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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	§	200TH JUDICIAL DISTRICT
vs.	§	
MICHAEL WILLIAMS, COMMISSIONER OF EDUCATION, IN HIS OFFICIAL CAPACITY; SUSAN COMBS, TEXAS COMPTROLLER OF PUBLIC ACCOUNTS, IN HER OFFICIAL CAPACITY; TEXAS STATE BOARD OF EDUCATION,	§	
Defendants.	§	TRAVIS COUNTY, TEXAS

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PLAINTIFFS' CORRECTED SEVENTH AMENDED ORIGINAL PETITION AND REQUEST FOR DECLARATORY JUDGMENT

NOW COME Plaintiffs and bring this Corrected Seventh 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 438 districts in the Coalition and those districts educate over 1.3 million students. The following school districts are members of the Coalition: Academy ISD, Agua Dulce ISD, Aldine ISD, Aledo ISD, Alice ISD, Alief ISD, Alpine ISD, Alvord ISD, Amherst ISD, Anahuac ISD, Anson ISD, Anthony ISD, Anton ISD, Apple Springs ISD, Aquilla ISD, Aransas Pass ISD, Archer City ISD, Arlington ISD, Athens ISD, Atlanta ISD, Aubrey ISD, Avalon ISD, Axtell ISD, Azle ISD, Balmorhea ISD, Banquete ISD, Bartlett ISD, Beeville ISD, Bellevue ISD, Bells ISD, Belton ISD, Benjamin ISD, Big Sandy ISD (Upshur), Bland ISD, Blanket ISD, Blue Ridge ISD, Blum ISD, Boles ISD, Bonham ISD, Bosqueville ISD, Brackett ISD, Bridge City ISD, Broaddus ISD, Brock ISD, Brookesmith ISD, Brownfield ISD, Brownwood ISD, Bruceville-Eddy ISD, Bryan ISD, Bullard ISD, Buna ISD, Burkburnett ISD, Burkeville ISD, Burleson ISD, Burnet Cons ISD, Bynum ISD, Caddo Mills ISD, Calallen ISD, Callisburg ISD, Campbell ISD, Canton ISD, Canutillo ISD, Canyon ISD, Carlisle ISD, Carrizo Springs Cons ISD, Castleberry ISD, Celina ISD, Center ISD, Centerville ISD (Trinity), Central ISD, Chapel Hill ISD (Smith), Cherokee ISD, Childress ISD, Chillicothe ISD, Chilton ISD, Chisum ISD, Christoval ISD, Clarendon ISD, Clebume ISD, Clint ISD, Coldspring-Oakhurst Cons ISD, Coleman ISD, Colmesneil ISD, Colorado ISD, Columbia-Brazoria ISD, Commerce ISD, Community ISD, Connally ISD, Coolidge ISD, Cooper ISD, Corpus Christi ISD, Corrigan-Camden ISD, Cotton Center ISD, Cotulla ISD, Coupland ISD, Covington ISD, Crandall ISD, Crosbyton Cons ISD, Crowell ISD, Crystal City ISD, Cuero ISD, Culberson County-Allamore ISD, Cumby ISD, Danbury ISD, De Leon ISD, Dekalb ISD,

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Denison ISD, Desoto ISD, Detroit ISD, Devine ISD, D'Hanis ISD, Diboll ISD, Dickinson ISD, Dilley ISD, Dodd City ISD, Donna ISD, Dublin ISD, Early ISD, Eastland ISD, Ector ISD, Edgewood ISD (Van Zandt), Edinburg Cons ISD, El Paso ISD, Elgin ISD, Ennis ISD, Era ISD, Etoile ISD, Eula ISD, Eustace ISD, Evant ISD, Everman ISD, Excelsior ISD, Fabens ISD, Falls City ISD, Fannindel ISD, Farmersville ISD, Ferris ISD, Flatonia ISD, Floresville ISD, Floydada ISD, Frost ISD, Fruitvale ISD, Ft Davis ISD, Ft Hancock ISD, Gainesville ISD, Ganado ISD, Gladewater ISD, Gonzales ISD, Goodrich ISD, Gorman ISD, Grandview ISD, Grand Saline ISD, Granger ISD, Grape Creek ISD, Greenville ISD, Gregory-Portland ISD, Groom ISD, Groveton ISD, Gunter ISD, Hale Center ISD, Hamilton ISD, Hamlin ISD, Hardin ISD, Harlandale ISD, Harleton ISD, Hart ISD, Haskell Cons ISD, Hawley ISD, Hearne ISD, Hedley ISD, Hemphill ISD, Henrietta ISD, Hereford ISD, Hico ISD, Hidalgo ISD, High Island ISD, Hillsboro ISD, Hitchcock ISD, Honey Grove ISD, Howe ISD, Hubbard ISD (Hill), Huckabay ISD, Hudson ISD, Huntington ISD, Huntsville ISD, Hutto ISD, Idalou ISD, Ingram ISD, Iola ISD, Italy ISD, Jacksonville ISD, Jasper ISD, Joaquin ISD, Joshua ISD, Jourdanton ISD, Judson ISD, Kames City ISD, Kaufman ISD, Kemp ISD, Kenedy ISD, Kennedale ISD, Kerens ISD, Kilgore ISD, Kirbyville Cons ISD, Knippa ISD, Knox City-O'Brien ISD, Kopperl ISD, La Pryor ISD, La Vega ISD, La Vernia ISD, La Villa ISD, Lake Dallas ISD, Lake Worth ISD, Lampasas ISD, Lasara ISD, Latexo ISD, Leonard ISD, Leveretts Chapel ISD, Liberty-Eylau ISD, Lindale ISD, Lipan ISD, Little Cypress-Mauriceville Cons ISD, Little Elm ISD, Littlefield ISD, Livingston ISD, Lockney ISD, Lometa ISD, Longview ISD, Lorena ISD, Los Fresnos Cons ISD, Louise ISD, Lubbock ISD, Lueders-Avoca ISD, Lufkin ISD, Lyford Cons ISD, Lytle ISD, Mabank ISD, Madisonville Cons ISD, Mansfield ISD, Marfa ISD, Mart ISD, Martins Mill ISD, Mathis ISD, Maud ISD, McDade ISD, McLeod ISD, Meadow ISD, Mercedes ISD, Mesquite ISD, Milano

