gruver I.S.D. taxes at \$1.04 and is expected to yield \$7,181 per WADA, and Pringle Morse I.S.D. taxes at \$1.04 and is expected to yield \$7,407 per WADA.

45. Similar revenue and tax gaps exist across Texas, from West Texas to Central and East Texas.

46. School districts, including Plaintiff school districts and districts in which individual Plaintiffs reside, have been forced to make changes to their educational programs, including increases in class sizes and reductions in services and staff.
47. The gap in tax rates between the lowest wealth and highest wealth school districts needed to generate revenue to provide a general diffusion of knowledge well exceeds the amounts the Supreme Court of Texas previously held allowable (9-cents in a \$1.50 system). In addition, given the rising State standards and expectations applicable to all students and school districts, coupled with the extensive budget cuts, even a \$600 advantage for the wealthier school districts taxing at similar rates could be deemed in violation of the mandate to provide “substantially equal access to similar revenue at similar tax effort.”
48. The Texas school finance system under Chapter 42 of the Texas Education Code is no longer financially efficient and the low wealth school districts, including Plaintiff districts and the districts in which individual Plaintiffs reside, should be “leveled up.”

Student and School Accountability

49. At the same time that the school finance budget has been cut and the arbitrary “Target Revenue” system has strangled funding for many low wealth school districts, additional mandates and the standards and expectations for students, including Plaintiff children, and school districts have increased.
50. The Texas Education Agency (“TEA”) is tasked with assessing public school students on what they have learned and determining district and school accountability ratings. Defendant State Board of Education has devised a system that prescribes an education curriculum and, by means of accreditation standards, holds schools and districts

accountable for teaching it. All schools and students, with few exceptions, are held to the same accountability and accreditation standards.

51. The TEA holds school districts accountable, in part, by using standardized tests. The Texas Assessment of Knowledge and Skills (“TAKS”) assessments are designed to measure the extent to which a student has learned and is able to apply the defined knowledge and skills at each tested grade level. A school’s aggregate TAKS test scores are then used in rating both the individual school and the entire district under the State’s accountability ratings.
52. The TAKS tests were first administered in 2003 and in 2004, they were incorporated by Defendants for accountability purposes and have been in place since then.
53. Additionally, in 2009 the Legislature enacted House Bill 3 (HB3) and made sweeping amendments to public school curriculum and graduation requirements. Notably, the legislation amended Section 28.025 of the Texas Education Code by modifying the graduation requirements for the minimum, recommended, and distinguished achievement graduation programs.
54. HB3 also integrated college readiness performance standards into the K-12 accountability system. The bill requires public schools to increase the number of students performing at the college readiness level to attain an academic distinction rating. School districts are expected to prepare their students to enroll and succeed in entry-level English language and mathematics courses in baccalaureate or associate degree programs without remediation.
55. The vast majority of students are placed into the recommended graduation program. In addition to past requirements, high school students are now required to pass government

and economics courses to satisfy the social studies requirements, pass at least two years of language courses other than English, and pass a variety of math and science courses beyond algebra II and physics, determined by individual school districts and as approved by the State Board of Education.

56. Beginning in the present school year, 2011-12, Defendants are administering new, more rigorous tests for grades 3-8—the State of Texas Assessments of Academic Readiness (STAAR)—and will begin incorporating end-of-course exams, which are also more rigorous, in four different subjects for grades 9-12. STAAR will supplant the TAKS test and will cover the same subjects in elementary and middle school as the previous testing program.

57. Texas high schools will now be required to administer fifteen end-of-course exams as part of the STAAR program, instead of the four high school tests administered under TAKS. The TEA will set minimum passing score requirements that will apply to students in all districts.

58. The preliminary results from the more rigorous STAAR end-of-course exams show only 57% of all participating students achieving minimum passing scores on the 2010 Algebra I test, including 45% of economically disadvantaged students compared to 70% of non-economically disadvantaged and 21% of English Language Learner (“ELL”)⁵ students compared to 60% of non-ELL students.

59. TEA also requires school districts to include the STAAR end-of-course exam results in students’ final grades. Historically, grading requirements have been determined by local

⁵ English Language Learner, or ELL, connotes the same meaning as limited English proficient, or LEP, defined under the Texas Education Code as a student whose primary language is other than English and whose English language skills are such that the student has difficulty performing ordinary classwork in English. TEX. EDUC. CODE § 29.052.

school districts; however, STAAR exams will account for a minimum of 15% of a student's final grade in the corresponding course.

