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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

MAYA ROBLES-WONG, et al.

Plaintiffs,

v.

STATE OF CALIFORNIA; and ARNOLD SCHWARZENEGGER, Governor of the State of California,

Defendants.

And

CALIFORNIA TEACHERS ASSOCIATION,

Plaintiff-Intervener

No. RG10515768

PLAINTIFFS' OPPOSITION TO DEFENDANTS' DEMURRER TO COMPLAINT

[Filed Concurrently with Plaintiffs' Opposition to Defendants' Request for Judicial Notice in Support of Plaintiffs' Demurrer; Plaintiffs' Opposition to Defendants' Motion to Strike Complaints; Appendix of Non-California Authorities Not Previously Cited to Court Filed in Support of Plaintiffs' Opposition to Defendants' Demurrer]

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I. INTRODUCTION

The State's demurrer asserts that article IX of the California Constitution confers no substantive rights upon school children and imposes no substantive duties on the State, or in the alternative, that any obligations imposed on the State are satisfied by the minimum funding constitutional provisions enacted by Proposition 98. The State's limited construction of the rights conferred and the duties imposed by article IX is at odds with the language and historical purpose of the article, numerous pronouncements from the California Supreme Court regarding the fundamental right to an education, and judicial interpretations of similar provisions in other state constitutions. Nor can the State rely on Proposition 98 to avoid its constitutional obligations, because the minimum funding provisions there do not conflict with or trump the State's obligations or the rights of children under article IX and the equal protection clause.

The State further asserts that plaintiffs ask this Court to "order the appropriation of more money for California's schools . . . ." (Defendants' Demurrer to Plaintiffs' Complaint (Aug. 10, 2010) p. 11:4-5 (hereafter Dem.).) That is wrong, as is the related argument that the constitutionality of the State's school finance system is non-justiciable. The State ignores that the California Supreme Court in *Serrano I* and *Serrano II* reviewed the constitutionality of the State's school finance system, found that the system violated the constitutional rights of students, and ordered the State to develop a new school finance system consistent with constitutional principles. (See generally *Serrano v. Priest* (1971) 5 Cal.3d 584 (hereafter *Serrano I*); *Serrano v. Priest* (1976) 18 Cal.3d 728 (hereafter *Serrano II*).) In numerous cases throughout the nation, courts have considered whether school funding schemes pass muster under their state constitutions. Plaintiffs ask this Court to do no more than review the state's school finance system – as the trial court did in *Serrano* – to determine whether the State is living up to its constitutional obligations.

II. STANDARD OF REVIEW

In considering a demurrer, all material facts properly pleaded are deemed true (*Serrano II,* 5 Cal.3d at p. 591), and those facts may be implied or inferred from those expressly alleged.

(*Marshall v. Gibson, Dunn & Crutcher* (1995) 37 Cal.App.4th 1397, 1403.) Defendants must show that the challenged causes of action in the complaint are defective on their face. (See Code Civ. Proc., § 430.30(a).) A demurrer tests the legal, not factual, sufficiency of a complaint – the complaint must only state a cause of action for which there is a remedy. (See Code Civ. Proc., § 3422.) If a complaint contains allegations of the facts essential to state a cause of action, regardless of mistaken theory or imperfections of form, the court must overrule the demurrer. (*Brousseau v. Jarrett* (1977) 73 Cal.App.3d 864, 870.)

III. OVERVIEW AND FACTUAL ALLEGATIONS

A. Constitutional Framework Establishing the State's Obligation to Provide and Support a System of Public Education

Californians have recognized the paramount importance of public education since the adoption of the California Constitution in 1849. That Constitution provided for the three branches of government and required only two other institutions: the state militia and the public school system. (Plaintiffs' Complaint (May 20, 2010) ¶ 2 (hereafter Compl.).) Even today, the duties contained in the education article are the only affirmative constitutional duties placed upon the State to establish any public welfare or social services.

Section 1 of the education article provides that:

> A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement.

(Cal. Const., art IX, § 1.) The California Supreme Court has held that education is not only essential for the "preservat[ion] of other basic civil and political rights," (*Serrano I*, 5 Cal.3d at p. 608), but that public education "forms the basis of self-government and constitutes the very corner stone [*sic*] of republican institutions." (*Hartzell v. Connell* (1984) 35 Cal.3d 899, 906 (quoting Debates and Proceedings, Cal. Const. Convention 1878-1879, p. 1087).) Because "education is a major determinant of an individual's chances for economic and social success in our competitive society" and "is a unique influence on a child's development as a citizen and his participation in political and community life," education is a fundamental right of each child in

California. (*Serrano I*, 5 Cal.3d at pp. 605, 608-09.) California courts have repeatedly held that the purpose of the State's public education system is to teach students the skills they need to succeed as productive members of modern society.

To ensure that all students are afforded their right to an education, the Constitution requires that "[t]he Legislature shall provide for a *system of common schools* by which a free school *shall be kept up and supported* in each district . . . ." (Cal. Const., art. IX, § 5, italics added.) The Supreme Court has held that "the word 'system,' as used in article IX, section 5, implies a 'unity of purpose as well as an entirety of operation, and the direction to the legislature to provide a system of common schools means one system which shall be applicable to all the common schools within the state.'" (*Serrano I,* 5 Cal.3d at p. 595, italics omitted (quoting *Kennedy v. Miller* (1893) 97 Cal. 429, 432).) The State is obligated to ensure that the common schools are maintained and operated so that the education guaranteed by the Constitution is provided throughout the California school system. (*Id.* at pp. 595-96.)

It is well established that the education provided by the State through the common school system must be made available to all students on an equal basis. Quoting from *Brown v. Board of Education* (1954) 347 U.S. 483, the California Supreme Court explains:

> In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

(Serrano I, 5 Cal.3d at p. 606.) Equal educational opportunities are essential because "the public schools of this state are the bright hope for entry of the poor and oppressed into the mainstream of American society." (*Id.* at p. 609.) Moreover, because public education is a "uniquely fundamental" concern of the State, the "State itself has broad responsibility to ensure basic educational equality under the California Constitution" and cannot delegate that responsibility to any other entity. (*Butt v. California* (1992) 4 Cal.4th 668, 681.)

The California Constitution recognizes the paramount importance of public education by requiring that funding of common schools take priority over other State expenditures – from each year's state revenues shall "*first be set apart* the moneys to be applied by the state for support of

the public school system." (Cal. Const., art. XVI, § 8(a), italics added.) The Constitution provides no similar funding priority for any other public institution or public service.

This constitutional framework for public education makes it clear that: education is a fundamental right that is essential to preserving other rights and liberties granted by the Constitution; the purpose of the State's public education system is to teach students the skills they need to succeed in a competitive economy, and to become informed citizens and productive members of modern society; the common school system must be maintained and operated so that the education guaranteed by the Constitution is available to students throughout the public school system; and that the common school system must be maintained and operated so that all students are provided equal educational opportunities.

The complaint states four separate claims for relief[1]:

(1) The first cause of action alleges that the State has violated its duty under sections 1 and 5 of article IX to "provide for a system of common schools" that is "kept up and supported" by the State using "all suitable means" by failing to provide a funding system that has a coherent or functional relationship with the educational program that the State requires the schools to deliver, and that this failure prevents the State from delivering an educational program to all students that provides them an opportunity to learn the academic standards prescribed by the State for success in the 21st century.

(2) The second cause of action alleges that the State is denying students their fundamental right to an education under article IX, is denying students an opportunity to become proficient according to the State's academic standards, and is denying students an opportunity to develop the skills and capacities necessary to achieve economic and social success because it operates an irrational and insufficient school finance system.

(3) The third cause of action alleges that the State violates the equal protection guarantees of sections 7(a) and 7(b) of article I and section 16 of article IV of the California

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[1] Other than a cursory argument that the alleged facts do not support an equal protection claim, the State does not specifically analyze and demur to any of Plaintiffs' four causes of action in their 33-page Demurrer.

Constitution by failing to provide and support an education finance system that provides all California school children equal access to the State's prescribed educational program and an equal educational opportunity to become proficient in the State's academic standards.

(4) The fourth cause of action alleges that by failing to intentionally and rationally determine and provide the amount of funding necessary to support the State's prescribed education program and the educational needs of all students, the State has violated its duty under section 8(a) of article XVI of the California Constitution to ensure that from each year's state revenues shall "first be set apart the moneys to be applied by the state for support of the public school system."

B. Factual Allegations Support Each Claim for Relief

The State has implemented its article IX constitutional obligations by establishing a comprehensive, standards-based education program and accountability scheme that defines the specific academic knowledge, skills, and abilities that all public schools are expected to teach and that all students are expected to learn. (See Compl. at ¶¶ 61-68.) This comprehensive education program provides a common purpose and goal for the State's system of public schools.

In 1995, the State began developing statewide "academic content standards" in English-language arts, mathematics, history and science. Consistent with the purpose of article IX, section 1, the Legislature directed that the academic content standards "shall be based on the knowledge and skills that pupils will need in order to succeed in the information-based, global economy of the 21st century." (Ed. Code, § 60602.) These content standards are central to the State's education program, and define "the specific academic knowledge, skills, and abilities that all public schools in this state are expected to teach and all pupils expected to learn in each of the core curriculum areas, at each grade level tested." (Ed. Code, § 60603.) Through the statutorily-required alignment of curriculum frameworks, instructional materials, and teacher training, a common, comprehensive education program was imposed on the entire public school system. (Compl. at ¶¶ 61-68.)

