

Cause No. _____

CALHOUN COUNTY INDEPENDENT
SCHOOL DISTRICT; ABERNATHY
INDEPENDENT SCHOOL DISTRICT;
ARANSAS COUNTY INDEPENDENT
SCHOOL DISTRICT; FRISCO
INDEPENDENT SCHOOL DISTRICT;
LEWISVILLE INDEPENDENT SCHOOL
DISTRICT; RICHARDSON
INDEPENDENT SCHOOL DISTRICT,

Plaintiffs,

VS.

ROBERT SCOTT, TEXAS
COMMISSIONER OF EDUCATION;
TEXAS EDUCATION AGENCY; SUSAN
COMBS, TEXAS COMPTROLLER OF
PUBLIC ACCOUNTS; and TEXAS STATE
BOARD OF EDUCATION,

Defendants.

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE JUDGE OF THE COURT:

Calhoun County Independent School District, Abernathy Independent School District, Aransas County Independent School District, Frisco Independent School District, Lewisville Independent School District, and Richardson Independent School District (collectively, the "Plaintiffs") file this Original Petition against Robert Scott, in his official capacity as Texas Commissioner of Education, the Texas Education Agency, Susan Combs, in her official capacity as the Texas Comptroller of Public Accounts, and the Texas State Board of Education (collectively, the "Defendants"), respectfully showing the Court as follows:

I.

DISCOVERY CONTROL PLAN

1. Plaintiffs respectfully submit that the parties' discovery in this case should be conducted in accordance with a Discovery Control Plan under the provisions of Track 3 of Rule 190.4 of the Texas Rules of Civil Procedure.

II.

PARTIES

2. Plaintiff Calhoun County Independent School District ("Calhoun County I.S.D.") is a public independent school district and has the authority to bring this action by and through its board of trustees.

3. Plaintiff Abernathy Independent School District ("Abernathy I.S.D.") is a public independent school district and has the authority to bring this action by and through its board of trustees.

4. Plaintiff Aransas County Independent School District ("Aransas County I.S.D.") is a public independent school district and has the authority to bring this action by and through its board of trustees.

5. Plaintiff Frisco Independent School District ("Frisco I.S.D.") is a public independent school district and has the authority to bring this action by and through its board of trustees.

6. Plaintiff Lewisville Independent School District ("Lewisville I.S.D.") is a public independent school district and has the authority to bring this action by and through its board of trustees.

7. Plaintiff Richardson Independent School District (“Richardson I.S.D.”) is a public independent school district and has the authority to bring this action by and through its board of trustees.

8. Defendant Texas Education Agency (the “TEA”) is a governmental agency organization under the laws of the State of Texas and can be served through Robert Scott, Texas Commissioner of Education, at the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701.

9. Defendant Robert Scott, Texas Commissioner of Education, is sued in his official capacity and can be served at the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701.

10. Defendant Susan Combs, Texas Comptroller of Public Accounts, is sued in her official capacity and can be served at the Lyndon B. Johnson State Office Building, 111 East 17th Street, Austin, Texas 78774.

11. Defendant Texas State Board of Education is a governmental agency organization under the laws of the State of Texas and can be served through its Chairwoman, Barbara Cargill, at the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701.

12. The Honorable Greg Abbott, Attorney General of the State of Texas, will be served with notice in accordance with Section 37.006(b) of the Texas Civil Practice and Remedies Code and can be served with appropriate notice at the Texas Supreme Court Building, 209 West 14th Street, Austin, Texas 78701.

III.

JURISDICTION AND VENUE

13. This Court has original jurisdiction to adjudicate the claims or causes of action made by Plaintiffs against Defendants under the Uniform Declaratory Judgments Act of Section 37.001, *et seq.*, of the Texas Civil Practice and Remedies Code.

14. Venue is proper in the district court of Travis County because Defendant Scott is a resident of Travis County. Venue as to all remaining Defendants is proper under Section 15.005 of the Texas Civil Practice and Remedies Code.

IV.

