

SEARCHING FOR THE MISSING PIECE: AN EXAMINATION OF THE CONSTITUTIONAL LANGUAGE IN TEXAS’S EDUCATION CLAUSE THAT CONTINUES TO FUEL THE PUZZLING SCHOOL FINANCE SAGA

Comment

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* J.D. Candidate, Texas Tech University School of Law, 2016; B.A. Government, University of Texas at Austin, 2010. I would like to thank my parents for their constant support throughout my law school career. Writing this Comment would not have been possible without the encouragement each of you provided. I would also like to thank Dr. Kyle Wargo and Wayne Blount for sharing their valuable knowledge and expertise on the subject of school finance with me.

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I. YOU CAN’T BE ANYTHING YOU WANT TO BE IF YOU JUST PUT YOUR MIND TO IT

*“[I]t is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.”*¹

Ask kindergarten students on their first day of school what they want to be when they grow up, and they will each answer right away: an astronaut, a veterinarian, a President of the United States of America, a teacher.² While we should always encourage a child to aspire for lofty goals, enriching careers, and promising futures, it remains a reality that many children’s futures are vulnerable to being stripped away by education systems that are underfunded and unequipped to adequately prepare them to continue their education.³

Education fuels the American Dream.⁴ An astronaut, a veterinarian, a President of the United States, and a teacher all possess one common attribute: each received a college education.⁵ A child’s opportunity to attend college depends on a strong foundational education.⁶ While the Supreme Court of the United States declined to recognize education as a fundamental right under the Equal Protection Clause of the Fourteenth Amendment, every state constitution contains an education clause, and all states require children to enroll in school with the ultimate goal of preparing students to graduate from high school ready to attend college.⁷ Education is

1. *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954).

2. See Christina Couch, *How to Get Your Childhood Dream Job*, ABC NEWS (Jan. 27, 2014), <http://abcnews.go.com/Business/popular-childhood-dream-jobs/story?id=21659577>.

3. See generally TEX. EDUC. AGENCY, SECONDARY SCHOOL COMPLETION AND DROPOUTS IN TEXAS PUBLIC SCHOOLS 2012–13 63 (Aug. 2014), http://tea.texas.gov/Dropout_Information.html (follow “Secondary School Completion and Dropouts in Texas Public Schools, 2012-13” hyperlink) (showing a table of annual dropout rates for Texas public schools).

4. See JENNIFER L. HOCHSCHILD & NATHAN SCOVRONICK, *THE AMERICAN DREAM AND THE PUBLIC SCHOOLS* 1–2 (2003).

5. See Couch, *supra* note 2.

6. Derrick Darby & Richard E. Levy, *Slaying the Inequality Villain in School Finance: Is the Right to Education the Silver Bullet?*, 20 KAN. J.L. & PUB. POL’Y 351, 351 (2011); James E. Ryan, *Standards, Testing, and School Finance Litigation*, 86 TEX. L. REV. 1223, 1224–35 (2008).

7. E.g., TEX. EDUC. CODE ANN. § 25.085(a)–(b) (West 2012) (requiring parents to enroll their children in school from the time the child is six years old until the child reaches the age of eighteen); *Rodriguez v. San Antonio Indep. Sch. Dist.*, 337 F. Supp. 280, 285 (W.D. Tex. 1971) (per curiam), *rev’d*, 411 U.S. 1 (1973) (reversing on the ground that school districts could not argue that education finance violated the Fourteenth Amendment because the court held that school finance, a state issue,

touted as “perhaps the most important function of state and local governments,” and voters’ perception of the importance of education generally remains constant.⁸ Furthermore, the language in the Constitution of Texas reflects the importance Texas, in particular, places on education.⁹ Thus, if receiving an education is so fundamental and important, why have educational funding decisions become so common in the court system?¹⁰ And why are the majority of Texas students failing to graduate from high school college-ready?¹¹ Issues of school finance continue to face litigation and (many times successful) claims that the state-implemented system violates the state’s constitution.¹²

This Comment focuses on the struggle Texas courts continue to face in untangling the constitutionality of education finance.¹³ In doing so, this Comment compares Texas’s school finance issues with school finance cases in Colorado and Kansas, two states with opposite supreme court decisions on school finance within the last two years.¹⁴ Part II of this Comment hones in on the redundant nature of Texas’s school finance issue. Part III provides an overview of the distinction between the judiciary and the

should be argued under provisions of state constitutions). Although the U.S. Supreme Court’s decision prevented any further review of school finance on a federal, strict scrutiny basis, Judge Goldberg authored the district court’s opinion in *Rodriguez*, and he believed the opinion was his best. See Judge Sam D. Johnson, *Foreword*, 27 TEX. TECH L. REV. 423, 423–24 (1996). Furthermore, he believed education should be a basic, fundamental right. See *id.*; see also Interview with Wayne Blount, Assoc. Exec. Dir., Region 17 Educ. Serv. Ctr., in Lubbock, Tex. (Jan. 23, 2015) (explaining that the ultimate goal for educators is to prepare each student to attend college). Mr. Blount also previously served as the Superintendent for Sands Independent School District. *Id.*

8. *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954); see Jeffrey Omar Usman, *Good Enough for Government Work: The Interpretation of Positive Constitutional Rights in State Constitutions*, 73 ALB. L. REV. 1459, 1465 (2010).

9. Compare TEX. CONST. art. VII, § 1 (“A general diffusion of knowledge *being essential* to the preservation of the liberties and rights of the people.” (emphasis added)), with COLO. CONST. art. IX, § 1 (beginning the clause with less colorful language, stating, “The general supervision of the public schools of the state shall be vested in a board of education whose powers and duties shall be as now or hereafter prescribed by law”).

10. See sources cited *infra* notes 62, 145. The highest courts in many states hear a series of school finance cases, which often consist of multiple state supreme court decisions.

11. Morgan Smith, *Struggling for Students’ Readiness*, N.Y. TIMES (Aug. 4, 2012), <http://www.nytimes.com/2012/08/05/education/most-texas-students-found-not-ready-for-college.html>.

12. See *Tex. Taxpayer & Student Fairness Coal. v. Williams (Williams I)*, No. D-1-GN-11-003130, 2014 WL 4254969, at *1 (200th Dist. Ct., Travis County, Tex. Aug. 28, 2014) (Trial Order). *Texas Taxpayer & Student Fairness Coalition v. Williams* is the most recent dispute over school finance in Texas. *Id.* Judge Dietz, the trial judge presiding over the case, handed down his opinion on August 28, 2014, after forty-five days of litigation that began approximately two years prior to his decision. See *id.* at *2. The plaintiffs in the most recent case claimed, among many other things, that the finance system, in its current state, violated each clause of article VII of the Texas Constitution. See *Tex. Taxpayer & Student Fairness Coal. v. Williams (Williams II)*, No. D-1-GN-11-003130, 2014 WL 4243277, at *3–4 (200th Dist. Ct., Travis County, Tex. Aug. 28, 2014) (Final Judgment).

13. See *infra* Parts II–VI.

14. Compare *Lobato v. State (Lobato II)*, 304 P.3d 1132, 1143–44 (Colo. 2013) (en banc) (holding that the state’s school finance system was rationally related to the education and local control clauses of the Colorado constitution), with *Gannon v. State (Gannon I)*, 319 P.3d 1196, 1250–52 (Kan. 2014) (holding that Kansas’s school finance system violated the state’s constitution).

legislature—a “punting problem” that almost always arises in the context of school finance cases—to define the relationship between the two branches of government. Part IV of this Comment provides a history of school finance litigation, focusing on the equity and adequacy claims plaintiffs assert under state constitutions. Part IV also lays out the history of each state’s school finance cases and the build up to the most recent litigation in each state. A history of the states’ issues is necessary to comprehend the problems each state faces.¹⁵ Part V of this Comment then explores the language in the Texas Constitution, as well as that of the Colorado and Kansas constitutions, on which the plaintiffs relied to assert claims and the courts used to rule on claims of inadequacy or inequity. In an attempt to untangle the constitutional language, this Comment compares the education clauses and the courts’ analysis of each clause to determine what an “adequate” and “equitable” public school system entails and how far-reaching (or short-reaching) legislators should consider that language to be.¹⁶ Part VI of this Comment explains why the Texas Supreme Court should emulate the actions of the Kansas Supreme Court in assigning a meaning to an adequate system of free public schools. Furthermore, Part VI of this Comment proposes action that the Texas Legislature, as well as Texas taxpayers, can take to shape the future of Texas students.

II. RETAKING THE EXAM: TEXAS’S EDUCATION SYSTEM CAN’T PASS THE TEST

*“It’s frustrating that we have solved the problem of sending men to the moon, and we can’t solve a problem of school funding. . . . We’re going to keep on fighting until we prevail.”*¹⁷

“[W]oeefully inadequate and hopelessly broken”¹⁸ sums up the current condition of Texas school finance, which ranks among the bottom five states in public school funding.¹⁹ While most legislators and judges agree that there must be a drastic change to rectify the problems with school

15. See *infra* Part V.

16. See *infra* Part V.D.

17. J. Steven Farr & Mark Trachtenberg, *The Edgewood Drama: An Epic Quest for Education Equity*, 17 YALE L. & POL’Y REV. 607, 607 & n.1 (1999) (citing Joe Culbrith, *Poor Districts to File Suit*, FORT WORTH STAR-TELEGRAM, June 30, 1993, at 1 (quoting Demetrio Rodriguez, plaintiff in *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973))).

18. Will Weissert, *Texas School System Finance Plan Unconstitutional, Judge Rules*, HUFFINGTON POST (Oct. 29, 2013, 5:40 PM), http://www.huffingtonpost.com/2013/02/05/texas-school-system-finance_n_2622002.html (quoting Rick Gray, an attorney representing many poor districts throughout the state in Texas’s most recent school finance litigation).

19. Terrence Stutz, *Texas Legislature Unlikely to Boost School Funds in Upcoming Session*, DALL. MORNING NEWS (Dec. 26, 2014, 11:02 PM), <http://www.dallasnews.com/news/education/headlines/20141226-texas-legislature-unlikely-to-boost-school-funds.ece>.

finance, the state has yet to witness a powerful reform.²⁰ Because a clear separation of powers exists between Texas's branches of government, each branch must stop punting school finance back to one another—the future of Texas's schoolchildren lies at their mercy.²¹

After the Supreme Court of Texas's decision in *Neeley v. West Orange-Cove Consolidated Independent School District* in 2005, legal scholars had plenty to say about the Court's decision.²² Interestingly, these articles begin with language that almost perfectly describes the current and "new" situation of school finance in Texas.²³ For instance, the opening paragraph in one article explains that Judge Dietz—the same district court judge who ruled on the most recent Texas school finance case—handed down an opinion enjoining funding for Texas public education "until the constitutional deficiencies in the school finance system are remedied."²⁴ The author then goes on to state that Greg Abbott, who, at the time of appeal, served as the Texas Attorney General in the most recent school finance case, intended to appeal the Court's decision.²⁵ Furthermore, the author warned that "[t]he heat is on once again for the legislature to fix the school finance system."²⁶ The article provides an accurate and significant reflection of the current state of school finance: despite efforts to repair the system, Texas school finance dishearteningly remains in a situation similar to the one it confronted in 2005—multiple years of litigation.²⁷

III. RED ROVER, RED ROVER: THE JUDICIARY VS. THE LEGISLATURE

*"The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny."*²⁸

20. Weissert, *supra* note 18; Interview with William Keffer, Associate Professor, Tex. Tech Univ. Sch. of Law, in Lubbock, Tex. (Sept. 10, 2014). Prior to becoming a professor at Texas Tech, Professor Keffer served as a member of the Texas House of Representatives from 2003 until 2007. *Bill Keffer*, LEGIS. REFERENCE LIB. TEX., <http://www.lrl.state.tx.us/legeLeaders/members/memberdisplay.cfm?memberID=5569> (last visited Oct. 30, 2015).

21. *See Rodriguez*, 411 U.S. at 71 (Marshall, J., dissenting).

22. *See, e.g.*, Lonnie F. Hollingsworth, Jr., *School Finance*, 68 TEX. B.J. 61, 61 (2005); Paula Moore, Comment, *Robin Hood: To Not Be or How to Be, That Is the Question—An Analysis of the Problems with Texas School Financing Today and a Proposal for a Better Tomorrow*, 38 TEX. TECH L. REV. 455, 475–76 (2006).

23. *See Moore, supra* note 22, at 456–57.

24. Hollingsworth, Jr., *supra* note 22.

25. *Id.* After the trial court released its opinion in August, the Texas Attorney General's Office appealed the ruling. *See Big School Finance Questions Remain*, CBS DFW (Aug. 29, 2014, 6:19 AM), <http://dfw.cbslocal.com/2014/08/29/big-school-finance-questions-remain/>.

26. Hollingsworth, Jr., *supra* note 22.

27. *See, e.g., Williams II*, No. D-1-GN-11-003130, 2014 WL 4243277, at *3–4 (200th Dist. Ct., Travis County, Tex. Aug. 28, 2014) (Final Judgment).

