Executive Summary

This Court held a forty-five day trial between October 22, 2012 and February 4, 2013, hearing from over eighty live witnesses and building a record containing over 5,000 admitted exhibits. On the final day of trial, this Court orally announced its ruling on the plaintiffs' claims, finding the Texas school finance system unconstitutional in several respects. Before this Court entered its findings of fact and a final judgment, the 83rd Legislature passed several bills that implicated the claims in this case. The Court granted a motion to reopen the evidence to consider the impact of the 2013 legislation, and held another three-week evidentiary hearing beginning on January 21, 2014. During this second phase, the Court heard from another twelve live witnesses and admitted an additional 700 exhibits.

Based on the Court's review of the relevant case law and the evidence presented during the two trial phases, this Court issues the following findings of fact and conclusions of law, which are summarized below:

A. The Legal Claims at Issue

This case involves multiple challenges to the constitutionality of the Texas school finance system and public educational system by (1) four plaintiff coalitions primarily composed of independent school districts (collectively, the "ISD Plaintiffs"), (2) a group of intervening parties referred to during the trial as the "Efficiency Intervenors" or the "Intervenors," and (3) a group of plaintiffs affiliated with the Texas Charter School Association (the "Charter School Plaintiffs").

At the heart of this dispute is the "education clause" of the Texas Constitution – Article VII, Section 1 – which 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 (emphasis added).

From this language, four of the claims at issue in this case arise:

- Adequacy claim: The "general diffusion of knowledge" clause has been interpreted by the Texas Supreme Court as requiring the Legislature to ensure that school districts are reasonably able to provide *all* students with a meaningful opportunity to learn the essential knowledge and skills reflected in the state curriculum such that upon graduation, students are prepared to continue to learn in postsecondary educational, training, or employment settings.

- Suitability claim: The "suitable provision" clause has been interpreted by the Texas Supreme Court as requiring the school finance system to be structured, operated, and funded so it can accomplish a general diffusion of knowledge for all Texas children.

- Equity/financial efficiency claim: The "efficiency" clause has been interpreted by the Texas Supreme Court as requiring that school districts have substantially equal access to revenues necessary to provide a general diffusion of knowledge, *i.e.*, an adequate education, at similar tax effort.

- Qualitative efficiency claim: The Intervenors assert that the public education system is qualitatively inefficient because it is not productive of results with little waste.

A second constitutional provision also plays a central role in this dispute. Article VIII, Section 1-e of the Constitution provides that "[n]o State ad valorem taxes shall be levied upon any property within this State." Tex. Const. art. VIII, § 1-e. The Texas Supreme Court has held that Article VIII, Section 1-e is violated when districts lack "meaningful discretion" in setting their property tax rates for a local ad valorem tax because of state constitutional, statutory, and regulatory mandates, such that the tax becomes a *de facto* state property tax (the "state property tax claim").

With this legal background in mind, the Court provides an overview of what has occurred since the Texas Supreme Court last addressed these issues in 2005, followed by a summary of its rulings on these and the other claims at issue in this case.

B. Developments since the Texas Supreme Court's 2005 decision in *Neeley v. West Orange Cove ISD.*

When the Texas Supreme Court last addressed the constitutionality of the school finance system in 2005, it held that the system had evolved into an unconstitutional state property tax because school districts were deprived of meaningful discretion to set their local tax rates. A major factor in the Court's decision was the lack of local taxing capacity, as the majority of districts were taxing at or near the statutory cap on tax rates. While the Court was unwilling to also declare the system inadequate at that time, it hinted that Texas was on the cusp of violating the adequacy clause. It 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." *Neeley v. W. Orange-Cove Consol. Indep. Sch. Dist.*, 176 S.W.3d 746, 790 (Tex. 2005) ("*WOC II*").

The convergence of three major trends since 2005 has brought the school finance system back under judicial scrutiny. First, Texas's student population is growing rapidly and at the same time growing poorer and increasingly diverse – to the point where more than three in every five students qualify for free and reduced-price lunches and almost one in five are English Language Learners (*i.e.*, have limited proficiency in English). Undisputed evidence shows that these populations are significantly more expensive to educate than the non-economically disadvantaged and English-proficient student populations.