The State also developed a statewide assessment and accountability program to measure success in providing the required program and learning the required material. Assessments

measure the extent to which students in each school and school district reach "proficiency" in the State's academic standards. Based on student performance on these assessments, each school and school district receives an "Academic Performance Index" (API) ranking that serves as the basis for both state and federal accountability measures, including mandatory sanctions. (Compl. at ¶¶ 64-67.)

There is no coherent or functional relationship, however, between the State's comprehensive education program and its school finance system. The State has not aligned funding policies and mechanisms with the education program it has developed, and has made no effort to determine the actual cost of providing the education program in all of its public schools. (Compl. at ¶¶ 82-106.) Nor does the State's funding scheme sufficiently account for the learning needs of certain populations of students, including English learners and economically disadvantaged children, to ensure these children have equal access to the program and equal opportunities to meet the State's education standards.[2] (*Id.* at ¶¶ 107-17.)

California's school finance system is based on formulas and policies cobbled together over decades and bears no relation to the current educational needs of students. (Compl. at ¶¶ 82-106.) School funding amounts are primarily based upon a minimum funding guarantee (Proposition 98) that predates the development of the standards-based education program. (*Id.* at ¶¶ 97-105.) Allocations to schools and school districts are primarily based on archaic formulas and policies (such as "revenue limits") that are unrelated to the programs and services those schools and districts must currently provide. (*Id.* at ¶¶ 88-93.) Moreover, state funding is unstable, unreliable and insufficient to support core education programs and services related to academic proficiency, or necessary intervention programs, support services and enrichment activities.[3] (*Id.* at ¶¶ 106-31.)

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[2] Governor Schwarzenegger's Committee on Education Excellence concluded that education funding "is based on anachronistic formulas, neither tied to the needs of individual students nor to intended academic outcomes" and the current system "[d]oes not ensure that sufficient resources reach students according to their needs." (Compl. at ¶ 70.)

[3] Low funding levels and ineffective financing policies directly impact the educational resources available to California students. Out of 50 states, California ranks 49th in teacher-student ratios and 48th in total school staff-student ratios. (Compl. at ¶ 24.) Teacher-student ratios and class sizes in California schools are not determined by pedagogical or education policy factors, but are purely a function of funding amounts generated by arbitrary formulas and policies on a year-to-year basis. (Compl. at ¶ 72.)

The irrational and unstable funding system directly impedes the ability of school districts, including plaintiff school districts, to meet the requirements imposed by the State and the educational needs of their students. Districts cannot maintain appropriate teacher-student ratios and appropriate class-sizes; they are unable to offer sufficient instructional minutes in core academic subject courses and necessary preparatory classes to all students, including the additional instructional time necessary for English learners; they cannot design and implement necessary intervention and remedial programs which require long-term planning and continuity in order to be effective; and they cannot provide all students appropriate instructional materials, including access to computers and educational technology, to effectively communicate and deliver course content. (Compl. at ¶ 171.)

Many California students, including the individual plaintiff students here, are harmed or at risk of being harmed by the State's educational finance system because it denies them the educational resources they need to learn the State's academic standards and acquire the "knowledge and skills . . . [they] need in order to succeed in the information-based, global economy of the 21st century." (Ed. Code, § 60602.) According to the State's own assessments, millions of California students are not proficient in the academic standards and fail to acquire the specific skills and knowledge the State itself deems necessary for success in the 21st Century. Only about half of all California students are proficient in English-language arts. That number drops precipitously for certain subgroups of students – by 11th grade, only one out of four African-American, Hispanic, or economically-disadvantaged students is proficient in English. Overall proficiency is even lower in math. (Compl. at ¶¶ 76-80.) California also ranks near the bottom in nationwide rankings of academic achievement, as evidenced by the latest National Assessment of Educational Progress (NAEP) rankings in which California tied for 47th on fourth grade reading and 46th in eighth grade math. (*Id.* at ¶ 75.)

IV. ARGUMENT

A. Article IX Provides Substantive Rights and Enforceable Duties

The heart of article IX is sections 1 and 5. Section 1 provides:

> A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral and agricultural improvement.

Section 5 provides: "The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year . . . ."

In determining the meaning and scope of article IX, the court's objective must be "to discern the true intent of [constitutional provisions'] authors, and when that intent has been ascertained, it becomes the duty of the Court to give effect to it . . . ." (*Bourland v. Hildreth* (1864) 26 Cal. 161, 180.) Constitutional provisions must not "be interpreted according to narrow or supertechnical [*sic*] principles, but liberally and on broad general lines, so that it may accomplish in full measure the objects of its establishment and so carry out the great principles of government." (*People v. Giordano* (2007) 42 Cal.4th 644, 655, citations omitted.) To do this, courts look to the plain meaning of the words. (*Mutual Life Ins. Co. v. City of Los Angeles* (1990) 50 Cal.3d 402, 407.) Courts may also, if necessary, look to the history of the provisions, interpretations of the provisions in prior judicial decisions, as well as the decisions of courts from other states that have interpreted similar provisions in their state constitutions. (*Id.* at p. 407; *Arcadia Unified Sch. Dist. v. State Dept. of Ed.* (1992) 2 Cal.4th 251, 261; *Hartzell*, 35 Cal.3d at pp. 905-12.) Based on these authorities, the provisions of article IX create enforceable substantive rights.

1. Plain Meaning and History of Article IX Establish the Connection Between the State's Obligation to Support its Public School System and Every Child's Substantive Right to an Education.

Sections 1 and 5 confer substantive rights and impose affirmative duties. Both use the term "shall," which connotes a mandatory or directory duty. (See *Woodbury v. Brown-Dempsey* (2003) 108 Cal.App.4th 421, 435-36.) The use of the word "all" to modify "suitable means" demonstrates that the framers and voters intended the State to use its best or maximal effort to achieve the educational goal stated in section 1. Implicit in section 1 is a requirement that the diffusion of knowledge and intelligence be of *sufficient quality* to preserve the rights and liberties of the people, which are specified in detail in the Constitution. The language of section 5 also

invokes a qualitative standard; inherent in the idea of being "kept up and supported" is the notion of a standard that the schools would meet. The phrase suggests both a substantive component (*i.e.*, "kept up and supported" to meet educational standards) and a temporal component (*i.e.*, "kept up" to continue to meet standards over the course of time).[4]

The framers viewed education of the young as the most important priority for the new state and therefore enacted language that would ensure its provision. The state school fund created by the 1849 Constitution was originally supported by designated revenues that were to be "inviolably appropriated to the support of common schools." (Cal. Const., art. IX, § 2.) Delegates to the 1849 Constitutional Convention rejected proposals that would have deleted the term "inviolably" or allowed some funds to be diverted from education "if the exigencies of the State require it." (Rep. of the Debates in the Convention of Cal., on the Formation of the State Const. (1850) pp. 203-206.) The delegates overwhelmingly rejected these proposals, stating that "there cannot be too large a fund for educational purposes" and that "[n]othing will have a greater tendency to secure prosperity to the State, stability to our institutions, and an enlightened state of society, than by providing for the education of our posterity." (*Id.* at p. 204.) Financial responsibility for support of the schools was thus connected to the underlying entitlement to an education, and was seen from the earliest days of statehood as a critical element of the "system" required by the Constitution.

The language now found in sections 1 and 5 of article IX was added at the Constitutional Convention of 1879. (Debates and Proceedings in the Convention of Cal. On Formation of State Const. (1881) p. 1089.) Several delegates emphasized that the language of Section 1 "means something" beyond a mere statement of principles: "[section 1] makes it the duty of the Legislature to forward [public education] in every way that the Legislature may have the power to do." (*Id.* at p. 1089.) That section was specially placed at the beginning of article IX because

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[4] Several state constitutions express an analogous concept with the word "maintain," and courts have recognized that the term "implies a continuing obligation to ensure compliance with evolving educational standards." (*Op. of the Justices*, No. 338 (Ala. 1993) 624 So.2d 107, 154; see also *Campaign for Fiscal Equity v. New York* (2003) 801 N.E.2d 326, 330.)

it provided "the basis upon which the whole [education system was] founded." (*Id.*)

In 1910, the Constitution was amended to impose the requirement that from each year's state revenues, "there shall first be set apart the moneys to be applied by the state for support of the public school system." This amendment moved the funding priority from the education article to article XIII (state revenues), had the effect of changing the funding source for education from a set of finite revenues to all state revenues, and made clear that education was designated as the State's first priority. The explicit command to the Legislature to affirmatively establish a system of provision for education is unique in the constitution. All other constitutional provisions concerning public welfare or social services are couched in permissive terms.

