



system that fails to provide the general diffusion of knowledge required by the Texas Constitution. They suffer an actual injury as a result of the current inefficient school system and have standing to challenge that it is unconstitutional. To address this injury, the Efficiency Intervenors are asking this Court to render judgment declaring that the current system of public free schools violates Article VII, Section 1 of the Texas Constitution in that it is not efficient in providing for the general diffusion of knowledge in order to preserve the liberties and rights of the people.

The State tries to turn redressability on its head by asserting that if the Efficiency Intervenors get what they want, then the State will have to shut down the public schools. First, it is an odd argument for the State to threaten to shut down the schools if this Court determines the school system it has in place fails the State's constitutional duty. The State cannot avoid its constitutional duty. The Legislature must meet its affirmative constitutional obligation to establish an efficient system of public free schools that provides a "general diffusion of knowledge."<sup>1</sup> *Carrollton-Farmers Branch Indep. Sch. Dist. v. Edgewood Indep. Sch. Dist.*, 826 S.W.2d 489, 523 (Tex. 1992) (*Edgewood III*). And shutting down the schools would certainly not meet that obligation.

The Efficiency Intervenors are not asking the Court to shut down the schools or to draft legislation to create an efficient public school system. They ask the Court, as is within its power, to determine whether the Legislature has indeed met its constitutional obligation.

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<sup>1</sup> For a detailed discussion of the Legislature's constitutional duty to establish an efficient system of public free schools that provides a "general diffusion of knowledge," the Efficiency Intervenors note for the Court and incorporate herein by reference their Trial Brief on the Standard Governing the Constitutional Claims Asserted Under Article VII, Section 1 of the Texas Constitution, filed on February 1, 2013 in this cause.

Because the Legislature has a constitutional obligation here—not simply a constitutional restraint of a power—this is a unique situation that none of the cases cited by the State addresses. The Court is not prescribing or mandating future legislative action, but instead is assessing whether the previously determined constitutional standard has been met. Since Texas enacted the current Constitution in 1876, the Legislature has been held to the *same* standard. This Court is being asked to assess if the current statutes created by the Legislature undercut the constitutional standard—the Court is not being asked to create a new or higher standard that the Legislature is required to meet.

Standing exists when there is a real controversy between the parties that will be actually determined by the judicial declaration sought. The Efficiency Intervenors allege that the Texas public school system is facially unconstitutional: public school children are not receiving the general diffusion of knowledge mandated by the Texas Constitution. This Court has the power to redress this injury.

II. The Texas Supreme Court has made clear that the Efficiency Intervenors' claims are invited to be part of the litigation and are not barred by the political-question doctrine.

In *West Orange-Cove II*, the Texas Supreme Court clearly rejected the State's faulty argument that claims like those brought by the Efficiency Intervenors are barred, in whole or in part, by the political-question doctrine, emphasizing that the Legislature has an affirmative constitutional obligation:

This is not an area in which the Constitution vests exclusive discretion in the legislature; rather the language of article VII, section 1 imposes on the legislature ***an affirmative duty to establish and provide for the public free schools***. This duty is not committed unconditionally to the legislature's discretion, but instead is accompanied by standards. By express constitutional mandate, the legislature must make "suitable" provision for an "efficient"

system for the “essential” purpose of a “general diffusion of knowledge.” While these are admittedly not precise terms, they do provide a standard by which this court must, when called upon to do so, measure the constitutionality of the legislature’s actions.

*Neeley v. W. Orange-Cove Consol. Indep. Sch. Dist.*, 176 S.W.3d 746, 776 (Tex. 2005) (*W. Orange-Cove I*). The Court recognized the test in the case relied on by the State, *Baker v. Carr*, 369 U.S. 186, 217 (1962), applied to the separation of powers in the federal context. But the Court did not hold it applied to the separation of powers in the state context. And the Court further disagreed that the test precluded the judiciary from deciding the issues raised under Article VII, Section 1. *W. Orange-Cove II*, 176 S.W.3d at 778.

Further, the Texas Supreme Court has specifically indicated it wants the viewpoint of the Efficiency Intervenors to be a part of its analysis on the issue of whether the State’s system of public free schools provides a “general diffusion of knowledge.” The Court has recognized that while “the financial component of efficiency to be implicit in the Constitution’s mandate, the qualitative component is explicit.” *Edgewood Indep. Sch. Dist. v. Meno*, 917 S.W.2d 717, 729 (Tex. 1995) (*Edgewood II*). And the Court has expressly signaled that the question of whether the public schools are qualitatively efficient should be part of the analysis of the constitutionality of the Texas public school system. The Efficiency Intervenors have raised precisely this issue: is the system of public free schools qualitatively efficient?

As the Court held in *W. Orange-Cove II*:

There is substantial evidence, which again the district court credited, that the public education system has reached the point where continued improvement will not be possible absent significant change, whether that change take the form of increased funding, improved efficiencies, or better methods of education.

*W. Orange-Cove II*, 176 S.W.3d at 790. The Court has been clear in its invitation that challenges about whether structural reforms are required to meet the mandate of qualitative efficiency should be part of litigation about the constitutionality of Texas public schools. The Court would not have expressly invited a challenge if it believed that the issue of efficiency was barred by the political-question doctrine.

**III. The Texas Association of Business has standing to challenge the public school system because of the particularized harm its members suffer as the result of the public education system not being efficient or productive of results.**

The State argues that the Texas Association of Business (“TAB”) only claims standing as an association of taxpayers. The State is incorrect. The evidence establishes that TAB members are Texas employers, doing business throughout the State, and they rely on the Texas system of public free schools to meet their need for an educated workforce. TAB readily meets the requirements for standing for an association: 1) TAB's pleadings and the rest of the record demonstrate that TAB's members have standing to sue in their own behalf; 2) TAB's pleadings and the rest of the record demonstrate that the interests TAB seeks to protect are germane to the organization's purpose, which is to “represent the interests of its members on issues which may impact upon its members' businesses”; 3) TAB's pleadings and the record demonstrate that neither the claim asserted nor the relief requested require the participation of individual members in the lawsuit. *Texas Ass'n of Bus. v. Texas Air Control Bd.*, 852 S.W.2d 440, 447-48 (Tex. 1993). Moreover, TAB has proven particularized harm, specifically the harm imposed by a Texas system of public schools that is not efficient and productive of results, as required by Article VII, Section 1 of

the Texas Constitution—and thus that is failing to meet the businesses’ needs for an educated workforce.

As the Texas Supreme Court has recognized, the proper inquiry is whether the plaintiffs assert something more than they, as citizens, insist that the government follow the law. *Andrade v. NAACP of Austin*, 345 S.W.3d 1, 8 (Tex. 2011). TAB has demonstrated that it is suing on behalf of its members, because, as business owners, they are negatively impacted by the insufficiently educated Texas workforce. This is a particularized injury “distinct from that sustained by the public at large.” *Id.* at 8.

Moreover, because the Efficiency Intervenor parents and children have standing to challenge the constitutionality of the public schools, the standing of TAB is immaterial. The Efficiency Intervenors are making claims only for declaratory and injunctive relief, and TAB is seeking the same relief. Thus, because the Efficiency Intervenor parents and children have standing, TAB is not required to also independently establish standing. *See Barshop v. Medina Cnty. Underground Water Conservation Dist.*, 925 S.W.2d 618, 627 (Tex. 1996).

### **PRAYER**

WHEREFORE, PREMISES CONSIDERED, the Efficiency Intervenors pray that this Court deny the Defendants’ Plea to the Jurisdiction and award the Efficiency Intervenors such other relief to which Intervenors are justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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