Second, to its credit, Texas has substantially raised the level of academic expectations for students and school districts, incorporating college-readiness standards into the state curriculum, increasing graduation requirements, and transitioning to a much more rigorous testing regime.

The evidence before the Court credibly demonstrates that it takes more resources to enable students to meet higher levels of performance.

The third trend – a significant decline in financial support for public education – has substantially exacerbated the challenges caused by the first two trends. Ironically, this decline was set in motion by the passage of House Bill 1 in 2006 ("HB1"), which was supposed to remedy the state property tax violation found by the Texas Supreme Court.

HB1 – which was promoted by political leaders as "the largest tax cut in Texas history" – compressed school districts' property taxes by one-third over a two-year period, resulting in the loss of over $7 billion annually in property tax revenue. To pass legal muster, these lost local revenues were supposed to be replaced with new state revenues, including a restructured business margins tax. School districts were then authorized to gradually increase their maintenance and operations tax rates to $1.04 without the need for an election, or to a rate between $1.05 and $1.17 if the rate was approved in a tax ratification election ("TRE") by the districts' voters. However, even at the time the Legislature passed HB1, it was aware that the new state revenues would not come close to replacing the lost local property tax revenues. Making the situation worse, the Legislature also greatly overestimated the amount of revenues that would be generated by the new state taxes. Consequently, the Legislature's actions left Texas with what the Comptroller called a recurring $10 billion "structural deficit" per biennium.

The State was able to avoid serious repercussions from this structural deficit during the 2009 legislative session by relying on an infusion of approximately $12 billion in federal stimulus funds. (State general revenue support for public education actually declined by about $3.2 billion for the 2010-11 biennium.) But the federal stimulus funds disappeared in 2011. Rather than take action to close the structural deficit and revise the funding system to account for changing demographics and rising academic standards, the Legislature opted to cut $5.3 billion from the public education budget. This resulted in significant harm to Texas students, as discussed below.

In 2013, the Legislature reinstated approximately $3.5 billion of the $5.3 billion it had cut from public education in 2011. Most of this new funding came from local taxpayers, as the Legislature "replaced" the general revenue funds it had cut by using increased local revenue obtained from increasing property values. Yet as noted below, even taking the Legislature's actions in 2013 into account, there still has been a significant decline in total per-student revenues for public education, on an inflation-adjusted basis, over the last decade. This decline in real, per-student education spending has been even more pronounced over the last five years – even as the economically disadvantaged and English Language Learner ("ELL") populations have continued to grow, and even as the State has begun the process of implementing the most rigorous curriculum and assessment standards in its history.

Not surprisingly, over the same period, a wide variety of measures show that: (1) the performance of economically disadvantaged students and ELL students is dismal, and the gaps between these students and their peers have grown, (2) student performance overall is flat, (3) hundreds of thousands of high school students are not on track to graduate, and (4) an

overwhelming number of Texas graduates are not on track to attend college and succeed without remediation.

C. The ISD Plaintiffs' adequacy claims

Texas's future depends heavily on whether it meets the constitutional obligation to provide a general diffusion of knowledge – such that *all* students have a meaningful opportunity to graduate college and career ready. More than 60% of Texas public school students are economically disadvantaged, more than 17% are "ELLs," and the majority (51.3%) are Hispanic. Those percentages have grown dramatically over the last decade – a trend which is almost certain to continue. According to Steve Murdock, the former state demographer and former director of the U.S. Census Bureau, if existing gaps in educational attainment and household income levels remain in place, Texas faces a stark future with declining income, higher rates of poverty, reduced consumer spending, reduced tax revenues, and higher state expenditures. However, if Texas can deliver on the constitutional promise of an adequate education and close the educational gaps described in these findings, then Texas would be far more likely to improve its long-term fiscal outlook through substantial increases in household income levels, economic growth, and state revenues. Unfortunately, in recent years, Texas has defaulted on its constitutional promise.

In the last school finance case, the Texas Supreme Court held that "[i]t would be arbitrary [and therefore unconstitutional] . . . 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." *WOC II*, 176 S.W.3d at 785. What has happened since that decision was rendered plainly violates this arbitrariness standard.

The Texas Supreme Court instructs that to meet the constitutional mandate of adequacy, Texas school districts must reasonably be able to provide all students with a meaningful opportunity to achieve the academic standards set by the Legislature. Through significant amendments to Chapters 28 and 39 of the Texas Education Code, the Legislature has established college and career readiness as the outcome goal of the Texas educational system, and has raised the academic performance standards for Texas schools and students accordingly.