28. THE FEDERALIST NO. 47 (James Madison).

The United States Constitution provides for separation of powers among each branch of the federal government.²⁹ The Constitution achieves this not through explicit language but instead through the structure of the document.³⁰ Inherent in restricting the powers of the Judicial, Legislative, and Executive branches in different articles is the idea of separate but equal branches of government.³¹ Expanding on the separation of powers doctrine, the Supreme Court of the United States inaugurated the idea of judicial review in *Marbury v. Madison*.³² Importantly, the Supreme Court established that “[i]t is emphatically the province and duty of the judicial department to [s]ay what the law is.”³³ The decision in *Marbury* remains one of the most—if not *the* most—prolific and fundamental decisions in constitutional law, establishing the idea that the Supreme Court is the supreme interpreter of the Constitution.³⁴

The Constitution of the State of Texas differs from the United States Constitution in its more explicit language and expansive content, which is apparent in its structure alone.³⁵ The Texas Constitution is six times longer than the United States Constitution.³⁶ Moreover, while the structure of the United States Constitution establishes the concept of separation of powers, the Texas Constitution actually sets forth a provision that explicitly mandates the separation of powers between the branches of Texas’s government.³⁷ Thus, the Texas judiciary has definitive authority to serve as the ultimate interpreter of the state’s education clause and assign statewide educational standards to which the legislature must adhere.³⁸

Another distinction between the Texas Constitution, as well as other state constitutions, and the United States Constitution is the manner in which the language delegates powers to the citizens it governs.³⁹ The Texas Constitution contains positive rights, which obligate the government to fulfill specific constitutional provisions.⁴⁰ The United States Constitution, however, strips powers away from the federal government and lays out rights the government must not deny its citizens.⁴¹ Though federal and state

29. See U.S. CONST. arts. I–III.

30. See *id.*

31. See *id.*

32. See *Marbury v. Madison*, 5 U.S. 137, 177 (1803).

33. *Id.*

34. Eric J. Segall, *Why I Still Teach Marbury (and So Should You): A Response to Professor Levinson*, 6 U. PA. J. CONST. L. 573, 575–76, 579 (2004).

35. See, e.g., TEX. CONST. art. II, § 1; Harold H. Bruff, *Separation of Powers Under the Texas Constitution*, 68 TEX. L. REV. 1337, 1339–40, 1339 n.14 (1990).

36. Bruff, *supra* note 35, at 1339 n.14.

37. TEX. CONST. art. II, § 1.

38. See Gershon M. Ratner, *A New Legal Duty for Urban Public Schools: Effective Education in Basic Skills*, 63 TEX. L. REV. 777, 816–17 (1985) (describing state supreme courts as “ultimate arbiters” that are “free to interpret [constitutional] provisions as expansively as they see fit”).

39. See Usman, *supra* note 8, at 1461.

40. See *id.* at 1462.

41. See *id.*

constitutions garner a balance between the judiciary and the legislature, it remains a constant principle that the Supreme Court stands as the supreme constitutional interpreter—both at the state and federal level.⁴²

IV. THE DRAWING BOARD

*“[E]ducation is perhaps the most important function of state and local governments.”*⁴³

Historically, plaintiffs have argued school finance suits based on the state’s failure to adhere to provisions in the state constitution requiring adequacy, equity, or both.⁴⁴ Plaintiffs who seek adequacy-based reform ground their claims in the minimum level of education that a child should receive in public school.⁴⁵ Additionally, adequacy claims often focus on a student’s educational output.⁴⁶ In terms of school finance litigation, *input* connotes the financial resources that funnel into the system, such as tax revenue and per-student expenditures, while *output* described the results garnered with that revenue, such as testing scores, graduation rates, and instructional quality.⁴⁷ In *Rose v. Council for Better Education*, a case familiar to school finance activists, the Supreme Court of Kentucky set forth a list of seven factors that it believed were indicative of an adequate education:

[A]n efficient system of education must have as its goal to provide each and every child with at least the seven following capacities: (i) sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization; (ii) sufficient knowledge of economic, social, and political systems to enable the student to make informed choices; (iii) sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation; (iv) sufficient self-knowledge and knowledge of his or her mental and physical wellness; (v) sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage; (vi) sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and (vii) sufficient levels of academic or vocational skills to enable public school students to

42. See Ratner, *supra* note 38.

43. *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954).

44. See, e.g., Darby & Levy, *supra* note 6, at 356–65; Erin E. Buzuvis, Note, “A” for Effort: Evaluating Recent State Education Reform in Response to Judicial Demands for Equity and Adequacy, 86 CORNELL L. REV. 644, 646 (2001).

45. Darby & Levy, *supra* note 6, at 361–62.

46. Ryan, *supra* note 6, at 1243.

47. *Id.*

compete favorably with their counterparts in surrounding states, in academics or in the job market.⁴⁸

These factors, known as the *Rose* standard, continue to appear in school finance cases, with five state supreme courts adopting the standard as their state's definition of *adequacy*.⁴⁹

Plaintiffs also bring claims under state constitutions based on inequity.⁵⁰ Equity-based claims focus on the equality of education funding across all school districts.⁵¹ Claims based on equity tend to center on the sources of financial input.⁵² The Texas Supreme Court proposed a standard for equity, which courts often use in school finance decisions:

There must be a direct and close correlation between a district's tax effort and the educational resources available to it; . . . districts must have substantially equal access to similar revenues per pupil at similar levels of tax effort. Children 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.⁵³

Reform focused on equity, however, can be problematic because the state may pull revenue from a wealthier district to equalize funding in poorer districts.⁵⁴ Aiming for equality in this way fails to address whether leveling funds provides an adequate education.⁵⁵

Adequacy and equity suits have become somewhat indistinguishable.⁵⁶ Courts often sidestep adequacy-based claims because tackling the issue requires setting a minimum level of adequate funding and, ultimately, funneling more money into the system.⁵⁷ Equity, on the other hand,

48. *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 212 (Ky. 1989).

49. See *Gannon v. State (Gannon II)*, No. 2010-CV-1569, slip op. at 10 (3d Dist. Ct., Shawnee County, Kan. Dec. 30, 2014). The five states that follow the *Rose* standard are Alabama, Massachusetts, New Hampshire, Ohio, and, most recently, Kansas. See Richard E. Levy, *Gunfight at the K-12 Corral: Legislative vs. Judicial Power in the Kansas School Finance Litigation*, 54 U. KAN. L. REV. 1021, 1034 n.58 (2006).

50. Buzuvis, *supra* note 44, at 656. The evolution of inequity claims stems from the United States Supreme Court's decision in *Rodriguez*. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 5–6 (1973); see also Buzuvis, *supra* note 44, at 652–54 (explaining the evolution of equity and adequacy in school finance cases).

51. Darby & Levy, *supra* note 6, at 360.

52. Ryan, *supra* note 6, at 1243.

53. TEX. CONST. art. VII, § 1; *Edgewood Indep. Sch. Dist. v. Kirby (Edgewood I)*, 777 S.W.2d 391, 392 (Tex. 1989). It is important to note that *equity* and *efficiency* are interchangeable terms throughout this Comment. Texas courts, especially, use the terms interchangeably. See, e.g., *Williams II*, No. D-1-GN-11-003130, 2014 WL 4243277, at *9 (200th Dist. Ct., Travis County, Tex. Aug. 28, 2014) (Final Judgment).

54. Darby & Levy, *supra* note 6, at 360.

55. *Id.*

56. See, e.g., *Williams II*, 2014 WL 4243277, at *7–10; Ryan, *supra* note 6, at 1235.

57. Darby & Levy, *supra* note 6, at 364.

involves a more objective analysis: the court and legislature can compare differences and discrepancies in funding levels across districts within the state.⁵⁸ Additionally, courts face criticism when they try to define *adequacy* because of the definition's subjectivity in an educational context.⁵⁹ Using a plain-meaning approach of statutory interpretation to determine the definition of terms, however, often proves unavailing.⁶⁰ In Texas's education clause, two phrases, specifically, lack a concrete meaning: "suitable provision" and "an efficient system."⁶¹

Despite the more assertive language in the Texas Constitution, education funding in Texas continues to find itself embroiled in the court system, with the Texas Supreme Court previously considering the constitutionality of school finance numerous times.⁶² Additionally, school finance issues remain prominent not only in Texas, but also continue to arise throughout the rest of the country.⁶³ Within the last thirty years, the constitutionality of almost every state's education finance system has faced challenge.⁶⁴ Due to the massive lawsuits school districts file against states, it falls within the duty of courts to determine whether the legislature is adhering to its constitutional responsibilities.⁶⁵

A. Texas

Texas is a powerhouse for large public school districts, and the total enrollment of students in public schools statewide trails only California.⁶⁶

58. *Id.*

59. See Ryan, *supra* note 6, at 1225–26. Ryan suggests that courts should continue to compare resources across school districts because courts are in a better place to compare one district to another, rather than measure the input against school districts' educational outcome. *Id.* Furthermore, he suggests the legislature is in a better position to compare the input and outcomes, since the legislature assigns and regulates the input. *Id.* at 1230.

60. *Id.* at 1230–31.

61. See TEX. CONST. art. VII, § 1; Interview with William Keffer, *supra* note 20.

62. See generally *Neeley v. W. Orange-Cove Consol. Indep. Sch. Dist. (W. Orange-Cove II)*, 176 S.W.3d 746, 809 (Tex. 2005) (holding the school system's use of local property taxes to be an unconstitutional system); *Edgewood Indep. Sch. Dist. v. Meno (Edgewood IV)*, 917 S.W.2d 717, 750 (Tex. 1995) (holding the school finance system constitutional after the legislature implemented the "Robin Hood" system); *Carrollton-Farmers Branch Indep. Sch. Dist. v. Edgewood Indep. Sch. Dist. (Edgewood II)*, 826 S.W.2d 489, 524 (Tex. 1992) (holding the state's school finance system to be unconstitutional prior to the legislator's attempt to reform).

63. *Is School Funding Fair? A National Report Card*, SCHOOLFUNDINGFAIRNESS.ORG, http://www.schoolfundingfairness.org/ExecutiveSummary_2014.htm (last visited Nov. 2, 2015).

64. Buzuvis, *supra* note 44, at n.4.

65. See, e.g., *Williams I*, No. D-1-GN-11-003130, 2014 WL 4254969, at *3 (200th Dist. Ct., Travis County, Tex. Aug. 28, 2014) (Trial Order); see also *W. Orange-Cove II*, 176 S.W.3d at 777 ("The final authority to determine adherence to the Constitution resides with the Judiciary." (quoting *W. Orange-Cove Consol. I.S.D. v. Alanis*, 107 S.W.3d 558, 563 (Tex. 2003))).

66. NAT'L EDUC. ASS'N, RANKINGS OF THE STATES 2013 AND ESTIMATES OF SCHOOL STATISTICS 2014 5 (Mar. 2014), <http://www.nea.org/assets/docs/NEA-Rankings-and-Estimates-2013-2014.pdf>. This report is based on enrollment as of Fall 2012. *Id.* at ix.

Last year, the total Texas public school population grew by 76,085 students—almost as many students as the total population of Fort Worth Independent School District.⁶⁷ School finance, an important topic in all states, remains especially important in Texas due to the amount of times the issue has landed in the courts, the size of Texas’s public education system, and the procedural posture of the current case in Texas.⁶⁸ Previously, other states looked to emulate Texas’s funding system upon the inventive and characteristic changes the legislature made after the Texas Supreme Court considered the issue in *West Orange-Cove II*.⁶⁹ As a result of Texas’s use of an innovative property tax mechanism to remedy school finance in the past, many states await Texas’s current plan to stabilize its public education’s financial situation.⁷⁰ If Texas implements a financial plan that provides a more adequate and equitable educational environment across disparate districts, other states could follow Texas’s lead.⁷¹ The journey toward implementing such a plan, however, remains Texas’s largest hurdle.⁷²

1. *A Lesson in Texas School Finance History*

In 1973, Texas faced its first challenge against the constitutionality of the state’s public education system.⁷³ The case traveled to the Supreme Court of the United States, where the Court decided school finance was an issue for the states—not the federal government.⁷⁴ In his dissent, however, Justice Marshall encouraged future plaintiffs to seek review of educational funding under provisions in state constitutions.⁷⁵ Justice Marshall felt dissatisfied by the Court’s opinion to ultimately wait for a political solution, while, “in the meantime, countless children unjustifiably receive inferior educations that . . . ‘affect their hearts and minds in a way unlikely ever to be undone.’”⁷⁶ Importantly, Justice Marshall’s recommendation

67. See TEX. EDUC. AGENCY, ENROLLMENT IN TEXAS PUBLIC SCHOOLS 6 (Nov. 2014), http://tea.texas.gov/acctres/Enroll_2013-14.pdf; *District Information*, FORT WORTH INDEP. SCH. DIST., http://www.fwisd.org/pages/FWISD/About_US/District_Info (last visited Nov. 2, 2015).

68. See JENNIFER IMAZEKI & ANDREW RESCHOVSKY, SCHOOL FINANCE REFORM IN TEXAS: A NEVER ENDING STORY? 1–2 (May 2003), <http://www-rohan.sdsu.edu/~jimazeki/papers/TXSchFin0503.pdf>.

69. Buzuvis, *supra* note 44, at 668, 687.

70. See *id.*; IMAZEKI & RESCHOVSKY, *supra* note 68.

71. Buzuvis, *supra* note 44, at 668, 687.

72. See *infra* Part IV.A.1–2.

73. See *Rodriguez v. San Antonio Indep. Sch. Dist.*, 337 F. Supp. 280, 280–86 (W.D. Tex. 1971), *rev’d*, 411 U.S. 1 (1973).

74. See *Rodriguez*, 411 U.S. at 61. The plaintiffs in *Rodriguez* challenged the school finance system’s constitutionality under the Equal Protection Clause of the Fourteenth Amendment. *Id.* at 70.