2. California Judicial Decisions Identify Article IX Rights and Duties.

Article IX confers judicially enforceable educational rights, including "a legal right" entitling all children "to be educated at the public expense." (*Ward v. Flood* (1874) 48 Cal. 36, 50-51; accord *Piper v. Big Pine School Dist.* (1924) 193 Cal. 664, 669; *Hartzell,* 35 Cal. 3d at p. 911.) California courts have repeatedly held that article IX provides schoolchildren a "fundamental" right to an education and that the purpose of the State's education system is to teach students the skills they need to succeed as productive members of modern society. (*Serrano I*, 5 Cal.3d at p. 608-09; *Hartzell,* 35 Cal.3d at pp. 906-09; *Butt*, 4 Cal.4th at p. 681; *O'Connell v. Superior Ct.* (2006) 141 Cal. App. 4th 1452, 1482; *Piper*, 193 Cal. at p. 670.) For example, in *Serrano I* the court held that the education guaranteed to students is one that provides all students opportunities to gain the skills necessary to enter "the chambers of science, art and the learned professions, as well as into fields of industrial and commercial activities." (*Serrano I,* 5 Cal. 3d at p. 607 (citing *Piper*, 193 Cal. at p. 673.) The court further held that the fundamental "right to an education today means more than access to a classroom" and the education provided must be of sufficient quality to provide students with the skills necessary to "participate in the social, cultural and political activity of our society." (*Id.* at p. 606, citations omitted; see also *O'Connell*, 141 Cal.App.4th at p. 1482 [California's public school system exists "not [simply] to endow students with diplomas, but to equip [students] with the

substantive knowledge and skills they need to succeed in life"].) In short, these decisions make it clear that the fundamental right to an education is also a substantive right – every California schoolchild has the right to an education that provides them the opportunity to participate successfully in the economic, social, and civic life of the state.

Similarly, courts have interpreted the term "system of common schools" in section 5 to have a qualitative component – it must be a functional system that applies to all schools in the State. (See *Serrano I,* 5 Cal. 3d at p. 595 ["the word 'system,' as used in article IX, section 5, implies a 'unity of purpose as well as an entirety of operation, and the direction to the legislature to provide 'a' system of common schools means one system which shall be applicable to all the common schools within the state.'"] (quoting *Kennedy*, 97 Cal. at p. 432).)

The State has implemented its obligations under sections 1 and 5 by establishing a comprehensive, standards-based education program that defines the specific academic knowledge, skills, and abilities that all public schools are expected to teach and that all students are expected to learn. (Compl. at ¶¶ 61-68.) Consistent with the cases establishing students' qualitative right under article IX, the Legislature specifically directed that the academic content standards "shall be based on the knowledge and skills that pupils will need in order to succeed in the information-based, global economy of the 21st century." (Ed. Code, § 60602.) Thus, the State has defined the education that all students are currently entitled to receive, and this Court may afford considerable deference to the legislative scheme establishing the contours of the substantive right.[5]

Moreover, California's comprehensive, standards-based education program is the core of the current public school system (Compl. at ¶¶ 63-67) and is "common" in the manner contemplated in *Kennedy* and *Serrano.* Consequently, the State's school finance scheme must be coherently connected to the standards-based education program so that the "system" functions with a "unity of purpose as well as an entirety of operation," and so that the education program is

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[5] Cf. *Lobato v. State* (Colo. 2009) 218 P.3d 358, n.17 ("[T]he General Assembly has enacted additional education reform statutes with proficiency targets and content standards, which the plaintiffs in this case assert, and we agree, may also be used to help evaluate the constitutionality of the legislature's actions.").

provided in "all the common schools within the State." (*Kennedy,* 97 Cal. at p. 432; *Serrano I,* 5 Cal.3d at p. 595.)

Defendants, however, attempt to construe the *Serrano* cases and *Wilson v. State Board of Education* (1999) 75 Cal.App.4th 1125, 1135, to prohibit the application of article IX to the school finance system and to the standards-based education program. In so doing, defendants limit *Serrano* and expand *Wilson* in ways that are inconsistent with the facts and holdings of those cases.

In *Serrano,* plaintiffs challenged a school finance system that made the educational resources available to students dependent on the tax wealth of the students' districts under both equal protection provisions and section 5 of article IX. The section 5 claim asserted that the State's finance policies created separate "systems" (based on a district's tax wealth) rather than the "common system" required by section 5. The Supreme Court agreed with plaintiffs that a funding system that results in wealth-based differences would violate equal protection guarantees, but upheld the demurrer to the section 5 claim to avoid a direct conflict with the text of former section 6. (*Serrano I,* 5 Cal.3d at pp. 595-96.) At that time, section 6 directed the Legislature to "provide for the levying annually by the governing board of each county . . . of such school district taxes, at rates . . . as will produce in each fiscal year such revenue as the governing board thereof shall determine is required . . . ." (Former Cal. Const., art. IX, § 6.) In *Serrano I* the Court characterized plaintiffs' claims as seeking "equal spending," and in *Serrano II* the Court concisely explained the reason why the section 5 claim had to be rejected:

> At pages 595 and 596 of our opinion in *Serrano I*, in rejecting plaintiffs' contention that the system there alleged to exist was violative of the provisions of article IX, section 5 (requiring 'a system of common schools'), we observed that former article IX, section 6, paragraph 6, the provision here at issue, 'specifically authorizes the very element [variation in school district expenditures] of which plaintiffs' complain.

(Serrano II, 18 Cal.3d at pp. 770,771, citations removed.) The text of former section 6 is no longer part of the constitution. Plaintiffs do not challenge the State's failure to provide "equal spending" but its failure to provide a finance system that allows students to master the education program that the State deems necessary to succeed in the 21st century. *Serrano's* holding that section 5 does not support an "equal spending" claim cannot be stretched to support the State's

assertion that its education finance system can never be challenged for failing to meet the requirements of article IX.[6]

The State also cites *Serrano* in an attempt to limit the requirements of section 5 to only uniformity in the prescribed course of study and progression from grade to grade. (Dem. at 7, n.5.) However, *Serrano* also cited *Piper*, which stated that each grade "forms a working unit in a comprehensive plan of education" and must be "preparatory" with the entire system purposefully aimed to "afford [its students] an entrance into schools of technology, agriculture . . . and the University of California." (*Piper*, 193 Cal. at p. 673.) While plaintiffs dispute that *Serrano* and *Piper* support the narrow construction of section 5 given by the State, the current system fails to meet even the requirements the State acknowledges. The statewide academic standards identify the skills needed to be mastered at each level in order to progress through the system and, ultimately, to be prepared for college or employment. Failure to master skills (*i.e.*, reach proficiency) at one level prevents a student from moving forward as contemplated by the system. Failure to reach proficiency leaves students unprepared for college or employment. The State's failure to provide a funding system that ensures that each student will have the resources necessary to master those skills and move to the next level *is* a failure to ensure the kind of progression and preparation for work or higher education envisioned by *Serrano* and *Piper*.

Wilson supports the plaintiffs in this regard, as it acknowledges that changes to the educational program in the last decade (*i.e.*, adoption of statewide standards and accountability measures) have had the effect of requiring uniformity as to key ingredients of the "system," *e.g.*, the requirement that the education program be provided on an equal basis to all without cost; the requirement that all schools provide adequately trained teachers and minimum instructional time; the fact that all students must "be geared *to meet the same state standards*;" and *measurement of student progress by standardized assessments*. (*Wilson*, 75 Cal.App.4th at pp. 1135, 1137-38,

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[6] *Butt* also supports plaintiffs. In *Butt*, the Court concluded that the probable equal protection violation made it "unnecessary to address claims that a State duty of intervention may also have arisen under the 'free school' clause." (*Butt*, 4 Cal.4th at p. 693.) In its analysis, however, the Court rejected the State's argument that its obligations under article IX extended only to keeping school doors open for six months each year. (*Id.* at p. 685.)

italics added.) Thus, *Wilson* recognized that the State has itself defined critical elements of the constitutionally required "system." Contrary to the State's inference, plaintiffs do not seek to make each element of the State's required program a constitutional requirement, but rather to ensure that the core elements of the standards-based education program are available to all students throughout the public school system.

In sum, California cases establish that education is a fundamental and substantive right of every school child. Implementing its article IX obligations, the State has established a standards-based education program that defines the academic skills and knowledge necessary for success in the 21st century, and thus provides the contours and critical elements of the substantive right. California cases also require a coherent, functional relationship between the State's school finance scheme and the standards-based education program, so that the public school system functions with a "unity of purpose as well as an entirety of operation," and so that the education program is provided in "all the common schools within the State." (*Kennedy,* 97 Cal. at p. 432; *Serrano,* 5 Cal.3d at p. 595.) This Court may properly use the State's own standards as evidence of the constitutionally required education program, and the State's own assessments as a measurement of the State's success in ensuring that all students have an opportunity to realize the promised educational program. The duty to provide and support the system of common schools requires the State to operate a funding system that ensures all students will have access to the State's educational program The substantive right to an education, and the obligation to provide a functional public school system, are related – the State cannot operate its school finance system in a manner that violates the substantive rights of students.

3. Majority of Non-California Authority Suggests Article IX Must Be Interpreted to Provide Substantive Rights and Enforceable Duties.

This Court may look to the decisions of other state courts that have interpreted similar constitutional provisions because where "words are used which are employed in a certain sense in the constitutions or statutes of other States . . . . it is proper to consider them as employed in the same sense in our Constitution." (*County of Sacramento v. Hickman* (1967) 66 Cal.2d 841, 850, italics omitted; see also *Arcadia Unified Sch. Dist. v. State Dept. of Ed.* (1992) 2 Cal.4th

251, 261.) In fact, the framers of the Education Article took the language for Article IX, Section 1 directly from a half dozen other constitutions. (See Debates and Proceedings in the Convention of Cal. On Formation of State Const. (1881) p. 1087 (statement of Mr. Winans).)