INTRODUCTION

15. The Texas school finance system has reached a crisis stage again. Even as the public education system is adding roughly 80,000 students per year, the Texas Legislature has made unprecedented reductions in education funding and has effectively failed to fund student enrollment growth for the first time in 60 years. The total \$5.4 billion cut to public education in the 2011 legislative session has forced districts to eliminate thousands of positions for teachers and other support staff. Budget constraints have driven school districts to request thousands of waivers of the State's own statutory class size requirements. In addition, \$1.4 billion of the cuts have come from grant programs, many of which are targeted towards at-risk students, like full-day prekindergarten, after-school tutoring, and dropout prevention programs, which will only exacerbate the significant "achievement gaps" in Texas. These cuts to school funding come at a time when Texas is already well below national averages in per-pupil expenditures – and also at the very time the State is requiring school districts to implement a new and more rigorous testing and accountability regime. In the words of Former Lieutenant Governor Bill Ratliff, Texas has a

reached a “situation where we’re asking people to make bricks without straw.” *Neeley v. West Orange-Cove Consolidated I.S.D.* (“*West Orange-Cove II*”), 176 S.W.3d 746, 790 (Tex. 2005).

16. The State’s failure to adequately fund education has also threatened the principle of local control, long a central pillar of the Texas system of public education. A substantial number of school districts must now effectively use all of their local taxing capacity in the effort to meet state mandates and adequacy requirements. School districts are supposed to enjoy meaningful discretion to generate and use local tax revenues for local enrichment purposes. But for many districts, this discretion has practically vanished.

17. The State’s severe reductions in school funding, occurring just as it has simultaneously increased the burdens on school districts, represent a violation of the State’s constitutional responsibility to provide adequate resources for a quality public education for all schoolchildren. The State’s actions have also left school districts without meaningful discretion to control their local property tax rates, in violation of the Texas Constitution’s prohibition on state ad valorem taxes. This lawsuit seeks a declaration that the current system is unconstitutional and that the State must swiftly remedy the inadequacy of the system of funding for public education.

V.

BACKGROUND AND FACTUAL ALLEGATIONS

A. The Constitutional Framework

18. Article VII, section 1 of the Texas Constitution – the “education” clause – provides: “A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.”

TEX. CONST. art. VII, § 1. According to the Texas Supreme Court, article VII, section 1 obligates the Legislature to meet three standards in providing for a public school system.

19. First, the education provided must be adequate, i.e., the public school system must accomplish “that general diffusion of knowledge essential to the preservation of the liberties and rights of the people.” *West Orange-Cove II*, 176 S.W.3d at 752 (citing TEX. CONST. art. VII, § 1). The Texas Supreme Court has elaborated that the public education system is adequate if districts are reasonably able to:

provide “*all Texas children . . . 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). Districts satisfy this constitutional obligation when they [are reasonably able to] provide all of their students with a *meaningful opportunity* to acquire the essential knowledge and skills reflected in . . . curriculum requirements . . . such that upon graduation, students are prepared to “continue to learn in postsecondary educational, training, or employment settings.” TEX. EDUC. CODE § 28.001 (emphasis added).

Id. at 787.

20. Second, the means adopted by the Legislature must be “suitable.” *Id.* at 753. “[S]uitable provision’ requires that the public school system be structured, operated, and funded so that it can accomplish its purpose for all Texas children.” *Id.*

21. Third, the system must be “efficient.” *Id.* at 752.

22. The Legislature must also satisfy these obligations without relying on constitutionally prohibited state ad valorem taxes. *See* TEX. CONST. art. VIII, § 1-e (“No State ad valorem taxes shall be levied upon any property within this State.”). Local control of property tax rates and the ability to use revenues from those taxes for locally chosen programs are essential to the principle of local control upon which the Texas public school system is premised. As the Supreme Court has declared, “[L]ocal supplementation is made a core component of the

system structure, necessitated by the basic philosophy of the virtue of local control.” *West Orange-Cove II*, 176 S.W.3d at 797.