75. See *id.* at 112 (Marshall, J., dissenting).

76. *Id.* at 71–72 (quoting *Brown v. Bd. of Educ.*, 347 U.S. 483, 494 (1954)). After the *Edgewood IV* Court held the state’s education system to be constitutional, Justice Spector quoted Justice Marshall’s language in his own dissenting opinion. See *Edgewood IV*, 917 S.W.2d 717, 770 (Tex. 1995) (Spector,

foreshadowed and predicted that states would continue to encounter problems with education funding.⁷⁷

Texas's funding issues next reached the court system in the *Edgewood* series of cases.⁷⁸ Edgewood Independent School District, one of the poorest districts in the state, had \$38,854 in property wealth per student.⁷⁹ Meanwhile, Alamo Heights Independent School District, located in the same county as Edgewood Independent School District, had \$570,109 in property wealth per student.⁸⁰ The conditions on Edgewood campuses were so poor that one morning in May 1968, a group of students simply walked out of the school.⁸¹ The poor conditions and the inequality between districts successfully forced school finance in front of the Texas Supreme Court for the first time.⁸² In an effort to assign a definition to "efficient system", the *Edgewood* Court struck down the school finance system because, after comparing expenditures on both curricular and extracurricular activities in schools across the state, the system did not provide "substantially equal access to similar revenues per pupil at similar levels of tax effort."⁸³ Notably, the Texas Supreme Court's decision in *Edgewood I* marked one of the first times a state supreme court invalidated an education finance system based on the state constitution alone.⁸⁴ Upon the Court's final decision that the system was inequitable, the Texas Legislature met in four consecutive special sessions to reconfigure the state's educational funding.⁸⁵

School finance landed in front of the Texas Supreme Court again in 2005, when the Court held that the system imposed a state property tax in violation of article VIII, § 1-e of the Texas Constitution to receive its funding.⁸⁶ Article VIII, § 1-e (later debated again in *Texas Taxpayer &*

J., dissenting). Justice Spector's citing language from *Brown v. Board of Education*, one of the most iconic decisions on school inequality, almost forty years after the Supreme Court rendered its decision, exemplifies the longstanding problem of Texas's school finance issue.

77. See *Rodriguez*, 411 U.S. at 133–34 (1973).

78. See *Edgewood IV*, 917 S.W.2d at 717 (majority opinion); *Edgewood II*, 826 S.W.2d 489 (Tex. 1992).

79. *Edgewood I*, 777 S.W.2d 391, 392 (Tex. 1989).

80. *Id.* This case foreshadowed the issue the state would later face in education funding based on disparate property taxes among rural and urban districts. See *id.*

81. Farr & Trachtenberg, *supra* note 17, at 608.

82. See *Edgewood I*, 777 S.W.2d at 391–92.

83. *Id.* at 397; see also TEX. CONST. art. VII, § 1 ("[I]t 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."); Ryan, *supra* note 6, at 1235 (analyzing the Court's *Edgewood I* decision and the Court's effort to define *efficiency*).

84. William E. Thro, *The Role of Language of the State Education Clauses in School Finance Litigation*, 79 EDUC. L. REP. 19, 21 (1993). Montana and Kentucky also invalidated their school finance systems based on their respective state constitutions in the same year the Texas Supreme Court handed down the *Edgewood I* decision. *Id.*

85. See Teresa Palomo Acosta, *Edgewood ISD v. Kirby*, TEX. ST. HIST. ASS'N, <http://www.tshaonline.org/handbook/online/articles/jre02> (last visited Oct. 22, 2014).

86. See TEX. CONST. art. VIII, § 1-e; *W. Orange-Cove II*, 176 S.W.3d 746, 790 (Tex. 2005).

Student Fairness Coalition v. Williams) prohibits the imposition of statewide ad valorem taxes.⁸⁷ The Texas Supreme Court held that the school finance system required revision because it unconstitutionally left districts without meaningful discretion over prescribing local tax rates.⁸⁸ Further, the Court hinted that the state would likely violate the adequacy clause in article VII of the Texas Constitution in the future, but it refused to further approach the judicial–legislative boundary and assert that the state was failing to adequately provide a “general diffusion of knowledge” at the time.⁸⁹ Importantly, *West Orange-Cove II* set forth the arbitrary standard, a standard that remains at the center of Texas school finance litigation: the legislature must not “define the goals for accomplishing the constitutionally required general diffusion of knowledge,” yet provide “insufficient means for achieving those goals.”⁹⁰

In 2006, just one year after the Texas Supreme Court rendered its decision in *West Orange-Cove II*, the trend of events causing the current, ongoing litigation began to unfold.⁹¹ The Texas Legislature passed the state’s current school finance formula in 2006, but the formula grossly underestimated the “cost of providing all students a meaningful opportunity to achieve a general diffusion of knowledge”—the state’s constitutional provision for adequacy.⁹² While federal stimulus funds saved the state for a while, those funds began to diminish in 2011.⁹³ Then, the Texas Legislature engaged in massive budget cuts in 2011, slashing approximately \$5.3 billion from education funding.⁹⁴ The budget cuts severely affected Texas public schools.⁹⁵

2. *The Aftermath of West Orange-Cove II*

Texas’s public education population continues to grow rapidly, which only worsens Texas’s educational stability.⁹⁶ Texas’s public school

87. TEX. CONST. art. VIII, § 1-e. Although this clause is again a debated provision in Texas’s current litigation, this Comment aims to focus on article VII, § 1 of the Texas Constitution.

88. See *W. Orange-Cove II*, 176 S.W.3d at 790.

89. See *id.*; see also *Williams I*, No. D-1-GN-11-003130, 2014 WL 4254969, at *2 (200th Dist. Ct., Travis County, Tex. Aug. 28, 2014) (Trial Order) (“While the Court [in *West Orange-Cove II*] was unwilling to also declare the system inadequate at that time, it hinted that Texas was on the cusp of violating the adequacy clause.”).

90. See *W. Orange-Cove II*, 176 S.W.3d at 785.

91. See *Williams I*, 2014 WL 4254969, at *3.

92. See *id.* at *24; see also TEX. CONST. art. VII, § 1 (providing the language the court used in referring to H.B. 1’s failure).

93. *Williams I*, 2014 WL 4254969, at *3.

94. *Id.* at *3–4.

95. See Morgan Smith, *Texas Schools Face Bigger Classes and Smaller Staff*, N.Y. TIMES (Mar. 16, 2012), http://www.nytimes.com/2012/03/16/education/texas-schools-face-bigger-classes-and-smaller-staff.html?pagewanted=all&_r=0.

96. *Williams I*, 2014 WL 4254969, at *4. Seven of the country’s fastest growing cities in 2013 were located in Texas. Katherine Peralta, *Everything’s Bigger, and Still Getting Bigger, in Texas*, U.S.

enrollment accounts for approximately 9% of the nation's total enrolled-student population—roughly 2.4 million students.⁹⁷ And as Texas's public education population grows, it is also becoming less financially privileged.⁹⁸ As the trial court in *Williams I* recently noted, this trend is evident through the amount of students who qualify for free and reduced lunch programs.⁹⁹ Further contributing to the inadequacy and inequity among Texas schools is the state's rapidly growing Hispanic student population, many of whom often require English as Second Language (ESL) education.¹⁰⁰ Students who require ESL education, in addition to special education students and at-risk students, are allocated higher per-student revenue—a funding mechanism known as Weighted Average Daily Attendance (WADA)—by the state to supplement the additional resources needed to educate them.¹⁰¹ With a rapidly growing population that requires more resources, however, Texas's education funding remains stagnant.¹⁰²

NEWS & WORLD REP. (May 22, 2014, 12:01 AM), <http://www.usnews.com/news/articles/2014/05/22/texas-cities-among-nations-fastest-growing-us-census-bureau-says>. Factors contributing to growth in Texas's public school population include Texas's economic stability compared to the rest of the country, job opportunities, minimal cost of living, and the fracing boom. *See id.*; Michelle Smith, *Let's Invest in Texas' Fast-Growing Schools*, TRIBTALK (Sept. 7, 2014), <http://www.tribtalk.org/2014/09/07/lets-invest-in-texas-fast-growing-schools/>.

97. SUSAN COMBS, TEX. COMPTROLLER OF PUB. ACCOUNTS, TEXAS IN FOCUS: A STATEWIDE VIEW OF OPPORTUNITIES 45 (Jan. 2008), <http://comptroller.texas.gov/specialrpt/tif/96-1286.pdf>.

98. *Williams I*, 2014 WL 4254969, at *4.

99. *Id.* at *2. This trend is evident even locally: at the beginning of the 2014–2015 school year, Lubbock Independent School District implemented a program allowing many of its schools to provide lunch to students completely free of charge. *See* Monica Yantosh, *Students at 35 Lubbock ISD Schools Will Receive Free Breakfast and Lunch*, EVERYTHINGLUBBOCK.COM (Aug. 22, 2014, 10:48 PM), <http://www.everythinglubbock.com/news/klbk-news/students-at-35-lubbock-isd-schools-will-receive-free-breakfast-and-lunch>.

100. *Williams I*, 2014 WL 4254969, at *20. The trial court found that the Hispanic population in Texas schools might grow by as much as 148% from 2010 to 2050. *Id.* Steve Murdock, the former state demographer and former director of the U.S. Census Bureau, presented these statistics as findings of fact at trial. *Id.*

101. TEX. EDUC. AGENCY, SCHOOL FINANCE 101: FUNDING OF TEXAS PUBLIC SCHOOLS 21 (Jan. 2013), <http://www.tea.state.tx.us/WorkArea/DownloadAsset.aspx?id=2147511834>. Currently, Texas receives its education funding from three sources: Tier 1 funding, Tier 2 funding, and property taxes. *Id.* at 7. Tier 1, the basic-level funding, includes allotments for core education and is based on average daily attendance (ADA), which the state calculates by dividing the sum of students in attendance each day of the school year by the number of instructional days in the school year. *Id.* at 7, 11–12. The state requires Texas school districts to provide no less than 180 instructional days during the school year. *See* TEX. EDUC. CODE ANN. § 25.081(a) (West 2012). Tier 2 funding functions to supplement Tier 1 funding by guaranteeing a specific amount per student in WADA, a mechanism that many states use in their education funding formulas. TEX. EDUC. AGENCY, *supra*. The state uses WADA to calculate the amount of state and local funds to which a district is entitled. *Id.* The state property tax revenue comes in the form of a compressed tax rate implemented by local governments. *Id.* at 21–22, 31–32. The property tax mechanism is one of the newest additions to the formula; the legislature implemented it in 2006 as a response to the Court's decision in *West Orange-Cove II*. *Id.*; *Williams I*, 2014 WL 4254969, at *2–3.

102. *Williams I*, 2014 WL 4254969, at *20.

After the Texas Supreme Court's decision in *West Orange-Cove II*, the state also heightened academic expectations for school districts, aiming to send more students to college.¹⁰³ In 2012, Texas rolled out a new standardized testing program, the State of Texas Assessment for Academic Readiness (STAAR).¹⁰⁴ This system replaced the Texas Assessment of Knowledge and Skills (TAKS).¹⁰⁵ The state intended for the STAAR program to be more difficult with a focus on preparing students for the rigorous demands of post-secondary education.¹⁰⁶ Because heightened standards require more resources, school districts expected additional funding to accompany the new series of standardized testing to support classroom instruction.¹⁰⁷ Instead, the state cut funding for the Foundation School Program (FSP), as well as other special grant programs—funding that heavily impacted at-risk students the most—by over \$5 billion collectively in 2011.¹⁰⁸ Not surprisingly, meeting higher expectations requires more resources than Texas currently provides for its education system.¹⁰⁹

Quick growth coupled with inadequate resources landed school finance in Judge Dietz's 200th Judicial District Court in 2012.¹¹⁰ The *West Orange-Cove* Court placed a significant amount of importance on the suitable and efficient provisions in Texas's education clause, and Judge Dietz did not shy away from finding Texas's education system unconstitutional for many of the same reasons.¹¹¹ Judge Dietz's decision laid out two components of the school system's unconstitutional inadequacy: (1) inadequate structure, operation, and funding, and (2) inability of the school system to provide a general diffusion of knowledge to schoolchildren.¹¹² In Judge Dietz's opinion, he found that the levels of funding were "arbitrary and inadequate," and were wholly out of sync with providing an adequate education in accordance with the Texas

103. *Id.* at *4.

104. Jeffrey Weiss, *STAAR v. TAKS: Texas' New Standardized Tests Come to Schools Next Week*, DALL. MORNING NEWS (Mar. 19, 2012, 11:25 PM), <http://www.dallasnews.com/news/education/headlines/20120319-staar-vs.-taks-texas-new-standardized-tests-come-to-schools-next-week.ece>.

105. *Id.* Major differences between the TAKS and the STAAR include the introduction of a four-hour time limit, a focus toward what students learned within that particular school year, and more questions requiring essay answers. *Id.*

106. *Id.*

107. *Williams I*, 2014 WL 4254969, at *4.

108. *Id.*

109. *Id.*

110. *Williams II*, No. D-1-GN-11-003130, 2014 WL 4243277, at *1 (200th Dist. Ct., Travis County, Tex. Aug. 28, 2014) (Final Judgment).

111. See *W. Orange-Cove Consol. I.S.D. v. Alanis (W. Orange-Cove I)*, 107 S.W.3d 558, 565–68 (Tex. 2003) (relying on *Edgewood I*, 777 S.W.2d 391, 394 (Tex. 1989)); *Williams I*, 2014 WL 4254969, at *253.