Defense and Plaintiff witnesses unanimously agreed that the incorporation of college-readiness standards into the state curriculum and the transition from the TAKS testing regime to the State of Texas Assessment of Academic Readiness ("STAAR") testing regime constitute a *dramatic increase* in the level of expectations for Texas students and school districts.

But rather than provide districts more resources to meet the higher standards, the Legislature, in the 2011 session, imposed $4 billion in cuts to the Foundation School Program ("FSP") and an additional $1.3 billion in cuts to special grant programs. Many of the grant program cuts fell most heavily on the at-risk student population. The Court notes that the level of funding Texas provided to public education was not high, by national standards, even before the 2011 reductions. Before implementation of the cuts, *Quality Counts*, an annual report prepared by *Education Week*, ranked Texas forty-ninth out of the fifty states on per-pupil

expenditures after adjusting for regional cost differences. Other evidence at trial yielded similar comparative results.

The "outputs" evidence adduced at trial showed that districts are not able to provide a general diffusion of knowledge at current funding levels. The failure rates on STAAR constitute a current crisis in the educational system. After three tries, 47% of the state's economically disadvantaged 2011-12 ninth graders, and 35% of all students from that class, still had not passed all of their ninth-grade level end-of-course ("EOC") exams required for graduation. And unlike previous results on the TAKS tests that were in place during *WOC II*, student performance on STAAR did not meaningfully improve during the second year of the tests' implementation. After the Spring 2013 administration of STAAR, 64% of economically disadvantaged ninth and tenth graders and 51% of all ninth and tenth graders (338,038 students) failed to pass at least one required EOC exam. Even after the Summer and December 2013 administrations, hundreds of thousands of students still had not passed all exams required for graduation, according to the State's own estimates. These failures have resulted in substantial remediation costs for districts. Student performance data from the STAAR exam, as well as other testing data, reveal that Texas is far from accomplishing its mission of producing college and career-ready graduates.

As large as the gap is between Texas's expectations and current levels of student achievement, the gap is even larger when considering the performance levels of economically disadvantaged and ELL student populations. For example, at the current "Level II phase-in" passing standard for the STAAR EOC exams, there was a 29% gap in the passing rate between economically disadvantaged and non-economically disadvantaged students for all tests taken after the Spring 2013 administration. The performance of economically disadvantaged students is even bleaker when judged against the "final Level II" standard that students will be measured against upon the completion of the phase-in in 2015-16. Only 13% of economically disadvantaged students could meet this final Level II standard for all tests taken during the Spring 2013 administration, compared to 36% of non-economically disadvantaged students, a 23% gap. Massive gaps also exist between ELL students and non-ELL students on every performance measure.

Despite the roll-out of tougher academic requirements and the dismal performance results, neither the Legislature nor the Texas Education Agency has made any effort to determine the costs of meeting increasing standards and providing remediation to struggling students. There is no evidence that the Legislature took those costs into consideration when making the budget cuts described above. The Education Code directs the Legislative Budget Board ("LBB") to make such a calculation and determine necessary costs per student, including the costs of the regular program, special population programs, and adjustments such as the Cost of Education Index, the guaranteed yield level for enrichment, and funding for the school facilities programs. Similar language has been in the Education Code for at least fifteen years, and yet the LBB simply has not complied with this provision, nor has the Legislature demanded compliance.

Relatedly, the special program weights and allotments in the State's statutory school funding formulas are sorely out-of-date and in need of adjustment. They do not approximate the actual cost of education. When state formula funds do not adequately compensate districts for uncontrollable costs arising from different student, district, or community characteristics,

districts must use their own funds to cover these costs (if they can), typically with funds that were supposed to be available for enrichment.

Because the funding formulas have not been updated, they are not structured or operated in such a way as to allow school districts to provide a general diffusion of knowledge. Many of the principal strategies that substantial evidence suggests districts could employ to improve student performance (especially for economically disadvantaged and ELL students) – such as (1) smaller class sizes, particularly in the early grades, (2) full-day quality pre-K programs, (3) more competitive teacher salaries to improve the hiring and retention of quality teachers, (4) instructional coaches, (5) tutors, and (6) extended day and summer school programs – cannot be implemented without additional resources. In the absence of state funds, districts have had to increase local tax rates and use revenues that are supposed to provide districts with meaningful discretion in order to provide for an adequate education – or, worse yet, to go without these programs entirely.