60. In addition, students, including Plaintiff children, will be required to achieve a minimum score on each exam, which will be established by the Texas Education Agency, and all exam scores in a given subject area will be added together and must meet a minimum aggregate score.

61. The increasing rigor places significant demands on professional and curriculum development for teachers, support staff and administrators, as well as an expansion of remedial and accelerated programs and other services for students not meeting the minimum college-readiness standards.

Low Income and English Language Learner Students

62. During the 2010-11 school year, the Texas Education Agency reported over 4.9 million students attending public schools in Texas. Of this number, 69% are non-white, including 50.3% Latino and 12.9% African American.

63. The number of low income, or economically disadvantaged, students and ELL students in Texas public schools has continued to increase over the years and include Plaintiff children. Of the 4.9 million public school students enrolled in the 2010-11 school year, low income students constituted sixty percent (60%) of all Texas public school students and ELL students accounted for seventeen percent (17%).

64. Defendants recognize that school districts require additional resources to provide a quality education to low income and ELL students, including Plaintiff children, 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). School districts must be able to reasonably provide all of their students, including all ELL and low income students, “with a meaningful opportunity to acquire the essential knowledge and skills reflected in the curriculum. . .” *West Orange Cove II*, 176 S.W.3d at 787.

65. Consequently, Defendants provide a compensatory education allotment (also known as a “weight”) equal to the adjusted basic allotment multiplied by .2 for each student identified on the free-and-reduced priced lunch program under the National School Lunch Act, or according to regulation if no such students are served under the Act. *See* TEX. EDUC. CODE § 42.152.

66. The compensatory allotment is meant to provide funding for the additional costs incurred with educating educationally disadvantaged students, including Plaintiff children, such as supplemental programs and services designed to eliminate any disparity in performance on assessment instruments, program and student evaluation, instructional materials and equipment and other supplies required for quality instruction, supplemental staff expenses, salary for teachers of at-risk students, smaller class size, and individualized instruction. However, the allotment falls far short of its intended and necessary purpose.

67. For ELL students, Defendants provide a bilingual education allotment for each student in average daily attendance in a bilingual education or special language program under Subchapter B, Chapter 29, in an amount equal to the adjusted basic allotment multiplied by 0.1. *See* TEX. EDUC. CODE § 42.153.

68. The bilingual allotment is meant to provide funding for the additional costs incurred with educating ELL students, including program and student evaluation, instructional materials and equipment, staff development, supplemental staff expenses, salary

supplements for teachers, and other supplies required for quality instruction and smaller class size. However, the allotment falls far short of its intended and necessary purpose.

69. Low income and ELL students, including Plaintiff children, are held to the same expectations as all other Texas students and can achieve on par with non-low income and non-ELL students if their school districts have sufficient funds for quality education programs.
70. The weights for compensatory education and bilingual/special language programs were arbitrarily set in 1984 and have not been adjusted since that time, even in light of the growing rigor in curriculum and testing.
71. The funding for quality preschool programs, which would help adequately prepare ELL and low income students, including Plaintiff children, to achieve their fullest potential, is also arbitrary and inadequate.
72. The current school finance system under Chapter 42 of the Texas Education Code for low income and ELL students, including Plaintiff children, is arbitrarily structured and funded so that school districts are not reasonably able to afford all students, especially low income and ELL students, access to the educational opportunity necessary to accomplish a general diffusion of knowledge.
73. The funding for low income and ELL students, including Plaintiff children, under the Texas school finance system, even when coupled with the basic allotment and guaranteed yields, is arbitrary, inefficient and unsuitable.
74. In addition, the increasing mandates, coupled with the decrease in revenue, force lower wealth districts to tax at or near the \$1.17 cap on M&O taxes, preventing them from exercising meaningful discretion over their local programs and taxes.