112. See *Williams II*, 2014 WL 4243277, at *3.

Constitution.¹¹³ For the inequity claim, the district court held that the system lacked equal access to funds for students across the state.¹¹⁴

The State of Texas appealed Judge Dietz's decision in September 2014, and because the issue turns on constitutional interpretation, the appeal traveled directly to the Texas Supreme Court.¹¹⁵ After setting the briefing timeline, the Court marked September 1, 2015, as the date to begin oral arguments.¹¹⁶ Now, the Texas Supreme Court again faces the task of determining how to interpret Texas's education clause and how to define *adequacy* and *equity* to maximize the state's opportunity for reform.¹¹⁷

B. Colorado

Texas does not stand alone in the school finance battle; Colorado faces many of the same equity issues in school finance that Texas faces.¹¹⁸ Enter Taylor Lobato.¹¹⁹ When Taylor was a high school student at Center High School, she became a plaintiff in a case against the state, in which she, along with many other plaintiffs, alleged that Colorado's education system was unconstitutional and underfunded by \$3 billion.¹²⁰ Taylor stated that she joined the case for her sister and other students in the state so they could receive an acceptable education, a liberty she felt the state denied her.¹²¹ By the time the case reached the Colorado Supreme Court, Taylor was a nineteen-year-old college student at the University of Denver, and despite the plaintiffs' efforts, the Colorado Supreme Court held that the funding of public education in Colorado was constitutional.¹²² In the same year the Colorado Supreme Court handed down its decision, Colorado—one of the

113. *Williams I*, 2014 WL 4254969, at *6.

114. *See Williams II*, 2014 WL 4243277, at *3. While the plaintiffs in the current litigation brought claims against the state based on article VIII of the Texas Constitution regarding ad-valorem taxation, this Comment focuses on the plaintiffs' claims under article VII, the education clause.

115. Mike Norman, Editorial, *Texas Is Searching for a Remedy to Its School Finance Problem*, STAR-TELEGRAM (Jan. 15, 2015), <http://www.star-telegram.com/opinion/opn-columns-blogs/mike-norman/article6727272.html>.

116. Merrill Hope, *Texas Supreme Court to Hear Arguments in Public School Finance Reform Case Appeal*, BREITBART (July 5, 2015), <http://www.breitbart.com/texas/2015/07/05/texas-supreme-court-to-hear-arguments-in-public-school-finance-reform-case-appeal/>. As the appellant, the State submitted its brief on April 13, 2015, and the appellee School Districts submitted their brief on July 2, 2015. *See* Morgan Smith, *High Court May Not Decide School Case Until 2016*, TEX. TRIB. (Jan. 23, 2015), <http://www.texastribune.org/2015/01/23/texas-high-court-may-not-decide-school-case-until-/>. Each party had a chance to submit replies on August 11, 2015. *Id.*

117. *See infra* Parts V.A., VI.A.

118. *See, e.g., Lobato II*, 304 P.3d 1132, 1140–44 (Colo. 2013) (en banc).

119. *See Taylor Lobato, Plaintiff in Education Funding Lawsuit Gets Her Day in Court After Five Years*, HUFFINGTON POST DENV. (Oct. 4, 2011, 5:12 AM), http://www.huffingtonpost.com/2011/08/04/taylor-lobato-plaintiff-i_n_918556.html [hereinafter *Taylor Lobato Gets Her Day in Court*].

120. *Id.*

121. *Id.*

122. *See Lobato II*, 304 P.3d at 1136, 1144; *Taylor Lobato Gets Her Day in Court*, *supra* note 119.

wealthiest states in the country—ranked forty-ninth out of the fifty states in per-student expenditures.¹²³

1. *The Constitutional Provisions at Play in Lobato v. State*

In *Lobato v. State*, the plaintiffs argued that the funding of public schools violated two provisions of the Colorado constitution: article IX, § 2, the education clause; and article IX, § 15, the local control clause.¹²⁴ The education clause requires the Colorado General Assembly to provide a public education system through federal funding for school districts that is “thorough and uniform.”¹²⁵ The local control clause, related to Colorado’s education clause, requires the legislature to construct school districts, allowing for constituents to elect a board of education to control instruction within the districts.¹²⁶ In their claims, the plaintiffs alleged that the state violated the education clause because the system did not provide sufficient funding—an equity claim—that supported a thorough and uniform system of free public schools.¹²⁷ Arguing the system did not allow school districts to control educational instruction at a local level, the plaintiffs also claimed that the education system violated the local control clause of the Colorado constitution.¹²⁸

2. *The Colorado Supreme Court’s Decision*

The Colorado Supreme Court first held that the plaintiffs’ claims did not present a political question.¹²⁹ The *Lobato I* court held that it fell within the judiciary’s responsibility to ensure that the state’s public school financing system was rationally related to the state’s education clause, requiring a “thorough and uniform” system of public education.¹³⁰ On remand, the *Lobato* plaintiffs urged the court to find that the state’s school finance system failed to even muster a rational relation to the thorough and

123. U.S. CENSUS BUREAU, PUBLIC EDUCATION FINANCES 2007 12 (July 2009), <http://www2.census.gov/govs/school/07f33pub.pdf>. The report is based on expenditures per \$1,000 of personal income. *Id.*

124. *See Lobato II*, 304 P.3d at 1136.

125. COLO. CONST. art. IX, § 2.

126. *Id.* art. IX, § 15.

127. *See also id.* art. IX, § 2 (“The general assembly *shall* . . . provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state.” (emphasis added)); *Lobato II*, 304 P.3d at 1136.

128. *See* Appellants’ Opening Brief at 62–66, *Lobato II*, 304 P.3d 1132 (No. 08SC185), 2008 WL 6495202 (quoting Bd. of Educ. of Sch. Dist. No. 1 v. Booth, 984 P.2d 639, 648 (Colo. 1999) (en banc)); *see also* COLO. CONST. art. IX, § 15 (“The general assembly *shall* . . . provide for organization of school districts . . . [where] directors *shall* have control of instruction in the public schools of their respective districts.” (emphasis added)).

129. *See Lobato II*, 304 P.3d at 1137.

130. *Lobato v. State (Lobato I)*, 218 P.3d 358, 363 (Colo. 2009) (en banc) (relying on *Lujan v. Colo. State Bd. of Educ.*, 649 P.2d 1005, 1025 (Colo. 1982)).

uniform constitutional mandate.¹³¹ Convinced by the plaintiffs' arguments, the trial court issued a ruling that the school system was unconstitutional, using the very language provided by the plaintiffs in their allegations.¹³² The trial court issued an injunction against the State, but stayed the injunction to provide the general assembly with adequate time to remedy the system in compliance with its order.¹³³

On appeal, the Colorado Supreme Court attempted to define the plain meaning of the language in Colorado's education clause.¹³⁴ Looking at the language on its face and turning to simple statutory interpretation, the court held that a thorough and uniform school system would be one "marked by completeness, . . . comprehensive[ness], and . . . consisten[cy] across the state."¹³⁵ The court also felt other provisions within the education clause supported its interpretation of a thorough and uniform school system.¹³⁶ The court found that requirements to receive state funding, such as providing public education opportunities to residents of Colorado between six and twenty-one years of age and keeping at least one public school open for three months each year, established a complete, comprehensive, and consistent school system.¹³⁷

Ultimately, the Colorado Supreme Court held that the legislature's financing system was rationally related to the education clause's language requiring the legislature to create thorough and uniform public schools.¹³⁸ Furthermore, the supreme court rejected the plaintiffs' argument that the funding of public education in Colorado failed to provide a thorough and uniform system and instead held that the local control clause allowed individual districts to "experiment[]" and "innovat[e]" with the limited resources available to them.¹³⁹

By using the rational basis test, the Colorado Supreme Court took a deferential approach to determining the constitutionality of Colorado's education funding.¹⁴⁰ While the court did find the claim was justiciable, the court noted that it did not wish to infringe upon or question the integrity of the general assembly's policy-making power.¹⁴¹ In the end, the Colorado

131. *Lobato II*, 304 P.3d at 1137.

132. *Id.*

133. *Id.*

134. *See id.* at 1138.

135. *Id.* at 1139.

136. *Id.* at 1138–39.

137. *Id.* at 1139.

138. *Id.* at 1138–43.

139. *Id.* at 1143 (quoting *Lujan v. Colo. State Bd. of Educ.*, 649 P.2d 1005, 10023 (Colo. 1982)).

140. *See, e.g., id.* at 1143–44.

141. *Id.* at 1138, 1144. Fascinatingly, the Colorado Supreme Court's decision spans a mere nine pages (excluding Chief Justice Bender's dissent), while the most recent district court trial order in Texas spans over a shocking 360 pages. *Compare id.* at 1136–44, with *Williams I*, No. D-1-GN-11-003130, 2014 WL 4254969 (200th Dist. Ct., Travis County, Tex. Aug. 28, 2014) (Trial Order). And the difference is not just because the opinion is the district court's opinion—the last Texas Supreme Court

Supreme Court's decision shifted the focus to Colorado voters rather than providing a definition to the Colorado General Assembly for reformation.¹⁴² Shifting the issue of school finance to voters is a weak and dangerous remedy because policy issues such as social security—not education—tend to cloud the minds of voters during elections.¹⁴³

C. Kansas

Just one year after the Colorado Supreme Court found that the state's funding system for public education was rationally related to Colorado's education clause, the Kansas Supreme Court held that Kansas's education funding system was unconstitutional.¹⁴⁴

1. *The Build up to Gannon v. State*

Events leading up to the Kansas Supreme Court's decision unfolded similarly to the events in Texas; Kansas's most recent school finance litigation stemmed from the Kansas Legislature's reaction to the Kansas Supreme Court's decision in the *Montoy* series of cases.¹⁴⁵ In *Montoy*, the plaintiffs were a group representing African American, Hispanic, and disabled students, along with two school districts.¹⁴⁶ They sued the state for failure to provide suitable education, which they alleged was against the education clause in Kansas's constitution.¹⁴⁷ After deciding that the plaintiffs' allegations did not warrant the district court's grant of summary judgment, the supreme court's first decision remanded the case back to the district court, where the district court found the system to be

decision on the constitutionality of school finance spanned seventy-two pages. See *W. Orange-Cove II*, 176 S.W.3d 746, 746–818 (Tex. 2005).

142. See Kevin Simpson, *Lobato Reversal Shifts Quest for Education Funding to Colorado Voters*, DENV. POST (May 29, 2013, 8:19 AM), http://www.denverpost.com/ci_23335957/court-reverses-lobato-finds-state-school-funding-constitutional.

143. See Buzuvis, *supra* note 44, at 686 n.305.

144. See *Gannon I*, 319 P.3d 1196, 1233–39 (Kan. 2014); *Lobato II*, 304 P.3d at 1141–42.

145. See *Gannon I*, 319 P.3d at 1204–06. See generally *Montoy v. State (Montoy IV)*, 138 P.3d 755 (Kan. 2006) (deciding that the legislature's amended funding scheme satisfied the state's constitutional provisions); *Montoy v. State (Montoy III)*, 112 P.3d 923 (Kan. 2005) (declaring the legislature's new funding scheme unconstitutional); *Montoy v. State (Montoy II)*, 120 P.3d 306 (Kan. 2005) (holding that the state's funding formula did not violate equal protection rights, but the legislature's formula did violate the "suitable provision" clause of the state constitution); *Montoy v. State (Montoy I)*, 62 P.3d 228 (Kan. 2003) (deciding that summary judgment in favor of the state was improper and remanding to the trial court to consider plaintiffs' claims).

146. *Montoy I*, 62 P.3d at 230.

147. *Id.*; see KAN. CONST. art. VI, § 6(b). The *Montoy* litigation in Kansas was similar to the litigation that ensued in Texas in the *Edgewood* and *West Orange-Cove* cases—each case involved a series where the case landed in front of the supreme court multiple times. See sources cited *supra* note 62.

unconstitutional.¹⁴⁸ Kansas's supreme court, in *Montoy II*, affirmed the district court's decision, "holding that the legislature . . . failed to meet its burden as imposed by [article] 6, § 6 of the Kansas Constitution."¹⁴⁹

After the Kansas Supreme Court's decision in *Montoy II*, the Kansas Legislature devised a bill that provided \$142 million in additional funding and formulated changes to the overall system.¹⁵⁰ The legislature's effort, however, was not enough, and in *Montoy III*, the Kansas Supreme Court directed the Kansas Legislature to implement even greater funding for public education.¹⁵¹ Specifically, the court required, at minimum, an increase of \$285 million.¹⁵² The court stated that the legislature's obligation to adequately fund public education would not end with the 2004–2005 increases because students' needs in education constantly change.¹⁵³ As a result of this guidance, the legislature began to devise yet another new scheme to fund public education.¹⁵⁴

In a 2005 special session, the Kansas Legislature created a funding system that met the court's compliance standards by implementing a \$289 million funding increase for the 2005–2006 school year.¹⁵⁵ The legislature followed this interim mechanism by providing total funding of \$466.2 million for K–12 education over a period of three years.¹⁵⁶ Thus, the total increases of the legislature's valiant efforts from January 2005 totaled \$755.6 million.¹⁵⁷ Upon the legislature's action, the court acknowledged the legislature's compliance and completely dismissed the *Montoy* litigation.¹⁵⁸ The aftermath of the *Montoy* series, however, caused Kansas's most recent litigation.¹⁵⁹

2. *The Kansas Supreme Court Finds Its Rose*

From 2009 to 2012, the Kansas Legislature diminished its Base State Aid Per Pupil (BSAPP) funding to \$4,780, placing the state's total funding cuts at approximately \$511 million in just three years.¹⁶⁰ Not surprisingly,

148. *Montoy I*, 62 P.3d at 236; *Montoy v. State*, No. 99-C-1738, 2003 WL 22902963, at *49 (3d Dist. Ct., Shawnee County, Kan. Dec. 2, 2003).

