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The Texas Supreme Court Retreats from Protecting Texas Students

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ARTICLES

THE TEXAS SUPREME COURT RETREATS FROM PROTECTING TEXAS STUDENTS

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This Article criticizes the 2016 Texas Supreme Court school finance decision, the latest of seven decisions starting in 1989, for its disregard of both the record in the case and the realities of the Texas Constitution and Texas politics. The Article also focuses on how standards for reviewing legislation have changed and the Texas Supreme Court's irrational and unfounded retreat to the "money doesn't make a difference" theory of school finance. Finally, the Article recommends a return to an objective, comprehensible, enforceable and constitutional system of review, and concludes with a prayer for holdings that recognize the inequities of the past.

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I. Introduction

The Texas Supreme Court has now fully retreated from a powerful line of previous Texas Supreme Court decisions protecting the rights of public school students and low-wealth districts.[1] Returning to Texas history's dual system of poor districts and wealthy districts, the Court removed itself from its constitutional role as a vital ingredient in progressing toward school finance equity and adequacy and has instead regressed to a dual school system in Texas that is divided between poor and wealthy districts.[2] This regression becomes evident by analyzing seven major

1. *See* Morath v. Tex. Taxpayer & Student Fairness Coal., 490 S.W.3d 826, 833, 840 (Tex. 2016) (upholding the current school finance regime despite the argument it violated the adequacy and suitability requirements of Article VII, Section 1 of the Texas Constitution).

2. *See id.* ("[O]ur judicial responsibility is not to second-guess or micromanage Texas education policy . . . . Despite the imperfections of the current school funding regime, it meets minimum constitutional requirements.").

school finance decisions:[3] (1) *Edgewood Independent School District v. Kirby* (*Edgewood I*);[4] (2) *Edgewood Independent School District v. Kirby* (*Edgewood II*);[5] (3) *Carrollton-Farmers Branch Independent School District v. Edgewood Independent School District* (*Edgewood III*);[6] (4) *Edgewood Independent School District v. Meno* (*Edgewood IV*);[7] (5) *West Orange-Cove Consolidated Independent School District v. Alanis* (*Edgewood V*);[8] (6) *Neeley v. West Orange-Cove Consolidated Independent School District* (*Edgewood VI*);[9] and (7) *Morath v. Texas Taxpayer and Student Fairness Coalition* (*Edgewood VII*).[10]

The retreat in *Morath/Edgewood VII*[11] was presaged in four Texas Supreme Court cases dating back to 1992.[12] Only *Edgewood I* and *II*, which were decided in 1989 and 1991 respectively,[13] adhered to the Texas Constitution's demands that the state create an efficient system of school finance; indeed, at the time, the Texas Supreme Court stood as the final guarantor of the rights of students in low-wealth districts.[14]

The Texas Supreme Court's power to declare the constitutionality of the state's school finance system has served as a great equalizer over the legislature's tendency to underfund public schools while benefitting

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3. To simplify the discussion, this Article employs the terms *Edgewood I–Edgewood VII* to denote the seven major school finance opinions issued by the Texas Supreme Court.

4. Edgewood Indep. Sch. Dist. v. Kirby (*Edgewood I*), 777 S.W.2d 391 (Tex. 1989).

5. Edgewood Indep. Sch. Dist. v. Kirby (*Edgewood II*), 804 S.W.2d 491 (Tex. 1991).

6. Carrollton–Farmers Branch Indep. Sch. Dist. v. Edgewood Indep. Sch. Dist. (*Edgewood III*), 826 S.W.2d 489 (Tex. 1992).

7. Edgewood Indep. Sch. Dist. v. Meno (*Edgewood IV*), 917 S.W.2d 717 (Tex. 1995).

8. W. Orange-Cove Consol. Indep. Sch. Dist. v. Alanis (*Edgewood V*), 107 S.W.3d 558 (Tex. 2003).

9. Neeley v. W. Orange-Cove Consol. Indep. Sch. Dist. (*Edgewood VI*), 176 S.W.3d 746 (Tex. 2005).

10. Morath v. Tex. Taxpayer & Student Fairness Coal. (*Edgewood VII*), 490 S.W.3d 826 (Tex. 2016).

11. *Edgewood VII*, 490 S.W.3d 826 (Tex. 2016).

12. *See Edgewood VI*, 176 S.W.3d 746, 753 (Tex. 2005) (noting how the Texas Constitution states it is "the duty of the Legislature to provide public education," while the judiciary role is limited to a review of constitutional issues) (internal quotations omitted); *Edgewood V*, 107 S.W.3d 558, 564 (Tex. 2003) (emphasizing the legislature has the "sole right to decide how to meet the standards" of the constitution); *Edgewood IV*, 917 S.W.2d 717, 726 (Tex. 1995) (stating that the court does not dictate how the legislature should act); *Edgewood III*, 826 S.W.2d 489, 522 (Tex. 1992) (noting the duty to provide an efficient system of free public schools is bestowed upon the legislature by the Texas Constitution).

13. *Edgewood II*, 804 S.W.2d 491 (Tex. 1991); *Edgewood I*, 777 S.W.2d 391 (Tex. 1989).

14. *See Edgewood II*, 804 S.W.2d at 491 (affirming the district court's conclusion that the public school finance system had not changed to comply with the Texas Constitution); *Edgewood I*, 777 S.W.2d 391 (Tex. 1989) ("However, let there be no misunderstanding. A remedy is long overdue. The legislature must take immediate action.").

wealthy school districts.[15] *Edgewood I* and *II* thus led to quantum leaps in the quality and efficiency of Texas's school finance system.[16] Unfortunately, history has shown that Texas rarely moves toward fairness and equality for its population unless federal or state courts force the legislature to address the issue and take strong, sometimes unpopular action.[17] For example, courts have effectively forced Texas to change its laws to be more equitable and in line with the U.S. Constitution in the following areas: the rights of undocumented children to public education,[18] the rights of juveniles in detention,[19] voting rights,[20] prisoners' rights,[21] school desegregation,[22] bilingual education,[23] public hous-

15. *See Edgewood VII*, 490 S.W.3d 826, 844 (Tex. 2016) (recognizing the 700-to-1 ratio of wealth per student found in *Edgewood I* had been lowered to 28-to-1 due to the legislative response to *Edgewood III*).

16. Albert H. Kauffman, *The Texas School Finance Litigation Saga: Great Progress, Then Near Death by a Thousand Cuts*, 40 ST. MARY'S L.J. 511, 513, 537 (2008).

17. *See e.g.*, Ellen Williams, *Annual Survey of Texas Law: Education*, 49 SMU L. REV. 901, 902 (1996) (asserting that the Texas legislature felt burdened by court order to implement school finance changes); Michael Wines, *Texas Agrees to Soften Voter ID Law After Court Order*, N.Y. TIMES (Aug. 3, 2016), https://www.nytimes.com/2016/08/04/us/texas-agrees-to-soften-voter-id-law-after-court-order.html?_r=0 [https://perma.cc/7TLN-884C] (stressing how it took a court order for the Texas legislature to change its discriminatory voting laws).

18. *See* Doe v. Plyler, 458 F. Supp. 569, 593 (E.D. Tex. 1978), *aff'd*, 628 F.2d 448 (5th Cir. 1980), *aff'd*, 457 U.S. 202 (1982) (holding that a Texas statute barring undocumented children from public school based solely on their status as an undocumented immigrant violates the Fourteenth Amendment).

19. *See* Morales v. Turman, 364 F. Supp. 166, 172 (E.D. Tex. 1973) (stating that the lack of educational instruction in Texas prisons failed to meet Texas's constitutional requirements).

20. *See* White v. Regester, 412 U.S. 755, 755 (1973) (upholding the district court's order requiring dissolution of the multimember districts in Bexar and Dallas counties due to the historical political discrimination imposed upon Mexican–Americans and African–Americans in those counties).

21. *See* Ruiz v. Estelle, 503 F. Supp. 1265, 1277, 1288, 1300 (S.D. Tex. 1980), *aff'd in part and rev'd in part*, 679 F.2d 1115 (5th Cir. 1982), *vacated in part and amended in part by*, 688 F.2d 266 (5th Cir. 1982) (finding Texas prisons to be overcrowded and lacking security in violation of the Eighth Amendment).

22. *See* United States v. Texas, 321 F. Supp. 1043, 1052 (E.D. Tex. 1970), *aff'd*, 447 F.2d 441 (5th Cir. 1971) (relying on Gomillion v. Lightfoot, 364 U.S. 339 (1960), which held that "the creation, maintenance and perpetuation of racially discriminatory district lines—whether for the purpose of elections or school attendance—is constitutionally improper").

23. *See* United States v. Texas, 506 F. Supp. 405, 434 (E.D. Tex. 1981), *rev'd*, 680 F.2d 356 (5th Cir. 1982) (holding the state of Texas failed to take "appropriate action" to meet the language difficulties encountered by Spanish speaking schools in violation of the Equal Educational Opportunities Act).

ing,[24] public health,[25] mental health,[26] and equality in grand jury proceedings.[27]

Morath/Edgewood VII is the latest of seven Texas Supreme Court decisions examining the state constitutionality of Texas's school finance system.[28] This article will analyze the test for constitutionality framed in the *Morath/Edgewood VII* decision, the Court's inappropriate reliance on fifty-year-old studies on the connection between funding and achievement in public schools, and it will recommend a test for the constitutionality of the Texas school finance system that will provide long-term protection for students and low-wealth school districts.[29]

The test for whether the Texas school finance system is constitutional under the Texas Constitution is based on a consideration of the system's efficiency, adequacy, suitability, equality, and tax structure.[30] Yet, it is naïve to think the Texas Supreme Court will ever fully embrace a finding that the Texas school finance system is inadequate or unsuitable.[31] In fact, the Texas Supreme Court has enforced the Texas Constitution's proscription of a statewide ad valorem tax to benefit wealthy districts, the constituents of which chafe at their inability to provide more educational funds to their own students than what is available to students in all other districts.[32] In Texas, the "financial efficiency test," which is based in eq-

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24. *See* Young v. Pierce, 628 F. Supp. 1037, 1052 (E.D. Tex. 1985) (holding that the Department of Housing and Urban Development's funding, regulation, and assistance of local public housing authority was an unconstitutional support of segregation).

25. *See* Frew v. Gilbert, 109 F. Supp. 2d 579, 585, 595 n.20 (E.D. Tex. 2000), *vacated sub nom.* Frazar v. Gilbert, 300 F.3d 530 (5th Cir. 2002), *rev'd in part sub nom.* Frew v. Hawkins, 540 U.S. 431 (2004) (holding Texas violated several provisions of a 1996 Consent Decree, the purpose of which was to enhance over one million Medicaid Early Screening, Diagnosis and Training program (EPSDT) recipients' access to health care and to foster the improved use of health care services by Texas EPSDT recipients).

26. *See* Lelsz v. Kavanagh, 98 F.R.D. 11 (E.D. Tex. 1982), *appeal dismissed*, 710 F.2d 1040, 1042 (5th Cir. 1983) (noting that the district court certified a class action lawsuit challenging the adequacy of conditions, care, and habilitation at Texas institutions for the mentally disabled).

27. Hernandez v. Texas, 347 U.S. 475, 482 (1954) (holding it unconstitutional to try a person indicted by a grand jury in which membership of that grand jury purposefully excluded those of the defendant's race).

28. *Edgewood VII*, 490 S.W.3d 826 (Tex. 2016).

29. *See infra* Part VII.

30. *Edgewood VII*, 490 S.W.3d 826, 845 (Tex. 2016). "The financial efficiency doctrine requires a rough equality of access to district funding . . . . Its aim is equality of opportunity, not equality of results." *Id.* at 862.

31. *See id.* at 845 ("The Court has never held the [school finance] system constitutionally inadequate, unsuitable, or 'qualitatively' inefficient under [A]rticle VII, [S]ection 1.").

32. *See id.* (stating the Texas Supreme Court has twice held the school finance system unconstitutional under Article VIII, Section 1–e of the Texas Constitution because the system effectively imposed a statewide ad valorem tax); Kauffman, *supra* note 16, at 544

uity, is the only test that ensures both a long-term guarantee of equality in the system and enforceability by the courts.[33]

Although several state supreme courts have found their respective state school finance systems inadequate,[34] and either directly or indirectly required their respective legislatures to invest more funds in public schools,[35] my personal study and experience with Texas courts leads me to conclude that such will never occur in Texas.[36] The anti-tax and anti-court involvement movements are simply too robust to enable a Texas Supreme Court, whatever its political composition, to enforce standards requiring the legislature or school districts to place sufficiently more funds into the school finance system.[37]

The test the Texas Supreme Court used went overboard in reinforcing the presumption that the Texas school finance system is constitutional.[38] To be sure, the Court has gone beyond that test to create a "multiple escape hatch" test in which the Court relies largely on state discretion, lack of arbitrariness, reasonableness, and deference to uphold the constitutionality of Texas's school finance system.[39] This complex web of escape hatches for the legislature is further exacerbated by the Texas

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(discussing *Edgewood V*, wherein four wealthy districts argued the various tax requirements in the school finance system was an unconstitutional statewide property tax).

