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


Plaintiffs

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

PLAINTIFFS' NINTH AMENDED ORIGINAL PETITION AND REQUEST FOR DECLARATORY JUDGMENT

NOW COME Plaintiffs and bring this Ninth Amended Original Petition and Request for Declaratory Judgment and Injunctive Relief 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 443 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, Bangs 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, Burnet 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, Carizo 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, Clarksville ISD, Cleburne 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
ISD, Meadow ISD, Mercedes ISD, Mesquite ISD, Milano 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 Rayburn ISD, San Angelo ISD, San Antonio ISD, San Augustine ISD, San Diego 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,


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

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

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

7. Plaintiff, BRAD KING, owns property in the Bryan I.S.D. and pays property taxes in the district. He does not have children attending school in the district.
8. Plaintiff, SHELBY DAVIDSON is a parent of Cortland, Carli and Casi Davidson who are students in the Van I.S.D., and brings this in his individual capacity and as next friend of 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 Attorney General.

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

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

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 and Rule 270 of the Texas Rules of Civil Procedure.

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. The constitutionality of the public school finance system was challenged by these plaintiffs and three other plaintiff groups in 2011. (See Calhoun County ISD Plaintiffs First Amended Petition, Edgewood Plaintiffs’ Second Amended Petition, and Fort Bend ISD Plaintiffs’ Fifth Amended Petition). Trial on these claims commenced on October 22, 2012 and concluded on February 4, 2013, hereinafter “October trial.” After the parties rested, the Court
ruled from the bench declaring the system unconstitutional because it was qualitatively inefficient, was unsuitable and inadequate to provide a general diffusion of knowledge overall and specifically to those students who are economically disadvantage and/or English Language Learners, and because the maintenance and operations (M & O) property tax cap created a state ad valorem tax. Tr. 2/4/2013 at 159-164. On March 15, 2013, the plaintiff groups submitted joint proposed findings of fact and conclusions of law based on the extensive trial record.\(^1\) The Court has not issued its findings of fact and conclusions of law, nor has it issued its written judgment.\(^2\)

15. The Legislature, in the 83\(^{rd}\) Regular Legislative Session, which concluded on May 27, 2013, passed several bills addressing issues raised in the “October trial,” including Senate Bill 1 - the Appropriations Bill, House Bill 1025, House Bill 5, and House Bill 866. These bills, for the most part, moved the system in the right direction; however, they were not enough to cure the unconstitutionality of the system. The funding changes that were made were made by appropriations and were not statutory changes to the basic allotment or other aspects of the funding system. Further, districts will incur additional costs in implementation of the bills passed by the 83\(^{rd}\) Legislature.

16. The 82\(^{nd}\) Legislature, in 2011, had reduced the existing inadequate and inefficient funding for public schools by over $5 billion dollars. The actions of the 83\(^{rd}\) Legislature failed to replace all of these dollars and failed to cure the constitutional issues tried in the “October trial.” Prior to the 82\(^{nd}\) Legislature’s cuts, Texas’ funding for public education had already become an arbitrary hodge-podge of approaches rather than a coherent system and

\(^1\) Plaintiffs incorporate this joint submission of Findings of Fact and Conclusions of Law by reference as if fully set forth herein.

\(^2\) The Calhoun County plaintiffs filed a Motion to Reopen the Evidence on June 16, 2013, which, after a hearing on June 19, 2013, was granted by the Court. The Court will reopen the evidence on January 21, 2014 to consider changes made by the 83\(^{rd}\) Legislature which may have affected the issues tried by the Court in the “October trial.”
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. The cuts made in FY 2011-12, when applied to already low-funded districts, had a harsher impact on the already low-funded districts than similar cuts to higher funded districts. Some of this impact was reduced in FY 2013, when cuts were slightly deeper for districts with Target Revenue, but these higher wealth districts with Target Revenue still had greater resources than the lower wealth districts.

17. 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. In 2012, Point Isabel ISD, which encompasses Padre Island, taxed at $0.98 and yet raised over $306 more per WADA than its neighbor, Los Fresnos ISD, which taxed nineteen cents higher at $1.17. Also in 2012, Boles ISD received $5,648 per WADA while taxing at the maximum $1.17 M&O rate; in contrast, Kenedy Countywide ISD received $11,216 per WADA while taxing at a $1.00 M&O tax rate. The actions of the 83rd Legislature have not substantially changed the system in which low wealth districts like Los Fresnos and Boles ISD can levy the maximum tax rate on their taxpayers, and the school children within those districts receive significantly fewer dollars per WADA than the students within the Point Isabel and Kenedy Countywide districts, who tax at a lower tax rate.