The evidence provided to the Court demonstrates the detrimental impact of the cuts on school districts' ability to achieve the mandates set before them. Despite enrollment growth of 44,454 in 2011-12 (excluding charter schools), districts lost approximately 12,000 teachers and 15,000 other school employees. Districts were forced to increase class sizes, eliminate tutors and other instructional specialists, eliminate full-day pre-K programs, and implement other cost-saving measures that have negatively impacted their ability to carry out their educational mission. The evidence further established that while most districts struggled as a result of the budget cuts, low property wealth districts, which tend to educate a higher percentage of economically disadvantaged students and ELLs, bore a more difficult burden because they are unable to access similar tax revenues for maintenance and operations ("M&O") or interest and sinking fund ("I&S") rates as wealthier districts. Even taxing at the highest rates possible, these low property wealth districts were unable to generate local tax revenues to replace the lost state revenues.

Taking the 2013 Legislature's partial restoration of funding into account, Texas still has experienced a significant decline in total per-student revenues for public education on an inflation-adjusted basis over the past decade. The decline has been even sharper in the last five years. In 2003-04, total per-student operating revenues for public education were approximately $7,128 in 2004 dollars. The 2008-09 school year reflected the largest per-student revenues during the last decade at $7,415 (in 2004 dollars), in part due to increases in federal funding that year. By 2014-15, on an inflation-adjusted basis, public education funding per student will have dropped to $6,816 in 2004 dollars, representing a loss of $312 per student compared to the 2004 level and a loss of $599 per student since 2009 – even though Texas's student population has become more challenging to educate and the bar for student performance has been raised substantially since that time.

This Court finds that current arbitrary and inadequate levels of funding do not allow school districts to provide a general diffusion of knowledge and thus do not satisfy the constitutional requirements of adequacy and suitability. As discussed in Part I.C.5 (FOF 603, *et seq.*) below, persuasive evidence shows that Texas cannot accomplish a general diffusion of knowledge without a substantial investment of additional resources. The Court also finds that

the constitutional requirement of adequacy, and the financial resources it necessarily entails, must be available to districts without being made subject to a vote in a special election; otherwise local taxpayers can deprive local students access to the constitutionally required level of education (a very real threat, considering that at least 128 TREs failed between 2006 and 2012). For this reason, at a minimum, the Court finds that school districts must be able to finance the cost of meeting the constitutional mandate of adequacy within the range of taxing authority not subject to a TRE, which is a $1.04 M&O tax rate under the current system.

Further, districts must be able to access sufficient facilities funding. An adequate education cannot be provided without classrooms.

In summary, the plaintiff school districts, which are representative of the system at large, lack sufficient funding at a $1.04 M&O tax rate, or even at the maximum $1.17 tax rate intended for enrichment, to reasonably provide all of their students with a meaningful opportunity to learn the Texas Essential Knowledge and Skills and graduate from high school fully prepared for post-secondary educational or employment settings. This is particularly true with respect to the growing and large numbers of economically disadvantaged and ELL students. Thus, this Court declares that the Texas school finance system is presently in violation of the "general diffusion of knowledge" clause of Article VII, Section 1 of the Texas Constitution. The Court also specifically declares that the State is in violation of this clause with respect to its economically disadvantaged and ELL student populations.

D. The ISD Plaintiffs' state property tax claim

The Court's ruling on the ISD Plaintiffs' Article VIII, Section 1-e state property tax claim rests in part on the analysis set forth above, as well as the following additional facts.

When the Legislature compressed 2005-06 tax rates by one-third (generally to $1.00) in House Bill 1 (2006) in response to *WOC II*, it was intended that districts could use the funding generated by tax rates between $1.00 and $1.17 for local supplementation and enrichment above the level of funding required for a constitutionally adequate education. However, any such meaningful discretion has disappeared in the face of increasing costs (associated with higher standards and increasing percentages of disadvantaged student populations), legislative mandates on the use of additional funds, and the $5.3 billion in budget cuts in the 2011 legislative session.