33. *See Edgewood VII*, 490 S.W.3d at 845 (stating the efficiency standard of Article VII, Section 1 of the Texas Constitution consists of a "quantitative" component, which is also referred to as "financial efficiency").

34. *See e.g.*, Gannon v. Kansas, 372 P.3d 1181, 1204 (Kan. 2016) (holding the Kansas school funding system to be unconstitutional); Abbeville Cty. Sch. Dist. v. South Carolina, 767 S.E.2d 157, 180 (S.C. 2014) (holding the South Carolina school funding method unconstitutional); McCleary v. Washington, 269 P.3d 227, 261 (Wash. 2012) (holding that the state of Washington failed to meet its constitutional obligation to fund schools fairly). *See generally* Michael A. Rebell, *Poverty, "Meaningful" Education Opportunity, and the Necessary Role of the Courts*, 85 N.C. L. Rev. 1467, 1500 (2007) (discussing historical patterns in education equity challenges).

35. *See e.g.*, Gannon, 372 P.3d at 1204 (affording the legislature time to cure funding disparities before issuing a judicial mandate).

36. *See* Kauffman, *supra* note 16, at 579 ("[T]he [Texas Supreme Court] has so weakened its own jurisprudence that the [*Edgewood*] cases will be of little use to the legislature in understanding its constitutional duties").

37. *See* Douglas S. Reed, *Court-Ordered School Finance Equalization: Judicial Activism and Democratic Opposition*, Dev. Sch. Fin. 99–100 (1996), https://nces.ed.gov/pubs97/97535g.pdf (illustrating a "gradual and modest" decrease in school financing inequities, "despite the Texas Supreme Court's deep and repeated involvement").

38. *See Edgewood IV*, 917 S.W.2d 717, 728–29 (Tex. 1995) (upholding the presumption of constitutionality of S.B. 7, which failed to provide poorer school district's an efficient public school system).

39. *See infra* Parts III and IV.

Supreme Court standard that efficiency and equality must only meet the minimum level of adequacy.[40]

By deferring to the legislature's definition of adequacy and its decisions regarding whether equal access to an adequate school finance system exists, the Court has doubled down on how deferential it is to the legislature. Moreover, the Court applies this "kid-glove, "escape hatch" approach to the legislature's decisions on curriculum, testing, accreditation, and the general diffusion of knowledge.[41] The Court also applies the same set of deferential standards to the legislature's decisions on the degree of adequacy and equity necessary to achieve an accredited education level.[42]

The test of constitutionality set forth in *Edgewood I* and *Edgewood II* was clear and enforceable, and it set an understandable and attainable standard for the legislature.[43] Conversely, the present system effectively allows the legislature near complete deference to determine the constitutionality of its school finance decisions while leaving the decision of whether the legislature's authority has been properly examined and respected in the hands of the Texas Supreme Court.[44]

One particularly negative aspect of the *Morath/Edgewood VII* decision is the Court's reliance on the Coleman Report.[45] In 1966, The Coleman Report incorrectly found that additional school funding has little effect on the achievement of students.[46] The study has been roundly criticized and holds no weight in light of the more sophisticated, complete, and objective analyses of the funding-achievement connection in school fi-

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40. *See Edgewood VII*, 490 S.W.3d 826, 853 (Tex. 2016) (noting that financial efficiency is more relevant to educational financial analysis than adequacy).

41. *Id.* at 849.

42. *Id.*

43. The *Edgewood I* standard for financial efficiency requires the following:

> [A] direct and close correlation between a district's tax effort and the educational resources available to it; in other words, districts must have substantially equal access to similar revenues per pupil at similar levels of tax effort. 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.

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

44. *See Edgewood VII*, 490 S.W.3d at 886 (reiterating that education policy making is the responsibility of the legislature, not the courts, and further, that the judicial role is not to second-guess whether the legislature's system is optimal).

45. *Id.* at 851–52, 859–60; JAMES S. COLEMAN ET AL., EQUALITY OF EDUCATIONAL OPPORTUNITY, NAT'L CTR. FOR EDUC. STATISTICS (1966), http://files.eric.ed.gov/fulltext/ED012275.pdf [https://perma.cc/5CDM-LNUN].

46. *See Edgewood VII*, 490 S.W.3d at 852 (discussing how the Coleman Report has been followed by hundreds of studies that reached conflicting conclusions).

nance systems.[47] Nevertheless, the Texas Supreme Court relied heavily on the outdated Coleman Report to support its tired and rebuffed argument that additional funding does not lead to additional student achievement.[48] Indeed, the Court has retreated from its own strong holdings in *Edgewood I* and *Edgewood II* that increased funding *does* lead to additional opportunities for students.[49]

To clarify this issue and directly rebut the Texas Supreme Court's assumptions on funding, this Article will briefly summarize the present understanding of the connection between funding and achievement in public schools. This Article will also delineate and defend the proper test for determining the constitutionality of the Texas public school finance system. That is, Texas should adhere to a standard that grants all school districts equal access to public school funds. Further, the funding system should use up-to-date criteria for determining the needs of every student and every school district and employ a formula directing sufficient funds to accommodate educational requirements.

For the last seventy years, Texas has kept reliable data on the funding available to Texas public schools.[50] Such data shows wealthy school districts have significant advantages in funding and access to funding, while poor school districts have continuous disadvantages in funding and access to funding.[51] Such a disparity in access and funding negatively impacts Texas educational standards because school districts with the least access to funds often are tasked with educating students with the greatest

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47. *See, e.g.*, Warren Simmons, *Looking Back on the 50th Anniversary of the Coleman Report*, ANNENBERG INST. FOR SCH. REFORM (Sept. 7, 2016), http://www.annenberginstitute.org/blog/op-ed-looking-back-50th-anniversary-coleman-report [https://perma.cc/2UTP-9CZW] (arguing Coleman's conclusions are flawed because he ignored the consequences of poverty and the negative impact on student achievement of unequal funding for school materials and facilities).

48. *Edgewood VII*, 490 S.W.3d at 860.

49. *Compare Edgewood I*, 777 S.W.2d 391, 393 (Tex. 1989) ("The amount of money spent on a student's education has a real and meaningful impact on the educational opportunity offered that student."), *with Edgewood VII*, 490 S.W.3d at 860 (quoting *Edgewood VI*, 176 S.W.3d 746, 788 (Tex. 2005)) ("[M]ore money does not guarantee better schools or more educated students.") (emphasis added).

50. *See* Patricia A. Fry, *Texas School Finance: The Incompatibility of Property Taxation and Quality Education*, 56 TEX. L. REV. 253. 254 (1978) (discussing the Gilmer-Aikin Bill of 1949, which essentially created a program of state-funded education for Texas and began data collection of the state school system).

51. *See How Do We Finance Our Schools?*, PBS (Sept. 5, 2008), http://www.pbs.org/wnet/wherewestand/reports/finance/how-do-we-fund-our-schools/?p=197 [https://perma.cc/87CV-AMJG] (explaining that Texas's school funding gap is amongst the largest in the nation and that the quality of a school's equipment and buildings depend on the wealth of the community surrounding it).

needs.[52] As such, this Article recommends that the legislature provide sufficient funding to the school finance system to, at the very least, bring Texas up to national standards of public school funding.

II. The Texas School Finance Decisions Have Moved From Clarity and Enforceability to Arbitrariness and Unenforceability

This Part briefly summarizes two important constitutional provisions and the seven Texas Supreme Court school finance cases, focusing only on the basic constitutional tests developed in each decision and the extent to which each decision modified the tests used in prior decisions. There are two crucial provisions in the Texas Constitution for interpreting the school finance cases: (1) the education clause, and (2) the ad valorem tax clause, which prohibits state-wide property taxes.

The education clause is found in Article VII, Section 1 of the Texas Constitution and reads as follows:

> A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.[53]

Almost every word of this constitutional provision has been an issue in the Texas school finance cases, but clearly the phrases "general diffusion of knowledge," "duty of the Legislature," "establish and make suitable provision," and especially "efficient system" have been the most litigated to date.[54] In the context of Texas Supreme Court jurisprudence regarding the protection of liberty from attack by state law, the impact of the school finance system on the "liberties" of the people is especially important.[55]

The ad valorem clause was added to the Texas Constitution in 1968 and is found in Article VIII, Section 1-e.[56] Unlike the education clause, it is straightforward and unambiguous: it states, "No State ad valorem taxes shall be levied upon any property within this State,"[57] language the Court

52. *See* Kauffman, *supra* note 16, at 523 (explaining how low-wealth schools are at a unique performance disadvantage compared to wealthy schools).

53. Tex. Const. art VII, § 1.

54. *See, e.g.*, *Edgewood I*, 777 S.W.2d 391, 394 (Tex. 1989) (discussing the constitutional mandate by which the legislature is to provide an education system of public free schools).

55. *See infra* Part IV(B).

56. Tex. Const. art. VIII, § 1-e.

57. *Id.*

utilized in *Edgewood I*, *Edgewood II*, *Edgewood III*, and *Edgewood IV* to find the school finance system in question unconstitutional.[58]

A. Edgewood I *(1989)*

In *Edgewood I*, the Texas Supreme Court analyzed the Texas Constitution and developed a test focused on the existence of substantially equal access.[59] Specifically, the Court held:

> There must be a direct and close correlation between a district's tax effort and the educational resources available to it; in other words, districts must have substantially equal access to similar revenues per pupil at similar levels of tax effort. 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.[60]

The *Edgewood I* court also concluded, "The amount of money spent on a student's education has a real and meaningful impact on the educational opportunity offered that student."[61] This holding was a direct repudiation of the court of appeals' decision.[62] In that case, the court of appeals relied heavily on the analysis in *San Antonio Independent School District v. Rodriguez*,[63] which upheld the Texas school system as constitutional despite the challenges brought under the Equal Protection Clause of the U.S. Constitution.[64] Moreover, the *Edgewood I* decision was con-

58. *See Edgewood VI*, 176 S.W.3d 746, 754 (Tex. 2005) ("We now hold . . . that local ad valorem taxes [primarily used by local school districts for funding] have become a state property tax in violation of [the Texas Constitution]."); *Edgewood III*, 826 S.W.2d 489, 500 (Tex. 1992) (agreeing with the appellants' contention that the taxes imposed by the Texas Senate's proposed school financing bill amounted to a state ad valorem tax in violation of the Texas Constitution); *Edgewood II*, 804 S.W.2d 491, 498 (Tex. 1991) (contending that school financing system in question is too dependent on local ad valorem taxes and does not draw revenue from all property at a substantially similar rate); *Edgewood I*, 777 S.W.2d at 398 (holding that local districts' heavy reliance on ad valorem taxes for funding violated the Texas Constitution).

59. *Edgewood I*, 777 S.W.2d at 397.

60. *Id.*

61. *Id.* at 393.

62. *Id.*, *rev'g*, Kirby v. Edgewood Indep. Sch. Dist., 761 S.W.2d 859 (Tex. App.—Austin 1988).

63. 411 U.S. 1 (1973).