149. *Montoy II*, 120 P.3d at 308.

150. See Levy, *supra* note 49, at 1022–23.

151. *Montoy III*, 112 P.3d 923, 940–41 (Kan. 2005).

152. *Id.* at 940.

153. See *id.* at 940–941.

154. *Gannon I*, 319 P.3d 1196, 1206 (Kan. 2014).

155. *Id.* at 1205–06.

156. *Id.*

157. *Id.* at 1206.

158. *Id.*

159. See *id.*

160. *Id.* at 1204–06. Kansas's school finance formula provides a fixed amount of funding per student. *Id.* at 1204–05. Kansas's BSAPP accounts for adjustments to provide higher funding for students, such as at-risk and special education students, who require more resources. See *id.* Kansas's BSAPP mechanism is similar to Texas's ADA and WADA mechanism because each allows for a fixed

the *Montoy* plaintiffs moved to reopen their appeal as a result.¹⁶¹ The plaintiffs wanted the court to provide judgment on whether (1) the funding system the legislature devised upon dismissal of the original *Montoy* case was constitutional and (2) the legislature's newest funding cuts violated article VI, § 6(b) of the state constitution.¹⁶² The Kansas Supreme Court dismissed the *Montoy* plaintiffs' motion, and a new group of plaintiffs, comprised of four school districts, multiple students who attended Kansas schools, and many guardians of Kansas schoolchildren, filed a new suit—*Gannon v. State*.¹⁶³

In *Gannon*, the plaintiffs argued that the State was in violation of article VI of Kansas's constitution, which mandates: "The legislature shall provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools."¹⁶⁴ The Kansas Supreme Court relied heavily on the Texas Supreme Court's decisions in *West Orange-Cove I* and *Edgewood I* to determine that school finance was a justiciable issue.¹⁶⁵ Ultimately, the Kansas Supreme Court held that the school finance system for public schools was unconstitutional because the system was underfunded and created wealth-based disparities among districts.¹⁶⁶ In addition to a list of ultimatums for the Kansas Legislature, the Kansas Supreme Court remanded its decision to the district court with guidance for measuring adequacy in a manner that would provide the legislature with a more concrete definition of the term.¹⁶⁷

amount of funding per student, and each mechanism accounts for the fact that some students require more funding than others. See TEX. EDUC. AGENCY, *supra* note 101, at 12–17, 21. The amount of funding a district receives from the state is a district's weighted enrollment multiplied by the BSAPP. *Gannon I*, 319 P.3d at 1205. Furthermore, Kansas derives the BSAPP from two sources: (1) local resources and (2) general state aid. *Id.* Districts receive local funding through property taxes, which vary depending upon the value of the property. *Id.* The property taxes are obtained through a mill levy, which each district is required "to impose . . . upon taxable tangible property in its territory." *Id.* Districts located in areas with poorer property value receive additional financial aid from the state. *Id.* If the district has higher property value and receives a larger amount of local funding than state funding, the excess local funds remit back to the state. *Id.* Relatedly, if the district receives the same amount of local funding and state funding, the district does not receive additional state funding. *Id.* Two additional ways for Kansas districts to access funds are through "supplemental general state aid," aid that less wealthy districts may derive from the state after a school board implements an additional mill levy to fund a local option budget (LOB), and "school district capital outlay state aid," aid that less wealthy districts may receive after a school board imposes an additional mill levy to provide for capital outlay expenses. *Id.* A district may use capital outlay expenses "for the purpose of the acquisition, construction, reconstruction, repair, remodeling, additions to, furnishing, maintaining and equipping of school district property and equipment necessary for school district purposes." KAN. STAT. ANN. § 72-8804 (West, Westlaw through 2015 Reg. Sess.).

161. *Gannon I*, 319 P.3d at 1206.

162. *Id.*; KAN. CONST. art. VI, § 6(b).

163. *Gannon I*, 319 P.3d at 1206.

164. *Id.*; KAN. CONST. art. VI, § 1.

165. *Gannon I*, 319 P.3d at 1220.

166. *Id.* at 1240.

167. See *id.* at 1251–52.

To determine a standard for equity, the court turned to the Texas Supreme Court's decision in *Edgewood I*.¹⁶⁸ Kansas adopted Texas's standard of equity, requiring the legislature to devise a system that allows for equal educational opportunities across school districts by taxing each district at a similar rate.¹⁶⁹ To impose standards of adequacy, however, the Kansas Supreme Court adopted the *Rose* standard and measured each individual factor against the state's statutory education goals.¹⁷⁰ On remand for a determination of whether the state was adhering to the principles of the *Rose* standard, the original three-judge panel further considered each *Rose* factor individually and held that the state was unconstitutionally failing to provide its students with the adequate education the Kansas constitution requires.¹⁷¹

In March 2015, with the *Gannon* case still open, the Kansas Legislature, with approval from Kansas Governor Sam Brownback and in an effort to make massive cuts to Kansas's budget, passed Senate Bill 7, a controversial bill that overhauled the manner in which the state funded its public schools.¹⁷² The bill turned Kansas's per-student funding mechanism into a system that funds resources for students and operations through block grants.¹⁷³ Block-grant funding does not allow districts to receive greater funding for special needs or at-risk students.¹⁷⁴ As finalized, the block-grant system was to take effect during the 2015–2016 and 2016–2017 school years; however, the cuts to school funding were immediate, and Kansas school districts struggled to pay for basic operations during the final months of the 2014–2015 school year.¹⁷⁵ A firestorm of backlash ensued.¹⁷⁶

168. *Id.* at 1238–40.

169. *Id.* at 1223–40.

170. KAN. STAT. ANN. § 72-1127 (West, Westlaw through 2015 Reg. Sess.); *Gannon I*, 319 P.3d at 1236–37.

171. *Gannon II*, No. 2010-CV-1569, slip op. at 10–11, 19 (3d Dist. Ct., Shawnee County, Kan. Dec. 30, 2014).

172. See S.B. 7, 86th Leg., Reg. Sess. (Kan. 2015), http://www.kslegislature.org/li/b2015_16/measures/documents/sb7_enrolled.pdf; Chris Suellentrop, *The Kansas Experiment*, N.Y. TIMES MAG. (Aug. 5, 2015), http://www.nytimes.com/2015/08/09/magazine/the-kansas-experiment.html?_r=0. The budget cuts arose as a result of the state cutting income taxes in 2012 and 2013. Dion Lefler, *Court Tosses Out Block Grant Funding for Kansas Schools*, KAN. CITY STAR (June 26, 2015), <http://www.kansascity.com/news/government-politics/article25599313.html>.

173. Andrew Ujifusa, *Fight Looms in Kansas on Funding K–12 Via Block Grants*, EDUC. WEEK (Mar. 24, 2015), <http://www.edweek.org/ew/articles/2015/03/25/fight-looms-in-kansas-on-funding-k-12.html>.

174. *Id.*

175. *Id.*; see, e.g., Yael T. Abouhalkah, Editorial, *Gutsy KCK Superintendent Cynthia Lane Confronts Gov. Sam Brownback on School Funding*, KAN. CITY STAR (June 2, 2015), <http://www.kansascity.com/opinion/opn-columns-blogs/yael-t-abouhalkah/article22849515.html>.

176. Abouhalkah, *supra* note 175. The budget cuts required one superintendent to eliminate thirty district positions and implement a 10% across-the-board district budget cut during the final months of the school year. *Id.* Some school districts were even forced to end the academic year early because they were unable to continue operations. Trymaine Lee, *Kansas School Districts to Close Early After Tax*

A group of school districts challenged the block-grant system in the Shawnee County District Court.¹⁷⁷ In addition to rejecting Governor Brownback's new block-grant funding mechanism because it was unconstitutional, the district court ordered the legislature to immediately provide \$54 million in funding by midnight on June 30, 2015.¹⁷⁸ With the deadline looming, the Supreme Court of Kansas stayed the order upon an appeal by the State of Kansas.¹⁷⁹ Importantly, while the supreme court focused on the issue of equity, attorneys for the school district stated that the adequacy issue itself was the most important issue and worth approximately \$540 million alone.¹⁸⁰ Advocates for education continue to criticize Kansas's lawmakers for failing to fulfill their constitutional obligation of providing an equitable and adequate school system for Kansas's students.¹⁸¹

V. WORKING THE EQUATION: EXAMINING THE COURTS' REVIEW OF EACH STATE'S EDUCATION CLAUSE

Most of the issues that arise over school funding hinge on the way states acquire funds and the provisions of the state's constitution that the acquisition of those funds violates.¹⁸² While the legislature will ultimately determine the funding scheme for education, it falls squarely within the court's jurisdiction to determine whether the legislature performs its tasks constitutionally.¹⁸³ State supreme courts, however, often interpret education clauses differently.¹⁸⁴ Courts' constitutional interpretation methods vary; a supreme court may (1) look to other states' decisions for guidance, (2) use statutory interpretation to define the language, or (3) refer to its own previous decisions.¹⁸⁵ A major push-and-pull battle ensues in almost every school finance case: the judiciary must check the legislature's performance, but the court risks its integrity in undermining the separation of powers between the legislature and the judiciary.¹⁸⁶ Adequacy claims, especially,

Cut 'Experiment', MSNBC (Apr. 4, 2015, 2:02 PM), <http://www.msnbc.com/msnbc/kansas-school-districts-close-early-after-tax-cut-experiment>.

177. See Lefler, *supra* note 172.

178. Pilar Pedraza, *KS Supreme Court Stays Education Funding Order*, KWCH12 (June 30, 2015, 12:00 AM), <http://www.kwch.com/news/local-news/KS-Supreme-Court-stays-education-funding-order/33880846>.

179. *Id.*

180. See *id.*

181. See, e.g., Abouhalkah, *supra* note 175; Lefler, *supra* note 172; Pedraza, *supra* note 178.

182. See, e.g., *W. Orange-Cove II*, 176 S.W.3d 746, 752–53 (Tex. 2005).

183. See *supra* notes 37–38 and accompanying text.

184. Ryan, *supra* note 6, at 1232.

185. See, e.g., *Gannon I*, 319 P.3d 1196, 1219, 1227 (Kan. 2014) (relying on interpretations of the Kentucky Supreme Court and Texas Supreme Court); *Lobato II*, 304 P.3d 1132, 1136 (Colo. 2013) (en banc) (turning to statutory construction).

186. See Ryan, *supra* note 6, at 1223–24.

cause tension between the court and legislature.¹⁸⁷ But determining where the “boundary” actually lies and providing a definition of *adequacy* and *equity* remain the largest battles for judiciaries, legislatures, litigants—and most of all, schoolchildren.¹⁸⁸

A. Texas

“This Court is mindful that its role differs from that of the Legislature.”¹⁸⁹

The Texas Supreme Court continues to find that school finance issues are proper inquiries for the Court.¹⁹⁰ Considering whether it possesses the latitude to oversee the legislature’s structuring of public school funding, the Texas Supreme Court, in *West Orange-Cove II*, noted that the Texas Constitution

nowhere suggests that the Legislature is to be the final authority on whether it has discharged its constitutional obligation. If the framers had intended the Legislature’s discretion to be absolute, they need not have mandated that the public education system be efficient and suitable; they could instead have provided only that the Legislature provide whatever public education *it* deemed appropriate.¹⁹¹

The Court’s language suggests two principles. First, the Court finds authority to check the legislature in the language of Texas’s education clause because the clause’s language—efficient and suitable—is open to interpretation.¹⁹² Without language qualifying the type of school system the constitution requires, the Court might be less likely to uphold such a strong division between the two branches of government.¹⁹³ Second, the Court’s language reiterated its determination in *Edgewood I* that the legislature does not possess an absolute discretion over school finance and must comply with the standards set forth in the Texas Constitution.¹⁹⁴ When the legislature falls short of fulfilling its duty, the Texas Constitution allows the

187. Darby & Levy, *supra* note 6, at 364.

188. See, e.g., *Williams I*, No. D-1-GN-11-003130, 2014 WL 4254969, at *6–7 (200th Dist. Ct., Travis County, Tex. Aug. 28, 2014) (Trial Order).

189. *Williams II*, No. D-1-GN-11-003130, 2014 WL 4243277 at *2 (200th Dist. Ct., Travis County, Tex. Aug. 28, 2014) (Final Judgment).

190. See, e.g., *W. Orange-Cove II*, 176 S.W.3d 746, 776–77 (Tex. 2005).

191. *Id.* at 778 (emphasis added).

192. See TEX. CONST. art. VII, § 1; see also *infra* notes 266–69 and accompanying text (discussing the importance of the words *efficient* and *suitable*).

193. Thro, *supra* note 84, at 23–25.

194. *Edgewood I*, 777 S.W.2d 391, 394 (Tex. 1989). The standards to which the legislature must adhere appear in the education clause’s language: “an efficient system of public free schools.” TEX. CONST. art. VII, § 1.