At least 21 state supreme courts have held that their education articles guarantee students substantive educational opportunities, and allowed plaintiffs to bring challenges to state funding policies alleged to violate those substantive rights.[7] Many of those cases interpreted constitutional provisions with language very similar to that of California's education article. For example, in *Leandro v. State* (1997) 346 N.C. 336, the North Carolina Supreme Court interpreted N.C. Const., art. IX, §§ 1, 2: "Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools, libraries, and the means of education shall forever be encouraged" and "the General Assembly shall provide . . . for a general and uniform system of free public schools." Based on that language, the court held that "the right to education provided in the state constitution is a right to a sound basic education, [which] prepar[es] students to participate and compete in the society . . . ." (*Leandro*, 346 N.C. at p. 345.)

B. State Violates Children's Rights to Equal Protection of the Law

The State is denying individual student plaintiffs and California schoolchildren equal protection of the laws in two separate ways. First, education is a fundamental interest and any child denied equal access to the State's education program and an equal opportunity to become proficient according to the State's education standards is being denied equal protection of the

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[7] **Arizona**: *Roosevelt Elementary Sch. Dist No. 66 v. Bishop* (Ariz. 1994) 877 P.2d 806; **Arkansas**: *Tucker v. Lake View Sch. Dist. No. 25* (Ark. 1996) 917 S.W.2d 530; **Colorado:** *Lobato v. Colorado* (Colo. 2009) 218 P.3d 358; **Connecticut:** *Connecticut Coalition for Educ. Justice, Inc. v. Rell* (Conn. 2010) 990 A.2d 206; **Idaho:** *Idaho Schs. For Equal Ed. Opportunity* (Idaho 1998) 976 P.2d 913; **Kansas**: *Montoy v. State* (Kan. 2005) 120 P.3d 306; **Kentucky**: *Rose v. Council for Better Ed.* (Ky. 1989) 790 S.W.2d 186; **Massachusetts**: *McDuffy v. Sect. of the Office of Ed.* (Mass. 1993) 615 N.E.2d 516; **Montana:** *Columbia Falls Elementary Sch. Dist. No. 6 v. State* (Mont. 2005) 109 P.3d 257; **New Hampshire**: *Claremont Sch. Dist. v. Governor* (N.H. 1997) 703 A.2d 1353; **New Jersey:** *Abbott v. Burke* (N.J. 1990) 575 A.2d 359; **New York**: *Campaign for Fiscal Equity v. State* (N.Y. 2003) 801 N.E. 2d 326; **North Carolina:** *Leandro v. State* (N.C. 1997) 488 S.E.2d 249; **Ohio**: *DeRolph v. State* (Ohio 1997) 677 N.E.2d 733; **South Carolina**: *Abbeville County Sch. Dist. v. State* (S.C. 1999) 515 S.E.2d 535; **Texas**: *Edgewood Indep. Sch. Dist. v. Kirby* (Tex. 1989) 777 S.W.2d 391; **Vermont**: *Brigham v. State* (Vt. 1997) 692 A.2d 384; **Wisconsin:** *Vincent v. Voight* (Wis. 2000) 614 N.W.2d 388; **Washington:** *Seattle Sch. Dist. No. 1 v. State* (1978) 90 Wash.2d 476; **West Virginia:** *Pauley v. Kelly* (W.Va. 1979) 255 S.E.2d 859, 870; **Wyoming**: *Campbell County Sch. Dist. v. State* (Wyo. 1995) 907 P.2d 1238.

law. Second, the State is violating California's equal protection guarantee by failing to provide discrete groups of students – economically disadvantaged children, racial minority children, and English learners – the educational resources they need to have an equal opportunity to learn the academic material prescribed by the State, thereby failing to provide basic education equality to such children.

Defendants do not argue that the school finance system cannot be challenged on equal protection grounds. Instead, they assert that Plaintiffs' factual allegations are insufficient because the complaint "must allege that defendants were motivated by discriminatory animus;" because Plaintiffs fail "to identify any disparities relating to the allocation of education resources between students or between school districts;" and because "there are no allegations that any of the Student/Plaintiffs have suffered or are about to suffer any 'real and appreciable impact' in the form of any 'extreme and unprecedented disparity in education services or progress.'" (Dem. at 28-29 (citing *Butt*, 4 Cal. 4th at pp. 686-87).) These assertions misunderstand the complaint and the law of equal protection.

1. Allegations of Discriminatory Animus Are Not Required Under California State Equal Protection Law.

The equal protection clause of the California Constitution protects citizens against the State's infringement of fundamental rights, even if the state action does not discriminate against suspect classes or is not borne out of animus. As emphasized in *Butt*, equal protection applies to either "State maintained discrimination whenever the disfavored class is suspect *or* [when] the disparate treatment has a real and appreciable impact on a fundamental right or interest." (*Butt*, 4 Cal. 4th at pp. 685-86, italics in original.) "[T]he absence of purposeful conduct by the State [does] not prevent a finding that the State system for funding public education had produced unconstitutional results." (*Id.* at p. 682 (citing *Serrano I,* 5 Cal. 3d at pp. 603-04).) As a result of its misapprehension of the law and the present claims, the State misguidedly attempts to bring law applicable to intentional discrimination against suspect classes into this case.

The State relies heavily on language from *Sanchez v. California* (2009) 179 Cal.App.4th 467, which involved allegations of discrimination against a suspect class. The court in Sanchez

dismissed the claims for lack of an identified suspect class, and then offered observations about role of animus in those circumstances. (*Id.* at pp. 488-89.) In contrast, in *Butt*, the Supreme Court unequivocally rejected similar arguments by the State that equal protection does not apply where there are no allegations of discrimination against a suspect class, holding that "the absence of purposeful conduct by the State [does] not prevent a finding that the State system for funding public education had produced unconstitutional results." (*Butt*, 4 Cal.4th at p. 682 (citing *Serrano I*, 5 Cal.3d at pp. 603-04).) Instead, "denials of basic educational equality on the basis of district residence are subject to strict scrutiny" without regard to animus or discrimination against suspect classifications. (*Id.* at p. 692.) Plaintiffs do not need to allege animus to state an equal protection claim based on the on-going denial of basic educational equality.

2. State's School Finance System Impinges and Has a Real and Appreciable Impact on Student Plaintiffs' and California schoolchildren's Fundamental Right to an Education.

"[B]oth federal and California decisions make clear that heightened scrutiny applies to State-maintained discrimination whenever . . . the disparate treatment has a real and appreciable impact on a fundamental right or interest." (*Butt*, 4 Cal.4th at pp. 685-86.) In the leading cases on the right to basic educational equality under the California Constitution, the equal protection claims were grounded in the fundamental right to an education, (*Id.* at p. 692; *Serrano I*, 5 Cal.3d at pp. 604-10; *Hartzell*, 35 Cal. 3d at pp. 906-09; *O'Connell*, 141 Cal App.4th at p. 1467), with only *Serrano* additionally identifying a suspect classification of persons who were subjected to disparate treatment. (*Serrano I*, 5 Cal.3d at pp. 597-604.) Plaintiffs need only plead that children are deprived of resources sufficient to provide them with the "prevailing statewide standard" of educational opportunity. (See *Butt*, 4 Cal.4th at pp. 686-87.) In *Butt*, the California Supreme Court again ruled in favor of plaintiff students on their equal protection claim based solely on "unjustified discrimination against District students compared to those elsewhere in California." (*Id.* at p. 674.) There, the plaintiffs made no allegations of discrimination against a suspect class. Similarly, in *O'Connell*, the finding of a likelihood of success on the merits of an equal protection claim rested on evidence of the "disparate effect of . . . scarcity of resources on schools serving economically challenged neighborhoods and communities," and found simply

that "students in economically challenged communities have not had an equal opportunity to learn . . . ." (*O'Connell*, 141 Cal.App.4th at p. 1465.)

Here, Plaintiffs sufficiently allege that, due to the State's dysfunctional and insufficient school finance system, districts are unable to provide students the resources necessary to ensure that every student receives her fundamental right to an education and thereby denies or threatens to deny California's children equal educational opportunity. The complaint alleges that California's children do not have the required preparation or opportunities to meet statewide proficiency standards, i.e., the prevailing statewide standards, as provided by the Legislature. (Compl. at ¶¶ 70 – 80, 97, 101, 106 – 131.)

3. Economically Disadvantaged, English Learner and Racial Minority Plaintiffs and California Schoolchildren Are Being Denied Their Fundamental Right to an Education.

The Complaint alleges many examples of how the economically disadvantaged children, English learners, and racial minorities throughout California are denied their rights to basic educational equality because their educational opportunities fall "fundamentally below prevailing statewide standards." (*Butt*, 4 Cal. 4th at pp. 686-87.) The complaint makes numerous allegations regarding the failure of the State to provide sufficient funding to ensure that all children have an opportunity—based on their needs—to become proficient in the educational standards that the State itself has made the prevailing standard for California's public school system. (See Compl. at ¶¶ 106-22). It also alleges specific harm to economically disadvantaged, English learners, and racial minority students from these shortfalls, much like the plaintiffs in *O'Connell*. (See *O'Connell*, 141 Cal.App.4th at p. 165; see, e.g., Compl. at ¶¶ 109, 111.)

