

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

TEXAS TAXPAYER & STUDENT	§	IN THE DISTRICT COURT
FAIRNESS COALITION, <i>ET AL.</i> ,	§	
	§	
Plaintiffs,	§	
	§	
EDGEWOOD INDEPENDENT SCHOOL	§	
DISTRICT, <i>ET AL.</i> , (consolidated)	§	
	§	
Plaintiffs	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
ROBERT SCOTT, in his official capacity	§	
as Commissioner of Education, <i>et al.</i> ,	§	
	§	
Defendants,	§	200TH JUDICIAL DISTRICT

**EDGEWOOD PLAINTIFFS’ TRIAL BRIEF  
ON EFFICIENCY**

Edgewood I.S.D., *et al.*, (“Edgewood Plaintiffs”), file this trial brief on the issue of efficiency to assist the Court in determining the merits of their efficiency claim alleged in their petition.

***I. Edgewood I***

The Education Clause, Tex. Const. art. VII, section 1, requires that the State “make ‘suitable’ provision for an ‘efficient’ system for the ‘essential’ purpose of a ‘general diffusion of knowledge.’” *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391, 394 (Tex. 1989) (*Edgewood I*). In *Edgewood I*, Plaintiffs, a group of property-poor school districts, parents and children, filed a claim under the Education Clause alleging that the public school finance system was not efficient as required under the Education Clause. *See generally Edgewood I*, 777 S.W.2d 391. Following an appeal to the Supreme Court of Texas, the Court interpreted the meaning of the Efficiency Clause, stating that “[e]fficient conveys the meaning of effective or productive of results and connotes the use of resources so as to produce results with little waste . . . .” *Id.* at

395. It rejected the notion that “efficient” meant “an ‘economical,’ ‘inexpensive,’ or ‘cheap’ system.” *Id.* Reviewing the history of the Education Clause, the Court cited substantial testimony from the delegates at the Constitutional Convention of 1875 noting “the importance of education for all the people of this state, rich and poor alike.” *Id.* The delegate who first proposed the term “efficient,” Henry Cline, “urged the convention to ensure that sufficient funds would be provided to those districts most in need” and described a public school system whereby the “funds that had selfishly been used by the wealthy would be made available for the education of all the children of the state.” *Id.* at 396 (citing S. McKay, Debates in the Constitutional Convention of 1875, 217-18).

Noting the important relationship between funding and educational opportunity,<sup>1</sup> the Court declared that an efficient system requires that “children who live in poor districts and children who live in rich districts . . . be afforded a substantially equal opportunity to have access to educational funds.” *Id.* at 397. It went on to hold under the efficiency provision of the Education Clause, “[t]here must be a direct and close correlation between a district’s tax effort and the educational resources available to it; in other words, districts must have substantially equal access to similar revenues per pupil at similar levels of tax effort.” *Id.* at 397.

In examining the efficiency of the system, the Court engaged in a number of analyses of the inequities in access to funding between property-poor and property-rich districts. The Court compared expenditures between 150,000 students in the wealthiest districts and 150,000 students in the poorest districts. *Id.* at 392-93. The Court also analyzed the variation in average tax rates and expenditures per student among the 100 poorest and the 100 wealthiest districts. *Id.* at 393.

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<sup>1</sup> “The amount of money spent on a student’s education has a real and meaningful impact on the educational opportunity offered that student.” *Id.* at 393.

The Court proceeded to compare the tax rates and expenditures among individual districts within the same counties. *Id.* (in Dallas County, comparing Highland Park I.S.D. to Wilmer-Hutchins I.S.D., and in Harris County, comparing Deer Park I.S.D. to North Forest I.S.D.).

The Court also examined the higher property taxes paid by a homeowner in a low-wealth district located in East Texas compared to the taxes paid by a homeowner in a high-wealth district located in West Texas. *See id.* The Court noted its concern with high-wealth districts operating as tax havens and also pointed out how other districts are trapped “in a cycle of poverty” with their inadequate tax bases because they are unable to attract new industry and development with high tax rates and inferior schools. *Id.*

The Court held that an efficient system requires not “the funds available for education be distributed equitably and evenly,” which would “allow for more local control, not less. It will provide property-poor districts with economic alternatives that are not now available to them.” *Id.* at 398. The Court ultimately concluded that the system was neither “financially efficient nor efficient” in sense of providing the resources necessary for a “general diffusion of knowledge,” and “therefore it violates *article VII, section I of the Texas Constitution.*” *Id.* at 397.