Texas Supreme Court to check the legislature's performance.¹⁹⁵ Thus, the Texas Supreme Court carries a great amount of weight and latitude in shaping the state's school finance system, and the Court should take full advantage of this power.¹⁹⁶

Turning to the significance of the language in Texas's education clause, the Texas Constitution contains an entire article devoted completely to funding the state's public education system.¹⁹⁷ Unlike other funding duties of the legislature that are impliedly laid out in the Texas Constitution, article VII mandates that the Texas Legislature must adequately maintain public schools.¹⁹⁸ The Texas Constitution states that "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," and the Texas Supreme Court places a large amount of significance on the delegating language of this clause.¹⁹⁹ The clause obligates the legislature to devise a school finance scheme that comports with suitable and efficient standards and provides a general diffusion of knowledge.²⁰⁰

Previously, the Texas Supreme Court defined equity in public schools to mean the legislature should devise a "financially efficient" school system that provides "[c]hildren who live in poor districts and children who live in rich districts . . . a substantially equal opportunity to have access to educational funds."²⁰¹ Texas courts continue to retain this meaning of a financially efficient and equitable school system from *Edgewood I*—one of the first school finance cases the Texas Supreme Court heard.²⁰² Although Texas's equity definition remains relevant, it is time for the state to implement a substantive meaning to providing an adequate education.²⁰³

B. Colorado

"This case requires us to interpret relevant portions of the Colorado Constitution"²⁰⁴

195. See discussion *supra* Part III.

196. See *infra* Part VI.A.

197. See TEX. CONST. art. VII.

198. See *id.* art. VII, § 1. The legislature's duty to fund public schools is noticeably absent from article III, which lays out the majority of the legislature's duties. See *generally id.* art. III (laying out the duties of the Texas Legislature and the Texas Comptroller of Public Accounts). Instead, education receives its own article. See *id.* art. VII.

199. *Id.* art. VII, § 1 (emphasis added); see, e.g., *W. Orange-Cove I*, 107 S.W.3d 558, 563–64 (Tex. 2003).

200. TEX. CONST. art. VII, § 1; see, e.g., *W. Orange-Cove I*, 107 S.W.3d at 563–64.

201. *Edgewood I*, 777 S.W.2d 391, 397 (Tex. 1989).

202. See *Williams II*, No. D-1-GN-11-003130, 2014 WL 4243277, at *4 (200th Dist. Ct., Travis County, Tex. Aug. 28, 2014) (Final Judgment).

203. See *infra* Part VI.

204. *Lobato II*, 304 P.3d 1132, 1137 (Colo. 2013) (en banc) (emphasis added).

In too stringent an effort to maintain a rigid separation between the legislature and the judiciary, the Colorado Supreme Court failed to place a value on a thorough and uniform system of schools across the state.²⁰⁵

In *Lobato I*, the Colorado Supreme Court spent very little time discussing whether school finance was a justiciable issue, and the court even noted that many courts considering school finance issues do not consider the factors set forth in *Baker v. Carr* to decide whether the issue is justiciable.²⁰⁶ Relatedly, the Colorado Supreme Court used a rational basis review to hold that the school finance system was constitutional.²⁰⁷ The Colorado Supreme Court's decision to glide past the *Baker* factors, paired with its use of a deferential standard of review, proves significant: a rational basis review suggests that the Colorado Supreme Court, though it technically held school finance to be a justiciable issue, did not actually want to approach the boundary between the court and the legislature.²⁰⁸ Additionally, rational basis review is an inappropriate tool to review provisions in state constitutions because state constitutions impose positive rights.²⁰⁹ Rational basis review is more appropriate in instances where a constitution takes power away from the government; under such circumstances, the government must affirmatively prove its mandate was rationally related to interfering with a citizen's individual rights.²¹⁰ When a constitution grants affirmative rights, the government must prove why it failed to adhere to its duty.²¹¹ Thus, using a rational basis review in school finance litigation defeats the purpose of judicial review.²¹²

The plaintiffs in *Lobato* claimed that the school system lacked sufficient funding—a claim of inequity—to provide a thorough and uniform education in violation of the Colorado constitution.²¹³ The education clause in Colorado's constitution “establishes the constitutional floor” on which

205. Case Commentary, *Colorado Supreme Court Upholds State's School Finance System as Rationally Related to the "Thorough and Uniform" Mandate of the Colorado Constitution's Education Clause—Lobato v. State*, 304 P.3d 1132 (Colo. 2013), 127 HARV. L. REV. 803, 805 (2013) [hereinafter *Colorado Supreme Court Upholds School Finance System*].

206. *Lobato I*, 218 P.3d 358, 384 n.13 (Colo. 2009) (en banc); see generally *Baker v. Carr*, 369 U.S. 186 (1962) (setting forth a list of factors to determine if an issue is a non-justiciable political question).

207. *Lobato II*, 304 P.3d at 1137.

208. *Colorado Supreme Court Upholds School Finance System*, supra note 205, at 806.

209. *Id.* at 807.

210. See Usman, supra note 8, at 1462.

211. See *id.* Interestingly, the Colorado Supreme Court even acknowledged that while the United States Constitution takes powers away and limits the powers of the branches of the federal government, state constitutions tend to grant specific powers to state governments, which are “entitlements that the government must secure for its citizens.” See *Lobato I*, 218 P.3d at 371; see also Usman, supra note 8, at 1465–70 (explaining the implications of state education clauses as a positive right in state constitutions).

212. See *Colorado Supreme Court Upholds School Finance System*, supra note 205, at 807.

213. *Lobato II*, 304 P.3d 1132, 1136 (Colo. 2013) (en banc).

the general assembly should build its policy for education.²¹⁴ Thus, by limiting their request for relief to equity only, the plaintiffs significantly reduced the amount of constitutional interpretation required of the Colorado Supreme Court.²¹⁵ Consequently, this allowed the Colorado Supreme Court to hold that the system adhered to the plain language of the constitutional mandate, leaving an inadequate system intact.²¹⁶ If the plaintiffs had included inadequacy in their suit against the state and showed that the school system failed to comply with actual values in accordance with a standard, such as the one set forth in *Rose*, the court would have faced a more difficult interpretation of the state’s education clause.²¹⁷

C. Kansas

*“[O]ur Kansas Constitution clearly leaves to the legislature the myriad of choices available to perform its constitutional duty; but when the question becomes whether the legislature has actually performed its duty, that most basic question is left to the courts to answer under our system of checks and balances.”*²¹⁸

Like the Texas Supreme Court, the Kansas Supreme Court also holds school finance to be a proper issue for the court.²¹⁹ In fact, the Kansas Supreme Court relied heavily on the Texas Supreme Court’s decision in *West Orange-Cove II* to determine that school finance does not present a political question.²²⁰ Unlike the Colorado Supreme Court, the Kansas Supreme Court analyzed each *Baker* factor individually in its opinion.²²¹ Individually analyzing each factor indicated the supreme court’s willingness to tackle tough interpretations and suggested the Kansas Supreme Court knew it would approach the boundary between the judiciary and the legislature.²²² Ultimately, declaring that the school finance system

214. *Id.* at 1138. In Colorado’s previous school finance case, it held that “thorough and uniform” did not necessitate “absolute equality in educational services or expenditures.” *Lujan v. Colo. State Bd. of Educ.*, 649 P.2d 1005, 1018 (Colo. 1982).

215. *Lobato II*, 304 P.3d at 1136; see Buzuvis, *supra* note 44, at 656–57.

216. *Lobato II*, 304 P.3d at 1138.

217. See *Rose v. Council for Better Educ.*, 790 S.W.2d 186, 212 (Ky. 1989); Ratner, *supra* note 38, at 817–18.

218. *Gannon I*, 319 P.3d 1196, 1226 (Kan. 2014).

219. *Id.* at 1231.

220. See *id.* at 1219–20.

221. *Id.* at 1219–32.

222. Compare *id.* (analyzing every *Baker* factor and declaring the school finance system unconstitutional), with *Lobato I*, 218 P.3d 358, 384 n.13 (Colo. 2009) (en banc) (skipping any analysis of the *Baker* factors and declaring the school finance system constitutional).

was unconstitutional created a tense, highly charged relationship between the judiciary and the legislature in Kansas.²²³

The Kansas constitution assigns the Kansas Legislature duties pertaining to school finance in two different clauses: a main education clause and a clause devoted to the financing of public schools.²²⁴ Noticeably absent in the main education clause is any language that qualifies the type of school system the state should maintain.²²⁵ While it seems as though such minimal language in Kansas's education clause would more easily allow the court to hold the school finance system constitutional, the court turned to § 6(b) of the state's education clause for further support.²²⁶ Section 6(b), the finance section of the education clause, contains a minimum level of quality that the state must provide for education funding, stating, "The legislature shall make *suitable* provision for finance of the educational interests of the state."²²⁷ Proactively finding additional support to hold the system inadequate was a step in the right direction for the Kansas Supreme Court, and it is an action that the Texas Supreme Court should consider mimicking in its quest to formulate a better education system.²²⁸

Another notable discussion in the Kansas Supreme Court's decision was its interpretation of the word *shall*.²²⁹ The court devoted a significant amount of its opinion to explaining that *shall* places a constitutional duty upon the legislature.²³⁰ Although the term often absorbs an ambiguous meaning, it almost always sets forth a required act.²³¹ The word *shall*, present in the Kansas, Texas, and Colorado education clauses, means "must."²³² Thus, the obligation to provide educational funding lies first

223. See Darby & Levy, *supra* note 6, at 360–65 (labeling the relationship between the court and the legislature in *Montoy II* as a "highly charged and protracted showdown," creating "a firestorm of controversy"); John Eligon, *Kansas Legislature Threatens Showdown with Court Over School Financing*, N.Y. TIMES (Oct. 8, 2013), <http://www.nytimes.com/2013/10/09/us/kansas-legislature-threatens-showdown-with-court-over-school-financing.html> (reporting that members of the Kansas Supreme Court felt that they could not trust lawmakers to adequately fund public schools because the court already decided to implement greater funding in *Montoy II*).

224. KAN. CONST. art. VI, §§ 1, 6(b).

225. Compare *id.* art. VI, § 1 (using no qualifying language for "establishing and maintaining public schools"), with TEX. CONST. art. VII, § 1 (requiring the state to provide "an efficient system" of public schools).

226. *Gannon I*, 319 P.3d at 1220.

227. KAN. CONST. art. VI, § 6(b) (emphasis added).

228. See *infra* Part VI.A.

229. *Gannon I*, 319 P.3d at 1220.

230. *Id.* at 1220–22.

231. See, e.g., Bryan A. Garner, *Shall We Abandon Shall?*, A.B.A. J. (Aug. 1, 2012, 7:20 AM), http://www.abajournal.com/magazine/article/shall_we_abandon_shall/.

232. See COLO. CONST. art. XI, § 1; KAN. CONST. art. VI, §§1, 6(b); TEX. CONST. art VII, § 1; WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE, UNABRIDGED 2085 (1993) [hereinafter WEBSTER'S].

within the legislature's duty.²³³ The Kansas Supreme Court further used this discussion of adhering to the plain meaning of words as a springboard for its discussion of the "suitable provision" clause.²³⁴ Using the Texas Supreme Court's decision in *West Orange-Cove II* as support, the Kansas Supreme Court found judicial review inherent in the framers' intent by mandating that the education system be "efficient and suitable."²³⁵ Otherwise, the framers could have left the quality of school finance in the hands of the legislature by simply using the word *provision* without any qualifying language.²³⁶

The Kansas Supreme Court also enunciated the *Rose* factors and held that the *Rose* standard encompassed the state's definition of *adequacy*.²³⁷ Observing that the *Rose* factors mirror the legislature's codified education goals for the state, the Kansas Supreme Court held that the education system must be in compliance with each factor to operate adequately before remanding the case to the district court to determine this issue.²³⁸ The Kansas Supreme Court also observed that the Kentucky Supreme Court formulated the *Rose* standard around the language in the Kentucky constitution, which requires the Kentucky General Assembly to "provide for an efficient system of common schools"—the exact same standard that the Texas Constitution requires from its legislature.²³⁹

On remand, the Kansas district court measured adequacy by comparing statistics on issues, such as students' interactions with one another and reading achievement statewide, against each *Rose* factor.²⁴⁰ This analysis placed a value on adequacy and will provide the Kansas Legislature with a higher expectation for setting out an appropriate minimum threshold of learning for each student.²⁴¹ While the Kansas Supreme Court relied on the Texas Supreme Court's decision in *Edgewood I* to formulate its equity requirement, the Texas Supreme Court should now emulate the Kansas Supreme Court's approach to adequacy.²⁴²

233. *Gannon I*, 319 P.3d at 1220; see also Levy, *supra* note 49, at 1051–52 (relating the mandatory nature of the word *shall* to use in other legal documents that typically implies a "mandatory and judicially enforceable" nature); Garner, *supra* note 231 (explaining two possible approaches to using the word *shall*: (1) using the word to mean "has a duty to," or (2) eliminating use of the word altogether).

234. *Gannon I*, 319 P.3d at 1221–22 (citing KAN. CONST. art. VI, § 6(b)).

235. *Id.* (quoting *W. Orange-Cove II*, 176 S.W.3d 746, 748 (Tex. 2005)).

236. *Id.* (relying on *W. Orange-Cove II*, 176 S.W.3d at 748).

237. *Id.* (relying on *W. Orange-Cove II*, 176 S.W.3d at 746).

238. See *id.* at 1234–35. 1251 KAN. STAT. ANN. § 72-1127 (West, Westlaw through 2015 Reg. Sess.). The Kansas Supreme Court also guided the district court by stating that the *Rose* standard does not require the legislature to provide an *optimal* system. See *Gannon I*, 319 P.3d at 1237–38. The *Rose* test, more simply, requires the legislature to provide a system that is more adequate than the one currently in operation. See *id.*

239. KY. CONST. § 183; TEX. CONST. art. VII, § 1; *Gannon I*, 319 P.3d at 1233.

240. *Gannon II*, No. 2010-CV-1569, slip op. at 35, 40, 114–15 (3d Dist. Ct., Shawnee County, Kan. Dec. 30, 2014).

241. *Id.* at 104.