18. In 2011-12, at $1.04 tax rate in Tier 1, Eanes I.S.D. was funded at $6,834 per WADA and Pflugerville I.S.D. at the same tax rate was funded at $5,506 per WADA, an overall funding gap of $1,328 per WADA. This difference in funding provided Eanes I.S.D. with about $30,000 per year per classroom more than the same tax effort made available to Pflugerville
I.S.D. The actions of the 83rd Legislature have not substantially changed these disparities. Substantial funding gaps continue to exist throughout the system, with districts taxing at lower rates but receiving substantially more funding than corresponding districts taxing at higher rates. This is true for both Maintenance and Operations as well as Interest and Sinking funds for facilities.

19. The weights utilized in the system have not been updated for years and significantly understate the true costs of educating children, particularly ELL and Comp Ed children. Low wealth districts tend to have a greater percentage of these types of children, making the funding gap between the low-wealth and high-wealth districts even greater. The actions of the 83rd Legislature did nothing to affect these outdated and understated weights.

20. 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.

21. 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.

22. Over 200 school districts in Texas had adopted an M & O tax rate at the $1.17 tax cap in 2010-11 and did not have the capacity to rebound from the 2011 failure to fund. The actions of the 83rd Legislature have not substantially changed this picture.

**THE PUBLIC SCHOOL FINANCE SYSTEM IS UNCONSTITUTIONAL**

**Taxpayer Equity:**

23. 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 more than half of the districts in Texas, 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 the lowest funded of the 91 “net recapture” districts.3 Further, the inequity associated with the “golden pennies”4 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 n5.

24. Plaintiff, taxpayer Randy Pittenger, owns property in the Central Texas district of Belton I.S.D. where in 2011, he was taxed at $1.17 for M & O, which tax rate raised $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, raised $8,895 per WADA. In other words, Randy Pittenger paid forty-two percent (42%) higher taxes while Glen Rose received fifty percent

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3 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.

4 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.
(50%) more in revenue per WADA. The actions of the 83rd Legislature have not substantially changed this situation.

25. Plaintiff, taxpayer Chip Langston, owns property in the Kaufman I.S.D. where in 2011 he was 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 paid ten percent (10%) higher taxes while nearby Lovejoy I.S.D. at a lower tax rate received nearly thirty percent (30%) more in revenue per WADA. The actions of the 83rd Legislature have not substantially changed this situation.

26. 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. The actions of the 83rd Legislature have not substantially changed this situation.

27. 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. Property wealth variation alone explains about half of the variation in M&O revenues per WADA. Based on funding levels for the 2011-12 school year, property values per WADA range from $22,218 (lowest) in Boles ISD to $7,341,341 (highest) in Kenedy Countywide ISD. The responsibility for any inequity falls directly on the Legislature, which has the power to create school districts and draw boundary

**Efficiency/Equity:**

28. 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 connote[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. 1990) (*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.

29. 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.

30. 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.

31. The State failed 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. The basic allotment was set so low that no district was funded under the formula system; instead 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.

32. In 2009 the Legislature increased the basic allotment, but not to a level that resulted in more than twenty-five percent (25%) of districts being funded under the formula system.

33. 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. Under S.B. 1, 83rd Leg., appropriations have increased the basic allotment, but even at this level only 65% of the districts will be in the formula system. Even with the actions of the 83rd Legislature, the Tier 1 funding level continues to not provide similar revenue for similar tax effort. In fact, the difference in yields remains significantly large between high and low funded districts.

34. 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 2011-12, at its $1.04 adopted tax rate in Tier 1, Eanes I.S.D. was funded at $6,834 per WADA and Pflugerville I.S.D., at the same compressed tax rate, was funded at $5,506 per WADA, creating a Tier 1 funding gap of $1,328 per WADA.

35. Eanes I.S.D and Pflugerville I.S.D. are not isolated examples nor do they present the worst comparisons. Based on the LBB projections, with the funding provided by the 83rd Legislature there will still be a gap of $2,450 between Glen Rose ISD and Hillsboro ISD with Hillsboro taxing 32.5 cents more; and there will be a gap of $955 between Canadian ISD and
Anton ISD with Anton taxing 23.2 cents more; and another example is a gap of $847 between Highland Park ISD and Irving ISD with Irving ISD taxing 2 cents more.

36. The 82\textsuperscript{nd} Legislature created the Regular Program Adjustment Factor (RPAF) to cut over $4 billion dollars from the funding system. The RPAF distributed 92.3\% of the 2010-11 basic allotment to school districts. These across-the-board percentage cuts to the regular program allotment had 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. The 83\textsuperscript{rd} Legislature increased funding for low-wealth districts by a greater amount than the increase to high-wealth districts, but those increases did not bring the level of funding for the provision of a general diffusion of knowledge within the range of substantially equal. Furthermore, the 83\textsuperscript{rd} Legislature, rather than choosing to reduce target revenue, raised target revenue by raising the Target Revenue Factor (TRF) from 92.35\% to 92.63\%, thereby negating some of the equalizing effect of the increase in the basic allotment.