As a result, school districts are effectively out of taxing capacity. The overwhelming evidence shows that districts taxing in the $1.04 to $1.17 tier are doing so in an effort to obtain funds for an adequate education, not for local supplementation and enrichment. Nearly one-quarter of all districts are taxing at the maximum rate of $1.17. These districts have increased tax rates primarily in an attempt to keep up with state standards and requirements in the face of increasing costs. They do not have meaningful discretion to lower their tax rates.

Even if all districts increased their M&O tax rates to $1.17, the amount of revenue raised would not constitute meaningful discretion because revenue at these rates would remain insufficient even to meet the heightened adequacy standards. Superintendents from low property wealth districts that are already taxing at $1.17, established without question that they are unable

to fund an adequate education with these tax revenues. They have no discretion to reduce their tax rates, and the system as a whole does not have the taxing capacity to fund a constitutionally adequate education for all students.

In addition, the State's failure to ensure that facilities funding keeps pace with property value growth, inflation, or the growing student population, has forced districts to issue more bonds and raise I&S tax rates. In order to finance needed facilities and comply with the State's 50 cent limit on the issuance of new bonds, districts have been forced to issue debt with longer maturities and greater interest expenses. This increasingly expensive debt, combined with rising I&S tax rates due to lack of state support, has contributed to the loss of meaningful discretion over M&O tax rates.

The State also exercises impermissible control over the levy of school district taxes through the taxing structure it has established. By forcing school districts to compress their tax rates by one-third, the Legislature eliminated $14.2 billion of revenue capacity in the system per biennium. But it "replaced" this lost capacity with a franchise tax that it knew did not raise enough to make up for the lost revenue (leading to the 2011 budget cuts). It then lowered the statutory M&O tax cap from $1.50 to $1.17, thus limiting the ability of school districts to replace the lost revenue themselves. The State exercises additional control through the TRE requirement (for any tax rate above $1.04) and the significantly lower guaranteed yield and higher recapture rate that applies to the "copper-penny tier" (above $1.06) – a combination that effectively prevents many districts from taxing beyond this amount. Finally, the State controls the levy by using increasing property values to finance enrollment growth and (nominal) funding increases.

For the foregoing reasons, the Court concludes that the ISD Plaintiffs, individually and collectively, have established a violation of the prohibition on statewide ad valorem taxes. Just as the Texas Supreme Court found nine years ago, the current M&O rates effectively serve as a floor (because school districts cannot lower taxes without further compromising their ability to meet state standards and requirements) and a ceiling (because districts are either legally or practically unable to raise rates further). Further, to the extent districts could raise taxes to the statutory maximum rate of $1.17 (and have not already done so), they would still remain unable to meaningfully use those additional local tax dollars for local enrichment, as these funds are needed to replace basic adequacy funding lost due to the State's cuts. Even taxing at the $1.17 maximum, most school districts would be unable to fund even the lowest estimates of the cost of an adequate education. Because the ISD Plaintiffs collectively have established a systemic/statewide violation, this Court declares that the Texas school finance system is presently in violation of Article VIII, Section 1-e of the Texas Constitution.

E. The ISD Plaintiffs' suitability claims

The suitability clause focuses on the "means chosen to achieve an adequate education through an efficient system." *WOC II*, 176 S.W.3d 746, 793. While the Legislature has significant discretion to choose these means, the Texas Supreme Court instructs that whatever means chosen must be "structured, operated and funded so as to achieve [the] purpose" of providing a general diffusion of knowledge for *all* students. *Id.* at 753. In other words, the suitability clause would be violated 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." *Id.* at 794 (citation and internal quotation marks omitted).

The student performance evidence detailed above – including the hundreds of thousands of high school students who are off-track for graduation, the low levels of college readiness, and the substantial performance gaps (especially for economically disadvantaged and ELL students) – makes it clear that the Legislature has in fact substantially defaulted on that responsibility. Rather than attempt to solve the problem, the State has buried its head in the sand, making no effort to determine the cost of providing all students with a meaningful opportunity to acquire the essential knowledge and skills reflected in the state curriculum and to graduate at a college and career-ready level.