64. San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 18 (1973) (rejecting a strict scrutiny analysis that is afforded under Equal Protection Clause because the Court found "neither the suspect-classification [nor] the fundamental-interest analysis persuasive"); Kirby, 761 S.W.2d 859, *rev'd*, 777 S.W.2d 391, 862, 864 (1989).

sistent with a large group of state Supreme Court cases that found their respective state school financing systems to be inequitable.[65]

B. Edgewood II *(1991)*

In response to *Edgewood I*, the Texas legislature enacted Senate Bill 1 (S.B. 1);[66] however, low-wealth districts again challenged the new school financing system.[67] After the district court struck down S.B. 1's school financing system as unconstitutional, the state appealed.[68] In *Edgewood II*, the Texas Supreme Court strengthened the test it promulgated in *Edgewood I* by requiring a "direct and close correlation between a district's tax effort and the educational resources available to it."[69] Importantly, *Edgewood II* specifically analyzed the difference in property wealth between wealthy and poor school districts.[70] The *Edgewood II* opinion also suggested remedies for the legislature to consider in addressing the constitutional issues surrounding the creation of a school finance system that provides equal access to educational funds.[71] Such remedies included consolidating school districts and tax bases.[72]

Additionally, the *Edgewood II* court bemoaned the insidious opportunity gaps between rich and poor districts,[73] the arbitrary boundaries of the 1,052 existing school districts,[74] the wide gap between tax bases among the districts,[75] and the fact that 170,000 students in the wealthiest districts were supported by local revenues drawn from the same tax base as 1 million students in the poorest districts.[76] Consequently, the Court found that S.B. 1's school financing system violated the Texas Constitution as a matter of law.[77] Unfortunately, the *Edgewood II* saga was far

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65. *See, e.g.*, DuPree v. Alma Sch. Dist., 651 S.W.2d 90, 91 (Ark. 1983) (affirming that an Arkansas financing system violated equal protection provisions found in the Arkansas Constitution); Brigham v. Vermont, 692 A.2d 384, 384 (Vt. 1997) (holding Vermont's system of financing public education unconstitutional and requiring the state to ensure substantial equality of educational opportunity); Washakie Cty. Sch. Dist. No. 1 v. Herschler, 606 P.2d 310, 311 (Wyo. 1980) (holding Wyoming's state financing system of public schools unconstitutional because it failed to afford equal protection).

66. Act of June 7, 1990, 71st Leg., 6th C.S., ch. 1, 1990 Tex. Gen. Laws 1.

67. *Edgewood II*, 804 S.W.2d 491, 493 (Tex. 1991).

68. *Id.*

69. *Id.* at 397.

70. *Id.* at 496–97.

71. *Id.* at 497.

72. *Id.*

73. *Id.* at 496.

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

from over, as the Court granted the state's motion for rehearing and retreated from its previous decision.[78]

i. *Edgewood IIa* (1991)

On rehearing, and facing intense public scrutiny, the Texas Supreme Court began reversing course from equity back to continued superior funding for wealthy districts.[79] The rehearing opinion, which I describe as *Edgewood IIa*, relied on parts of the Texas Constitution the Court essentially ignored in its previous opinions.[80] Specifically, the rehearing opinion focused on analyzing the proscription against statewide ad valorem taxation under Article VIII, Section 1-e,[81] and compared it with the constitutional provision mandating that local tax revenue is not subject to statewide recapture.[82] However, the most damaging holding in the *Edgewood IIa* rehearing by far was the following: "Once the [l]egislature provides an efficient system in compliance with Article VII, Section 1, it may, so long as efficiency is maintained, authorize local school districts to supplement their educational resources if local property owners approve an additional local property tax."[83]

The Court's holding on rehearing was apparently in response to the great public uproar over possible recapture funds from wealthy districts.[84]

C. Edgewood III *(1993)*

After the *Edgewood II* decision, the legislature effectively disregarded the *Edgewood IIa* rehearing ruling and enacted a new bill that required local school districts to share their tax revenue with other districts in the state—a system referred to as "recapture."[85]

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78. Edgewood Indep. Sch. Dist. v. Kirby (*Edgewood IIa*), 804 S.W.2d 499, 499–508 (Tex. 1991) (op. on reh'g). The *Edgewood II* case is published as two opinions in one. The first part is the decision holding that the 1990 school finance system laid out by S.B. 1 was unconstitutional. *Edgewood II*, 804 S.W.2d at 491–99. The second part of the opinion is the "Opinion on Motion for Rehearing," which is an opinion by five of the justices in response to the state's Motion for Rehearing. *Edgewood IIa*, 804 S.W.2d at 499–500.

79. *Edgewood IIa*, 804 S.W.2d at 499–508.

80. *See Edgewood II*, 804 S.W.2d at 499 (op. on motion for reh'g) (focusing on Article VIII, Section 1-e and Article VII Section 3 of the Texas Constitution, whereas Article VII, Section 1 led to the holdings of unconstitutionality in *Edgewood I* and *Edgewood II*).

81. Tex. Const. art. VIII, § 1-e.

82. Tex. Const. art. VII, § 3.

83. *Edgewood II*, 804 S.W.2d 491, 500 (Tex. 1991) (op. on motion for reh'g).

84. Justice Doggett's dissent made this point clearly and attached newspaper articles from powerful education leaders to support his view. *Edgewood II*, 804 S.W.2d at 506–08 (Doggett, J., concurring and dissenting).

85. *See Edgewood III*, 826 S.W.2d 489, 498 (Tex. 1992) (determining the constitutionality of the legislature's "recapture plan").

The newly enacted Senate Bill 351 (S.B. 351) created county education districts (CEDs), whose "sole function [was] to levy, collect, and distribute property taxes."[86] In response, wealthy school districts immediately attacked S.B. 351.[87] Completing its turn away from equity and efficiency toward the rights of wealthy districts, the court held that the CEDs amounted to an unconstitutional statewide ad valorem tax.[88] The *Edgewood III* opinion was also an important development in terms of the Texas Supreme Court's school finance jurisprudence because Justice Cornyn, the author of the *Edgewood IV* opinion, wrote that the cases should be considered from an *adequacy* point of view rather than *equity* point of view.[89]

D. Edgewood IV *(1995)*

In 1993, after the Texas Supreme Court struck down the CEDs, the legislature passed Senate Bill 7 (S.B. 7),[90] which created the basic structure still used today.[91] S.B. 7 required the wealthiest districts to share some of their tax wealth with other districts in the state.[92] Further, the Texas Supreme Court upheld S.B. 7 in 1995's *Edgewood IV* decision.[93]

In *Edgewood IV*, the Court clearly showed the inconsistency and weakness of its school finance jurisprudence. It did so by allowing a $600 per student gap between wealthy and poor districts and reinforcing the standard that, as long as the system was reasonably equalized at a certain level of adequacy, inequalities above that funding level would not violate the Texas Constitution.[94] Realizing the Court's school finance jurisprudence was moving toward inequity and inadequacy, Justice Spector wrote a powerful dissenting opinion in which she emphasized the stark change

86. Act of April 11, 1991, 72nd Leg., R.S., ch. 20, 1991 Tex. Gen. Laws 381, 407, amended by Act of May 27, 1991, 72nd Leg., R.S., ch. 391, 1991 Tex. Gen. Laws 1475, 1478; *Edgewood III*, 826 S.W.2d at 498.

87. *See Edgewood III*, 826 S.W.2d at 493 (explaining numerous school districts challenged the constitutionality of S.B. 351's "recapture" system and the CEDs it created); JOSE A. CARDENAS, TEXAS SCHOOL FINANCE REFORM, AN IDRA PERSPECTIVE 319 (1997) (stating a group of the state's wealthiest school districts brought a lawsuit challenging the constitutionality of S.B. 351 a mere three weeks after its adoption).

88. *Edgewood III*, 826 S.W.2d at 500.

89. *Edgewood IV*, 917 S.W.2d 717, 730 (Tex. 1995) (emphasis added); Kauffman, *supra* note 16, at 537–39.

90. Act of May 28, 1993, 73rd Leg., R.S., ch. 347, 1993 Tex. Gen. Laws 1479 *repealed by* Act of May 27, 1995, 74th Leg., R.S., ch. 260 § 58(1), 1995 Tex. Gen. Laws 2207, 2498.

91. *See* Kauffman, *supra* note 16, at 540 (stating S.B. 7 provided, with a few modifications, the school finance system in effect until 2006).

92. Act of May 28, 1993, 73rd Leg., R.S., ch. 347, 1993 Tex. Gen. Laws 1479 *repealed by* Act of May 27, 1995, 74th Leg., R.S., ch. 260 § 58(1), 1995 Tex. Gen. Laws 2207, 2498

93. *Edgewood IV*, 917 S.W.2d at 725.

94. *Id.* at 731.

in the standard the Court applied and noted the tragic movement away from equity standards laid out in *Edgewood I* and in *Edgewood II*.[95]

E. Edgewood V *(2003)*

In 2001, after six years of unchallenged school finance changes, the wealthy districts again attacked the school finance system by arguing that the plan's requirement they tax at near-maximum rates effectively created an unconstitutional statewide property tax.[96] After the district court summarily dismissed this argument, the Texas Supreme Court supported the wealthy districts' theory and remanded the case to the district court for a trial on those issues.[97]

F. Edgewood VI *(2005)*

The remand in *Edgewood V* led to the district court's hearing and opinion in *Edgewood VI*, by far the most comprehensive consideration of the Texas school finance system up to that date.[98] The wealthy districts argued that the tax rate caps created a system without "meaningful discretion" and therefore amounted to a statewide ad valorem tax.[99] Additionally, mid-wealth and low-wealth districts joined the wealthy districts in claiming the school finance system was inadequate.[100] Consequently, *Edgewood VI* was the first school finance case in Texas to litigate the adequacy standard fully.[101]

Low wealth districts argued that the funding system was not only inadequate but also prejudicial to the low-wealth districts because they had significantly less funds available than wealthy and mid-level districts.[102] Unsurprisingly, the wealthy districts did not join in the equity portion of the litigation.[103]

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95. *Id.* at 766–70 (Spector, J., dissenting).

96. *Edgewood V*, 107 S.W.3d 558, 562 (Tex. 2003).

97. *Id.* at 585.

98. *See Edgewood VI*, 176 S.W.3d 746, 751–54 (Tex. 2005) (rehearing arguments to determine whether the school finance system failed to meet the three standards of the education clause of Article VII, Section 1 of the Texas Constitution and also whether the local ad valorem taxes at issue amounted to a statewide ad valorem tax expressly prohibited by Article VIII, Section 1-e of the Texas Constitution).

99. *Id.* at 751.

100. *See id.* ("Our responsibility in this case is limited to determining whether the public education system is "adequate" in the constitutional sense . . . .").

101. *See generally Edgewood VII*, 490 S.W.3d 826, 842–50 (Tex. 2016) (summarizing all the previous school finance cases and concluding this case was the first to address the adequacy argument).

102. *Edgewood VI*, 176 S.W.3d at 772.

103. *Id.* at 751.

After allowing the parties to litigate the equity and adequacy issues thoroughly, the district court determined the system was both inadequate and inequitable and found that the funding structure was an unconstitutional statewide property tax.[104] Texas immediately appealed, thereby providing the Texas Supreme Court a genuine opportunity to develop its jurisprudence on the entire area of school finance in a single opinion.[105]

A brief description of the differences between the "adequacy" and "equity" theories is necessary here. The equity theory requires school districts to have the same or similar access to funds for education, regardless of the general level of education expenditures in the state.[106] The adequacy theory, on the other hand, requires the state and localities to maintain adequate standards for education and to fund all school districts to meet this level of adequacy.[107] Furthermore, these standards do not necessarily overlap: that is, under the equity standard, a school financing system can achieve equity without providing an adequate education for students, and, under the adequacy standard, it can provide more funding to some districts than others as long as all districts have "adequate" funds.[108] In fact, in his *Edgewood II* dissent Justice Cornyn argued that providing all districts with $1,000 per student met the equity standard even though much more funding was necessary for an adequate education.[109] This argument is *reductio ad absurdum*.[110] The problem has never been about having a perfectly equitable system at a low achievement level; the problem is that the system is very inequitable in that lower- and middle-income districts have inequitable access to adequate funding.

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104. *Id.* at 753–54, 771.

105. *See id.* at 751–54 (addressing the attacks on the school finance system through the education clause and the ad valorem clause of the Texas Constitution).

106. *Id.* at 753; *Equity vs. Adequacy*, INTERCULTURAL DEV. RES. ASS'N (Oct. 24, 2016), http://www.idra.org/education_policy/fair-funding-common-good/know-the-issue/equity-vs-adequacy [https://perma.cc/QJR5-UA6W] [hereinafter *Equity vs. Adequacy*].

107. *Equity vs. Adequacy*, *supra* note 106.

108. *See Edgewood III*, 826 S.W.2d 489, 527 (Tex. 1992) (Cornyn, J., concurring and dissenting) ("[T]he Constitution does not require equalization of funds between students across the state. Further, implicit in the concept of an efficient school system is the idea that the output of the system should meet certain minimum standards—it should provide a minimally "adequate" education.").

109. *See id.* at 525–26 ("[I]t is fundamentally important that the legislature be mindful of all of the elements of the efficiency standard we announced in *Edgewood I*. That standard deals with more than money, it mandates educational results.").

110. An argument is *reductio ad absurdum* when, if taken to its logical conclusion, it results in an absurd notion. *Reductio ad absurdum*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/reductio%20ad%20absurdum [https://perma.cc/WX2D-DRXN] (last visited April 6, 2017).