B. *West Orange-Cove II: The School Finance System Under a Constitutional Cloud*

23. Eight years ago, in *West Orange-Cove Consolidated I.S.D. et al v. Neeley*, a broad coalition of school districts brought two claims against the State. First, they argued that the school finance system had evolved into an unconstitutional state property tax, in violation of article VIII, section 1-e of the Texas Constitution. Specifically, the statutory cap on maintenance and operations (“M&O”) tax rates of \$1.50 per \$100 of property valuation had become both a “floor” (because districts could not meaningfully lower their tax rates without compromising their ability to provide a constitutionally adequate education) and a “ceiling” (because the cap barred districts from raising their tax rates further), such that districts lacked meaningful discretion in setting their tax rates. Second, the *West Orange-Cove* plaintiffs argued that the then-existing school finance system failed to provide the plaintiff districts access to funds sufficient to provide a constitutionally adequate education. In extensive findings, the trial court ruled in favor of the *West Orange-Cove* plaintiffs on both the state property tax and adequacy claims.

24. In November 2005, in a 7-1 decision, the Texas Supreme Court declared the Texas school finance system unconstitutional, finding that it violated the Constitution’s prohibition of a state property tax. *Neeley v. West Orange-Cove Consolidated I.S.D.*, 176 S.W.3d 746 (Tex. 2005).

25. In upholding the trial court’s judgment that the system had evolved into an unconstitutional state property tax, the Supreme Court emphasized that the Legislature must provide a funding system that allows local school districts to meet the State’s high educational

standards, while leaving local school boards with meaningful discretion over their local property tax rates. While the Court acknowledged that “meaningful discretion” is an “imprecise standard,” it concluded that it was not even a “close question” as to whether districts had such discretion. *Id.* at 796. The Court cited evidence of “how districts are struggling to maintain accreditation with increasing standards, a demographically diverse and changing student population, and fewer qualified teachers, while cutting budgets even further.” *Id.* at 796. It referenced falling teacher certification rates, growing teacher turnover and attrition, the increasing numbers of limited English proficient and economically disadvantaged students, the higher costs of educating these special needs students, and the more rigorous curriculum, testing, and accreditation standards. *Id.* After pointing to statistics regarding the number of districts taxing at the cap and the exhaustion of fiscal capacity in the system, the Court noted that “[t]he current situation has become virtually indistinguishable from one in which the State simply set an ad valorem tax rate of \$1.50 and redistributed the revenue to the districts.” *Id.* at 796-97.

26. The Court also reaffirmed that districts must have funding for “local supplementation,” noting that this was inherent in the statutory scheme:

Although the statute does not promise any particular level of supplemental funding, local supplementation is made a core component of the system structure, necessitated by the basic philosophy of local control. The State cannot provide for local supplementation, pressure most of the districts by increasing accreditation standards in an environment of increasing costs to tax at maximum rates in order to afford any supplementation at all, and then argue that it is not controlling tax rates.

Id. at 797 (emphasis added).

27. The Supreme Court reversed the trial court’s finding of an adequacy violation, but not without raising serious warning flags. The Court noted that there was:

much evidence . . . that many schools and districts are struggling to teach an increasingly demanding curriculum to a population with a growing number of

disadvantaged students, yet without additional funding needed to meet these challenges. There are wide gaps in performance among student groups differentiated by race, proficiency in English, and economic advantage. Non-completion and dropout rates are high, and the loss of students who are struggling may make performance measures applied to those who continue appear better than they should. The rate of students meeting college preparedness standards is very low. There is also evidence of high attrition and turnover among teachers statewide, due to increasing demands and stagnant compensation.

Id. at 789.

28. The Court further concluded that there was “substantial evidence . . . 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.” *Id.* at 790.

29. The Court even characterized the situation as “an *impending* constitutional violation” and stated that it “remains to be seen whether the system’s *predicted drift toward constitutional inadequacy* will be avoided by legislative reaction to widespread calls for changes.” *Id.* (emphasis added).

30. Finally, the Supreme Court issued a warning about the legislative proposals being discussed at the time of its decision:

Various legislative proposals during the past year to remedy perceived problems with the public education system and its funding would reduce the maximum ad valorem tax rate and allow it to be exceeded for certain purposes. While we express no view on the appropriateness of any of these proposals, *we are constrained to caution, as we have before, that a cap to which districts are inexorably forced by educational requirements and economic necessities, as they have been under Senate Bill 7, will in short order violate the prohibition of a state property tax.*

Id. at 797-98 (emphasis added). The Supreme Court’s warnings have proven prophetic.