C. The Constitutional Rights and Obligations Under Articles IX and XVI Are Not Nullified By Proposition 98

Proposition 98 was the 1988 voter response to the gradual drop in California's per pupil spending following the adoption of Proposition 13, which dramatically reduced local property tax revenues and the increased competition for State revenues. (Cal. Const., art. XVI, § 8(b).) Proposition 98 establishes a *minimum* amount of monies to be appropriated annually from the

General Fund each year for education: "[T]he monies to be applied by the state for the support of school districts and community college districts *shall be not less than*" the greater of the tests specified therein. (*Id.*) While Proposition 98 serves as a critical backstop against wholesale cuts to education, there is no support for the State's assertion that when voters adopted Proposition 98 they intended to define or limit the State's constitutional duties under articles IX and XVI.[8]

Interpretation of a constitutional initiative amendment must be guided primarily by the voters' intent, including a review of "the natural and ordinary meaning of its words." (*City and County of San Francisco v. County of San Mateo* (1995) 10 Cal.4th 554, 562-63.) Proposition 98 provides that funding from the general fund shall be "not less than" a certain amount each year. Courts have construed it as requiring a "minimum" level of funding. (*California Teachers' Association v. Hayes* (1992) 5 Cal.App.4th 1513, 1518-19.) Webster's Dictionary defines "minimum" to mean "the *least* quantity assignable, admissible, or possible." (Italics added.) By its terms, therefore, Proposition 98 only sets out formulas by which a floor for General Fund appropriations for public schools is set each year. Nor do Defendants suggest otherwise, using references to "minimum" funding several times in their demurrer. (See, e.g., Dem. at 9:17.)

Defendants' interpretation of Proposition 98 would read critical rights and duties contained in article IX (and subdivision (a) of article XVI, section 8) out of the Constitution – an interpretation disfavored by the courts. "In choosing between alternative interpretations of constitutional provisions we are further constrained by our duty to harmonize various constitutional provisions in order to avoid the implied repeal of one provision by another." (*City and County of San Francisco*, 10 Cal.4th at p. 563 (citing *Serrano I,* 5 Cal.3d at p. 596).) There is such a "strong . . . presumption against implied repeals" in California that courts will "conclude one constitutional provision impliedly repeals another *only when the more recently enacted of two provisions constitutes a revision of the entire subject* addressed by the

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[8] While the complaint does not allege a violation of Proposition 98, it does allege that the State has systematically manipulated and undermined the Proposition 98 variables in ways that have frustrated the purpose of the initiative. (Compl. at ¶¶ 102-105.)

provisions." (*Id.* at p. 563, italics added.)

Proposition 98 did not purport to "constitute[] a revision of the entire subject addressed by" article IX. It did not amend article IX and does not refer to article IX.[9] Nor did it use any of the terminology from article IX. Proposition 98 simply sets a minimum amount to be appropriated each year from the general fund; it does not suggest that its formulas were designed to satisfy the State's substantive obligations under article IX. In fact, courts have specifically interpreted Proposition 98 to avoid conflict with other constitutional provisions and ensure that the State fulfills its constitutional duties that flow from other provisions of the Constitution:

> Another principle of constitutional adjudication requires that the constitutional provisions added by Proposition 98 be considered in light of all other relevant provisions of the Constitution, including those that contain, define, and limit the status of school districts and their relationship to the state. "The initiative amendment to the [C]onstitution itself must be interpreted in harmony with the other provisions of the organic law of this state of which it has become a part."

(*California Teachers Ass'n v. Hayes* (1992) 5 Cal.App.4th 1513, 1532 (citing *Galvin v. Board of Supervisors* (1925) 195 Cal. 686, 692).)

Two of the fundamental elements in the relationship between the State and districts are the responsibility for defining the educational program and providing for the revenues to deliver that program. Both have changed significantly over the past decades. Proposition 98 pre-dated California's adoption of a comprehensive, standards-based education program applicable to all public schools and students, and the corresponding need to design and enact a finance system to support that program. In short, Proposition 98 does not relieve the State of its constitutional obligation to provide all students with the educational program that the State itself promises:

> Since Proposition 98 did not alter the state's role in education, the Constitution continues to make education and the operation of the public schools a matter of statewide rather than local or municipal concern...*The Legislature still has ultimate and nondelegable responsibility for*

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[9] It also does not amend the "first set apart language" in article XVI, section 8(a). While Proposition 98 immediately follows section 8(a), it does not purport to define that language – which it could easily have done. Nor can it be intended that satisfaction of 8(b) automatically satisfies 8(a), as such an interpretation would work an implied repeal of 8(a).

education in this state.

(*Id.* at p. 1533, internal citations omitted, italics added.)

The Supreme Court of Colorado recently analyzed the impact of a "minimum funding" provision similar to Proposition 98. (*Lobato v. State* (2009) 218 P.3d 358.) Plaintiffs in that case argued that Colorado's education system violated the Colorado Constitution, which requires the state to establish and maintain "a thorough and uniform system of free public schools," because the system "is underfunded and allocates funds on an irrational and arbitrary basis." (*Id.* at pp. 362-63.) The Court rejected the argument that "Amendment 23," an initiative that provided for minimum annual increases in funding, satisfied the level of state funding required by Colorado's education clause. (*Id.* at p. 375.) The initiative was designed to reverse the decline in education spending that followed the adoption of limits on state revenues and spending, but "was not intended to qualify, quantify, or modify the 'thorough and uniform' mandate expressed in the education clause." (*Id.* at p. 376.) The same is true of Proposition 98.

D. Plaintiffs' Claims are Justiciable and Do Not Violate Separation of Powers Doctrine.

The claims and relief requested by Plaintiffs do not ask the Court to render policy choices or value determinations in violation of the political question or separation of powers doctrines, but rather leave discretion to the State as to how it chooses to meet its constitutional obligations. This Court must exercise its duty - as specifically envisioned by separation of powers - to review the constitutionality of the education finance system as it currently exists, and enforce the Constitutional requirements for the system of public schools. (See, e.g., *Katzenburg v. Regents of Univ. of Cal.* (2002) 29 Cal.4th 300, 331 ["The California Constitution is the supreme law of our state . . . and safeguards individual rights and liberties."]; *Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243, 1252 [the court "must enforce the provisions of our Constitution and 'may not lightly disregard or blink at . . . a clear constitutional mandate'"], citations omitted; *O'Connell*, 141 Cal.App.4th at p. 1475 ["In both *Serrano II* and *Butt*, as well as in *Crawford*, the injunctive relief issued by the trial courts, and upheld by the Supreme Court, was limited to directing the legislative and executive branches to find a way to redress the particular

constitutional violation identified by the judicial branch, by providing the affected students with the funding needed to ensure their equal access to educational opportunity."].) The Court's adjudicatory power is proper and is derived from its role as interpreter of the Constitution.

1. California's Separation of Powers Doctrine Does Not Preclude Court Review or the Relief Sought by Plaintiffs.

Defendants' contention that this Court cannot provide the relief sought in the Complaint without violating the separation of powers doctrine (Cal. Const., art. III, § 3.) misreads the complaint. Plaintiffs do not ask the Court to order a specific appropriation or to redesign the school finance system. A ruling in this matter does not require the Court to become involved in the minutiae of how an educational funding system should be structured. Rather, Plaintiffs request that this Court serve its important—and limited—constitutional role of declaring the State's educational finance system unconstitutional and ordering the State to develop a new finance system consistent with its constitutional obligations.[10]

The courts have engaged in this very review before. In *Serrano II*, the trial court issued an order finding that "the [education financing] system before it was violative of our state constitutional standard" of equal protection, and ordered that the violation be remedied by bringing the school finance system into constitutional compliance. (*Serrano II*, 18 Cal. 3d at p. 749.) But the court cautioned that its order "was not to be construed to require the adoption of any particular system of school finance, but only to require that the plan adopted comport with the requirements of state equal protection provisions." (*Id.* at p. 750.) Agreeing with the trial court's approach, the California Supreme Court upheld the trial court's order and noted:

> We decline defendants' invitation to address ourselves to the constitutional merits of the various financing alternatives and combinations thereof which have been developed in the scholarly literature on this subject. Our concern today is with the system presently before us. We are confident that the

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[10] In a footnote, the State seems to suggest that this Court should not rule on the constitutionality of the school finance system because non-finance related reforms may also be needed to "dramatically improve student achievement." (Dem. at 19:24-20:28, fn. 9) Regardless of whether the State's assertion is accurate, the State has broad authority to enact education reforms and cannot use its failure to do so as an excuse to operate an unconstitutional school finance system.

> Legislature, aided by what we have said today and the body of scholarship which has grown up about this subject, will be able to devise a public school financing system which achieves constitutional conformity from the standpoint of educational opportunity through an equitable structure of taxation. (*Id.* at p. 775 n. 54.)[11]

Like *Serrano II*, Plaintiffs seek an order from the Court directing the State to reform California's school finance system such that it passes constitutional scrutiny. Defendants repeatedly misconstrue the Complaint, declaring it asks this Court to "order the appropriation of more money for California's schools." (See, e.g., Dem. at 11:4-5.) Defendants further suggest that the Court is being asked to override "both the Legislature and the People to compel the allocation of money to California schools and to order the re-design of California's entire education finance system." (Dem. at 13:1-2.) The prayer for relief contains no such request. Rather, Plaintiffs seek an injunction ordering the State to comply with its constitutional obligations by implementing a coherent system of public school finance that supports the educational program all students are entitled to receive. (See Compl. at 56:17-18.) California law does not prohibit such a judicially-ordered scheme. Indeed, the Supreme Court already approved such an injunction in *Serrano II*. Defendants essentially concede this point, making no attempt to distinguish the facts of *Serrano II* from Plaintiff's allegations.