In *Edgewood VI*,[111] the Texas Supreme Court essentially rewrote its entire jurisprudence in the school finance area and created, out of whole cloth, a complex evaluation system for Texas school finance laws. The new standards set forth what appear to be objective standards yet grant the legislature nearly unfettered discretion on how to meet them.[112] In discussing the appropriate standard of review for allegations of unconstitutionality of the finance system the court stated, "Whether the statutory provisions creating the public school system are arbitrary and therefore unconstitutional is a question of law."[113] The Court went on to describe the new test as follows: "If the [l]egislature's choices are informed by guiding rules and principles properly related to public education—that is, if the choices are not arbitrary—then the system does not violate the constitutional provision."[114] Moreover, the Court itself described this "arbitrariness" standard as "very deferential to the [l]egislature."[115]

Under this new test, a plaintiff must show the system is arbitrary, which effectively makes it nearly impossible to challenge the state's legislative discretion.[116] In addition, establishing that the issue of whether the system is constitutional is a question of law removed any real discretion from district court fact findings and placed the power solely into the hands of the Texas Supreme Court.[117] In my previous analysis of this case, I concluded that "[i]t is difficult to contemplate a school finance system that would not meet this 'arbitrariness' test."[118] Unfortunately, my opinion proved to be right.[119]

The *Edgewood VI* case further weakened the equal access provisions of the Court's constitutional jurisprudence by concluding that "[e]fficiency requires only substantially equal access to revenue for facilities necessary for an adequate system."[120] Thus, the Court doubled down on its arbi-

111. *Edgewood VI*, 176 S.W.3d 746 (Tex. 2005).

112. *See id.* at 784 ("Article VII, Section 1 allows the Legislature a large measure of discretion on two levels. The Legislature is entitled to determine what public education is necessary for the constitutionally required "general diffusion of knowledge", and then to determine the means for providing that education.").

113. *Id.* at 785.

114. *Id.*

115. *Id.* at 790.

116. *See id.* at 789–91 (concluding the legislature did not act arbitrarily in structuring and funding the public education system).

117. *Id.* at 785.

118. Kauffman, *supra* note 16, at 549.

119. *See Edgewood VII*, 490 S.W.3d 826, 857 (Tex. 2016) ("[W]e cannot say that the State has acted in an unconstitutionally arbitrary manner simply because it has not attempted to assign precise dollar values as to the costs of providing a general diffusion of knowledge.").

120. *Edgewood VI*, 176 S.W.3d 746, 792 (Tex. 2005).

trariness standard and substantially equal requirements. To add further insult to injury, the Court also disregarded the district court's finding of an *impending* constitutional violation as insufficient—to the Court, only a finding of an *existing* constitutional violation would be enough.[121]

In *Edgewood VI*, the Texas Supreme Court dealt a breathtaking sleight of hand. After holding that the system was financially efficient, equitable, and adequate for all districts, the court also held that districts were denied their constitutional rights because of the limits on tax rates available to them.[122] Of course, this tax rate limitation argument benefited only the wealthy districts.[123] This is so because only wealthy districts stand to gain from tax rates above the state set levels because only wealthy districts generate significant monies from locally generated tax rates and do not need supplemental monies provided by the state.[124] Yet, this argument was based on the districts' inability to support an adequate system with the current tax rates allowed under the state system.[125] In other words, the Court held that the state system was fair to all districts *except* wealthy districts.[126]

Although it concluded that all districts had adequate funding despite the fact that wealthy districts had substantially more money than low-wealth districts, the Court nevertheless held that the finance system was unconstitutional because it did not allow wealthier districts to raise their own tax rates, which hindered their ability to provide local supplementation.[127] As such, the Court's decision recognized—indeed protected—the rights of districts that have always held a superior position in the Texas school finance system and perpetuated such superiority.[128]

III. *MORATH/EDGEWOOD VII* (2015)

After another period of relative peace in the school finance litigation world, a wide range of districts once again filed a lawsuit against the Texas legislature's decision to decrease school finance funding by over $5

121. *Id.* at 792 (emphasis added).

122. *Id.* at 797.

123. *See id.* at 797–98 (explaining that removing the cap on the tax rate would increase revenue disparity among the property-rich and property-poor districts).

124. *Id.* at 798.

125. *Id.* at 796–97.

126. Kauffman, *supra* note 16, at 551 (emphasis added).

127. *Edgewood VI*, 176 S.W.3d 746, 796–98 (Tex. 2005).

128. This inconsistent logic is more fully explained in Kauffman, *supra* note 16, at 551.

billion for the 2012–2013 fiscal year.[129] This set the stage for the *Morath/ Edgewood VII* opinion.

A. *The* Morath/Edgewood VII *District Court Decision*

The district court that heard *Edgewood I* in 1984[130] wrote the most detailed description of the Texas school finance system ever produced. Thirty years later, the same court issued a 400-page, single-spaced opinion.[131] The district court carefully followed the guidelines set by the Texas Supreme Court in *Edgewood VI* and found the school finance system deficient in four respects:(1) the Texas school finance system was not adequate and therefore violated the education clause of the Texas Constitution;[132] (2) likewise, the system was not suitable and violated the education clause of the Texas Constitution;[133] (3) the funding system constituted a statewide ad valorem tax and violated the ad valorem clause of the Texas Constitution;[134] and (4) the system was not financially efficient because it failed to provide substantially equal access to funds necessary to accomplish a general diffusion of knowledge (in other words, it did not meet the standards of *Edgewood I* regarding equity and efficiency).[135] Moreover, the district court specifically addressed the system's inadequacy and unsuitableness for two groups of students: English Language Learners (ELL) and students who are economically disadvantaged.[136]

There were six groups of plaintiffs in the case: three groups of low and middle wealth school districts; one group of high wealth school districts; charter school plaintiffs; and a group of "efficiency" intervenors.[137] The

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129. Tex. Taxpayer & Student Fairness Coal. v. Williams, No. D-1-GN-11-003130, 2014 WL 4254969, at *3 (Tex. Dist. Ct. 200th Aug. 28, 2014) *aff'd in part and rev'd in part by Edgewood VII*, 490 S.W.3d 826 (Tex. 2015).

130. Teresa Palomo Acosta, *Edgewood ISD v. Kirby*, HANDBOOK OF TEX. ONLINE, https://tshaonline.org/handbook/online/articles/jre02 [https://perma.cc/QSX3-CEEN] (last visited April 9, 2017); *TRIBPEDIA: School Finance*, TEX. TRIBUNE, https://www.texastribune.org/tribpedia/school-finance/about [https://perma.cc/TUS4-HFXX] (last visited Mar. 18, 2017).

131. Tex. Taxpayer & Student Fairness Coal., No. D-1-GN-11-003130, 2014 WL 4254969 (Tex. Dist. Ct. 200th Aug. 28, 2014) *aff'd in part and rev'd in part by Edgewood VII*, 490 S.W.3d 826 (Tex. 2015).

132. *Id.* at *347–48.

133. *Id.* at *348.

134. *Id.* at *343.

135. *Id.* at *351.

136. *Id.* at *87–88.

137. The district court opinion identifies the parties involved as follows:

(1) four plaintiff coalitions primarily composed of independent school districts (collectively, the "ISD Plaintiffs"), (2) a group of intervening parties referred to during the trial as the " 'Efficiency Intervenors" or the "Intervenors," and (3) a group of plain-

district court upheld the school districts' claims that the school finance system was inadequate and unsuitable[138] and also upheld the low- and mid-wealth school districts' claims that the system was financially inefficient.[139] Further, the district court not only found that charter school funding was constitutionally inadequate, but also that charter schools did not have an appropriate cause of action under Article VII, Section 1 of the Texas Constitution.[140] The district court also denied the "efficiency intervenors'" claims that the school finance system wasted funds because of its inefficient use of tax resources for matters such as teacher salaries.[141] Lastly, the court denied the intervenors' qualitative efficiency claim seeking a dedication of state school funds to public school charters or vouchers.[142]

B. *A Summary of the* Morath/Edgewood VII *Supreme Court Opinion*

In *Morath/Edgewood VII*, the Texas Supreme Court upheld the entire Texas school finance system.[143] Following the standards set out in *Edgewood VI*,[144] the *Morath/Edgewood VII* court held that the school finance system was adequate, suitable, efficient, and did not amount to an unconstitutional state-wide property tax.[145] Additionally, the court rejected the charter schools' and the efficiency intervenors' claims.[146] This section sets forth the Texas Supreme Court's major holdings and standard of review for the school finance system litigation.

The Court began its analysis by describing the four integrated components of the school finance system: (1) the state curriculum; (2) the standardized test; (3) accreditation standards; and (4) sanctions and remedial measures.[147] While the legislature certainly provided a set of statutes and regulations that appear to create a well-structured and designed sys-

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tiffs affiliated with the Texas Charter School Association (the "Charter School Plaintiffs").

Id. at *2. For purposes of this Article, the author divides the first group of plaintiffs, "ISD Plaintiffs," into four individual categories: three low- and middle wealth-districts and one high-wealth district.

138. *Id.* at *13.

139. *Id.* at *351.

140. *Id.* at *353.

141. *Id.* at *358.

142. *Id.* at *331.

143. *Edgewood VII*, 490 S.W.3d 826, 826 (Tex. 2016).

144. *See Edgewood VI*, 176 S.W.3d 746, 753 (Tex. 2005) (defining constitutional standards of efficiency and adequacy).

145. *Edgewood VII*, 490 S.W.3d at 826.

146. *Id.* at 876–81.

147. *Id.* at 834.

tem,[148] under the Court's extremely deferential review, any given set of state statutes and regulations could meet the Court's standards. However, the school districts produced a thorough record of failures in the school finance system, including the lack of progress and achievement in all districts and the significant gaps between poor and wealthy students and minority and non-minority students.[149] Nevertheless, the Court dismissed the district court's extensive and well-documented findings with a simple holding that the state legislature has *discretion* to decrease funding by $5 billion.[150] The only justification the state offered for the insidious low achievement was the limited progress made over the years.[151]

In analyzing the curriculum testing, accreditation standards, sanctions, and remedial measures, the Court consistently and cavalierly overruled the findings of the district court, which had found significant disparities and violations in each of these four components.[152] Importantly, the Texas Constitution and relevant case law significantly limit the authority of the appellate courts to overrule findings of a district court, even if those findings are made by a judge rather than a jury.[153] Moreover,

148. *See id.* at 834–36 (describing the various objectives and responsibilities imposed on the state school systems by the legislature via the Texas Education Code).

149. *Id.* at 841, 859–68.

150. *See id.* at 886 (holding it is within the legislature's province to create education policy and the judicial standard for review counsels "modesty" when considering whether the school system is constitutional).

151. *Id.* at 866.

152. *Cf. id.* at 859 (concluding that an achievement gap between students does not establish the school system failed in its allocation of resources). In overruling the district court, the Texas Supreme Court disregarded data presented that reflected achievement gaps for economically disadvantaged students because "more money does not guarantee better schools or more educated students." *Id.* at 860 (internal quotations omitted).