37. When sorting all 1,024 districts in Texas by the M&O revenue per WADA that the district could raise at the $4,177 cap and grouping by WADA, the districts receiving the highest revenue, enrolling 10\% of the WADA (top 10\%), would receive, on average, $8,092 per WADA, while the districts receiving the lowest revenue, enrolling 10\% of the WADA (bottom 10\%), would receive, on average, just $5,684 per WADA. In other words, the gap in maximum possible M&O revenue between the top and bottom 10\% is $2,408 per WADA (or $81,167 per classroom of twenty-two students). The actions of the 83\textsuperscript{rd} Legislature have not substantially changed this situation.
38. The "copper pennies"\(^5\) 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. The actions of the 83\(^{rd}\) Legislature have not substantially changed this situation.

39. The state facilities funding system guarantee has not changed from the $35 yield per penny per ADA adopted in 1999 although the cost of construction has doubled since then. It was set at the 91\(^{st}\) percentile of wealth (per ADA basis) and has fallen to equal about the 55\(^{th}\) percentile. In 2010-11, low-wealth districts would have to levy an I&S tax rate that was 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%.

40. The Existing Debt Allotment equalizes only 29 of the 50 pennies available for facilities taxation. None of the 50 pennies 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. The actions of the 83\(^{rd}\) legislature did nothing to address these inequities.

\(^5\) 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.
41. The disparities in funding result in disparities in performance.

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

**Local Supplementation:**

43. In *Edgewood IV*, Justice Cornyn noted that an efficient system did not preclude 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, 506 (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. At least 25% of the districts tax at the maximum rate in an effort to provide a general diffusion of knowledge and are unable to do so and therefore cannot offer any enrichment.

44. 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 in low wealth districts for that purpose rather than for enrichment.

45. 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 its was set below recommendations made by experts. Because low funded districts lack the discretionary funding levels of the more highly funded districts and tend to have a higher concentration of students needing compensatory services and 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. The actions of the 83rd Legislature did not address this situation.

**State Ad Valorem Tax:**

46. 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, the State has passed the burden of raising funds to support education to the districts.

47. By the 2011-12 school year, well 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 raise adequate revenue to meet increasing accountability standards, deliver a general diffusion of knowledge, meet community expectations, or offset inflation. These districts are using both Tier 1 and Tier 2 funds in an attempt to deliver a basic education and have no funds for enrichment.
Over 90% of districts tax at $1.04 (the level that should allow provision of a basic education) or more. The actions of the 83rd Legislature have not significantly impacted this situation.

49. The $1.17 tax cap is both a floor and a ceiling leaving the districts with no meaningful discretion. Almost 25% of the districts are forced to tax at the maximum allowable rate in an effort to provide a general diffusion of knowledge. 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.* at 579.

**Suitability/Adequacy:**

50. Texas Constitution article VIII, § 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 constitutes 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.*

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 2011.6 By 2014, inflation will have increased this figure by about $200. The inflation adjustment does not factor in the higher standards and the greater number of economically disadvantaged or ELL students in Texas. By 2011-12, at most, 130 districts taxing at $1.04 in M&O could raise $6,576 per WADA. Taxing at $1.17 only 233 districts could raise $6,576. The changes made by the 83rd Legislature did not positively impact those numbers and in fact, made them worse.

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6 If that number is figured based on the manner in which WADA was determined in 2011-12 it would be $6,966.
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 tests 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 Legislature in 2006: "college and career readiness." Evidence at the "October trial" showed that large percentages of students were not meeting these standards and that the funding available to districts was inadequate to allow them to carry out their mission. The evidence further showed that passing rates were negatively affected by the number of economically disadvantaged students in a district. Though the 83rd Legislature modified the number of tests necessary for graduation they made no change to the "college/career ready" standard, and failed to fund districts at a level necessary to meet that standard.

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.7

In 2009, the Legislature required that college readiness be reflected in passing standards for end-of-course exams. The 83rd Legislature made changes to the testing regimen, but a general diffusion of knowledge is still defined as college and career ready.

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 is 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 were basically frozen at 2005-06 levels. The 83rd Legislature raised the basic allotment by appropriations, but made no statutory change. Revenue levels are still 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.”8 The 83rd Legislature did little

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8 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.
to phase out target revenue, and, in fact, increased the percentage of Target Revenue property wealthy districts could keep.