The mandates under the Efficiency Clause that “districts . . . have substantially equal access to similar revenues per pupil at similar levels of tax effort” and the resources necessary to provide a general diffusion of knowledge have remained steadfast components of the Court’s analysis of efficiency claims.<sup>2</sup>

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<sup>2</sup> Contrary to other arguments made in this case, the Texas Supreme Court has never suggested that parties may challenge the efficiency of the system by attacking the policy choices made by the Legislature, such as those governing teacher-certification and class-size requirements. Indeed, the Court has emphasized the opposite, by stating that its responsibility is “not to judge the wisdom of the policy choices of the Legislature.” *See, e.g., Edgewood Indep. Sch. Dist. v. Meno*, 917 S.W.2d 717, 726 (Tex. 1995) (*Edgewood IV*). Without any specific challenges to the public educational framework, the *Edgewood IV* court acknowledged that “the question before us

## II. *Edgewood II*

In *Edgewood Independent School District v. Kirby*, 804 S.W.2d 491, 498 (Tex. 1991) (*Edgewood II*), the Supreme Court of Texas held that its “duty is plain: we must measure the public school finance system by the standard of efficiency ordained by the people in our Constitution. The test for whether a system meets that standard is set forth in our opinion in *Edgewood I*, 777 S.W.2d at 397-98.”

In determining whether Senate Bill 1 passed by the Legislature had changed the school finance system in such a way that the Court’s prior injunction issued in *Edgewood I* should not be enforced, the Court noted that the law had excluded 132 districts that educated approximately 170,000 students, or five percent of the State’s students. *See Edgewood II*, 804 S.W. 2d at 496. The Court compared the tax base of those wealthy districts collectively to the tax bases of the one-third of the students (1,000,000 total) attending the poorest districts. *See id.* The Court further noted that the system forced most property owners to “bear a heavier tax burden to provide a less expensive education for students in their districts, while property owners in a few districts bear a much lighter burden to provide more funds for their students.” *Id.*

Like the *Edgewood I* Court, the *Edgewood II* Court examined tax advantages among individual school districts across Texas in determining the efficiency of the system. *See id.* at 496-97 (identifying existing tax rates and corresponding revenue generated by Glen Rose I.S.D., Highland Park I.S.D., and Iraan-Sheffield I.S.D.). The Court held that “[t]o be efficient, a funding system that is so dependent on local ad valorem property taxes must draw revenue from

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is whether the financing system established by Senate Bill 7 meets the financial *and qualitative* standards of article VII, section 1.” *Id.* at 730. The *Edgewood IV* Court went on to hold that the State had met its constitutional duty of providing the resources necessary for an adequate education, *i.e.*, qualitative efficiency, under Tiers 1 and 2. *See id.* at 731 n.10.

all property at a substantially similar rate.” *Id.* After noting the deficiencies in the system, albeit to the advantage of only 170,000 students, the Court concluded that “Senate Bill 1 fails to provide ‘a direct and close correlation between a district’s tax effort and the educational resources available to it.’” *Id.* at 496 (citing *Edgewood I*, 777 S.W.2d at 397).

### **III. *Edgewood IV***

In *Edgewood IV*, the Court again subscribed to the requirement that under the Efficiency Clause, “districts must have substantially equal access to similar revenues per pupil at similar levels of tax effort.” *Edgewood Indep. Sch. Dist. v. Meno*, 917 S.W.2d at 729. In evaluating the financial efficiency of the system, the Court held that this standard “applies *only* to the provision of funding necessary for a general diffusion of knowledge,” *id.* at 731, “so long as efficiency is maintained,” *id.* at 729 (quoting *Edgewood II*, 804 S.W.2d at 500). The Court cautioned that “the amount of ‘supplementation’ in the system cannot become so great that it, in effect, destroys the efficiency of the entire system. The danger is that what the Legislature today considers to be ‘supplementation’ may tomorrow become necessary to satisfy the constitutional mandate for a general diffusion of knowledge.” *Id.* at 732. The Court also acknowledged that “the State’s provision for a general diffusion of knowledge must reflect changing times, needs and public expectations.” *Id.*

In this case, the Court examined the yield differences between fifteen percent of the wealthiest districts and fifteen percent of the poorest districts and the corresponding M&O and I&S tax rate that they would need to generate the amount required to provide a general diffusion

of knowledge.<sup>3</sup> The Court also assumed that all districts were funded on the formula in the school finance system. *See id.* at 731, n.12.

After concluding that the evidence showed the cost of an adequate education at that time was \$3,500 per weighted student, the Court proceeded to analyze the average yields per penny of tax effort for the districts with the poorest 15% of students and the districts with the wealthiest 15% of students. *Id.* at 731-32. The Court noted that the yield difference was only \$2 between the two groups of districts: \$26.74 for the poor and \$28.74 for the wealthy. *Id.* at 731 n.12. Finding little difference in the yields, the Court next calculated the rate of taxes each group would need to tax its residents in order to provide a general diffusion of knowledge. Taking into account the cost of a general diffusion of knowledge based on the then-existing accreditation standards, the Court found that the disparity in yields and corresponding 9-cent tax rate differential (\$1.31 for the poor and \$1.22 for the wealthy) for both M&O and I&S needs was not to be “so great that it renders Senate Bill 7 unconstitutional.” *Id.* at 732.