153. *E.g.*, Ortiz v. Jones, 917 S.W.2d 770, 772 (Tex. 1996) (declaring trial court findings may be overturned only when they are in contradiction of the great weight and preponderance of evidence, making them incorrect and unjust); E.I. du Pont de Nemours & Co., Inc. v. Robinson, 923 S.W.2d 549, 558 (Tex. 1995) (prohibiting a reviewing court from declaring an abuse of discretion by a trial court merely because the trial court ruled differently than the reviewing court would have); Anderson v. City of Seven Points, 806 S.W.2d 791, 794 (Tex. 1991) (stating that facts found in a bench trial carry the same force as a jury's verdict and are subject to the same standard of review). The trial court entered over 5,000 exhibits in the case, heard competing testimony from nearly one-hundred expert and lay witnesses, and was in the best position to weigh the credibility of the witnesses and accompanying evidence during nearly four months of trial. Tex. Taxpayer & Student Fairness Coal. v. Williams, No. D-1-GN-11-003130, 2014 WL 4254969, at * 1 (Tex. Dist. Ct. 200th Aug. 28, 2014) *aff'd in part and rev'd in part by Edgewood VII*, 490 S.W.3d 826 (Tex. 2015). Following trial, the judge painstakingly examined the evidence as a whole for several months before issuing findings of fact and conclusions of law on the many difficult issues before him. In this case, the court can only reverse based on incorrect fact findings if it finds no evidence to support the findings. Ortiz, 917 S.W.2d at 772. A finding of insufficient evidence, though the Supreme Court does not have direct authority to make such a holding,

Texas standards of appellate review do not allow appellate courts to make fact findings but merely review the lower court's fact findings for legal and factual sufficiency.[154] Indeed, the Texas Constitution itself prevents the Supreme Court from making findings of fact.[155] Unfortunately, the Texas Supreme Court consistently violated these principles and ignored the tried and true appellate standard of pointing out that the district court did not give sufficient weight to certain parts of the record or did not review the facts with the proper deference to the legislature. The Court stated its standard of review as follows:

> Our role is consequential yet *confined, strictly circumscribed by a deferential standard of review*, as well as our own prior decisions in this unique area of the law.
>
> In this direct appeal, we have no jurisdiction "over any question of fact," and must "rely entirely on the district court's findings." But in deciding the constitutional issues, "those findings have a limited role." *Whether the public school system is constitutional is ultimately a question of law.* And under our settled precedent, *which frowns upon judicial second-guessing of policy choices, we presume the system is constitutional.*
>
> In [*Edgewood VI*], we recognized an *arbitrariness* standard for challenges under [A]rticle VII, [S}ection 1. Under this *"very deferential"* standard, we *must not substitute our policy preferences for the Legislature's*, but "must on the other hand examine the Legislature's choices carefully to determine whether those choices meet the requirements of the Constitution." "If the Legislature's choices are informed by guiding rules and principles properly related to public education—that is, *if the choices are not arbitrary*—then the system does not violate the constitutional provision." At bottom, the *"crux" of this standard is "reasonableness,"* and the lens through which we view these challenges maintains *a default position of deference to the*

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would lead to remand to the district court for a new trial. Pool v. Ford Motor Co., 715 S.W.2d 629, 632–33 (Tex. 1986).

154. Tex. Const. art. V, § 6; *see also* Pool, 715 S.W.2d at 634 (holding that a reviewing court is permitted to "unfind" facts even though they cannot "find" them).

155. Tex. Const. art. V, §§ 3, 6. Article V, Section 3 the Texas Constitution indicates that the Supreme Court's determinations are final with regards to all non-criminal law cases and other matters described within the constitution. Tex. Const. art. V, § 3. Article V, Section 6 describes the scope of authority of the appellate circuit and describes all appellate court decisions to be "conclusive on *all questions of fact* brought before them on appeal or error." Tex. Const. art. V, § 6 (emphasis added). Therefore, by designating the appellate court as making final conclusions of fact, the legislature specifically removed this authority from the Texas Supreme Court.

Legislature—that political branch responsible for establishing a constitutionally compliant system.[156]

In effect, the court established a set of legal hurdles that no party attempting to challenge the school finance system can overcome. Further, the Court's extreme deference to the legislature means they will only overrule such legislation if it is arbitrary and unreasonable.[157] Even worse, when determining whether the system has met the constitutional requirements of equitable access and adequacy, the Court applies the standard the legislature has itself set.[158] That is, the legislature sets the standard for what constitutes an "adequate education" and "equitable access," and the Court then takes that standard and applies it to a deferential review of the law[159] Such a system of review thus weighs even more heavily in favor of the state than the extremely weal standard in *Edgewood VI*.[160]

In reality, the Texas legislature will only move towards equity and adequacy only if it is aware of the Texas Supreme Court's sword of Damocles" dangling over their heads.[161]

The legislative deference evident in *Morath/Edgewood VII* is especially surprising when compared to that in *Patel v. Department of Licensing and Regulation*.[162] In *Patel*, the Court applied a much more critical analysis of state methods and motivations than they did to the school finance system in *Morath/Edgewood VII*.[163] For example, Justice Willett, who also authored the opinion in Morath/*Edgewood VII*, passionately criticizes state

156. *Edgewood VII*, 490 S.W.3d 826, 846 (Tex. 2016) (emphasis added) (footnotes omitted).

157. *Id.* at 863.

158. TEX. EDUC. CODE ANN. § 28.001 (West 2015); *Edgewood VII*, 490 S.W.3d at 849. The Texas Supreme Court recognizes the legislature's ability to "retain, revise, or replace [the Education Code] to reflect its current view of what the required curriculum" should entail. *Id.*

159. *Edgewood VII*, 490 S.W.3d at 849.

160. *Compare Edgewood VI*, 176 S.W.3d 746, 785 (Tex. 2005) ("If the Legislature's choices are informed by guiding rules and principles properly related to public education—that is, if the choices are not arbitrary—then the system does not violate the constitutional provision."), *with Edgewood VII*, 490 S.W.3d at 846 ("At bottom, the 'crux' of this standard is 'reasonableness,' and the lens through which we view these challenges maintains a default position of deference to the Legislature—that political branch responsible for establishing a constitutionally compliant system.").

161. *See Sword of Damocles*, CAMBRIDGE DICTIONARY, http://dictionary.cambridge.org/us/dictionary/english/sword-of-damocles [https://perma.cc/8PN8-HLPJ] (last visited April 21, 2017) (defining the idiom as the threat of imminent harm or danger).

162. Patel v. Tex. Dep't of Licensing and Regulation, 469 S.W.3d 69 (Tex. 2015). The Court in *Patel* applied a careful and deadly review of state regulations as they pertained to eyebrow threading businesses. *Id.*

163. The standard in *Patel* is as follows:

overreach in the eyebrow threader market. Most notably, he concludes by stating, "I prefer authentic judicial scrutiny to a rubber-stamp exercise that stacks the legal deck in government's favor."[164] Justice Willett develops the role of judicial review of legislative action as follows:

> I would not have Texas judges condone government's dreamed-up justifications (or dream up post hoc justifications themselves) for interfering with citizens' constitutional guarantees. As in other constitutional settings, we should be neutral arbiters, not bend-over-backwards advocates for the government. Texas judges weighing state constitutional challenges should scrutinize government's *actual* justifications for a law—what policymakers *really* had in mind at the time, not something they dreamed up after litigation erupted. And judges should not be obliged to concoct speculative or farfetched rationalizations to save the government's case.[165]

Much of the *Patel* decision is rooted in the importance of liberty found in the Texas Constitution.[166]

The education clause bears the same relationship to liberty and the rights of the people as do the sections of the Texas Constitution on which the *Patel* court so intensely relied.[167] Justice Willett's concurring opinion

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> In sum, statutes are presumed to be constitutional. To overcome that presumption, the proponent of an as-applied challenge to an economic regulation statute under Section 19's substantive due course of law requirement must demonstrate that either (1) the statute's purpose could not arguably be rationally related to a legitimate governmental interest; or (2) when considered as a whole, the statute's actual, real-world effect as applied to the challenging party could not arguably be rationally related to, or is so burdensome as to be oppressive in light of, the governmental interest. To be clear, the foregoing standard includes the presumption that legislative enactments are constitutional, and places a high burden on parties claiming a statute is unconstitutional. The presumption of constitutionality and the high burden to show unconstitutionality would apply as well to regulations adopted by an agency pursuant to statutory authority. Although whether a law is unconstitutional is a question of law, the determination will in most instances require the reviewing court to consider the entire record, including evidence offered by the parties.

Patel, 469 S.W.3d at 87 (citations omitted).

164. *Id.* at 110 (Willet, J., concurring).

165. *Id.* at 116.

166. *Id.* at 80, 92.

167. *Compare* Tex. Const. art VII, § 1 ("A general diffusion of knowledge being essential to the preservation of the *liberties* and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.") (emphasis added), *with* Patel, 469 S.W.3d at 80 (relying on Article 1, Section 19 of the Texas Constitution, which provides "[n]o citizen of this State shall be deprived of life, *liberty*, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.") (emphasis added).

also expresses real concern with legislative indifference and insensitivity to the rights of the people:

> As judges, we have no business second guessing *policy* choices, but when the Constitution is at stake, it is not impolite to say "no" to government. Liberties for "We the People" necessarily mean limits on "We the Government." That's the very reason constitutions are written: to stop government abuses, not to ratify them. Our supreme duty to our dual constitutions and to their shared purpose—to "secure the Blessings of Liberty"—requires us to check constitutionally verboten actions, not rubber-stamp them under the banner of majoritarianism.[168]

In essence, *Patel* is a return to *Lochner v. New York*[169] because it reinvigorates substantive due process, which led Chief Justice Hecht to confront the Court's recidivism directly in his dissent.[170] This shocking difference in approach to philosophical songs of liberty and the realities of school finance belie any sharp distinctions between the "due course of law," clause[171] and the education clause[172] of the Texas Constitution. The Texas Supreme Court has the power to devise any test it wants to avoid difficult decisions or to extend their philosophical approaches to judicial decision-making in favor of their personal theories of government. But in the case of school finance, millions of children suffer, and that is a real tragedy.[173]

IV. Analysis of the Supreme Court's Purported Reasoning in *Morath/Edgewood VII*

This Part provides a brief summary of the professed reasons for the Court's decisions in *Morath/Edgewood VII*, focusing on the six crucial issues the Court addressed: (1) adequacy; (2) suitability; (3) financial efficiency; (4) qualitative efficiency; (5) charter school claims; and (6) the statewide ad valorem tax.

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168. Patel, 469 S.W.3d at 120 (Willet, J., concurring).

169. Lochner v. New York, 198 U.S. 45 (1905), *abrogated by* W. Coast Hotel Co. v. Parrish, 300 U.S. 379 (1937).

170. Patel, 469 S.W.3d at 120 (Hecht, C.J., dissenting).

171. Tex. Const. art I, § 19.

172. Tex. Const. art VII, § 1.

173. *See Edgewood VII*, 490 S.W.3d 826, 833–34 (Tex. 2016) (acknowledging that more than five million children in Texas are affected by the ongoing litigation and deserve better).

A. *Adequacy*

The Texas Supreme Court will uphold a school system as constitutionally adequate if it achieves a general diffusion of knowledge, as defined by the Texas Education Code.[174] Specifically, the legislature's constitutional obligation is satisfied if schools reasonably provide students with "access to a quality education that enables them to achieve their potential," and "a meaningful opportunity to acquire the essential knowledge and skills, reflected in the curriculum requirements."[175] The Court presumes the legislature has met its standards as long as the state has devised a curriculum and accountability regime.[176] Unfortunately, the Court's analysis of the system's adequacy is plagued with errors.

Moreover, in its analysis the Texas Supreme Court eschewed a review of expert studies addressing the standards of school funding throughout the country.[177] At trial, three different experts using different techniques concluded the Texas school finance system is underfunded, with one expert claiming the system was underfunded by at least $1,000 per weighted student (on top of the present $5,500).[178] The experts based their analyses of the adequate cost of education on methods approved in states throughout the country that are considered to be the "best practice" for making such an evaluation.[179]

Nevertheless, the Court held there is no duty in Texas to meet the best practice standard.[180] In fact, the Court ignored the proper method of evaluating educational costs, which stresses that the Court should use outputs (for example, graduation rates and test scores), not inputs, to evaluate the school finance system.[181] In other words, the Court did not accept the experts' analyses and stated that, even if acceptable, the studies were irrelevant.[182] However, this is inconsistent with the Court's previous analyses in *Edgewood I*, *Edgewood II*, and *Edgewood IV*, as well as

174. TEX. EDUC. CODE ANN. § 28.001 (West 2015); *Edgewood VII*, 490 S.W.3d at 849.

175. *Id.*

176. *Edgewood VII*, 490 S.W.3d at 849.

177. *See id.* at 850–51 (disagreeing with the trial court's reliance on experts).

178. *Id.* at 850.

179. Tex. Taxpayer & Student Fairness Coal. v. Williams, No. D-1-GN-11-003130, 2014 WL 4254969, at *164 (Tex. Dist. Ct. 200th Aug. 28, 2014) *aff'd in part and rev'd in part by Edgewood VII*, 490 S.W.3d 826 (Tex. 2015) (discussing how Allan Odden estimated the cost of adequate school funding levels for Texas school districts through an "evidence-based" approach which has been accepted and adopted as the basis for state school finance systems in other states).

180. *Edgewood VII*, 490 S.W.3d at 855.

181. *Id.* at 857.