This Court finds that the multiple defects in the current design of the school finance system cumulatively prevent districts from generating sufficient resources to accomplish a general diffusion of knowledge for all students, but particularly with respect to its economically disadvantaged and ELL student populations. Instead of increasing resources for programs targeting at-risk students, the State eliminated funding for such programs. As already discussed above, among other flaws, the State relies on outdated, arbitrary weights and allotments that do not come close to approximating the actual cost differences that they are intended to address. Some of these weights have not been updated in over twenty-five years, and were not originally based on the actual cost of education. The weights for economically disadvantaged and ELL students have not been updated since 1984, and even then were set at half the amount recommended by a School Finance Working Group composed of members of nearly every educational organization in Texas. The Cost of Education Index – which dictates the annual distribution of $2.36 billion to address variation of education costs beyond the control of school districts – has not been updated since 1990, despite the fact that this state has seen substantial demographic changes, uneven population growth, and significant changes in the cost of labor and housing since that time. As noted above, other structural flaws in the finance system relate to the combination of the TRE requirement and the significantly lower guaranteed yield and higher recapture rate of the copper-penny tier – which effectively prevent many districts from accessing funding needed for adequacy.

These structural flaws, combined with the evidence that districts across the state are not able to provide all of their students with access to a general diffusion of knowledge, demonstrate that the State has failed to structure, operate, and fund the school finance system so as to provide an adequate education to all students, including economically disadvantaged and ELL students, as required by the suitability provision.

F. The TTSFC Plaintiffs, Edgewood ISD Plaintiffs, and Fort Bend ISD Plaintiffs' financial efficiency/equity claims

The Texas Supreme Court has consistently ruled that the State's duty to provide funding up to the level of a general diffusion of knowledge comes with a responsibility to structure the system so that all school districts "have substantially equal access to funding up to that same level at similar tax effort." In spite of the Court's admonition, the school finance system

continues to treat students differently, depending on whether the students' zip code is located in a property-wealthy or a property-poor district. Although the Texas Supreme Court has never required perfect equity, the inequity has grown to the point that financial efficiency has been decimated.

Texas relies heavily on local property taxes to fund its public schools, though property values across Texas remain incredibly disparate. This decision to rely on local taxes does not by itself render the school finance system unconstitutional, but it does mean that the Legislature must take action to compensate for these disparities to ensure that all districts have sufficient funding to provide all students a meaningful opportunity to graduate career and college ready. Given the State's commitment to increasing the rigor and expectations of the Texas public education system, it is perhaps even more important now than ever before that the Legislature ensure that "[c]hildren who live in poor districts and children who live in rich districts must be afforded a substantially equal opportunity to have access to educational funds." Unfortunately, twenty-five years following the Texas Supreme Court's *Edgewood I* decision, the Legislature has once again failed to meet its constitutional duty to provide a financially efficient system by treating school children across Texas differently based upon the property wealth of the district in which they live.

The evidence overwhelmingly establishes that a number of factors – the compressed tax rate, target revenue funding, unrecaptured golden pennies and I&S pennies, and the failure to update weights and allotments to reflect a reasonable approximation of the actual cost of education – have converged in a way that substantially destroys equalization. Property-poor districts are critically deprived of the ability to access reasonably similar revenues for similar tax effort. The same holds true even after the 83rd Legislature's changes in 2013. Further, the substantial cuts to special programs for at-risk students are borne more heavily by the lower property-wealth school districts that tend to educate more at-risk students.

Ten years ago, in *WOC II*, this Court, and later the Texas Supreme Court, held that disparities between property-poor and property-wealthy districts were not so great as to run afoul of the duty to provide equal access to revenue up to the level of a general diffusion of knowledge. Since that time, the legislative changes to the structure of the system – tax compression, the target revenue system, and creation of the unrecaptured M&O "golden pennies" and I&S pennies – combined with the $5.3 billion cut to the public education system, and the dramatically increased academic standards, have caused the system to run afoul of the State's constitutional duty to provide for a general diffusion of knowledge in a financially efficient manner. The funding changes by the Legislature in 2013 slightly closed the gaps between property-poor and property-wealthy districts but not nearly enough to make the system constitutionally efficient.