C. The Legislature Responds to the *West Orange-Cove II* Decision

31. The Texas Legislature attempted to respond to the Supreme Court's *West Orange-Cove II* decision in a special session called in the summer of 2006. In that session, the Legislature passed House Bill 1, which mandated the lowering of M&O tax rates for most districts from \$1.50 to \$1.00. This new lower rate is known as the "compressed rate."

32. The compression of local property tax rates by approximately one-third, standing alone, would have severely reduced the overall funding available for public education. The Legislative Budget Board estimated that the effect of the compression would be to reduce local school district tax collections by \$6.58 billion in 2008, with additional reductions of 4-5% each year thereafter. This enormous reduction in revenue was, however, supposed to be offset by increased funding from other sources. In the same special session, the Legislature passed into law a restructured business margins tax. This new tax was intended to raise revenues to pay for a significant part of the large reduction in local property taxes. Counting on the availability of new revenues from the business margins tax and other sources – and to make up for school districts' loss of local property tax revenues – House Bill 1 included an increase in the amount allotted to schools from the State through its statutory funding formulas.

33. House Bill 1 included additional provisions to make sure that no individual school district actually lost revenues as a result of the Legislature's changes. The bill provided, in substance, that state aid would be provided to districts in an amount needed for each district to maintain total per-pupil revenue equal to what it had received in the 2005-06 school year, or what it would have received in the 2006-07 school year under the old system, whichever was greater. The bill further provided additional state aid for teachers and a high school allotment of \$275 per pupil. These provisions are the origin of what is known as "target revenue."

34. House Bill 1's mandatory compression of local property tax rates and its target revenue provisions were, together, intended to establish a basic level of funding for school districts consistent with their levels of tax effort and revenue generation as they existed at the time of the 2006 legislative changes. The target revenue provisions, moreover, would avoid the effect of penalizing any school districts for their own victory in court in *West Orange-Cove II*. From fiscal years 2007 to 2011, school districts were generally funded at the greater of either their target revenue level or the level that would be provided by the State's statutory formulas, as set forth in Chapters 41 and 42 of the Texas Education Code.

35. House Bill 1 also sought to address the state property tax violation that the Supreme Court had identified in *West Orange-Cove II*. The Supreme Court had directed that districts must have meaningful discretion in setting their local property tax rates, and that local property taxes could not be wholly enlisted in the effort to meet basic state requirements. The Legislature thus provided that districts could supplement the basic level of funding through a decision to increase local M&O tax rates above the compressed rate, up to a cap that was eventually set at \$1.17 per \$100 of property valuation. Districts could then use these additional funds for local enrichment purposes.

36. But the ability to increase local M&O tax rates came with several significant constraints. House Bill 1 stipulated that any increase above \$1.04 had to be approved by the district's voters in a special election, known as a Tax Ratification Election ("TRE"). The legislation also contained special measures applying to districts subject to the recapture provisions of Chapter 41 of the Education Code. For these Chapter 41 districts, any funds generated by an increase of more than six cents above the compressed rate were subject to partial recapture by the State under statutory formulas. Chapter 41 districts that wished to tax more than

six cents above the compressed rate, and above \$1.04, would therefore be forced to ask their voters to approve a tax increase in which a portion of the new dollars raised would not be used locally and would instead be recaptured by the State.

37. The Legislature's 2006 modifications to school finance were supposed to result in a system in which local property taxes were lowered, but in which the State made up for this lost revenue with new revenue from other sources, including the business margins tax. Districts were supposed to receive a basic tier of funding equal to or greater than their per-pupil funding in 2005-06 or their anticipated per-pupil funding in 2006-07. This level of funding was supposed to be sufficient to enable districts to meet essential state standards. And on top of this basic tier of funding, districts were supposed to have meaningful discretion to raise additional local tax dollars for local enrichment purposes. This was the intent of the plan. Unfortunately, the reality today does not match these intentions.