182. *Id.* at 850.

with the best practice standards used by other state supreme courts in making these types of evaluations.[183]

Further strangling and setting aside "best practices," the Court made one of its most illogical jumps: it quoted language from the United States Supreme Court case *San Antonio Independent School District v. Rodriguez*[184] to invalidate the correlation between additional educational expenditures and increased quality of education.[185] The *Morath/Edgewood VII* court then jumped to the Coleman Report, on which *Rodriguez* also relied.[186] In so doing, the Court ignored its previous decision in *Edgewood I* to apply the standards of the Texas Constitution, not the U.S. Constitution.[187]

The Texas Constitution has strong, clear, and enforceable standards to determine the equity and equality of the Texas school finance system.[188] However, in a footnote, the Court decided which body of educational research regarding the importance of education funding was appropriate.[189] As such, the Court dismissed the studies, authors, and underlying data that partly informed the district court's decision and took a clear side in the education funding debate, thus rendering their holding clearly unwarranted.[190]

Another major weakness of the Court's test can be seen in the section of the *Edgewood VII* opinion addressing the adequacy issue.[191] The district court relied on *Edgewood IV*, stating that an "adequate education" should be funded with at least$3,500 per weighted student.[192] However, the *Morath/Edgewood VII* court rejected the district court's holding because that figure arose in the context of a discussion on financial efficiency, not on adequacy.[193] Using this reasoning, the Court could ignore

183. *E.g.*, Campaign for Fiscal Equity v. New York, 655 N.E.2d 661, 666 (N.Y. 1995) (discussing how performance levels on standard competency examinations are helpful in determining if minimum education has been provided).

184. 411 U.S. 1 (1973).

185. *Edgewood VII*, 490 S.W.3d at 851 (quoting San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 42–43 (1973)).

186. *Id.* at 851–52 (citing San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 43, 48 (1973)).

187. *See generally Edgewood I*, 777 S.W.2d 391 (Tex. 1989) (analyzing the constitutionality of the school finance system according to the education clause in the Texas Constitution).

188. Tex. Const. art VII, § 1.

189. *Edgewood VII*, 490 S.W.3d at 852 n.152.

190. The weaknesses of the Coleman study are discussed in Part V.A. *infra*.

191. *Edgewood VII*, 490 S.W.3d at 849–68.

192. *Id.* at 853–54.

193. *Id.*

the system's tremendous inequities at the higher tax levels and higher expenditures that exist within the Texas school finance system.[194]

The philosophical weakness of the Texas Supreme Court's holdings are summarized in one pithy phrase found in the opinion: "[M]any of these findings do not appreciate that the constitutional standard demands not the best education, but only an educational system that is adequate to provide a general diffusion of knowledge."[195] The state admitted it had not calculated the cost of an adequate education—even though state law required it to do so; however, the Court again excused the legislature's failure by relying on the erroneous assumption that inputs in the school finance system are not of constitutional import.[196]

In addressing the adequacy issue, the Court struck the district court's findings that the statutory weights in the school finance system were constitutionally inadequate, specifically because they allotted slightly more funds to ELL and economically disadvantaged students.[197] To do so, the Court fell back on its standard that any reviewing court must review the school finance system as a whole and not on the individual components of the system.[198] The Court's reluctance is apparently based on the fear that it will invite various subpopulations of students to file similar claims with "no end in sight."[199] Had the Court simply reviewed the district court's record, it would have discovered that ELL students and economically disadvantaged students are disproportionately negatively impacted by the insufficient funding arising out of the current Texas school finance system.[200]

One of the more egregious sleights of hand in *Morath/Edgewood VII* was the Court's failure to require the legislature to narrow the insidious and threatening gaps in performance between poor and rich students and ELL and non-ELL students.[201] The district court carefully analyzed the outputs of the school finance system by focusing on the testing system, end of course exams, SAT and ACT exams, and by comparing graduation

194. *Id.* These disparities were exhaustively chronicled in the district court decision. Tex. Taxpayer & Student Fairness Coal. v. Williams, No. D-1-GN-11-003130, 2014 WL 4254969, at *9–12 (Tex. Dist. Ct. 200th Aug. 28, 2014) *aff'd in part and rev'd in part by Edgewood VII*, 490 S.W.3d 826 (Tex. 2015).

195. *Edgewood VII*, 490 S.W.3d at 855.

196. *Id.* at 857.

197. *Id.* at 857–63.

198. *Id.* at 858.

199. *Id.* at 859 (quoting *Edgewood VI*, 176 S.W.3d 746, 801 (Tex. 2005) (Brister, J., dissenting)).

200. *See id.* at 858–59 (providing that the trial court held the school system was constitutionally inadequate and unsuitable to ELL and economically disadvantaged students because of inadequate funding).

201. *Id.* at 866.

rates and dropout rates.[202] In contrast, when confronted with the clearly negative effects of the current system's outputs, the Court retreated again to its deference to the legislature and its related holding that the school finance system set forth by the legislature is not an arbitrary and unreasonable effort to provide a general diffusion of knowledge.[203] Further, the Court rationalized excusing the extremely deleterious effects of student test performance and how they negatively impact communities by stressing that the Texas Education Agency occasionally punishes districts for poor test results .[204] Given the tragic numbers, the Court retreated even further by holding, "[W]e cannot conclude that the legislatively designed system provides and requires so little as to indicate that the Legislature has arbitrarily abandoned its duty to provide a general diffusion of knowledge."[205]

The district court's finding that the school finance system especially underfunded ELL and economically disadvantaged students seemed to encourage the Court's revisionist outlook on history and sociology. For instance, the Court made the following assumption:

> [F]actors outside the classroom play an undeniable role in many children's lives. The Coleman Report, as discussed above, reached the seismic conclusion a half-century ago that family-related variables, for example, matter more—far more—than per-pupil expenditures when it comes to predicting academic success. The Plaintiffs presented much data on achievement gaps of ELL and economically disadvantaged students, but did not prove that those gaps could be eliminated or significantly reduced by allocating a greater share of funding to these groups. Again, as we have recognized, "more money does not guarantee better schools or more educated students."[206]

In its final leap backwards, the Court relied on its opinion in *Edgewood VI* to conclude that, despite the current school finance system's significant gaps and failures, the few good statistics that did exist were sufficient to offset the negative ones.[207] This is precisely the sort of weighing of facts the Court should avoid doing because it invades the province of the fact finder.[208] After realizing that the record convincingly showed the

202. *Id.* at 863.
203. *Id.* at 868.
204. *Id.* at 864.
205. *Id.*
206. *Id.* at 860 (quoting *Edgewood VI*, 176 S.W.3d 746, 788 (Tex. 2005)).
207. *Id.* at 868.
208. *Id.* at 846.

current funding was inadequate, the Court increased its legislative deference and thereby further weakened its own test:

> It is safe to say that the current Texas school system leaves much to be desired. Few would argue that the State cannot do better. But our function is limited to reviewing the constitutionality of the system under an extremely deferential standard, one that places the burden of proving the system constitutionally inadequate on the party challenging it. The Plaintiffs did not meet that burden.[209]

B. *Suitability*

I appreciate the Texas Supreme Court's candor when it held the school finance system was suitable.[210] For instance, the Court admitted that the suitability element was not fleshed out in *Edgewood VI*, where it was "discovered."[211] The Court also admitted that the suitability element is similar to that of adequacy.[212] What is unique about the suitability element is that it would lead the Court to declare the school finance system unconstitutional if the legislature allowed districts to ignore legislative goals.[213] Further, the Court found the district court's analysis inappropriate because, in the Court's view, "heavy a reliance on local tax revenues to fund the system [does] not . . . render the system unsuitable."[214] Finally, while the Court stated that suitability is based on the means chosen to achieve an adequate education, it admitted both that it has never held the school finance system to be constitutionally unsuitable and cannot outline an appropriate case of suitability given the Court's standards.[215]

C. *Financial Efficiency*

In its analysis of the financial efficiency issue, the Court purported to rely on its decisions in *Edgewood I* and *Edgewood II*.[216] However, the Court clearly applied the *Edgewood IIa* test, which requires that the legislature need only provide equal access to funding up to the amounts necessary to provide for "a general diffusion of knowledge."[217] Moreover, the Morath/*Edgewood VII* court analyzed previous Texas Supreme Court

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209. *Id.* at 868.
210. *Id.* at 870.
211. *See id.* at 869 ("In [*Edgewood VI*], in two paragraphs, we held the suitability requirement was met . . . ").
212. *Id.* at 868–69.
213. *Id.* at 869.
214. *Id.*
215. *Id.*
216. *Id.* at 870.
217. *Id.*

school finance opinions to determine the ratios between wealthier districts and poor districts[218] and accepted the ratios established in the *Edgewood I* record.[219]

The Court then compared the ratios in *Edgewood I*, which declared the school finance system unconstitutional, with *Edgewood II*, *Edgewood IV*, which upheld the school finance system as constitutional, and *Edgewood VI* with the ratios in the case before them.[220] Because of the changes the legislature made in response to *Edgewood I* and *Edgewood II*, these ratios have improved.[221] The ratios particularly improved due to the system of recapturing tax monies from very wealthy districts and sharing them with the rest of the districts in the state.[222] Indeed, each year this recapture system generates approximately $1–2 billion per year.[223] In turn, these monies both improve the overall level of funding in the system and significantly reduce the ratios between the wealthiest and poorest districts.[224]

However, the court's analysis of ratios ignored a salient fact. In every comparison, the low wealth districts suffered more than the high wealth districts.[225] The Court seemingly accepted offhand ratios of 1.4 between revenues available to richer districts and revenues available to poor districts;[226] but, the pattern has always been the same: the very wealthy districts continue to enjoy the advantages they had at the time the Court decided *Edgewood I* in 1989, which has been the case since the state began recording such data.[227] Additionally, the Court seems to ignore the

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218. *Id.* at 871–75.

219. *Id.* at 874. The Court did so by comparing the ratio between property wealth per student, the amount of total property wealth, and the disparities in per student revenue at the wealthiest districts and the poorest districts. *Id.*

220. *Id.* In discussing the wealth ratios, the court in *Edgewood I* stated the following:

> The wealthiest district has over $14,000,000 of property wealth per student, while the poorest has approximately $20,000; this disparity reflects a 700 to 1 ratio. The 300,000 students in the lowest-wealth schools have less than 3% of the state's property wealth to support their education while the 300,000 students in the highest-wealth schools have over 25% of the state's property wealth; thus the 300,000 students in the wealthiest districts have more than eight times the property value to support their education as the 300,000 students in the poorest districts. The average property wealth in the 100 wealthiest districts is more than twenty times greater than the average property wealth in the 100 poorest districts.

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

221. *Edgewood VII*, 490 S.W.3d at 873–74.

222. *Id.* at 873.

223. *Id.* at 883.

224. *Id.* at 874.

225. *Id.* at 871.

226. *Id.* at 873.

227. *Id.* at 871–75.

possibility that, from time to time, some ratios should actually favor of poor districts.[228] For instance, poor districts should have 40% more revenue per weighted student than richer districts, 40% lower tax rates than wealthy districts, and access to the same or even greater wealth per student to tax for facilities than do wealthy districts.

The Morath/*Edgewood VII* court criticized the district court for considering analyses of the tax rates required to obtain the funding necessary for a truly adequate system.[229] Although the gap between rich and poor districts—in terms of tax rates needed to raise the amounts for an adequate system as defined by the State—has been reduced, the ratios between tax rates for poor districts and tax rates for rich districts have increased.[230] Likewise, when one compares the tax rates necessary for low wealth districts to raise the monies to fund a truly adequate system, these ratios are facially unfair and embarrassing. Unlike the Texas Supreme Court, the district court closely considered these ratios and the calculations on which they are based.[231]

D. *Qualitative Efficiency Claims*

The "efficiency intervenors" attempted to apply the efficiency standard in Article VII, Section 1 of the Texas Constitution, to impose their personal preferences on the way the legislature should administer Texas schools.[232] In essence, the efficiency intervenors advocated for a system that spends less money overall while effectively increasing the amount of funds spent on charter schools and restructuring the school finance system according to their experts' standards.[233] The court appropriately rebuffed these efforts.[234]

E. *The Charter School Claims*

A group of charter schools joined the school districts in alleging that the funding for public schools was inadequate.[235] They did so because funding for charter schools is tied directly to the monies available to the public school districts in which they are located.[236] In addition, charter

228. *Id.*
229. *Id.* at 875.
230. Tex. Taxpayer & Student Fairness Coal. v. Williams, No. D-1-GN-11-003130, 2014 WL 4254969, at *86–97 (Tex. Dist. Ct. 200th Aug. 28, 2014) *aff'd in part and rev'd in part by Edgewood VII*, 490 S.W.3d 826 (Tex. 2015).
231. *Edgewood VII*, 490 S.W.3d at 844, 875.
232. *Id.* at 844, 876.
233. *Id.* at 844, 876–79.
234. *Id.* at 844, 879.
235. *Id.*
236. *Id.*

schools do not get funding for facilities.[237] However, the state grants charter schools waivers from state requirements that apply to all public schools, such as teacher certification requirements, salary scale requirements, and student-teacher ratios.[238] As such, the Texas Supreme Court held that these differences make any comparisons between the charter schools and public school funding inappropriate.[239]

F. *Statewide Ad Valorem Tax Claims*

In *Edgewood VI*, the Court held the school finance system unconstitutional based solely on what it viewed as an imposition of a statewide ad valorem tax.[240] That claim was made on behalf of wealthy districts that were required to share a portion of their tax wealth with the state school finance system, which effectively denied them the significant advantages they typically held over other districts in the state.[241]

Even though the *Edgewood VI* court held the system was equitable and adequate, it concluded that school districts did not have meaningful discretion to raise the monies they needed for an adequate system.[242] Such an inconsistent holding clearly benefitted one group of districts—those with great wealth and political power. Nevertheless, the *Morath/ Edgewood VII* court held that the districts were not denied meaningful discretion because they retained some flexibility to raise taxes within the school finance system.[243] Further, the Court maintained that the majority of districts were not taxing at the maximum levels set by the statutes.[244] In response, the districts argued that the school finance system the legislature passed in response to *Edgewood VI* significantly limited their ability to raise tax rates by requiring a tax election to raise taxes anywhere above $1.04.[245] This argument proved unconvincing, as the Court denied their statewide ad valorem tax claim.[246] Notwithstanding their denial of the claim, the Court outlined a how school districts could potentially make a statewide property tax claim,[247] though even this potential claim would be difficult to meet.

