EDMUND G. BROWN JR.
Attorney General of California
DOUGLAS M. PRESS [SBN 168740]
Senior Assistant Attorney General
ISMAEL CASTRO [SBN 85452]
Supervising Deputy Attorney General
PAULINE GEE [SBN 74447]
ERNEST MARTINEZ [SBN 74752]
LISA TILLMAN [SBN 126424]
JOSHUA SONDHEIMER [SBN 152000]
JENNIFER A. BUNSHOFT [SBN 197306]
TRACEY ANGELOPOULOS [SBN 220095]
NIMROD ELIAS [SBN 251634]
Deputy Attorneys General
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 323-0335
Fax: (916) 324-5567
E-mail: Pauline.Gee@doj.ca.gov
Attorneys for Defendants

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.

Case No. RG10515768

Hearing Reservation No: 1094185

DEMURRER OF STATE OF CALIFORNIA AND GOVERNOR ARNOLD SCHWARZENEGGER TO COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND COMPLAINT-IN-INTERVENTION; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Date: September 14, 2010
Time: 3:00 p.m.
Dept: 17
Judge: The Honorable Steven A. Brick
Trial Date: N/A
Action Filed: May 20, 2010

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DEMURRER

Defendants, State of California[1] and Governor Arnold Schwarzenegger, jointly and severally demur to the first, second, third, and fourth causes of action in both the Complaint for Declaratory and Injunctive Relief (Complaint I) and Complaint-in-Intervention (Complaint II) (collectively referred to as the Complaints) in this matter on the following grounds:

Demurrer to the "First Cause of Action"[2]

1. The First Cause of Action fails to state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e).)

2. The First Cause of Action contains a defect or misjoinder of parties. (Code Civ. Proc., § 430.10, subd. (d).)

3. The Court has no subject matter jurisdiction over the First Cause of Action. (Code Civ. Proc., § 430.10, subd. (a).)

Demurrer to the "Second Cause of Action"

4. The Second Cause of Action fails to state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e).)

5. The Second Cause of Action contains a defect or misjoinder of parties. (Code Civ. Proc., § 430.10, subd. (d).)

6. The Court has no subject matter jurisdiction over the Second Cause of Action. (Code Civ. Proc., § 430.10, subd. (a).)

Demurrer to the "Third Cause of Action"

7. The Third Cause of Action fails to state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e).)

8. The Third Cause of Action contains a defect or misjoinder of parties. (Code Civ. Proc., § 430.10, subd. (d).)

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[1] Defendant State of California does not represent any unnamed state agencies, unnamed state officials, or the Legislature.

[2] Both the complaint and complaint-in-intervention employ the same enumeration of the same causes of action. Accordingly, this demurrer will refer and intend to apply to the enumerated causes of action in the Complaints simultaneously unless otherwise noted.

9. The Court has no subject matter jurisdiction over the Third Cause of Action. (Code Civ. Proc., § 430.10, subd. (a).)

Demurrer to the "Fourth Cause of Action"

10. The Fourth Cause of Action fails to state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e).)

11. The Fourth Cause of Action contains a defect or misjoinder of parties. (Code Civ. Proc. § 430.10, subd. (d).)

12. The Court has no subject matter jurisdiction over the Fourth Cause of Action. (Code Civ. Proc., § 430.10, subd. (a).)

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER

INTRODUCTION

Plaintiffs in these Complaints ask the court to invalidate the entirety of California's "educational finance system" and to order the Legislature to re-design an entirely new scheme for public school financing. However, while plaintiffs purport to assail the State's entire school funding "system," plaintiffs' contentions focus upon a single point: that defendants are allegedly failing to adequately fund public education. Defendants, State of California and Governor Schwarzenegger, are deeply committed to ensuring an adequate education for all California students and are sympathetic to the concerns raised by plaintiffs. However, plaintiffs' claims are simply not appropriate for judicial resolution and are foreclosed by the California Constitution, which itself defines the constitutionally adequate level of State funding for public education. Plaintiffs also fail to bring their claims against the parties responsible for establishing and maintaining the allegedly deficient school finance system. The demurrers to plaintiffs' Complaints should be sustained, and the courts and the State spared from the quagmire of a lengthy and improper legal battle over the constitutional adequacy of the State's present and future systems for funding public education.

This demurrer should be sustained without leave to amend because plaintiffs' novel legal claims are not cognizable. Plaintiffs' claims and purported remedy violate the separation of powers doctrine because, under the California Constitution and applicable case law, the

California Legislature: (1) has sole constitutional authority to appropriate funds; and (2) maintains plenary power over the public school system. Thus, adjudication of plaintiffs' claims would require the court to invade the recognized plenary authority of the State Legislature to allocate budget appropriations among competing needs, and to address the complex public policy and fiscal issues involved in providing a quality education for all California students. (See, *Grossmont Union High School District v. State Department of Education* (2008) 169 Cal.App.4th 869, 880 ["The allegation that the Legislature is not providing enough funding for special education is not a basis for a lawsuit. How much money to collect and how to spend it are matters entrusted to the Legislature, not the judiciary."].)[3]

Further, the clauses of California's Constitution invoked by plaintiffs do not create a judicially enforceable right to increased funding or to a "better designed" public school finance system. Indeed, the level of funding required by California's Constitution has already been established by California voters who amended the Constitution in 1988 through Proposition 98, to establish what would constitute a minimum level of state funding for public education.