Without California law on their side, Defendants resort cite a non-binding, minority jurisprudence from other states, spending more than nine pages surveying the only seven cases[12] in which courts, citing separation of powers, justiciability, and/or political question doctrine

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[11] In *Butt*, the trial court issued an order directing the State "to ensure 'by whatever means they deem appropriate' that . . . students [in the district] would receive their educational rights," but "made clear that '[h]ow these defendants accomplish this is up to the discretion of defendants . . . .'" (*Butt*, 4 Cal.4th at p. 694.) The California Supreme Court upheld the trial court's finding that "the State has a constitutional duty . . . to prevent the budgetary problems of a particular school district from depriving its students of 'basic' educational equality,' and that a preliminary injunction was proper. (*Id.* at p. 674.) However, the Court overturned the portion of the trial court's injunction that provided financing for the district's operations by diverting funds that the legislature had intended for another purpose. (*Id.* at p. 698.) Plaintiffs seek no similar diversion or appropriation of funds in their complaint.

[12] A Florida trial court recently distinguished the ruling in *Coalition for Adequacy and Fairness in Sch. Funding, Inc.*, 680 So.2d at p. 400 (cited by the State) as nonbinding and, relying on a recent amendment to the Florida Constitution, found a challenge to the Florida school finance system justiciable. (*Citizens for Strong Schools, Inc. v. Florida State Bd. of Ed.* (Fla. Cir. Ct. Aug. 20, 2010) Case No. 09-CA-4534.)

concerns, declined to address the merits of plaintiffs' challenges to state school finance schemes.[13] While cautioning that "[t]his court should avoid . . .the 'swamp,' and 'morass' of constitutional challenges to public school funding systems," (Dem. at 13:10-11.), they ignore the fact that California courts have already shown their willingness to enforce the State's constitutional obligations for education (unlike the seven states cited).

To the extent the Court looks to other states for guidance on justiciability, the Court will find that in more than three quarters of the states whose supreme courts have considered a school finance challenge – 25 states/cases – neither justiciability nor separation of powers concerns prevented the courts from ruling on the constitutionality of the state's educational finance system.[14] (See, e.g., *Lake View Sch. Dist. No. 25,* 91 S.W.3d at p. 507 ("This Court's refusal to review school funding under our state constitution would be a complete abrogation of our judicial

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[13] Defendants also cite *Ex Parte James* (2002) 836 So.2d 813 to argue that constitutional school finance claims are non-justiciable, but they fail to mention that the Alabama Supreme Court previously issued opinions holding that the constitutionality of the state's school finance system was justiciable and that the state had to comply with a lower court's ruling that the system was unconstitutional. (*Op. of the Justices*, No. 338 (Ala. 1993) 624 So.2d 107, 109.) The 2002 ruling did not disturb that liability and separation-of-powers finding; it only vacated the court's remedial order.

[14] State supreme courts in 25 states/cases have found challenges to state school finance systems justiciable under state constitutional provisions: *Connecticut Coalition for Educ. Justice, Inc. v. Rell* (Conn. 2010) 990 A.2d 206 (**Connecticut**); *Lobato v. Colorado* (Colo. 2009) 218 P.3d 358 (**Colorado**); *Columbia Falls Elementary Sch. Dist. No. 6 v. State* (Mont. 2005) 109 P.3d 257 (**Montana**); *Lake View Sch. Dist. v. Huckabee* (2002) 351 Ark. 31 (**Arkansas**); *Campaign for Fiscal Equity v. State* (N.Y. 2003) 801 N.E.2d 326 (**New York**); *Vincent v. Voight* (Wis. 2000) 614 N.W.2d 388 (**Wisconsin**); *Abbeville County Sch. Dist. v. State* (S.C. 1999) 515 S.E.2d 535 (**South Carolina**); *Claremont Sch. Dist. v. Governor* (N.H. 1997) 703 A.2d 1353 (**New Hampshire**); *Leandro v. State* (N.C. 1997) 488 S.E.2d 249 (**North Carolina**); *DeRolph v. State* (Ohio 1997) 677 N.E.2d 733 (**Ohio**); *Brigham v. State* (Vt. 1997) 692 A.2d 384 (**Vermont**); *Campaign for Fiscal Equity v. State,* (N.Y. 1995) 655 N.E.2d 661 (**New York**); *Campbell County Sch. Dist. v. State* (Wyo. 1995) 907 P.2d 1238 (**Wyoming**); *Roosevelt Elementary Sch. Dist No. 66 v. Bishop* (Ariz. 1994) 877 P.2d 806 (**Arizona**); *Unified Sch. Dist. No. 229 v. State*, (1994) 256 Kan. 232 (**Kansas**); *Opinion of the Justices,* (Ala. 1993) 624 So.2d 107, 109 (**Alabama**); *McDuffy v. Sect. of the Office of Ed.* (Mass. 1993) 615 N.E.2d 516 (**Massachusetts**); *Small Sch. Sys. v. McWherter* (Tenn. 1993) 851 S.W.2d 139 (**Tennessee**); *Idaho Sch. For Equal Educ. Opportunity v. Evans* (1993) 123 Idaho 573 (**Idaho**); *Abbott v. Burke* (N.J. 1990) 575 A.2d 359 (**New Jersey**); *Rose v. Council for Better Ed.* (Ky. 1989) 790 S.W.2d 186 (**Kentucky**); *Edgewood Indep. Sch. Dist. v. Kirby* (Tex. 1989) 777 S.W.2d 391 (**Texas**); *McDaniel v. Thomas*, (1981) 248 Ga. 632 (**Georgia**); *Pauley v. Kelly* (W.Va. 1979) 255 S.E.2d 859, 870 (**West Virginia**); *Seattle Sch. Dist. No. 1 v. State* (1978) 90 Wash.2d 476 (**Washington**).

Lower courts in the following four states have found similar claims justiciable: *Citizens for Strong Schools, Inc. v. Florida State Bd. of Ed.* (Fla. Cir. Ct. Aug. 20, 2010) Case No. 09-CA-4534 (**Florida**); *Kasayulie v. State* (Sept. 1, 1999) 3AN-97-3782 CIV (**Alaska**); *Zuni Sch. Dist. v. State* (McKinley County Dist. Ct. Oct. 14, 1999) No. CV-98-14-11 (challenging adequacy of facilities funding) (**New Mexico**); *Bradford v. Maryland St. Bd. of Ed.* (Cir. Ct. for Balt. City, Md. 1996) Case Nos. 94349958/CE189672 and 9258055/CL202151 (**Maryland**).

responsibility and would work a severe disservice to the people of this state. We refuse to close our eyes or turn a deaf ear to claims of a dereliction of duty in the field of education.").)

2. Judicial Review of Plaintiffs' Claims Does Not Violate the Political Question Doctrine and Can be Based on Judicially Manageable Standards.

The "constitutionality of an act is inherently a judicial rather than [a] political question and neither the Legislature, the executive, nor both acting in concert can validate an unconstitutional act or deprive the courts of jurisdiction to decide questions of constitutionality." (*Schabarum v. Cal. Legislature* (1998) 60 Cal.App.4th 1205, 1215.) The political question doctrine—which flows from separation of powers principles—does not encroach on the role of the judiciary as the ultimate interpreter of the Constitution nor its power to compel the legislature and executive branches to act in accordance with such interpretations, but rather carves out only policy choices and value determinations for discretion of the legislature and executive. (*Id.* at pp. 1213-14.) The doctrine can be employed to prevent a court from deciding a controversy on its merits only when "complete deference to the role of the legislative or executive branch is required and there is nothing upon which a court can adjudicate . . . ." (*Id.* at p. 1214.) Such deference is not required here. Plaintiffs only request the Court to determine the constitutionality of the State's education finance system, not to make policy determinations or value judgments about the content of that education. The relief sought by Plaintiffs would allow the State to retain its authority to make those policy determinations.

Defendants broadly contend that "there is [sic] also a 'lack of satisfactory criteria for a judicial determination of' whether California's school financing system is 'intentionally, rationally, and demonstrably aligned' with California's educational goals." (Dem. at p. 13 (citing *Baker v. Carr* (1962) 369 U.S. 186.) Plaintiffs do not ask this Court to determine the elements of the constitutionally required educational program or the precise design of a constitutional finance system. They acknowledge the State has established a comprehensive program designed to provide the level of educational quality and content necessary to produce informed and engaged citizens as required by article IX. (Compl. at ¶¶ 61-68.) It has made the policy decision that the statewide academic standards define the "knowledge and skills that pupils will need in order to

succeed in the information-based, global economy of the 21st century" and represent "the specific academic knowledge, skills, and abilities that all public schools in this state are expected to teach and all pupils expected to learn in each of the core curriculum areas, at each grade level tested. (Ed. Code §§ 60602, 60603.)