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ISD, Miles ISD, Milford ISD, Miller Grove ISD, Millsap ISD, Mineola ISD, Mineral Wells ISD, Moran ISD, Morton ISD, Motley County ISD, Mount Enterprise ISD, Mount Pleasant ISD, Muenster ISD, Muleshoe ISD, Mullin ISD, Mumford ISD, Munday Cons ISD, Nacogdoches ISD, Navarro ISD, Navasota ISD, Needville ISD, New Boston ISD, New Diana ISD, New Home ISD, Newcastle ISD, Newton ISD, Nixon-Smiley Cons ISD, North Forest ISD, North Lamar ISD, Northside ISD (Wilbarger), Novice ISD, Nueces Canyon Cons ISD, Odem-Edroy ISD, Oglesby ISD, Olfen ISD, Olney ISD, Olton ISD, Onalaska ISD, Orangefield ISD, Ore City ISD, Paducah ISD, Palestine ISD, Palmer ISD, Panther Creek Cons ISD, Paradise ISD, Paris ISD, Patton Springs ISD, Pearsall ISD, Peaster ISD, Penelope ISD, Petersburg ISD, Petrolia ISD, Pettus ISD, Pflugerville ISD, Pharr-San Juan-Alamo ISD, Pilot Point ISD, Poolville ISD, Poteet ISD, Poth ISD, Prairiland ISD, Presidio ISD, Priddy ISD, Princeton ISD, Quanah ISD, Queen City ISD, Quinlan ISD, Rains ISD, Ralls ISD, Ramirez CSD, Ricardo ISD, Rice ISD, Richland Springs ISD, Rio Hondo ISD, Rising Star ISD, River Road ISD, Robinson ISD, Robstown ISD, Rogers ISD, Roosevelt ISD, Ropes ISD, Rosebud-Lott ISD, Rotan ISD, Roxton ISD, Royse City ISD, Rule ISD, Rusk ISD, S and S Cons ISD, Sabine ISD, Sam Raybum ISD, San Angelo ISD, San Antonio ISD, San Augustine ISD, San Elizario ISD, San Perlita ISD, San Saba ISD, San Vicente ISD, Sanford-Fritch ISD, Santa Anna ISD, Santa Rosa ISD, Santo ISD, Savoy ISD, Schulenburg ISD, Scurry-Rosser ISD, Seguin ISD, Seymour ISD, Shallowater ISD, Shamrock ISD, Sidney ISD, Silsbee ISD, Simms ISD, Sinton ISD, Skidmore-Tynan ISD, Slaton ISD, Smithville ISD, Smyer ISD, Snook ISD, Socorro ISD, Somerville ISD, South San Antonio ISD, Southland ISD, Southside ISD, Southwest ISD, Spring Hill ISD, Spring ISD, Springlake-Earth ISD, Springtown ISD, Spurger ISD, Stamford ISD, Star ISD, Stephenville ISD, Stockdale ISD, Strawn ISD, Sulphur Bluff ISD, Sulphur Springs ISD, Sweetwater ISD, Taft ISD, Tahoka ISD,