242. See *Gannon I*, 319 P.3d at 1220.

D. Examining the Language of the Three Constitutions Together

Education clauses typically fall into one of four different categories depending on the requirement the clause places upon the legislature: (1) clauses that do not mention any standard of quality for the legislature to provide for schools; (2) clauses that require the legislature to “impose some minimum standard of quality,” which usually comes in the form of a thorough, efficient, or suitable standard; (3) clauses with “stronger and more specific educational mandate[s],” paired with “a purposive preamble” (e.g., “[a] general diffusion of knowledge . . . being essential to the preservation of the rights and liberties of the people”); and (4) clauses that mandate education as the state’s most important and paramount duty for which to provide.²⁴³ The education clauses of Texas, Colorado, and Kansas all stand in different categories.²⁴⁴

The education clauses in both the Texas and Colorado constitutions impose a minimum standard of education quality.²⁴⁵ Kansas’s main education clause, however, provides no minimum level of quality.²⁴⁶ Distinct from the other two constitutions, Texas’s education clause is more of a hybrid; it also contains a purposive preamble, stating that a “general diffusion of knowledge [is] *essential* to the preservation of the rights and liberties of the people.”²⁴⁷ Similar preamble language is absent from the Colorado and Kansas education clauses.²⁴⁸

The Colorado Supreme Court reflected this noticeable absence of less assertive language in its decision in *Lobato II*.²⁴⁹ Instead of engaging in a debate over the meaning of the terms or assigning the terms a more demanding definition, the Colorado Supreme Court found that the state’s education clause satisfied the plain meaning of the clause’s language.²⁵⁰ Therefore, Texas’s language should suggest to the Texas Legislature that education funding sits at a high level of importance, as well as provide the Texas Supreme Court with greater interpretational authority.²⁵¹

243. Thro, *supra* note 84, at 23–25.

244. See, e.g., *id.*; Ratner, *supra* note 38, at 815.

245. See COLO. CONST. art. IX, § 2 (mandating “the establishment and maintenance of a *thorough and uniform* system of free public schools” (emphasis added)); TEX. CONST. art. VII, § 1 (requiring “support and maintenance of an *efficient* system of public free schools” (emphasis added)); see also Ratner, *supra* note 38, at 815 (placing the Colorado and Texas education clauses in the same category).

246. KAN. CONST. art. VI, § 1.

247. See Thro, *supra* note 84, at 23–25. Compare TEX. CONST. art. VII, § 1 (emphasis added) (using the word *essential*), with COLO. CONST. art. IX, § 2 (stating, “The general assembly shall, as soon as practicable . . .”), and KAN. CONST. art. VI, § 1 (containing no similar language).

248. COLO. CONST. art. IX, § 1; see also Ratner, *supra* note 38, at 815 (classifying the Kansas education clause as one containing only “general education language”).

249. See *Lobato II*, 304 P.3d 1132, 1138–39 (Colo. 2013) (en banc).

250. See *id.*

251. See generally Thro, *supra* note 84 (explaining the difference between education clauses with a preamble and those that only mandate a minimum level of quality for funding public schools).

Kansas's education clause contains the most barren language among the three constitutions, and it falls into the category of clauses that do not impose any standard of quality on the state legislature.²⁵² Kansas's education clause only requires the Kansas Legislature to “establish[] and maintain[] public schools.”²⁵³ Surprisingly, however, the Kansas Supreme Court's analysis did not mirror that bare-bones language.²⁵⁴ The Kansas Supreme Court, recognizing both adequacy and equity components in the education finance clause, broadened the standards for the Kansas Legislature.²⁵⁵ Now, not only must the Kansas Legislature equalize funds across districts, it must also provide students with a more adequate education.²⁵⁶ By reaching this conclusion, the Kansas Supreme Court likely hoped to lessen the problematic leveling effect of equity reform while assigning a more definite value to an adequate education under the *Rose* standard.²⁵⁷

Another distinction that may have significant importance in the school finance decisions in each state is the difference between the meanings of the words *thorough*, *uniform*, and *efficient*.²⁵⁸ Colorado's education clause requires thoroughness and uniformity, Texas's education clause requires efficiency, and Kansas's education finance clause requires suitability.²⁵⁹ Plaintiffs rarely prevail in states where the education clause requires a thorough and uniform school system, but plaintiffs have been victorious in states with education clauses imposing efficiency or suitability.²⁶⁰ This discrepancy is likely a result of the fact that *thorough* and *uniform* possess dictionary definitions that are more measureable and manageable in school finance cases.²⁶¹ This applicability allows courts—as the Colorado Supreme Court did—to apply a plain meaning to the words and easily measure whether the system complies with that definition.²⁶² Additionally, *thorough* and *uniform* possess a lower standard.²⁶³ Schools operating below the maximum level of efficiency might technically remain uniform.²⁶⁴ Similarly, even though some schools operate at a higher level than others,

252. *Id.* at 23–25.

253. KAN. CONST. art. VI, § 1.

254. *See, e.g., Gannon I*, 319 P.3d 1196, 1219 (Kan. 2014).

255. *See id.*

256. *See id.*

257. *See id.*; Darby & Levy, *supra* note 6, at 360–61.

258. *See Thro*, *supra* note 84, at 27.

259. *See* COLO. CONST. art. IX, § 2; KAN. CONST. art. VI, §§ 1, 6(b); TEX. CONST. art. VII, § 1.

260. *See Thro*, *supra* note 84, at 27.

261. *See Lobato II*, 304 P.3d 1132, 1138–39 (2013) (en banc) (stating the system is constitutionally sound if “it funds a public school system that is of a quality marked by completeness, is comprehensive, and is consistent across the state”).

262. *See, e.g., id.*

263. *Thro*, *supra* note 84, at 28–29.

264. *Id.*

each school, individually, might be thorough.²⁶⁵ *Efficiency* and *suitability*, on the other hand, are more difficult to define in the context of school finance litigation.²⁶⁶ The dictionary defines *efficient* as “the most effective and least wasteful means of doing a task or accomplishing a purpose” or being “marked by qualities, characteristics, or equipment that facilitate the serving of a purpose or performance of a task in the best possible manner.”²⁶⁷ This definition is far more elusive and relative to factors surrounding school districts, such as the amount of teachers available, the percentage of WADA students in the district, and other instructional resources available to students.²⁶⁸ Thus, education clauses that prescribe an efficient or suitable school district require the court—not a dictionary—to assign a meaning to the standard.²⁶⁹

VI. FOLLOW THE LEADER: HOW TEXAS CAN BEGIN TO IMPLEMENT SCHOOL FINANCE REFORMATION

A. *The Texas Supreme Court Should Take the Lead*

Texas’s school finance reform begins with the Texas Supreme Court. Although the Texas Legislature did not wait for the Supreme Court’s ruling to propose solutions for the shortcomings in Texas schools, the legislature failed to solve the issues of inadequacy and inequity in Texas education, and the task now rests with the Texas Supreme Court.²⁷⁰

When the Texas Supreme Court convenes to hear *Williams* in September, the court should affirm Judge Dietz’s decision and hold that the school system, in its current state, is unconstitutionally inequitable *and* inadequate.²⁷¹ Affirming Judge Dietz’s decision that the system remains underfunded and fails to constitutionally provide students with a general diffusion of knowledge will demand a solution from the Texas Legislature in 2017 and ultimately require the Texas House of Representatives and Texas Senate to work in unity.²⁷² Learning from the backlash in Kansas,

265. *Id.*

266. *See, e.g., Williams II*, No. D-1-GN-11-003130, 2014 WL 4243277, at *8–9 (200th Dist. Ct., Travis County, Tex. Aug. 28, 2014) (Final Judgment).

267. WEBSTER’S, *supra* note 232, at 725.

268. *See* Interview with Kyle Wargo, Exec. Dir., & Wayne Blount, Assoc. Exec. Dir., Region 17 Educ. Serv. Cent., in Lubbock, Tex. (Jan. 23, 2015) [hereinafter Interview with Wargo & Blount].

269. *See supra* Part V.C.

270. *See* Morgan Smith, *Plan for School Finance Overhaul Dies in Texas House*, TEX. TRIB. (May 14, 2015), <http://www.texastribune.org/2015/05/14/plan-school-finance-overhaul-dies-texas-house/>; *see also supra* notes 56–57 and accompanying text (discussing the difficulties claims of adequacy pose); *infra* notes 310–19 and accompanying text (detailing the failed attempt of the Texas Legislature to remedy the school finance issue in the 2015 Legislative Session).

271. *See Williams II*, 2014 WL 4243277, at *6.

272. *See id.* at *3. In the 2015 Legislative Session, the Texas Senate and the Texas House of Representatives each introduced their own bills, and each legislative body refused to pass the other’s

the Texas Supreme Court must preemptively guide the legislature's actions.²⁷³

1. Adequacy

The legislature's avoidance of the adequacy issue is particularly problematic because adequacy tends to cause large discrepancies in the level of education between students—not just between districts—and it remains a problematic issue for Texas students individually.²⁷⁴ Taking action to define adequacy plays into the Texas Supreme Court's role as the ultimate constitutional interpreter within the state; the Court must focus on the adequacy issue and use its wide interpretational authority to hold the legislature accountable.²⁷⁵ Although many supreme courts continue to avoid inadequacy in school finance litigation, the Kansas Supreme Court, in *Gannon*, took a step toward breaking this barrier.²⁷⁶ Texas should follow this lead to develop a more encompassing definition of *adequacy* by adopting the *Rose* standard and carefully analyze the Texas school finance system against each factor.²⁷⁷

Furthermore, a definition of *adequacy* from the Texas Supreme Court will provide the Texas Legislature with a standard by which it should reform the state's funding mechanism.²⁷⁸ Similar to the Kansas Supreme Court's analysis, the Texas Supreme Court should also compare each *Rose* factor against the codified educational goals of the state.²⁷⁹ In this analysis, the Texas Supreme Court should focus on whether the Texas Education Code—containing only four codified education goals—is repugnant to the meaning of *adequacy* under the Texas Constitution.²⁸⁰ The hybrid nature of Texas's education clause allows the Texas Supreme Court to capitalize on an opportunity to interpret Texas's educational standards.²⁸¹ Furthermore, the Texas Supreme Court must consider ordering the legislature to codify a version of the *Rose* standard.²⁸² Amending the Texas Education Code to

bill. See *infra* Part VI.B. Discord between the legislative bodies will be detrimental in facilitating an ultimate solution to the problem. See, e.g., Smith, *supra* note 270.

273. See *supra* notes 172–81 and accompanying text.

274. See Interview with Wargo & Blount, *supra* note 268. Equity affects entire school districts, but because adequacy pertains to the minimum level of education a student should receive, it affects each student on an individual level. See Darby & Levy, *supra* note 6, at 363–64.

275. See *supra* notes 38, 178–81 and accompanying text.

276. See *Gannon I*, 319 P.3d 1196, 1233–38 (Kan. 2014).

277. See *id.*

278. See discussion *supra* Part V.C.

279. See TEX. EDUC. CODE ANN. § 4.002 (West 2012); see also *Gannon I*, 319 P.3d at 123–35 (using the state's education statute as a backdrop to compare each *Rose* factor).

280. See also *Marbury v. Madison*, 5 U.S. 137, 138 (1803) (stating “a law repugnant to the con[s]titution is void”).

281. See *supra* notes 245–48 and accompanying text.

282. *Gannon I*, 319 P.3d at 1234–35. Compare KAN. STAT. ANN. § 72-1127 (West 2013) (codifying seven education goals), with TEX. EDUC. CODE § 4.002 (codifying only four education goals).

mirror the *Rose* factors will also provide future plaintiffs an additional source of relief in school finance litigation.²⁸³

In addition to assigning a standard to *adequacy*, the Texas Supreme Court should also specify a threshold dollar amount, set at a greater amount than the one the state now provides, that the legislature must not fall below to finance per-student expenditures.²⁸⁴ An increase in expenditures per student would help raise Texas—one of the bottom states in revenue per student—to a more competitive level.²⁸⁵ Additionally, ordering the legislature to implement higher revenue per student will require the legislature to provide additional funding and reform the system to adequately provide a general diffusion of knowledge for all Texas students.²⁸⁶ Furthermore, if the Court demands greater revenue per student, Texas could remain a powerhouse for public education while also preparing its students to compete in a competitive market after graduation.²⁸⁷

Another possibility the Texas Supreme Court could consider for defining *adequacy* involves assigning extracurricular achievements to the definition.²⁸⁸ While the minimum level of an adequate education certainly encompasses basic education, such as proficiency in math, science, and reading, many students—especially at-risk students—perform better in core, tested subjects when they engage in activities such as music and art.²⁸⁹ Because the idea of adequacy has potentially become too narrow, the Texas Supreme Court could begin the process of expanding the horizons of every child's education.²⁹⁰

2. Equity

While unfortunate, it remains a reality that not every district in Texas will receive the same level of funding for education. Factors that lend to inequity, such as district size and the socioeconomic status of its citizens, exist in every school district and will remain a constant source of unequal

283. See TEX. EDUC. CODE § 4.002; *Gannon I*, 319 P.3d at 1233–35.

284. See MARK DIXON, U.S. CENSUS BUREAU, PUBLIC EDUCATION FINANCES: 2012 8 (May 2014), <http://www2.census.gov/govs/school/12f33pub.pdf> (reporting a detailed analysis of the difference between state revenue per student across the fifty states).

285. See *id.*

286. Darby & Levy, *supra* note 6, at 364.

287. See DIXON, *supra* note 284, at xiv, 8 (reporting a detailed analysis of the difference between state revenue per student across the fifty states).