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237. *Id.*
238. *Id.* at 844, 880.
239. *Id.*
240. *Edgewood VI*, 176 S.W.3d 746, 794 (Tex. 2005).
241. *Id.* at 794.
242. *Id.* at 795.
243. *Edgewood VII*, 490 S.W.3d at 881–85.
244. *Id.* at 882.
245. *Id.*
246. *Id.*
247. *Id.* at 884.

G. *The Concurring Opinions*

Justices Guzman and Lehrmann filed a concurring opinion pointing out the educational challenges for economically disadvantaged students.[248] They offered a sympathetic view of Texas students' continued low performance, especially low-income students.[249] However, both justices still joined the majority opinion.[250] Additionally, although Justices Boyd, Lehrmann and Devine clearly highlighted their personal concerns with the school finance system, they also agreed that the Court should be extremely deferential to the legislature.[251]

In summary, the *Morath/Edgewood VII* opinion not only applied an inappropriate legal test the Court developed in *Edgewood VI*, it weakened the test further. The Court gave no weight to the district court's findings and added its own philosophical gloss to its school finance jurisprudence by allowing the socio-cultural arguments that "money does not make a difference" and "the students' family structure is more at fault than the state's failure to meet its constitutional responsibilities."[252] Texas can surely do better.

V. THE SUPREME COURT MISINTERPRETED EDUCATIONAL STUDIES ON THE IMPORTANCE OF RESOURCES TO EDUCATIONAL PERFORMANCE AND IGNORED ITS OWN PRECEDENTS AND TEXAS HISTORY

A. *The Coleman Report*

The *Morath/Edgewood VII* decision was largely based on a fifty-year-old study that research and scholarly works have since discredi-

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248. *Id.* at 887–92 (Guzman, J., concurring). The concurring opinion addresses hardships faced by economically disadvantaged students by stating the following:

> Poor children may never have been more than a few blocks away from home, never had access to computers or visited a museum. Their families, often lacking the means to provide academic support and stability, are struggling to provide their children with reliable nutrition, health care, housing, and transportation and, as a result, may move often. Once in school, low-income children are frequently without the opportunity, means, or transportation for extracurricular activities, after-school tutoring, summer school, or other enrichment activities.

Id. at 888.

249. *Id.* at 889–92 (acknowledging a performance gap between all students and those who are economically disadvantaged, and suggesting that not being the worst is not good enough).

250. *Id.* at 887.

251. *Id.* at 894 (Boyd, J., concurring).

252. *Id.* at 860.

ted.[253] Those who argue that increased funding does not make a difference in public school educational outcomes heavily rely on The Coleman Report.[254] . More specifically, proponents of the Report argue that the Court should be less involved in equalizing funding because there is no proof that additional funding leads to improved student achievement.[255] Indeed, *Morath/Edgewood VII* highlights the Texas Supreme Court's reluctance to accept the best research principles and studies conducted in Texas over the last twenty years.[256]

The Court's reliance on the Coleman Report infects the entire *Morath/Edgewood VII* decision. In particular, once the court agreed there is no real correlation between additional funding and student achievement, it was easy for them to disregard data showing the differences in funds and access to funds among all districts and the very strong record below showing that the overall funding of Texas public schools is inadequate.[257]

The *Morath/Edgewood VII* court describes the Coleman Report and related arguments as follows:

> But differences in achievement among subgroups do not necessarily establish a failure of the school system in its allocation of resources. The Coleman Report . . . concluded that factors distinguishing the students themselves accounted for vastly larger differences in achievement than differences in the resources provided by the school system. The Plaintiffs concede that economically disadvantaged students face challenges outside the schools that affect their educational achievement, and indeed offered much evidence to the trial court in support of this position. According to the Edgewood Plaintiffs, "The challenges that economically disadvantaged students face stem largely from the opportunities they have available to them where they live." This seems inarguable. Demography is not destiny. Many of our most celebrated achievers—in every walk of life—overcame tough odds to thrive, conquering headwinds galore. But factors outside the classroom play an undeniable role in many children's lives. The Coleman Report, as discussed above, reached the seismic conclusion a half-century ago that family-related variables, for exam-

253. *See id.* at 852, 860 (acknowledging the controversy surrounding the fifty-year-old Coleman Report and the hundreds of conflicting studies that followed it while later citing the report and its assertion that family related variables matter more).

254. COLEMAN ET AL., *supra* note 45; *see also Edgewood VII*, 490 S.W.3d at 851, 860 (using the Coleman Report to support its proposition that "more money does not guarantee better schools or more educated students").

255. *Edgewood VII*, 490 S.W.3d at 851, 860.

256. *See infra* Part V.B.

257. *See Edgewood VII*, 490 S.W.3d at 833 (recognizing imperfections in the current school funding regime but still holding the regime constitutional).

> ple, matter more—far more—than per-pupil expenditures when it comes to predicting academic success. The Plaintiffs presented much data on achievement gaps of ELL and economically disadvantaged students, but did not prove that those gaps could be eliminated or significantly reduced by allocating a greater share of funding to these groups. Again, as we have recognized, "more money does not guarantee better schools or more educated students."[258]

Unfortunately, the Court interpreted the Coleman Report far beyond the research questions which formed its base and its conclusions.[259] A 1968 criticism of the Coleman Report summarized some of the report's flawed reasoning.[260] For example, Samuel Bowles and Henry M. Levin broadly criticize the Coleman Report and suggest that "because of poor measurement of school resources, inadequate control for social background, and inappropriate statistical techniques . . . many of the findings of the Report are not supported."[261] Bowles and Levin also cite numerous flaws in the report's measurement and construction which included the following: (1) the lack of participation from several large cities;[262] (2) the fact that a "large number of nonresponses (no answer or 'don't know') . . . were simply given the arithmetic mean of the responses";[263] (3) "the research design and the measurement of variables and the statistical procedures used were overwhelmingly biased in a direction that would dampen the importance of school characteristics";[264] (4) the report distorted the measure for expenditure per pupil by ignoring school differences within a school district;[265] (5) the regression analysis did not include a measure for class size;[266] (6) the facilities measures used in the

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258. *Id.* at 859–60 (footnotes omitted).

259. *See* COLEMAN ET AL., *supra* note 45, at iii–iv (indicating that the Coleman Report was conducted to address four questions specifically involving racial and ethnic groups).

260. *See* Samuel Bowles & Henry M. Levin, *The Determinants of Scholastic Achievement—An Appraisal of Some Recent Evidence*, 3 J. HUM. RESOURCES 3, 3 (1968) (scrutinizing the Coleman Report on several grounds in which the findings are based).

261. *Id.*

262. *Id.* at 6. The report also indicated "[c]omplete sets of survey instruments were returned for only 59 percent (689 out of 1,170) of the high schools." *Id.*

263. *Id.* at 6–7.

264. *Id.* at 8.

265. *Id.* (emphasis omitted). The article goes on to say, in a footnote, that "[w]hile the survey amassed complete sets of data for about 3,100 schools, expenditure data were collected for only the 500 or so school districts in which these schools were located. (Some of the metropolitan school districts that were included in the survey had 50 or more schools in the sample that was used for the analysis.)." *Id.* at 8 n.9.

266. *Id.* at 11.

analysis had a limited range;[267] (7) "the survey collected information solely on current school inputs; thus, the analysis necessarily ignores the effects of past influences on present achievement levels";[268] (8) "the form of the equation implies that the effect on achievement of an incremental unit of a given input does not depend at all on how much of that input is utilized";[269] and (9) the achievement criterion gave "an advantage to students who are enrolled in academic and college preparatory curricula relative to those enrolled in basic, general, commercial, vocational, and technical curricula."[270]

Other social scientists have echoed these criticisms. For instance, according to Ronald P. Carver, "[I]t is not appropriate to draw conclusions about achievement when the conclusions are based on results of tests that were designed to maximize individual differences. The Coleman results make a great deal more sense when the test score results are interpreted as reflecting aptitude instead of achievement."[271]

B. *Recent Studies Contradict the Court's Conclusion*

In addition to long-held criticisms of the Coleman Report, the *Morath/ Edgewood VII* court ignored more recent studies about Texas schools, which were based on data that included more students than the Coleman Report and utilized more valid, contemporary data statistics.[272] For instance, Ronald F. Ferguson conducted a study specifically in Texas that covered "over 2.4 million students in the almost 900 districts, represent[ing] five times the 569,000 children in the data that Coleman

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267. *See id.* ("At grades 1, 3, and 6, the *only* facilities measure used was volumes-per-student in the school library. At grades 9 and 12, the library variable was supplemented by one representing the presence of science laboratory facilities.").

268. *Id.* at 12. Further, "the exclusion of past school inputs biases the analysis against finding school resources to be an important determinant of scholastic achievement, because measures of social background will serve to some extent as proxies for the excluded influence of past school inputs." *Id.*

269. *Id.* at 13–14.

270. *Id.* at 16.

271. Ronald P. Carver, *The Coleman Report: Using Inappropriately Designed Achievement Tests*, 12 AM. EDUC. RES. J. 77, 77 (1975). Carver states the following:

> In this regard, conclusions drawn from the Coleman Report can be no better than the quality of the tests used in that report to measure achievement. These tests were developed by a test company whose technical sophistication is exceeded by no other test publishing company in the world. Yet, they were designed to be biased against finding large differences between schools in achievement. The continued use of these kinds of tests in education will continue to provide biased evidence against any educational treatment effect."

Id. at 77–78.

272. *See Edgewood VII*, 490 S.W.3d 826 (Tex. 2016) (omitting any mention or use of Ronald F. Ferguson's study).

used."[273] Ferguson concluded that achievement significantly depends on factors such as teacher experience and quality "and that when targeted and managed wisely, increased funding can improve the quality of public education."[274]

Even scholars who firmly believe that increased funding does not make a difference have criticized the Coleman Report.[275] The great weight of recent research shows that funds, properly spent, have significant positive effects on educational achievement, especially for minority students.[276]

C. Morath/Edgewood VII *Is Inconsistent with the Law of the Case*

Based on the district court's record and findings, *Edgewood I* held: "[t]he amount of money spent on a student's education has a real and meaningful impact on the educational opportunity offered that stu-

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273. Ronald F. Ferguson, *Paying for Public Education: New Evidence on How and Why Money Matters*, 28 HARV. J. ON LEGIS. 465, 488 (1991).

274. *Id.* "Results show that better literacy skills (in other words, higher [Texas Examination of Current Administrators and Teachers ('TECAT')] scores) among teachers, fewer large classes and more teachers with five or more years of experience (nine or more for high school) all predict better student test scores, controlling for a number of family and community background factors." *Id.* "Even ignoring class sizes and teacher experience, TECAT scores in Texas explain between twenty and twenty-five percent of the variation across districts in students' test scores[.]" *Id.* at 490.

275. Henry S. Dyer, *School Factors and Equal Educational Opportunity*, 38 HARV. EDUC. REV. 38, 39 (1968) (acknowledging the Coleman Report's faults such as the sample of schools, the statistical design, and the over dependence on verbal learning as a proxy for academic achievement); *see also* Eric A. Hanushek, *When School Finance "Reform" May Not Be Good Policy*, 28 HARV. J. ON LEGIS. 423, 433–35, 439 (1991) (finding the "basic determinants of instructional expenditures in a district are teacher experience, teacher education, and class size" and analyzing these expenditure components as inputs throughout 187 studies).