The Court may use these legislatively determined standards as guidelines for determining whether or not the State has kept up and supported a system of common schools that gives all California children an equal opportunity to become proficient according to the State's standards and to participate fully in the civic and economic life of our State as is required by article IX. The recent *Lobato* decision in Colorado is instructive. (*Lobato*, 218 P.3d at p. 358.) Plaintiffs (school districts and children from those school districts) alleged that the Colorado school finance system violated the Education Clause of the State Constitution because it was underfunded and allocated funds on an irrational and arbitrary basis, preventing school districts from satisfying the "content standards and performance objectives in [state] education reform legislation" and particularly harming children with disabilities, economically disadvantaged children, and English learners. (*Id.* at pp. 363-64.) The State of Colorado argued that the plaintiffs' claims ran afoul of the political question doctrine and were non-justiciable in part because there were no "judicially manageable standards." (*Id.* at pp. 368-75.) The Colorado Supreme Court rejected the state's arguments and found that the court could look to the state's educational content standards for guidance as to the qualitative standard of education that the constitution required. (*Id.* ["the General Assembly has enacted additional education reform statutes with proficiency targets and content standards, which . . . may also be used to help evaluate the constitutionality of the legislature's actions"].) The court further held that a "ruling that the plaintiffs' claims are nonjusticiable would give the legislative branch unchecked power, potentially allowing it to ignore its constitutional responsibility to fashion and to fund a "thorough and uniform" system of public education." (*Id.* at p. 372.)

Other courts have similarly respected the legislature's competence and policymaking authority by deferring to their legislatures' standards of quality education, which delineated the specific skills that students must acquire to fulfill the education objectives outlined in those

states' respective education provisions. By doing so, those courts have avoided protracted litigation and judicial oversight because they are able to rely on data provided by statewide assessments aligned to those standards to determine whether their legislatures fulfill their constitutional obligations. California's academic standards and the assessment and accountability systems aligned to those standards are similar to those relied on by the Supreme Courts in Colorado, Idaho, North Carolina, and Kansas when those courts identified judicially manageable standards.[15] As in those cases, this Court can similarly look to the California Legislature's content standards in order to determine whether the school finance system is providing the quality of education required to satisfy the education article.

E. Defendants' Joinder and Standing Arguments Should be Rejected.

1. State of California and Governor Are Appropriate Parties.

The State argues that the case must be dismissed because no specific officer is named other than the Governor. (Dem. at p. 23.) The State appears to argue that because no one official is responsible for the totality of the State's education funding scheme, that scheme cannot be subject to constitutional challenge. This argument must be rejected.

The ultimate obligation to provide students with their right to an education, and to protect that right, belongs to the State. (See, e.g., *Serrano,* 18 Cal.3d at p. 755; *Piper,* 193 Cal. at p. 669.) Although specific state officials may manage various aspects of the day-to-day operations,

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[15] See e.g.,*Lobato*, 218 P.3d 358, n.17; *Idaho Schs. for Equal Educational Opportunity v. Evans* (1993) 123 Idaho 573, 584 ("We believe that our acknowledgement of these [legislatively-mandated academic] standards appropriately involves the other branches of government while allowing the judiciary to hold fast to its independent duty of interpreting the constitution when and as required."); *Unified Sch. Dist. No. 229 v. State*, 256 (1994) Kan. 232, 257 ["By utilizing as a base the standards enunciated by the legislature, the court will fulfill its obligations of interpreting the Constitution and of safeguarding the basic rights reserved thereby to the people."]; *Leandro v. State* (1997) 346 N.C. 336, 355 [relying on "educational goals and standards adopted by the legislature" allows court to fulfill its "duty to determine meaning of requirements of state constitution."].)

Those courts maintained their roles as interpreters by not "constitutionalizing" and adopting those legislatively-created standards as *the* constitutional minimum. Rather, the courts made clear they could find those standards unsatisfactory in the future should the legislatures dilute requirements to ensure easy compliance. Were the State to dilute content standards to the point that they would not ensure that all children had an opportunity to participate meaningfully in the economy and civic life of California, the standards would no longer be an appropriate constitutional reference point.

the State bears the ultimate responsibility of protecting children's constitutional rights because the State of California's education obligation is plenary and non-delegable. (See *Butt*, 4 Cal.4th at pp. 674, 681, 692.) *Butt v. State of California* demonstrates that it is typical to name the State as a defendant in education cases (4 Cal.4th 668.)

The Governor is also appropriately named as a defendant. While no one officer is responsible for all aspects of education in California, the Governor is vested with the "supreme executive power of the State" and responsibility for ensuring that "the law is faithfully executed." (Cal. Const., art. V, § 1; *White v. Davis, as Governor, et al.* (2003) 30 Cal.4th 528.) Plaintiffs do not seek an order directing the Governor to sign specific legislation.

The State suggests – without support – that the Legislature is an indispensable party. (Dem. at p. 23.) This argument was expressly rejected in *Serrano II,* 18 Cal.3d at pp. 751-54. And, while there may be state officers with specific education responsibilities who may also be *proper* parties to this litigation, they are not *indispensible* parties whose absence would provide grounds for dismissal of the action. (*Id.* at pp. 752-53 [discussing difference between proper parties and indispensable parties].) The State's argument should be rejected for the same reason it was rejected in *Serrano II*: the named parties (*i.e.,* the Governor and State of California) can effectively defend this case in a manner that benefits all potentially proper parties and adequately protects the interests of the State. (*Id.* at p. 753; see also Cal. Code of Civ. Proc. §§ 382, 389(a); *Countrywide Home Loans v. Super. Ct.* (1999) 69 Cal.App.4th 785, 795-98; *Bank of Cal. Nat. Ass'n v. Super. Ct.* (1940) 16 Cal.2d 516, 521 [court should be careful "to avoid converting a discretionary power or a rule of fairness in procedure into an arbitrary and burdensome requirement which may thwart rather than accomplish justice"].)

2. Plaintiffs Have Standing to Challenge the State's Failure to Provide a Constitutionally Sufficient Finance System.

In California, a plaintiff need only be "beneficially interested in the controversy." (*Holmes v. Cal. Nat. Guard* (2001) 90 Cal.App.4th 297.) A beneficial interest is "'some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large' . . . [an] interest that is concrete and actual, and not conjectural or

hypothetical." (*Holmes,* 90 Cal.App.4th at pp. 314-15 (citing *Carsten v. Psychology Examining Com.* (1980) 27 Cal.3d 793, 796).) All plaintiff here possesses such a "special interest."

In addition, each Plaintiff would be entitled to bring this action as a "citizen suit" – an *exception* to the requirement of beneficial interest that applies "where the question is one of public right and the object of the action is to enforce a public duty." (*Waste Management of Alameda County, Inc. v. County of Alameda* (2000) 79 Cal. App. 4th 1223, 1233 [beneficial interest and citizen interest with respect to public duty separate bases for establishing standing].) "Citizen suits promote the policy of guaranteeing citizens the opportunity to ensure that governmental bodies do not impair or defeat public rights." (*Connerly v. State Personnel Bd.* (2001) 92 Cal.App.4th 16, 17.) Where the object of the case is enforcement of a public right, plaintiff need not show any special interest in the result, "since it is sufficient he is interested as a citizen in having the laws executed and the duty in question enforced." (*Driving School Assn of California v. San Mateo Union High School Dist.* (1992) 11 Cal.App.4th 1513, 1518.)

As the Supreme Court has held, "[t]he purpose of a standing requirement is to ensure that the courts will decide only actual controversies between parties with a sufficient interest in the subject matter of the dispute to press their case with vigor." (*Common Cause v. Bd. of Supervisors* (1989) 49 Cal.3d 432, 439; see also *California Water & & Telephone Co. v. County of Los Angeles* (1967) 253 Cal.App.2d 16, 26 [doubts about justiciability should be resolved in favor of adjudication where public has interest in resolution of legal issue].) Those concerns are met here.[16]

a. Individual Students.

The Complaint alleges that each student plaintiff is, or is about to be, a student in the California public school system. (Compl. at ¶ 10.) It makes clear that each of these students, and other students in plaintiff districts, is suffering actual or threatened injury as a result of defendants' implementation of its dysfunctional school finance system. (See, e.g., Compl. at ¶

[16] To the extent the Court prefers more specific allegations to cure defects related to allegations of harm or standing, plaintiffs request leave to amend. Plaintiffs note such amendments could have been cured by prior amendment had the defendants met and conferred with plaintiffs about the specific nature of their grounds for demurrer.

118-31, 154 [detailing the resources and services children are being denied due to the irrational and insufficient finance system].) It further alleges that "California students are directly harmed by the State's failure to meet its constitutional obligation to support its system of public schools." (Compl. at ¶¶ 107-22.) "A complaining party's demonstration that the subject of a particular challenge has the effect of infringing some constitutional or statutory right may qualify as a legitimate claim of beneficial interest sufficient to confer standing on that party." (*Holmes*, 90 Cal.App.4th at p. 315 (citing *Associated Builders & Contractors, Inc. v. San Francisco Airports Com.* (1999) 21 Cal.4th 352, 361-363).)