D. 2007-2011: The Legislature's Fix Proves Illusory

38. Almost from the beginning, the Legislature's response to the Supreme Court's ruling showed signs of serious inadequacy. The new business margins tax, which was supposed to be a primary vehicle for offsetting the revenue lost from the compression of local property taxes, raised only \$4.5 billion in 2008, \$4.3 billion in 2009, and \$3.9 billion in 2010. These sums were nowhere near what was needed to compensate for the gap in the budget resulting from local property tax compression. By some estimates, the tax "swap" implemented in 2006 has left the State with a recurring deficit of over \$4.6 billion annually.

39. The State was able to avoid a more serious budget reckoning in the 2009 legislative session, owing to the infusion of approximately \$12 billion in federal stimulus funds.

This included \$3.8 billion earmarked specifically for education. These federal funds enabled the Legislature to postpone confronting the true challenges of the structural deficit it had created.

40. But in the 82nd Legislative Session, beginning in January 2011, the extent of the structural deficit could no longer be hidden. Responding to the problems originating in the failed tax swap of 2006, the Legislature chose to cut a total of \$4 billion in the fiscal biennium beginning in September 2011 from the Foundation School Program (the primary vehicle for distributing state aid to school districts) and \$1.4 billion in grants administered by the Texas Education Agency. Many of the grants were for programs targeted towards at-risk students, such as full-day prekindergarten, after-school tutoring, and dropout prevention efforts. These cuts were not guided by any studies or analyses of the true costs of adequate funding for quality public education. They had the effect of reducing overall funding for most school districts by approximately 5-6% in the 2011-12 school year, compared to what they would have received under prior law, with even greater reductions for many districts still to come in 2012-13. The Legislature also shifted an entire Foundation School Program payment of \$2 billion from August 2013 to September 2013 so that it would not count as an expense for the current biennium. This accounting maneuver constitutes an additional expense that will come due in the next biennium.

41. These funding cuts have come even as enrollment in Texas schools is increasing at the rate of approximately 80,000 students per year. Ordinarily, student growth would have required a corresponding increase in state funding just to maintain the same levels of funding per student. But the budget cuts of 2011 have caused a significant decline in actual per-student expenditures – even as Texas already ranked below average among states in this category.

E. The Situation Today: the Supreme Court's Warnings Have Materialized

42. Texas schools today find themselves in the very situation of which the Supreme Court warned in *West Orange-Cove II*. The State's school finance system is no longer merely "drifting" toward constitutional inadequacy. It has arrived.

43. The Legislature's 2011 budget cuts have forced school districts across the State to eliminate teaching positions, to fail to replace retiring teachers and staff, to reduce career and counseling services, to restrict curriculum and enrichment opportunities, and to curtail or eliminate after-school and prekindergarten programs. These reductions have had and will have a significant adverse impact on the ability of school districts to provide the access to quality education for all schoolchildren that the State's laws require. They hinder districts in the preparation of their students to meet college and post-secondary preparedness standards, a task that both the Supreme Court and the Legislature have identified as central to the State's constitutional obligation. They have also driven many districts to a dramatic increase in the number of requests for waivers of the State's legally mandated class size requirements. In tacit recognition of the dire circumstances in which districts have found themselves, the Texas Education Agency even added a new option for "financial hardship" to the list of reasons for requesting a class size waiver. These facts, together with others to be presented at trial, reveal that the State has not made the significant forward progress the Supreme Court admonished was necessary to avert a constitutional violation.

44. These severe funding reductions have come just as school districts are called upon by the Legislature and the TEA to do much more.

45. Following mandates from the Legislature, the State is implementing a new set of accountability and assessment exams and a new set of end-of-course exams. The new State of

Texas Assessments of Academic Readiness (“STAAR”) program is widely acknowledged to demand more of students, schools, and districts than the previous Texas Assessment of Knowledge and Skills (“TAKS”) program. The TEA’s website observes that “[t]he most significant changes to the assessment program include increasing the rigor of both the assessments and the performance standards for all grades, subjects, and courses... The rigor of items has been increased by assessing skills at a greater depth and level of cognitive complexity.” Moreover, the TEA notes, “[t]he total number of test items for the STAAR assessments has been increased for most grades, subjects, and courses.”