While taxing substantially lower than their property-poor counterparts, property-wealthy districts often reap over $1,000 per student more than their neighboring property-poor school districts for no better reason (much less an educational reason) than the value of their property. For a district receiving just $1,000 less per WADA than a neighbor, that translates into $22,000 less for a classroom of twenty-two students or $400,000 less for a campus of 400 students. These funds could be used on a whole range of reasonable and necessary educational resources

proven to increase student performance, including: recruiting and retaining the best teachers, improving technology, reducing class sizes, upgrading the quality of pre-K programs, and offering a fuller and deeper range of accelerated and intervention programs.

The Court heard from experts on the differences in the amount of revenue available to school districts and the corresponding levels of tax effort. Using a weighted average analysis, in order for the poorest districts with 15% of WADA in the state to raise between $6,500 to $7,000 per WADA in the Foundation School Program that the experts (and this Court) estimate is necessary to achieve adequacy, in 2012-13, these districts would have to tax, on average, between $1.29 and $1.39, respectively – tax rates substantially above the $0.99 and $1.06 rates levied by the wealthiest districts with 15% of the WADA in the state to raise the same amount. In fact, the poorest districts could not reach those levels because of the $1.17 cap on M&O taxes. Even after the 2013 legislative changes, these tax gaps are expected to lower by only three or four cents in 2013-14. Because property-poor districts access far fewer dollars in the system than property-wealthy districts at $1.04, they tend to have little-to-no discretion or ability to offer an enriched program. A system in which the poorest districts can *never* raise the level of funds necessary to provide for a general diffusion of knowledge – much less do so with room for meaningful discretion over supplemental enrichment pennies – clearly does not ensure substantially equal access to adequate funding at similar tax rates.

Perhaps more disturbing, the combination of these changes results in most districts in this state being unable to access enough revenue to provide a general diffusion of knowledge – even when using the "enrichment" pennies intended for supplementation. As noted above, the Court heard from national and state experts regarding the cost of funding an adequate educational program. Just as this expert testimony revealed the Texas system to be inadequate, it also revealed it to be inequitable. Taxing at $1.04, 896 of the 1,021 school districts in Texas in 2013-14 cannot raise the revenue per student in WADA for the lowest estimate of the cost of an adequate education, unadjusted for inflation. Even if districts used all of their "enrichment pennies" by taxing at the cap of $1.17 to satisfy the constitutional mandate of a general diffusion of knowledge, at least 761 districts still could not raise the revenue per WADA of any of the three estimates. These 761 districts have no access to the level of funding necessary to achieve a general diffusion of knowledge – much less access to it at a rate similar to that of the 124 districts that can raise this amount at $1.04.[1]

Furthermore, under the target revenue system, the differences in funding levels match the definition of arbitrary. The target revenue system takes the quirks of a single year's formula results – such as a "boost" in revenue from increased property values or a "hit" from declining property values or the loss of a major taxpayer – and makes them permanent. As a result, there is often no consistent relationship between a district's wealth and/or tax effort and its target revenue. Though the State indicated during trial that target revenue was going to be phased out, the 2013 Legislature increased the factor that applies to target revenue, which over time has benefitted far more property-wealthy districts than property-poor districts. Reliance on this

[1] The ability to access sufficient funding for a general diffusion of knowledge at the $1.04 tax rate is critical to a constitutionally sound school finance system. To find otherwise would permit local taxpayers through a TRE to deprive schools of sufficient funding.

snapshot of the 2005-06 school year also affects current formula funding because each district's compressed tax rate for its share of the Basic Allotment is an individually determined two-thirds of its 2006 tax rate. If a district was not taxing at the maximum M&O rate in 2006, its current Basic Allotment is arbitrarily reduced with no relation to need or the cost of education. Finally, the use of two separate funding mechanisms, target revenue and formula funding, makes equalization across the system impossible to the detriment of all but the wealthiest of districts.

The Court also heard from superintendents in every region of the state whose districts are negatively impacted by these disparities. As the La Feria ISD Superintendent stated: "if you happen to have an island [such as South Padre Island] or you happen to be rich under the ground, or now where you have a ton of windmills in your agricultural land, you have additional resources that come your way. Those don't come to La Feria. But our kids still have to compete with [others] on the football field and at the university."

School districts across the state are, as Dr. Meria Carstarphen of Austin ISD put it, "up against the wall on the ever increasing state standards" and unable to meet them with current resources. These problems are compounded for the low-target revenue and property-poor districts across the state whose students tend to have higher, more costly, needs. It is the State's duty to provide all districts with the revenue necessary to prepare their students for college or a career – at similar tax rates and with meaningful discretion for enrichment. The evidence before this Court makes it clear that the Legislature has failed in this duty.