These allegations are sufficient to demonstrate that the State's actions may result in "actual or threatened injury" to the student plaintiffs and that they have a beneficial interest in the litigation. (See *Trustees of Capital Wholesale Electric Etc. Fund v. Shearson Lehman Bros.* (1990) 221 Cal.App.3d 617, 621; *Poseidon Development, Inc. v. Woodland Lane Estates, LLC* (2007) 152 Cal.App.4th 1106, 1111 [on demurrer, complaint must be liberally construed and given reasonable interpretation, with a view to substantial justice between the parties].)

In re Tania S. (1992) 5 Cal.App.4th 728, cited by the State, is distinguishable. In that case, a father whose children were removed based on the threat of endangerment asserted that the Welfare & Institutions Code improperly created two classes of parents – those who injure their children out of a religious belief and those who injure their children for nonreligious reasons, although he did not claim that any religious beliefs were implicated in his case. The court denied standing to challenge the statute, concluding that the father did not have the necessary "personal stake" in the outcome of the controversy over the treatment of religious endangerment issues. Here, in contrast, student plaintiffs are intimately affected by the State's educational system and any constitutional defects in that system that affect the State's delivery of the education program. They therefore have the requisite personal stake in the resolution of the controversy. Additionally, student plaintiffs also have standing to bring a citizen suit as they unquestionably have an interest in having the State constitutional obligations to provide and support the educational system enforced. (See *Connerly,* 92 Cal. App.4th at p. 30.)

b. School District and Association Plaintiffs.

The State asserts that neither the districts nor associations have standing, relying on *Elk Grove Unified School Dist. v. Newdow* (2004) 542 U.S. 1. *Newdow* was based on federal "Article III" concerns, which are not present in the California Constitution, and on federal law governing standing, much of which "digress[es] from established California law." (*Environmental Information Protection Ctr. v. California Dep't of Forestry and Fire Prot.* (1996) 43 Cal.App.4th 1011, 1016-20; see *Stocks v. City of Irvine* (1981) 114 Cal.App.3d 520, 528-37.) The State also asserts that districts "lack standing to object to the amount of education funding that is allocated to their individual school districts," citing *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564. But the cited discussion in *Hayes* is inapt because it did not involve a challenge to school district standing and Plaintiffs are not requesting a specific amount of funding for any district. Rather, they ask the court to review the State's compliance with its constitutional duties.

Moreover, the State's assertion that school districts do not have standing to maintain a legal action against the State is belied by the numerous cases in which districts have challenged state action. For example, in *San Carlos Sch. Dist. v. State Bd. of Education* (1968) 258 Cal.App.2d 317, 323, the Court acknowledged that "the legislative power over the creation, alteration and abolition of school districts is plenary," but cautioned that it must be exercised subject to constitutional limitations and that "school districts have standing to challenge the constitutionality of acts . . . vitally affecting them." (*Id.* at p. 322.) "Where, as here, district trustees believe that legislation affecting the administration of the district is unconstitutional or is being enforced in an unconstitutional manner, they have a right to resist." (*Id.* at p. 323)[17]

Applying a similar analysis, courts have held that a local governmental entity has standing to challenge the constitutionality of a law when the entity is threatened with injury or obligation by the allegedly unconstitutional operation of the law. (*County of San Diego v. San Diego NORML* (2008) 165 Cal.App.4th 798, 816.) Standing has also been allowed for a political subdivision to

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[17] The court's analysis also identified multiple cases in which constitutional claims asserted by school districts were litigated on the merits and concluded that these precedents "necessarily imply a finding that the school district has sufficient standing to raise constitutional questions even against the state." (*Id.* at 323.)

challenge the constitutionality of a statute or regulation on behalf of its constituents "where the constituents' rights under the challenged provision are 'inextricably bound up with' the subdivision's duties under its enabling statutes." (*Central Delta Water Agency v. State Water Resources Control Bd.* (1993) 17 Cal.App.4th 621, 629-30.)

Districts have distinct obligations and are suffering real and concrete harm as the result of the State's creation and maintenance of a funding system that is disconnected from the both programmatic and student needs; they are "vitally affect[ed]" by the State's school funding system, and the rights of their students to an education that meets constitutional standards are "inextricably bound up" with their own duties under the law. The complaint alleges that the State's dysfunctional educational finance system prevents schools and school districts from ensuring that every student is provided with an equal opportunity to progress from grade to grade and to access and master the State's prescribed education program. (Compl. at ¶ 5, 107-22.) The complaint also alleges that school districts are held accountable to and may be sanctioned by the State for the failure of children to master the State's program. (*Id.* at ¶¶ 64-67.) These allegations sufficiently identify a beneficial interest.

The three plaintiff associations – California School Boards Association ("CSBA"), Association of California School Administrators ("ACSA") and the California Congress of Parents Teachers and Students ("CA PTA") – have standing as well. An association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." (*Apartment Ass'n of Los Angeles County, Inc. v. City of Los Angeles* (2006) 136 Cal.App.4th 119, 129, internal citations omitted.) The complaint alleges these facts with respect to each organizational plaintiff; the State does not challenge these allegations. (Compl. at ¶¶ 49-51.) As organizations intensely involved with education in California, CSBA, ACSA and CA PTA each have a beneficial interest in the constitutionality of the current education funding system, as do the members of each organization in their own right.

CSBA is comprised of the governing boards of nearly 1,000 school districts and county

boards of education in California. These governing board members are responsible under state law for administering the State's education program on a local level. (Ed. Code §§ 35010; 35160 et seq.) ACSA is comprised of school district superintendents and other administrative officials (e.g., principals and assistant principals). Administrators are tasked with overseeing the operation of all or part of a school or school district. Board members and administrators have a personal stake in the controversy both as citizens and public officials. CA PTA is made up of local PTA groups comprised of parents, teachers and students who are active in the education programs in their own communities. The students and their parents obviously have a direct interest in the education program provided, and teachers have a "special interest" beyond that of the general public as well. All three organizations focus on issues that have statewide consequences for public education. (Compl. at ¶¶ 49-51.)[18] The school finance system clearly is an issue of statewide consequence, thus the lawsuit clearly seeks to protect interests that are germane to each organization's purpose.

Finally, the districts, the associations (non-profit corporations), and their individual members would also be entitled to pursue a citizen suit to adjudicate the constitutionality of the State's education funding system. In *Waste Management*, 79 Cal.App.4th at pp. 750-51, the court concluded that whether a "nonhuman entity" should be allowed to pursue a citizen suit depends on the specific factual circumstances, including the entity's level of commitment or interest in the subject matter; whether the entity represents individuals who would have a beneficial interest; whether members would find it difficult or impossible to seek vindication of right individually; and whether prosecution of the suit as a citizen's suit would conflict with other public policies. (*Id.*) Those factors support standing for both the districts and education associations.[19]

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[18] In *Environmental Protection Information Center,* 43 Cal.App.4th at p. 1019, the court referenced prior litigation conducted by the parties as evidence of their level of interest. CSBA and ACSA have been parties in numerous court cases, including *CSBA v. State* (2009) 171 Cal.App.4th 1183; *CSBA v. California State Bd. of Education* (2010) 2020 WL 1692760 (unpublished, includes ACSA); *CSBA v. State Bd. of Education* (2010) 186 Cal.App.4th 1298 (includes ACSA).) The organizations have also filed *amicus* briefs in more than a dozen appellate cases. CA PTA was a party to *Dawson v. East Side Union High School Dist.* (1994) 28 Cal.App.4th 998, 1014, and filed an *amicus* brief in *California Teachers Assn. v. Hayes* (1992) 5 Cal.App.4th 1513.

[19] Plaintiffs also note that where at least one plaintiff has standing, the federal courts have allowed multiple plaintiffs to proceed without separately establishing standing. (See, e.g., *Massachusetts v. EPA* (2007) 549 U.S. 497, 518 [citing to *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.* (2006) 547 U.S. 47, 52, n. 2.].)

F. There are No Administrative Remedies to be Exhausted Because the Complaint Does Not Seek Reimbursement for Specific Mandates.

The State's argument that Plaintiffs have failed to exhaust their administrative remedies before the Commission on State Mandates misconstrues the nature of Plaintiffs' requested relief. Plaintiffs do not seek reimbursement for specific programs or services – they seek an order from this Court declaring that the current system fails to meet constitutional standards and directing the Legislature to develop a new system that meets those standards. (Compl. at ¶¶ 54-57.)

The requirement for exhaustion of administrative remedies applies only if the administrative agency has jurisdiction over the dispute and authority to grant an adequate remedy. (*County of Contra Costa v. State* (1986) 177 Cal.App.3d 62, 66-67.) The Commission on State Mandates lacks jurisdiction over Plaintiffs' claims because its jurisdiction is limited to determination whether a particular program or service constitutes a mandate under article XIII B, section 6 and, if so, the cost of the mandate. (Govt. Code, § 17500 et seq.; *Kinlaw v. State* (1991) 54 Cal.3d 326, 331-32.) Plaintiffs seek no such determination in this case. Nor could the Commission award Plaintiffs adequate relief, as it has neither jurisdiction over the State's education finance system nor the legal authority to enter the declaratory relief or injunctive relief sought by Plaintiffs. (See Cal. Const., article III, § 3.5 [administrative agencies have no authority to declare state law unconstitutional].)

V. CONCLUSION

For the reasons stated above, plaintiffs respectfully request the Court deny defendants' Demurrer as to all causes of action.

DATED: October 8, 2010

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