46. The Legislature also has set “college and career readiness” as the outcome goal of the Texas educational system. In 2006, through House Bill 3, the Legislature required that end-of-course assessments measure college readiness according to content standards developed by the TEA and the Texas Higher Education Coordinating Board (“THECB”). In 2008, the College and Career Readiness Standards (“CCRS”) were formally adopted by the THECB. These standards have since been approved by the Commissioner of Education and incorporated into state curriculum standards by the State Board of Education. By their own terms:

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 and career ready students.¹

47. In 2009, in House Bill 3, the Legislature extended and revised early college readiness legislation to include:

- development of end-of-course exams that embed the college-readiness content standards;

¹ Texas College and Career Readiness Standards at p. iii, available at <http://www.thecb.state.tx.us/files/dmfile/CCRS081009FINALUTRevisions.pdf> (visited Nov. 22, 2011).

- establishment of evaluation criteria on Algebra II and English III exams that directly link test performance with readiness to succeed in an entry-level, credit-bearing college course without remediation; and
- establishment of a statewide school accountability system that will hold schools accountable for increasing the percentages of students who meet EOC test standards for graduating from high school.

College readiness is now defined as the level of preparation a student must attain in English language arts and mathematics to enroll and succeed, without remediation, in an entry-level college course in those subject areas. The Legislature also set the goal in House Bill 3 of becoming one of the top ten states for graduating college-ready students by the 2019-20 school year. Yet even as the Legislature has increased the demands and expectations upon school districts, it has failed to provide districts with the resources needed to meet these challenges.

48. The Supreme Court has cautioned that “[i]t would be 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 785. Implementation of these unprecedented budget cuts at a time when significant new and demanding burdens are being placed on school districts falls short of any reasonable measure of constitutional adequacy.

49. Nor are school districts reasonably able to make up for the loss in state funding by raising their local property taxes. In many districts, and for each of the plaintiffs in this lawsuit, the additional revenue that districts could generate and retain after recapture would fall well short of making up for the losses to the district resulting from funds cut by the Legislature. Moreover, many districts are already at or very near the statutory M&O cap of \$1.17. Many other districts – including several of the plaintiffs in this action – are effectively constrained in their ability to raise taxes above \$1.04 or \$1.06, either (a) because they have attempted but failed to pass a Tax

Ratification Election (like plaintiff Lewisville ISD), or (b) because they have determined that a Tax Ratification Election is not politically viable and is unlikely to succeed in their district. This latter circumstance is exacerbated in the case of Chapter 41 districts, which are placed in the position of asking voters to support a tax increase when a significant portion of any new tax revenue exceeding six cents above the compressed rate would be sent out of the district.

50. Even if districts could raise enough money through local tax increases to offset the Legislature's cuts, forcing districts to do so in order to achieve adequate funding would violate the Supreme Court's precedent in *West Orange-Cove II*. Tax dollars raised above the compressed rate are intended to enable local supplementation and enrichment, not to be a vehicle for compensating for funding the State has failed to provide. As the Supreme Court has emphasized, the State must ensure that districts are adequately funded without requiring districts to enlist all of their local taxing capacity in the effort to accomplish state objectives.

51. Indeed, the State already controls and redistributes over \$1 billion annually in local tax revenues recaptured from Chapter 41 districts, a circumstance that the Supreme Court has described as a "significant factor in considering whether local taxes have become a state property tax." *West Orange-Cove II*, 176 S.W.3d at 797. For Chapter 41 districts, increasing M&O rates to the statutory maximum would increase the total amount of funds recaptured by the State, thereby adding to, not reducing, the State's level of control over the local revenues generated by these districts. The State's underfunding of public education thus threatens to drive the system toward an even greater reliance on recapture dollars to fund public education. For Chapter 41 school districts, this would further erode the principle of local control upon which the system is premised.

52. These circumstances demonstrate that the school finance system is constitutionally inadequate. The State has severely reduced levels of per-student funding, even as the burdens on school districts have increased. The State has acted arbitrarily in failing to provide the resources reasonably needed to enable school districts to prepare students to achieve the goals and accountability standards set by the Legislature.