Outputs

75. The *West Orange-Cove II* Court held that the constitutional standard for an adequate education “depends entirely on ‘outputs’ – the results of the educational process measured in student achievement.” 176 S.W.3d at 788.
76. Outputs related to college-readiness, the new standard in Texas, reflect a system that is not affording a general diffusion of knowledge to all students, especially more challenging students such as low income and ELL students.
77. Defendants identify a number of indicators purportedly representative of college-readiness in the Texas Education Agency’s Academic Excellence Indicator System. Without conceding that such criteria are indeed indicative of college-readiness, the results in the 2010-11 State Performance Report reflect great challenges for Texas.
78. For example, under the “Advanced Course/Dual Enrollment Completion” indicator, only 26.3% of students across the state satisfied this criteria, including 23% of Latino students, 19.5% of African American students, 20.4% of low income students, and 11.6% of ELL students.
79. On the SAT and ACT college entrance exams, only 26.9% of students across the state satisfied the college-ready criteria, including 12.7% of Latino students and 8.1% of African American students. Data was not reported for low income and ELL students, although, on information and belief, performance of those groups would lag behind the statewide average.
80. Under the State’s measure of “College-Ready Graduates” in English Language Arts and Mathematics (Class of 2010), which considers performance on the TAKS test, only 52% of all students across the state satisfied this criteria, including 42% of Latino students,

34% of African American students, 38% of low income students, and 5% of ELL students.

81. According to a Complete College America report published in September 2011, over one-half of all freshmen (51%) enrolled in two-year public colleges in Texas required remediation and over one out of every five freshmen (22.5%) enrolled in four-year public colleges in Texas required remediation.

82. In addition, a substantial number of Texas students continue to leave school. The state-reported attrition rates for the Class of 2010 were 30.5% for Latino students, 38.2% for low income students, and 22.5% for White students.

VI. CAUSES OF ACTION

Uniform Declaratory Judgment Act, Tex. Civ. Prac. & Rem. Code § 37.0001, *et seq.*

83. Plaintiffs repeat and re-allege all paragraphs above as if fully set forth herein.

84. Plaintiffs seek declaratory relief pursuant to the Texas Uniform Declaratory Judgments Act in order to settle and to receive relief from uncertainty and insecurity with respect to their rights, status, and other legal relations under Article VII § 1 and Article VIII, § 1-e of the Texas Constitution and under the applicable statutes of the Education Code.

1. Article VII, Section 1- Quantitative/Financial Efficiency (Equity)

85. The gap in funding and tax rates required to provide a general diffusion of knowledge between low wealth school districts, including Plaintiff districts and those districts in which individual Plaintiffs reside, and high wealth school districts, and produced by the current Texas school finance system, violates the efficiency provision of article VII § 1 of the Texas Constitution. More specifically, Plaintiffs refer the Court to paragraphs 18-22 and 24-49 and fully incorporate the same as if fully set forth herein.

2. Article VII, Section 1- Adequacy and Suitability

86. The arbitrary and inadequate funding for ELL and low income students, in conjunction current funding limitations, violates the efficiency and suitability provisions of article VII § 1 of the Texas Constitution. More specifically, Plaintiffs refer the Court to paragraphs 18, 19, 22, 23, 25-29, 31-82 and fully incorporate the same as if fully set forth herein.

3. Article VIII, Section 1-e- Local Discretion

87. The current funding capacity of the Texas school finance system, in conjunction with the inequitable access to revenue in the system, has forced lower wealth school districts, including Plaintiff districts and those districts in which individual Plaintiffs reside, to tax at or near the \$1.17 cap, causing those districts to lose meaningful discretion in setting their tax rates, in violation of article VII §1-e of the Texas Constitution. More specifically, Plaintiffs refer the Court to paragraphs 18, 19, 23-25, 27, 28, 31-39, and 41-82 and fully incorporate the same as if fully set forth herein.

4. Equalization Provisions

88. Plaintiffs further seek a declaration that, insofar as Defendants continue to rely on disparate property values and accompanying taxes to fund public schools, equalization provisions such as recapture and a cap on maximum tax rates, remain essential for an efficient public school system under Article VII, § 1 of the Texas Constitution. More specifically, Plaintiffs refer the Court to paragraphs 18-22 and 24-49 and fully incorporate the same as if fully set forth herein.

VI. ATTORNEYS' FEES

89. Plaintiffs were required to retain attorneys to prosecute this case and seek recovery of reasonable and necessary attorneys' fees and costs and expenses incurred in this case as

provided by Section 37.009 of the Texas Civil Practice and Remedies Code and as otherwise allowed by law.