The *Edgewood IV* Court also did not pay much attention to the gap built into the formulas between the wealthiest districts and all other districts of \$600 per weighted student, along with the unequalized distribution of other funds. *See id.* at 731. The \$600 advantage for the wealthy districts assumed the formulas would be fully funded and would have resulted if the districts taxed at the maximum rate of \$1.50. The Court did not authorize a \$600 gap but instead chose to review the yield differences. *Id.* at 731-32.

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<sup>3</sup> During *Edgewood IV*, Tier 2 included both I&S and M&O. *See Edgewood IV*, 917 S.W. 2d at 746 (“Tier 2 was designed to provide ‘a guaranteed yield system of financing to provide all districts with substantially equal access to funds to provide an enriched program and *additional funds for facilities.*’” (citing Tex. Educ. Code § 16.002(b))).

#### **IV. *West Orange-Cove II***

In *West Orange-Cove I* and *II*, the Court again held fast that for the public school finance system to be efficient, “districts must have substantially equal access to similar revenues per pupil at similar levels of tax effort.” See *Neeley v. W. Orange-Cove Consol. Indep. Sch. Dist.*, 176 S.W.3d 746, 790 (Tex. 2005) (*West Orange-Cove II*) (citing *West Orange-Cove Consol. Indep. Sch. Dist. v. Alanis*, 107 S.W.3d 558, 566 (Tex. 2003) (*West Orange-Cove I*)).

The *West Orange-Cove II* court noted a number of disparities alleged by the parties but reported that, unlike in *Edgewood IV*, it did not have a similar analysis comparing the yields and tax rates between any groups of districts or students needed to generate the revenue necessary to provide a general diffusion of knowledge. See *West Orange-Cove II*, 176 S.W.3d at 762. The Court, thus, did not engage in an analysis of whether property-poor and property-rich “districts [had] substantially equal access to similar revenue at similar levels of tax effort” to provide a general diffusion of knowledge.<sup>4</sup>

#### **Conclusion**

As demonstrated above, the Texas Supreme Court has adopted an approach that takes into account various measures when determining the constitutionality of the efficiency of the Texas school finance system. The Court takes into account the standards imposed by the State for a general diffusion of knowledge, as well as the need to adapt the school finance system over time to any changes in needs and expectations. The Court also ensures that the State fulfill its

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<sup>4</sup> The Court, instead, found that the limited number of hold-harmless existing at that time, thirty-four districts educating less than 1% of the students in Texas (*see id.* at 761), reduced recapture funds by only 4% and held that those provisions did not render the entire system inefficient. See *id.* at 792. The Court also noted that at maximum tax rates of \$1.50, the \$584 gap in *Edgewood IV* had decreased to \$301.04 per student under Senate Bill 7 in 2004. See *id.* at 761.

duty of providing a qualitatively efficient system when all districts have access to funds to provide a general diffusion of knowledge. The Court further ensures that all districts, property-rich and property-poor alike, have “substantially equal access to similar revenue at similar levels of tax effort” to provide a general diffusion of knowledge and that there is a direct and close correlation between a district’s tax effort and the educational resources available to it. In doing so, the Court has measured, for example, access between the 100 wealthiest and poorest districts in the State, the wealthiest and poorest 5% of districts and students in the State, as well as the yields and corresponding tax rates needed to provide a general diffusion of knowledge for the 15% wealthiest and poorest students in the State.

Additionally, the Court provides that although the system may authorize all districts to access supplemental funds (that being, “additional revenue not required for an education that is constitutionally adequate”), “the amount of supplementation in the system cannot become so great that it, in effect, destroys the efficiency of the entire system.” *West Orange-Cove II*, 176 S.W. 3d at 792. The Court has noted the important role of the tax cap and other equalization measures in maintaining an efficient public education finance system. Regarding the cap, the Court stated that “[t]o remove the cap so as to allow districts meaningful discretion in setting tax rates at higher levels would be to increase the revenue disparity among the property-rich and property-poor districts creating the financial inefficiency that the cap is intended to prevent.” *Id.* at 798. The Court further held that “[t]he equalization necessary for efficiency that the combination of the FSP, the tax rate cap, and recapture is intended to effectuate would be destroyed if the cap were removed,” creating a structural flaw in the system.

Consequently, any efforts to minimize the effects of the equalization provisions should be weighed with great caution.

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Respectfully Submitted,

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