53. The State's underfunding of public education also places school districts, once again, in the position of collecting a *de facto* unconstitutional state property tax. A large number of school districts have lost meaningful discretion to set their local M&O tax rates, either because they already tax at the statutory maximum, or because they are effectively constrained in the setting of their M&O tax rates by the combination of state budget cuts, statutory recapture provisions, and the TRE requirement.

54. Plaintiffs ask the Court to order that these violations be remedied.

VI.

CAUSES OF ACTION

Declaratory Judgment

55. Plaintiffs bring the following claims under the Uniform Declaratory Judgment Act. *See* TEX. CIV. PRAC. & REM. CODE, § 37.001 *et seq.*

56. All of the foregoing factual allegations are incorporated herein by reference.

57. The Texas Constitution requires a public school finance system that (1) permits districts to raise and receive sufficient funds to provide a general diffusion of knowledge, i.e., a constitutionally adequate education (article VII, section 1) and (2) leaves districts "meaningful discretion" to set their property tax rates in order to provide local enrichment programs to their

students, if they so choose (article VIII, section 1-e). The current system is in violation of both of these requirements, including with respect to the Plaintiffs named in this Petition.

1. Adequacy Claim

58. For the reasons stated above, Plaintiffs request that the Court enter a judgment declaring that the current school finance system violates article VII, section 1 of the Texas Constitution in that it is inadequate and fails to provide for the general diffusion of knowledge.

59. In the alternative, Plaintiffs request such a declaration as to their particular districts.

2. State Property Tax Claim

60. Plaintiffs also request that the Court enter a judgment declaring that the current system of school finance prevents districts from exercising “meaningful discretion” in setting their tax rates, thereby violating article VIII, section 1-e of the Texas Constitution. School districts, including Plaintiffs, have lost meaningful discretion to set their M&O tax rates, as their current rates effectively serve as a floor (because they cannot lower taxes without further compromising their ability to meet state standards and requirements) and a ceiling (because they are either legally or practically unable to raise rates further). Further, to the extent any plaintiff district could raise taxes to the statutory maximum rate, the district would still remain unable to meaningfully use local tax dollars for local enrichment beyond the level required for a constitutionally adequate education, in violation of the prohibition on state ad valorem taxes.

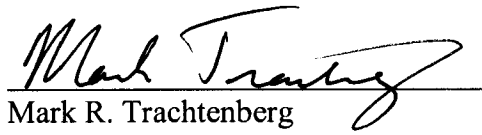
61. In the alternative, Plaintiffs request such a declaration as to their particular districts.

PRAYER FOR RELIEF

62. Plaintiffs respectfully request that the Court grant the following relief:
- A. Plaintiffs request that the Court grant the declaratory relief described above.
 - B. Plaintiffs seek a permanent injunction prohibiting Defendants from giving any force and effect to the sections of the Texas Education Code relating to the financing of public school education (Chapters 41 and 42 of the Texas Education Code) and from distributing any money under the current Texas school financing system until the constitutional violation is remedied. Plaintiffs request that the Legislature be given a reasonable opportunity to cure the constitutional deficiencies in the finance system before the foregoing prohibitions take effect.
 - C. 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.
 - D. Plaintiffs seek recovery of their reasonable attorneys' fees, costs, and expenses as provided by Section 37.009 of the Texas Civil Practices and Remedies Code and as otherwise allowed by law.
 - E. Plaintiffs request that they be awarded such other relief at law and in equity to which they may be justly entitled.

Respectfully submitted,

HAYNES AND BOONE, LLP

A handwritten signature in black ink, appearing to read "Mark Trachtenberg", is written over a horizontal line.

Mark R. Trachtenberg
State Bar No. 24008169

1 Houston Center

1221 McKinney St., Suite 2100

Houston, Texas 77010

Telephone: (713) 547-2000

Telecopier: (713) 547-2600

John W. Turner

State Bar No. 24028085

2323 Victory Avenue, Suite 700

Dallas, Texas 75219

Telephone: (214) 651-5000

Facsimile: (214) 651-5940

ATTORNEYS FOR PLAINTIFFS