58. To meet constitutional standards the funding system for public schools must provide adequate funds for instructional facilities necessary to deliver the required level of education. *Edgewood IV*, 917 S.W.2d 747 n. 37 cited by *West Orange Cove II*, 176 S.W.3d at 764. The Legislature made some strides in improving funding facilities after Edgewood IV, but that process has been eroded. The level of state support for the Instructional Facilities Allotment (IFA), created in 1997, and the Existing Debt Allotment (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. Both the 82nd Legislature and the 83rd Legislature failed to provide any funding for the IFA.

59. The amounts lost as a result of the FY 2011-2012 budget cuts directly affected the quality of education in that they 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 suggested that Texas districts are employing 32,000 fewer staff then they did before the budget cuts. About one-third of these were teaching positions. For the first time in 60 years, the 82nd Legislature did not fund growth, despite data that show that Texas public school enrollment increased by 90,000 students per year over the last five years. The actions of the 83rd Legislature, in replacing some of the funding cut

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by the 82nd Legislature, will allow districts to slow down this trend, but is insufficient to put districts in a secure position to meet the challenges they face.

60. Texas' growing student population contains a much larger percentage of students for whom English is a second language and about forty-five percent more "economically disadvantaged" students than it did a decade ago. Data for 2010-11 shows that sixty percent (60%) of Texas public school students fall into the low-income category and seventeen percent (17%) are ELL students. These populations present significant challenges to educators and require the expenditure of greater resources to achieve state standards for a general diffusion of knowledge. The 83rd Legislature ignored these demographic changes in making its funding decisions.

61. The structure of the system, designed to deliver a general diffusion of knowledge, is irrationally flawed and unable to deliver a constitutional level of education to all the children of Texas in violation of the suitability provision of article VII, §1. Further, the Legislature's failure to meet its responsibility to adequately fund the system and provide for fair distribution of the available funds has crippled the system. The Legislature has substantially defaulted on its responsibility to provide a suitable, adequate, and efficient system of education in Texas.

Arbitrariness:

62. It is arbitrary . . . for the Legislature to define the goals for accomplishing the constitutionally required general diffusion of knowledge, and then to provide insufficient means for achieving those goals.” West Orange Cove II, 176 S.W.3d at 784. In West Orange Cove II, the Texas Supreme Court, for the first time, addressed the standard of review when addressing a school finance challenge. The Court said that State "action is arbitrary when it is taken without reference to guiding rules or principles." The Court further held that Article VII of our
Constitution "does not allow the Legislature to structure a public school system that is inadequate, inefficient, or unsuitable, regardless of whether it has a rational basis or even a compelling reason for doing so."

63. As alleged above, the Legislature has increased standards for districts and students while, at the same time, capping local property taxes without replacing the funding lost due to lack of state funding. Despite knowing that the margins tax, created to deliver necessary tax dollars to fund education, was not delivering those dollars, the Legislature, rather than fixing it, cut $5.4 billion from public education funding without regard to any educationally sound reasoning. Indeed, during this period Texas public schools have experienced rapid growth in the numbers of students they must educate and greater percentages of students are economically disadvantaged and/or do not speak English as a first language making them more challenging to educate. The Legislature made these cuts to an already underfunded and inefficient system in 2011 without regard to available money in Texas' Rainy Day Fund. The 83rd Legislature replaced a portion of the $5.4 billion in cuts but did nothing to ensure that public education funding was adequate to allow districts to deliver a general diffusion of knowledge. The evidence at the "October trial" showed that funding was inadequate to deliver a general diffusion of knowledge. It remains so after the actions of the 83rd Legislature, which actions were taken without any study of the increased costs associated with the new standards or the changing demographics. Further, though the funding disparities among school districts, as cited above, were slightly ameliorated by the funding appropriated by the 83rd Legislature they were not fixed and their existence demonstrates that there were 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."

64. Section 42.007 of the Education Code requires the Legislative Budget Board to adopt rules, subject to public comment, controlling the calculation for each year of a biennium and the qualified funding elements in accordance with subsection (c) which are necessary to achieve the policy set forth under Section 42.001 of the Education Code. Section 42.001 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.

CAUSES OF ACTION

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

Declaratory Judgment:

66. 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 14-21, 30-42, 44-45, 55-57); 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 51-60, 63-64); 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 17,23-27); and that the system has created a state ad
valorem tax in violation of art. VIII, § 1-e of the Texas Constitution (see paragraphs 20, 23, 47-49).

Injunction:

67. 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.

68. 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.

69. Plaintiffs request that the Court require the Defendants to determine, in accordance with a Court-approved methodology and with the input and participation of the Plaintiffs, the true costs of meeting the State’s performance requirements for all school districts and students, including appropriate weights and adjustments to accurately reflect the cost associated with specific groups of students, specific instructional arrangements, and/or specific district characteristics.

ATTORNEYS’ FEES

70. 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,

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CERTIFICATE OF SERVICE

The undersigned certifies that on October 10, 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:

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