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Taylor ISD, Temple ISD, Terlingua CSD, Texline ISD, Thomdale ISD, Thrall ISD, Timpson ISD, Tioga ISD, Tolar ISD, Tornillo ISD, Trenton ISD, Trinity ISD, Troy ISD, Tulia ISD, Tyler ISD, Union Grove ISD, Union Hill ISD, United ISD, Valentine ISD, Valley View ISD (Cooke), Van ISD, Venus ISD, Veribest ISD, Vemon ISD, Vidor ISD, Warren ISD, Waskom ISD, Water Valley ISD, Wells ISD, Weslaco ISD, West Hardin County Cons ISD, West Oso ISD, West Sabine ISD, Westphalia ISD, Westwood ISD, Wharton ISD, White Oak ISD, Whitesboro ISD, Whitewright ISD, Whitharral ISD, Whitney ISD, Wichita Falls ISD, Windthorst ISD, Winnsboro ISD, Winona ISD, Woden ISD, Woodsboro ISD, Woodson ISD, Wortham ISD, Ysleta ISD, Zavalla ISD, and 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 FITTENGER 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

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who are students in the Van I.S.D., and brings this in his individual capacity and as next friend of Cortland Davidson, Carli Davidson, and Casi Davidson. Cortland Davidson is a junior high student, and Carli and Casi are elementary school students.

9. Defendant, MICHAEL WILLIAMS is the Texas Commissioner of Education and has appeared through the Texas Attomey General.

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

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

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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.

[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.

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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 conduct[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.

31. In 2009, the Legislature increased the basic allotment, but never to a level that

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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.

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

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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 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%)

[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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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.

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

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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 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

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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 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.

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

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52. In *Edgewood IV* the Texas Supreme Court found that the State meets its constitutional duty to provide a general diffusion of knowledge through funding provided by Tiers 1 and 2. In 1994, a general diffusion of knowledge required about $3,500 per weighted student. *Edgewood IV*, 917 S.W.2d 717, at 731, n. 10 (Tex. 1995). Adjusted only for inflation that $3,500 was $6,576 by 2011. That adjustment does not factor in the higher standards and the greater number of economically disadvantaged or ELL students in Texas by 2011.

53. 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."

54. 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-

[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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of-course exams.

55. 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 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.

56. 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.

57. 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.

58. To meet constitutional standards the funding system for public schools must

[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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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 (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.

59. 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.

60. 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 than 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.

61. Texas' growing student population contains a much larger percentage of students

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educational policy, but a decision based on politics and budgetary issues.

65. 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 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.

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CAUSES OF ACTION

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

Declaratory Judgment:

67. 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); and 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).

Injunction:

68. 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.

69. 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.

70. 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.

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ATTORNEYS' FEES

71. 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.

Respectfully submitted,

GRAY & BECKER, P.C.
900 West Ave.
Austin, Texas 78701
t 512.482.0061
f 512.482.0924

By: _____
Richard E. Gray, III
State Bar No. 08328300
Toni Hunter
State Bar No. 10295900
Richard E. Gray, IV
State Bar No. 24074308

Randall B. Wood
State Bar No. 21905000
Doug W. Ray
State Bar No. 16599200
RAY & WOOD
2700 Bee Caves Road #200
Austin, Texas 78746
(512) 328-8877 (Telephone)
(512) 328-1156 (Telecopier)

ATTORNEYS FOR PLAINTIFFS

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CERTIFICATE OF SERVICE

The undersigned certifies that on January 24, 2013, 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:

Shelley N. Dahlberg
Assistant Attorney General
Texas Attorney General's Office
General Litigation Division
P. O. Box 12548, Capitol Station
Austin, Texas 78711
Attorneys for the State Defendants

Mark R. Trachtenberg
HAYNES AND BOONE, LLP
1 Houston Center
1221 McKinney St., Suite 2100
Houston, Texas 77010

John W. Turner
Lacy M. Lawrence
HAYES AND BOONE, LLP
2323 Victory Avenue, Suite 700
Dallas, Texas 75219
Attorneys for Plaintiffs, Calhoun County ISD, et al.

J. David Thompson, III
Philip Fraissinet
THOMPSON & HORTON, LLP
Phoenix Tower, Suite 3000
3200 Southwest Freeway
Houston, Texas 77027

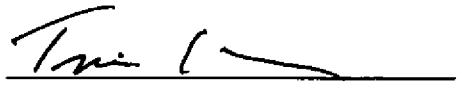
Holly G. McIntush
Thompson & Horton LLP
400 West 15th St., Suite 1430
Austin, Texas 78701
Attorneys for Ft. Bend ISD Plaintiffs

David G. Hinojosa
Marisa Bono
MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND, INC.
110 Broadway, Suite 300
San Antonio, Texas 78205
Attorneys for the Edgewood ISD Plaintiffs

J. Christopher Diamond
The Diamond Law Firm, P.C.
17484 Northwest Freeway, Suite 150
Houston, Texas 77040

Craig T. Enoch
Melissa A. Lorber
Enoch Kever PLLC
600 Congress, Suite 2800
Austin, Texas 78701
Attorneys for Efficiency Intervenors

Robert A. Schulman
Joseph E. Hoffer
Ricardo R. Lopez
Schulman, Lopez & Hoffer, L.L.P.
517 Soledad Street
San Antonio, Texas 78205-1508
Attorneys for the Charter School Plaintiffs



Toni Hunter

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