288. See James E. Ryan & Thomas Saunders, *Foreword to Symposium on School Finance Litigation: Emerging Trends or New Dead Ends?*, 22 YALE L. & POL'Y REV. 463, 474–75 (2004).

289. NAT'L TASK FORCE ON ARTS EDUC., C. BOARD, ARTS AT THE CORE: RECOMMENDATIONS FOR ADVANCING THE STATE OF ARTS EDUCATION IN THE 21ST CENTURY 29 (Fall 2009), <http://media.collegeboard.com/digitalServices/pdf/arts/recommendations-arts-education-21st-century-report.pdf>; see also Ryan & Saunders, *supra* note 288 (explaining the core-learning effects of students studying social sciences).

290. See Ryan & Saunders, *supra* note 288.

funding across districts, regardless of a change in expenditures.²⁹¹ And although the Texas Supreme Court previously laid out more extensive equity standards than the Colorado Supreme Court did in *Lobato II*, following only statutory interpretation for Texas would be problematic; statutory interpretation would be far too deferential to legislative action on an issue that requires a fine-tuned constitutional analysis.²⁹² Furthermore, because Texas's finance system is so unequal among wealthy and poor districts, the Texas Supreme Court should not engage in a rational basis review.²⁹³ Instead, the Texas Supreme Court must review the legislature's property tax mechanism, weigh the mechanism against the Court's equity definition from *Edgewood I*, and determine if the system adheres to the legislature's affirmative duties set forth in the Texas Constitution.²⁹⁴

Importantly, the Texas Supreme Court must protect school districts' local control and enjoin the legislature from proposing legislation that would introduce a statewide property tax. If the Court allows the Texas Legislature to introduce a statewide property tax, Texas education funding could face the same backlash that the Kansas Legislature's block-grant reform recently faced—districts would have little room to maintain local control or receive additional need-based funding.²⁹⁵

B. The Legislature Learns a Lesson from the Texas Supreme Court

Upon direction from the Texas Supreme Court, the Texas Legislature should seek to impose a threshold of adequacy for all school districts across the state.²⁹⁶ Formulating an adequacy standard is crucial because it would provide students with a minimum level of education on an individual basis, as opposed to being relatively compared to students in different districts.²⁹⁷

The legislature must consider amending the Texas Education Code to encompass more educational goals. Currently, the statute's four academic goals for education are rooted in proficiency in English, math, science, and social studies.²⁹⁸ The more comprehensive statutory language in Kansas, as well as the language of the *Rose* factors, should serve as a guide for the Texas Legislature.²⁹⁹ Specifically, the Texas Legislature should amend the

291. See Interview with Wargo & Blount, *supra* note 268. For example, wealthier districts may have resources beyond property taxes that allow them to designate more revenue to their school system, while other school districts must work with the property taxes available to them. See *id.*

292. See *Colorado Supreme Court Upholds School Finance System*, *supra* note 205, at 806.

293. See *id.*

294. See *Edgewood I*, 777 S.W.2d 391, 392 (Tex. 1989).

295. See *supra* notes 172–81.

296. See *supra* Part VI.A.

297. Darby & Levy, *supra* note 6, at 366 (highlighting that some scholars believe adequacy-based reform could be enough to solve issues of inequality).

298. See TEX. EDUC. CODE ANN. § 4.002 (West 2012).

299. See KAN. STAT. ANN. § 72-1127 (West, Westlaw through 2015 Reg. Sess.).

statute to include language that requires children to possess skills to function in a “complex and rapidly changing civilization.”³⁰⁰ The legislature should also add language that focuses on enabling “each child to choose and pursue life work intelligently,” as well as providing students “skills . . . to compete favorably with their counterparts in surrounding states.”³⁰¹ This language strives to better prepare students for their futures—not just core subjects they encounter each day in class.³⁰²

While the legislature may, in the future, consider amending the constitution in order to impose a statewide property tax, lawmakers should reform the system to avoid imposition of such a tax for three important reasons.³⁰³ First, imposing a statewide property tax would violate the Texas Constitution, requiring Texas voters to pass a constitutional amendment.³⁰⁴ Passing a constitutional amendment requires a statewide, constituent vote, which could be risky due to the complexity of this issue.³⁰⁵ Second, imposing a statewide property tax to equalize districts strips away any type of local control from the entities that must make the educational decisions—the districts themselves.³⁰⁶ A statewide tax would force districts in dire situations to make decisions that they might not have to otherwise make; if the district is low on funding due to inadequate taxing, a vote of local constituents can often cure the financial constraint.³⁰⁷ With a statewide property tax in effect, districts lose this local-control option.³⁰⁸ Third, amending the constitution to allow the legislature to set a property tax for the entire state grants a significant amount of power to the state legislature, which some legislators have even admitted makes them uncomfortable.³⁰⁹

In the 2015 Legislative Session, both chambers of the Texas Legislature introduced bills intended to reform the way the state funds education. Senate Bill 4, introduced by Senators Larry Taylor, Paul Bettencourt, and Donna Campbell, proposed one solution to the inequity

300. *Rose v. Council for Better Educ.*, 790 S.W.2d 186, 212 (Ky. 1989).

301. *Id.*

302. *Id.*

303. See TEX. CONST. art VIII, § 1-e (proscribing the state from implementing a statewide property tax); Evan Smith, *Video: Aycock on School Finance*, TEX. TRIB. (Jan. 22, 2015), <http://www.texastribune.org/2015/01/22/video-aycock-on-school-finance/>.

304. Smith, *supra* note 303.

305. Thomas R. Palfrey & Keith T. Poole, *The Relationship Between Information, Ideology, and Voting Behavior*, 31 AM. J. POL. SCI. 511, 512 (1987) (explaining that many voters are not well-informed on issues when they vote).

306. See, e.g., Transcript of Oral Argument at 14–15, *W. Orange-Cove II*, 176 S.W.3d 746 (Tex. 2005) (Nos. 041144, 050145, 050148), 2005 WL 6193688.

307. See Interview with Wayne Blount, *supra* note 7. Mr. Blount explained that, as a former superintendent, voters in his district were always willing to vote to assist schools within their community. *Id.*

308. See Transcript of Oral Argument, *supra* note 306.

309. Smith, *supra* note 303.

issue in Texas schools.³¹⁰ Initially, the bill proposed to make vouchers available to any family with an income of \$60,000 or less.³¹¹ These vouchers would ultimately allow parents to enroll their children in private, instead of public, schools.³¹² In its final form before ultimate defeat, the bill proposed for businesses to donate franchise tax money to a scholarship fund.³¹³ Nonprofit organizations would then award the scholarships to public school students.³¹⁴ While Senate Bill 4 proposed an option for parents to enroll their children in private schools, the proposal completely circumvented the ultimate problem—inadequate and inequitable public education—and failed to appropriate additional revenue to an underfunded school system.³¹⁵

House Bill 1759 proposed another resolution to the inequity issue.³¹⁶ The bill, introduced by Representative Jimmie Aycock, proposed to scale back the state's Robin Hood funding system and appropriate an additional \$800 million to Texas's education budget.³¹⁷ With the deadline for the chamber vote approaching, Representative Aycock withdrew the bill from the schedule, noting that the bill lacked the senate's support.³¹⁸ Although the bill was not successful during the 85th Legislative Session, it was a bold attempt to solve the school system's financial inequity, especially considering the fact that *Williams* remains pending before the Texas Supreme Court.³¹⁹ Therefore, taxpayers of both large and small school districts should encourage their legislators to take an activist approach and implement this kind of reform.

310. See Tex. S.B. 4, 84th Leg., R.S. (2015), <http://www.legis.state.tx.us/tlodocs/84R/billtext/pdf/SB000041.pdf#navpanes=0> (bill as introduced).

311. *Id.*

312. See Tom Benning, *Texas Senate OKs School Vouchers, but Bill Faces Tough House Vote*, DALL. MORNING NEWS (Apr. 20, 2015, 11:36 PM), <http://www.dallasnews.com/news/education/headlines/20150420-texas-senate-oks-school-vouchers-but-bill-faces-tough-house-vote.ece>; see also Ross Ramsey, *Analysis: Does "Voucher" Label Fit the Bill?*, TEX. TRIB. (May 1, 2015), <http://www.texastribune.org/2015/05/01/analysis-voucher-any-other-name/> (analyzing the implications of the senate's voucher bill).

313. Tex. S.B. 4, 84th Leg., R.S. (2015), <http://www.legis.state.tx.us/tlodocs/84R/analysis/pdf/SB000041.pdf#navpanes=0> (bill as amended).

314. *Id.* The bill never received a vote in committee. *84(R) Bill Stages for SB 4*, TEX. LEGISLATURE ONLINE, <http://www.legis.state.tx.us/BillLookup/BillStages.aspx?LegSess=84R&Bill=SB4> (last visited Nov. 2, 2015).

315. See *supra* Part IV.A.

316. See Tex. H.B. 1759, 84th Leg., R.S. (2015).

317. Morgan Smith, *Texas House Will Tackle School Finance This Session*, TEX. TRIB. (Mar. 25, 2015), <http://www.texastribune.org/2015/03/25/texas-house-will-tackle-school-finance-session/>.

318. Smith, *supra* note 270.

319. See *id.* (explaining that school finance was an unexpected topic in the 2015 Legislative Session); Smith, *supra* note 303.

C. A Call to Action for Texas Taxpayers

Texas taxpayers also have the ability to lend to school finance reform. The duty for taxpayers is simple: pick up the telephone and call the state's legislators. While it may seem menial and robotic to contact a state representative or senator, such actions have an impact when the entire state begins to take a progressive, hands-on approach.³²⁰ To provide even more motivation for taxpayers to contact their legislators, the state's economy, which heavily relies on adequately educating students to enter the workforce, possesses political weight during elections.³²¹ Because school districts tend to make decisions through plebiscite while legislators make decisions based on maximizing political support from constituents, there is a profound impact when Texas citizens voice concern for Texas's economic stability, which grows with better education.³²² Taxpayer involvement in Texas's education finance saga would have a significant impact on lawmakers who must ultimately change the system for the state's well being.³²³

Ultimately, the Texas Supreme Court's constitutional interpretation, in addition to the Texas Legislature's adherence to the Court's opinion and action from Texas taxpayers will lead Texas education in a positive direction.³²⁴

VII. YOU CAN BE ANYTHING YOU WANT TO BE IF TEXAS JUST PUTS ITS
MIND TO IT

*"We have a great . . . opportunity—to ensure that every child, in every school, is challenged by high standards, . . . to build a culture of achievement that matches the optimism and aspirations of our country."*³²⁵

Unfortunately, a simple solution does not exist for the school finance problem. Remediating the system will take years of work.³²⁶ With

320. See demandcaring, *How to be Effective About Contacting Your Senator: What Really Happens When You Call?*, DAILY KOS (Feb. 10, 2005, 11:44 AM), <http://www.dailykos.com/story/2005/02/10/91524/-How-to-be-effective-about-contacting-your-senator-What-Really-Happens-When-You-Call#> [hereinafter *How to be Effective*] (stating that "many voices are louder than one").

321. DENNIS PATRICK LEYDEN, *ADEQUACY, ACCOUNTABILITY, AND THE FUTURE OF PUBLIC EDUCATION FUNDING* 44 (2005).

322. See *id.* (examining the social implications of the decision-making process in school finance litigation); *supra* Part I.

323. See *How to be Effective*, *supra* note 320.

324. See *supra* Part V.A.

325. HOCHSCHILD & SCOVRONICK, *supra* note 4, at 1 (quoting George W. Bush, forty-third President of the United States).

326. See *supra* Part IV.A.1–2. The longevity involved with remediating school finance is apparent in the amount of times a single case travels to the Texas Supreme Court. See *supra* note 62 and accompanying text.

proactivity and cooperation among many of Texas's decisive bodies, however, the state can begin to take a step in the right direction immediately. First, the Texas Supreme Court must be willing to affirm Judge Dietz's decision and hold the school finance system inadequate.³²⁷ Furthermore, the Court must place a value on adequacy because doing so will require action from the legislature.³²⁸ Second, the Texas Legislature must take the Texas Supreme Court's direction and devise bills that will place the system in a position to be more adequate and equitable, and ultimately, in a better position to provide a better future for Texas's students.³²⁹ Ideally, the legislature, with guidance from the Texas Supreme Court, will codify the definition of *adequacy*, broadening the educational goals of the state.³³⁰ Third, taxpayers and voters must become involved in the saga because their children are ultimately the ones whom an inadequate school finance system will affect the most.³³¹

Texas's future depends on its students, and remedying the state's school finance system will confer a benefit on the entire state, not just the students currently enrolled in public schools.³³² Adequate education will cause a chain reaction: when children receive an adequate education, they will be able to continue their education at a collegiate level; when students are able to continue their education at a collegiate level, they will be poised to graduate and enter the workforce. And when students-turned-adults enter the workforce, Texas's economy grows and contributes to the national economy's stability.³³³ Most importantly, however, when the Texas Supreme Court and the Texas Legislature begin to solve the school finance equation, public education will actually poise students to fulfill their career dreams—an astronaut, a veterinarian, a teacher, or even President of the United States—without the state deciding their dreams for them.

327. *See supra* Part VI.A.

328. *See supra* Part VI.A.1.

329. *See supra* Part VI.B.

330. *See supra* Part VI.B.

331. *See supra* Part VI.C.

332. *See* Mortimer B. Zuckerman, *Why Math and Science Education Means More Jobs*, U.S. NEWS & WORLD REP. (Sept. 27, 2011, 8:00 AM), <http://www.usnews.com/opinion/articles/2011/09/27/why-math-and-science-education-means-more-jobs>.

333. *See id.*