276. *See* Harold Wenglinsky, *How Money Matters: The Effect of School District Spending on Academic Achievement*, 70 SOC. EDUC. 221, 221 (1997) ("[T]he economic resources of schools are associated with students' achievement"); C. Kirabo Jackson et al., *The Effect of School Finance Reforms on the Distribution of Spending, Academic Achievement, and Adult Outcomes* 4–5 (Nat'l Bureau of Econ. Research, Working Paper No. 20118, 2014) ("Results from our event-study and instrumental variable models reveal that increases in per-pupil spending, induced by court-mandated school finance reforms, led to significant increases in the likelihood of graduating from high school and educational attainment for poor children"); Linda Darling-Hammond, *Unequal Opportunity: Race and Education*, BROOKINGS (Mar. 1, 1998), https://www.brookings.edu/articles/unequal-opportunity-race-and-education [https://perma.cc/K7SA-XPRJ] ("[E]ducation resources do make a difference, particularly when funds are used to purchase well-qualified teachers and high-quality curriculum."). *See generally* Brief of Amici Curiae Center for Public Policy Priorities, et al. in Support of Plaintiffs-Appellees, at *29–36, Williams et al, v. Calhoun Cty. Indep. Sch. Dist., et al., (Tex. 2015) (No. 14-0776) (discussing empirical studies which show increased funding improves outcomes for economically disadvantaged students).

dent."[277] In contrast, *Edgewood VI* held that "more money does not guarantee better schools or more educated students."[278] Despite the holding in *Edgewood VI*, the *Morath/Edgewood VII* opinion performs logical and legal backflips to promulgate the following standard:

> The financial efficiency doctrine requires a rough equality of access to district funding for similar tax effort. Its aim is equality of opportunity, not equality of results. We have never interpreted our Constitution, under the adequacy requirement, to mandate equality of student achievement by district or student subgroup. Such equality of results may not be possible through changes in school funding alone, given the respected body of educational research holding that school resources account for only a small fraction of differences in student achievement. Equality of educational achievement is a worthy goal of government, and society at large, but it is not a constitutional requirement.[279]

Other state courts have acknowledged the money-achievement positive relationship. In fact, both state Supreme Court and lower court opinions have specifically noted the clear relationship between funding and student achievement.[280]

VI. To Obey the Constitution, the Court Should Apply the Test for Efficiency It Developed in *Edgewood I* and *Edgewood II*[281]

Following an extensive review of the history and interpretation of the Texas Constitution, the Texas Supreme Court, in *Edgewood I* and

277. *Edgewood I*, 777 S.W.2d 391, 393 (Tex. 1989).

278. *See Edgewood VI*, 176 S.W.3d 746, 788 (Tex. 2005) ("[M]ore money does not guarantee better schools or more educated students.").

279. *Edgewood VII*, 490 S.W.3d 826, 862–63 (Tex. 2016).

280. *See* Brief of Amici Curiae Center for Public Policy Priorities, et al. in Support of Plaintiffs-Appellees, at 37, Williams et al, v. Calhoun Cty. Indep. Sch. Dist., et al., (Tex. 2015) (No. 14-0776) (citing Rebell, *supra* note 34, at 1484–85) (stating "of thirty state courts that have considered the issue, twenty-nine have determined that funding levels are an important factor in academic achievement"). The amicus brief also cited to cases from other states stating the same. *Id.* at 37–39.

281. This Part of the relies heavily on an amicus brief the author filed in the *Morath/Edgewood VII* case, Brief of Amicus Albert Kauffman on Financial Efficiency Issues, Williams et al., v. Calhoun Cty. Indep. Sch. Dist., et al. (No. 14-0776) 2015 WL 4779773 [hereinafter Kauffman Amicus Brief]. While the Kauffman Amicus Brief was filed in the Williams et al., v. Calhoun County Independent School District case, that case was ultimately restyled as *Morath* on appeal. Williams et al., v. Calhoun Cty. Indep. Sch. Dist., et al., (No. 14-0776) 2015 WL 4779773, *sub nom.* Morath v. Tex. Taxpayer & Student Fairness Coalition, et al., 490 S.W.3d 826 (Tex. 2016).

Edgewood II, adopted the following definition of efficiency pertaining to Texas school finance litigation:

> There must be a direct and close correlation between a district's tax effort and the educational resources available to it; in other words, districts must have substantially equal access to similar revenues per pupil at similar levels of tax effort. 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.[282]

Edgewood V supported a district's ability to challenge the maximum tax rates available under S.B. 7 and set the framework for *Edgewood VI*, which significantly expanded and restructured the law in these cases.[283] *Edgewood V* also offered a weaker version of its previous financial efficiency test:

> As long as efficiency is maintained, it is not unconstitutional for districts to supplement their programs with local funds, *even if* such funds are unmatched by state dollars and *even if* such funds are not subject to statewide recapture. We caution, however, that the amount of "supplementation" in the system cannot become so great that it, in effect, destroys the efficiency of the entire system. The danger is that what the Legislature today considers to be "supplementation" may tomorrow become necessary to satisfy the constitutional mandate for a general diffusion of knowledge.[284]

In *Edgewood VI*, the court modified this test by holding the following:

> [T]he constitutional standard of efficiency requires substantially equivalent access to revenue only up to a point, after which a local community can elect higher taxes to "supplement" and "enrich" its own schools. That point, of course, although we did not expressly say so in *Edgewood I*, is the achievement of an adequate school system as required by the Constitution. Once the Legislature has discharged its duty to provide an adequate school system for the State, a local district is free to provide enhanced public education opportunities if its residents vote to tax themselves at higher levels. The requirement of efficiency does not preclude local supplementation of schools.[285]

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282. *Edgewood II*, 804 S.W.2d 491, 498 (Tex. 1991); *Edgewood I*, 777 S.W.2d 391, 397 (Tex. 1989).

283. *Edgewood V*, 107 S.W.3d 558, 559 (Tex. 2003).

284. *Id.* at 571–72 (emphasis added).

285. *Edgewood VI*, 176 S.W.3d 746, 791 (Tex. 2005).

The standards in *Edgewood V* and *Edgewood VI* are thus much weaker and difficult, if not impossible, to enforce.[286]

The confusion generated by the Court's changes in the standard and approach they applied in the series of school finance cases supports the argument that the original standards set forth in *Edgewood I* both conformed better to the demands of the Texas Constitution and were more jurisprudentially sound.[287] The basis of the efficiency arguments in the *Edgewood* cases is that the state had long created two systems within the school finance system.[288] One system created roughly equal access to a lower level of funding through programs that came to be known as the "Minimum Foundation Program," the "Foundation School Program," or the "Tier I and Tier 2 Program".[289] Conversely, the other system was funded at a higher level to which districts had access only via their own tax wealth.[290] The access to these funds was perfectly inequitable; in other words, the system was funded up to the 527-to-1 ratio in ability to raise funds for each penny of tax applied to these tax rates (for which state matching is not available).[291] Even after recapture, wealthier district had easier access to these funds than low-wealth districts, for which such funds were almost impossible to obtain.[292]

The Texas Supreme Court unanimously rejected the dual system theory in *Edgewood I* and *Edgewood II*, holding that the school finance system is one system to which all students should have substantially equal access.[293] Yet, the weaker standard the Court adopted in later cases returns Texas to the dual system in which districts have roughly equal access to some defined level of funding while low-wealth districts continue to have no reasonable access above what is the legislature defines as an "adequate."[294]

Such a standard is weak because it is based on significantly different definitions of what is "adequate" and requires the Court to make a threshold decision on adequacy before determining the financial effi-

286. Kauffman Amicus Brief, *supra* note 281, at *14.
287. *Id.* at *13–19.
288. *Id.* at *19.
289. *Id.*
290. *Id.*
291. *Id.* This ratio is the ratio of the wealth-per-ADA in the wealthiest district to the wealth-per-ADA in the poorest district, explained in section II of the amicus brief filed by the Author. *Id.* at *3–9.
292. *Id.* at *19. A wealthy district recaptured to $48/WADA (recapture level in Tier 1), after recapture, still generates 16 times more for each penny tax rate than a district that generates $3/WADA. This assumes that the poorer district does not get a state share at that tax rate. *Id.* at *19 n. 38.
293. *Id.* at *19.
294. *Id.* at *20.

ciency of the system.[295] Using adequacy as a threshold requirement also gives the legislature unfettered discretion to validate an inefficient system by redefining the level of education it considers "adequate."[296] This is not merely a theoretical concern. Indeed, during the *Morath/Edgewood VII* trial, the legislature and the Texas Education Agency changed the accountability system that occasionally increased or decreased the academic standards for school districts.[297]

Determining the efficiency of funding for facilities is even more difficult due to the differences between the quality and needs of facilities in each district—including the fact that certain districts are experiencing rapidly increasing student counts.[298] A financing system that requires substantially equal access to funds will necessarily require the legislature and the courts to include funding for facilities as an integral part of the system.[299]

Although facilities are an integral part of the school system, the Court refuses to as much.[300] The tests in *Edgewood V*, *Edgewood VI* and *Morath/Edgewood VII* do not explicitly require that substantially equal access be at "similar levels of tax effort."[301] As such, the jurisprudential weakness of the new standard is more difficult to define and to determine. It would be easier for the legislature, the public, and ultimately the Court, to determine substantially equal access to available funding than to determine what constitutes "adequate" before determining what constitutes "substantially equal access."[302]

VII. Conclusion: A Recommendation

This Article recommends a thought experiment: What if the legislature designed a school finance system that gave previously poor and underfunded districts access to 20%–40% more funds than the wealthy districts? Under the *Morath/Edgewood VII* test, this system would certainly be upheld because it would be based on the same set of state statutes and regulations upon which that decision was based. And, of course, the wealthy districts could not complain because there is no proof that additional funds leads to better educational quality. If you put the *Morath/*

295. *Id.*

296. *Id.*

297. *Id.* The state chooses the measurements of accountability and sets the passing scores and percent of passing requirements. *Id.*

298. *Id.* at *20–21.

299. *Id.* at *21.

300. *Id.* at *21.

301. *Edgewood I*, 777 S.W.2d 391, 397 (Tex. 1989); Kauffman Amicus Brief, *supra* note 281, at *21.

302. Kauffman Amicus Brief, *supra* note 281, at *21.

Edgewood VII standard into that scenario, you can imagine the reaction from those so long benefitted by the vagaries of Texas school finance jurisprudence.

I recommend a standard that all students in all districts have the *same* access to resources at any tax rate available in the state school finance system. Moreover, the system must account for all the special costs of students and districts in biennially reviewed cost studies, which many state district courts and supreme courts have approved. The "science" in this area has continued to improve and studies, like those reviewed by the court appointed masters in the New York adequacy litigation,[303] are particularly instructive, documented, and reviewed in detail by appellate courts. In addition, Texas must update the weights applied to the major subpopulations in the school finance area, specifically ELL, economically disadvantaged students, and students in special education programs.[304]

This would treat all students and all taxpayers equally. It is also a significantly easier standard to understand and apply. Beyond that, it fulfills the promises of our Texas Constitution and our moral obligations to meet the needs of our students. As Judge McCown said regarding *Edgewood II*, "they are all our children."[305]

303. Campaign for Fiscal Equity v. New York, 801 N.E.2d 326, 332-344 (N.Y. 2003) (analyzing expert testimony and studies on the "inputs" children receive-teaching, facilities, and instrumentalities of learning-and their resulting "outputs" such as test results and graduation and dropout rates, to determine whether New York schools delivered a sound basic education, and to establish a causal link between increased funding and increased educational opportunity).

304. Recent newspaper studies and hearings in the Texas legislature have disclosed an arbitrary limit on percentage of students in districts who may be identified in need of special education services. This artificially decreases the state share of school funding and tragically disserves students in need of special education funding. Bill Zeeble, *Texas May Be Denying Tens of Thousands of Children Special Education*, NPR (Oct. 21, 2016, 4:59 AM), http://www.npr.org/sections/ed/2016/10/21/496943376/texas-may-be-denying-tens-of-thousands-of-children-special-education [https://perma.cc/2V9W-MHTV].

305. Barry Siegel, *Parents Get a Lesson in Equality: In A Case Study for Other States, Texans Are Intently Watching the Courts Try to Share the Wealth Among Public Schools. They're Also Watching the Politicians Do Nothing*, L.A. TIMES (Apr. 13, 1992), http://articles.latimes.com/1992-04-13/news/mn-143_1_public-school-finance/2 [https://perma.cc/LR28-XUYQ].