G. The TTSFC Plaintiffs' taxpayer equity claim

Four taxpayers in the TTSFC Plaintiff coalition brought a claim that the school finance system violates Article VIII, Section 1(a)'s requirement that taxation be "equal and uniform." They complain that taxpayers in other districts within the same county receive greater benefits in the form of revenue per WADA than they do for a similar rate of ad valorem tax effort. This claim fails as a matter of law under Article VIII, Section 1(a) because the "equal and uniform" clause requires only that taxpayers in the same taxing district (whether a state, county, or ISD) be taxed at the same rate, and does not require equal and uniform benefit from taxation. Though not a viable claim under the "equal and uniform" clause, the claim that districts do not receive substantially equal revenues at similar levels of tax effort is better stated as a financial efficiency or equity claim under the education clause.

H. The Intervenors' qualitative efficiency claims

The Intervenors posit that the Texas educational system cannot be deemed constitutionally efficient until Texas adopts several structural reforms that have yet to attract majority support in the Legislature, including, among other things, eliminating the statutory cap on charter schools; changing laws, regulations, and practices that govern teacher compensation, hiring, firing, and certification; creating greater school choice or vouchers; and modifying school district financial reporting requirements. While the Intervenors contend that they do not seek any particular remedy besides a declaration that the system is "qualitatively inefficient" and therefore unconstitutional, a cure for the constitutional deficiency they allege necessarily would require the Legislature to adopt some version of their preferred educational policy choices.

This Court finds that it has jurisdiction to rule on the Intervenors' claims. The Texas Supreme Court has emphasized that the judiciary's role is limited to ensuring that the constitutional standards are met, not prescribing *how* the standards should be met; however, if a party can show that a means chosen by the Legislature, *e.g.* the structure controlling compensation, hiring, firing, and certification of teachers as alleged here, has no rational relationship to a necessary function of the public school system, or if the Legislature provided no structure for a necessary function, a qualitative efficiency claim could be proved. Here, the Intervenors do not claim that the current structure makes it impossible for the public school system to carry out a necessary function; rather, they contend there are better ways to structure the public school system to address them.

The Court can decide whether or not the Legislature has created a system that reasonably addresses a constitutionally necessary function, but the Court cannot rule that system is unconstitutional just because there may be a "better" way of carrying out that function. A declaration that the system is unconstitutional for the reasons Intervenors urge would constitute a level of judicial interference in specific questions of education policy that past precedents do not justify or permit. The Court therefore declines to find a qualitative efficiency violation.

I. The Charter School Plaintiffs' claims

Because the ISD Plaintiffs established the inadequacy of their funding on the school funding formulas, and because charter schools are financed based on state averages of ISD funding levels, the Charter School Plaintiffs prevail on their claim that funding for open-enrollment charter schools is also inadequate.

The Charter School Plaintiffs' equal protection claim based on the differences between how charter schools and school districts are funded (particularly, in relation to facilities funding) fails as a matter of law because this choice is within the discretion of the Legislature. The Legislature has specially provided for a charter school system that is publicly funded but that operates outside the predominant school district system. Charter schools are subject to fewer regulations. Because charter schools and districts are subject to different requirements, the Legislature has a rational basis for funding them differently. Similarly, with respect to the Charter School Plaintiffs' complaint about the statutory cap on open-enrollment charters, this choice is within the Legislature's discretion, and the Legislature had a rational basis for implementing this cap – namely to ensure that TEA could handle its oversight responsibilities.

J. Relief awarded

In light of the foregoing analysis, the Court declares that the current school finance system is inadequate, unsuitable, and financially inefficient under Article VII, Section 1 of the Texas Constitution, and violates the prohibition on a state ad valorem tax contained in Article VIII, Section 1-e. The Court enjoins the State from giving any force or effect to the sections of the Education Code relating to the financing of public school education, including the financing of open enrollment charter schools, until these violations are remedied, but is staying the effect of this injunction until July 1, 2015 to give the Legislature a reasonable opportunity to cure these constitutional deficiencies. The Court also awards the ISD Plaintiffs their reasonable and