VII. PRAYER FOR RELIEF

Plaintiffs respectfully ask this Court to:

90. Declare that the current public school finance system is financially and quantitatively inefficient under Article VII, § 1 of the Texas Constitution.
91. Declare that the current public school finance system is inadequate and unsuitable for the provision of a general diffusion of knowledge for low income and English Language Learner students under Article VII, § 1 of the Texas Constitution.
92. Declare that low wealth school districts have been forced to tax at or near the cap of \$1.17 merely to fulfill State mandates and no longer have meaningful discretion in setting their tax rates, so as to constitute a statewide *ad valorem* tax.
93. Declare that the equalization provisions built into the public school finance system, including the cap on tax rates and the recapture provisions, remain essential so long as the Legislature continues to rely on local property values as the basis for funding the school finance system.
94. Enjoin Defendants from giving force and effect to any school finance system and retain jurisdiction of this case until Defendants' system satisfies the principles established under Texas law and remedies the constitutional violations identified in the declaratory relief requested above.
95. Grant reasonable attorneys' fees and costs as allowed by Chapter 37 of the Texas Civil Practice and Remedies Code or as otherwise provided by law.

96. Grant any and all such other relief to Plaintiffs as so entitled.

DATED: December 3, 2012

Respectfully Submitted,

**MEXICAN AMERICAN LEGAL DEFENSE AND
EDUCATIONAL FUND, INC.**

David G. Hinojosa
State Bar No. 24010689
Marisa Bono
State Bar No. 24052874
Rebecca Couto da Silva
State Bar No. 24082473
110 Broadway, Suite 500
San Antonio, Texas 78205
(210) 224-5476
(210) 224-5387 Fax

By: /s/ David G. Hinojosa
David G. Hinojosa

**MULTICULTURAL, EDUCATION, TRAINING AND
ADVOCACY, INC.**

Roger L. Rice*
240A Elm Street, Suite 22
Somerville, MA 02144
(617) 628-2226
(617) 628-0322 Fax
*Pro Hac Vice Application Filed

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that on December 3, 2012 a true copy of *Edgewood I.S.D. Plaintiffs' Second Amended Petition* was filed with the Travis County District Court's electronic filing system and have served a true copy of the foregoing document via electronic mail to:

GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

DAVID C. MATTAX
Deputy Attorney General for Defense Litigation

ROBERT B. O'KEEFE
Chief, General Litigation Division

SHELLEY N. DAHLBERG
Assistant Attorney General Texas
Texas Attorney General's Office
General Litigation Division
P. O. Box 12548, Capitol Station
Austin, Texas 78711
Fax: (512) 320-0667

Attorneys for Defendants

Mark R. Trachtenberg
HAYNES AND BOONE, LLP
1 Houston Center
1221 McKinney St., Suite 2100
Houston, Texas 77010
Fax: (713) 547-2600

John W. Turner
HAYES AND BOONE, LLP
2323 Victory Avenue, Suite 700
Dallas, Texas 75219
Fax: (214) 651-5940

Attorneys for Plaintiffs, Calhoun County I.S.D., et al.

Richard Gray
Toni Hunter
GRAY & BECKER, P.C.
900 West Ave.
Austin, Texas 78701
Fax: (512) 482-0924

Randall B. Wood
Doug W. Ray
RAY & WOOD
2700 Bee Caves Road #200
Austin, Texas 78746
Fax: (512) 328-1156

Attorneys for Plaintiffs, Texas
Taxpayer & Student Fairness
Coalition, et al.

J. David Thompson, III
Philip Fraissinet
THOMPSON & HORTON, LLP
Phoenix Tower, Suite 2000
3200 Southwest Freeway
Houston, Texas 77027
Fax: (713) 583-9668

Attorneys for Plaintiffs, Fort Bend I.S.D.

J. Christopher Diamond
The Diamond Law Firm, P.C.
17484 Northwest Freeway
Ste. 150
Houston, Texas 77040
Fax: (832) 201-9262

Craig T. Enoch
Melissa A. Lorber
Enoch Keever PLLC
600 Congress, Ste. 2800
Austin, Texas 78701
Fax: (512) 615-1198

Attorneys for Intervenors, Joyce Coleman, et al.

Robert A. Schulman
Joseph E. Hoffer
Ricardo R. Lopez
517 Soledad Street
San Antonio, Texas 78205-1508
Facsimile: (210) 538-5384

Attorneys for Texas Charter Schools Association, et al.

s/David G. Hinojosa
David G. Hinojosa

Unofficial copy Travis Co. District Clerk Velda L. Price