This demurrer must also be sustained because plaintiffs have sued the wrong parties. Actions to enjoin state laws or the actions of state officials must be brought against those state officers with administrative responsibility over the laws or programs in question. Neither the "State of California" nor the "Governor of the State of California" administer or make appropriations to California's public school financing system. Defendants, therefore, have been improperly named in this litigation.

Plaintiffs also fail to allege any basis for standing to present their claims. The Complaint fails to allege that the individually named minors suffered direct injury on account of the generically alleged under-funding of California's schools. The school district and non-profit

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[3] Although the courts have addressed the obligation to provide equity or parity in state education spending and the allocation of resources under the equal protection clause of the state constitution (see, e.g., *Serrano v. Priest* (1977) 18 Cal.3d 728 (*Serrano* II) [invalidating Legislature's establishment of districts permitting inequitable spending in light of supplementation of state aid through local property taxes]; *Butt v. State of California* (1992) 4 Cal.4th 668 [early closing of school district while others remained open]), no court has held that the constitution creates a judicially enforceable adequacy standard.

corporation plaintiffs also lack standing to object to the sufficiency and distribution of funding for public schools under the California Constitution.

Finally, to the extent plaintiffs complain about the failure of the State to fund educational mandates, this Court lacks jurisdiction over these causes of action because plaintiffs have not exhausted their sole and exclusive remedies with the California Commission on State Mandates. Filing a claim with the California Commission on State Mandates is a statutorily required predicate to filing a lawsuit.

Accordingly, defendants' demurrers should be sustained without leave to amend.

STATEMENT OF FACTS AND OF THE CASE

A. Overview of California's Education Finance System

In *Butt v. State*, *supra*, 4 Cal. 4th 668, 679, fn. 11, the California Supreme Court described the State's education finance scheme as follows: "The funding scheme for public education is complex [. . .] 'The Legislature has attempted to equalize school district funding . . . by the use of a 'base revenue limit' for each district. Each district is classified by size and type. ([Ed.] Code, [§] 42238.) Based upon this classification scheme, each district has a 'base revenue limit' per unit of average daily attendance. The base revenue limit for any district includes the amount of property tax revenues a district can raise, with other specific local revenues, coupled with an equalization payment by the State, thus bringing each district into a rough equivalency of revenues. (Compare [Cal. Code Regs., tit. 5, §] 15371, et seq.[; Ed.] Code [§] 42238 et seq.) [¶] Because the student population is so diverse, the Legislature had to supplement the base revenue limit with specific augmentations targeted for categories of children with needs that require special attention. These supplements are designated as 'categorical' aid . . . ." (*Ibid.*)

In addition, *Butt* noted: "In furtherance of the State system of free public education, the Constitution also creates State and county educational offices, including a Superintendent of Public Instruction and a State Board of Education. (Cal. Const., Art. IX, §§ 2-3.3, 7.) It authorizes the formation of local school districts (*id.*, §§ 6 1/2, 14), requires that all public elementary and secondary schools be administered within the Public School System (*id.*, § 6), establishes a State School Fund (Fund) (*id.*, § 4), reserves a minimum portion of State revenues

for allocation to the Fund (*id.*, art. XVI, §§ 8, 8.5), guarantees minimum allocations from the Fund for each public school (*id.*, art. IX, § 6), specifies minimum salaries for public school teachers (*ibid.*), authorizes the State Board of Education to approve public school textbooks (*id.*, § 7.5), and permits the Legislature to grant local districts such authority over their affairs as does not 'conflict with the laws and purposes for which school districts are established' (*id.*, § 14)."[4] (*Butt v. State*, *supra*, 4 Cal.4th at p. 680.)

B. Procedural Background of the Case

Plaintiffs filed Complaint I on May 20, 2010. On June 21, 2010, the parties submitted a stipulated request to continue the due date for a responsive pleading to July 20, 2010. The court granted the extension request. On July 16, 2010, CTA was given permission to intervene in this action with Complaint II that contains all the same allegations and causes of action as in Complaint I. Complaint II was filed on the same date.

By agreement of the parties and by order of this court, defendants were granted until August 10, 2010, to file their response to the Complaints in this matter. Defendants file this demurrer in response to the Complaints.

STANDARD OF REVIEW

A. Standard for Demurrer

A demurrer is proper when: (1) "[t]he court has no jurisdiction of the subject of the cause of action alleged in the pleading"; (2) "[t]here is a defect or misjoinder of parties"; or (3) [t]he pleading does not state facts sufficient to constitute a cause of action." (Cal. Code Civ. Proc., § 430.10(a)(d)(e)). A demurrer tests the legal sufficiency of the complaint . . . ." (*Hernandez v. City of Pomona* (1996) 49 Cal.App.4th 1492, 1497.) The court deems as true all material facts

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[4] The Legislature "has assigned much of the governance of the public schools to the local districts (e.g., [Ed. Code] §§ 14000, 35160 et seq., 35160.1), which operate under officials who are locally elected and appointed ([Ed. Code] §§ 35020, 35100 et seq.). The districts are separate political entities for some purposes. (See, *Butt v. State*, 4 Cal.4th at 681.) School districts "are agencies of the state . . . . The state is the beneficial owner of all school properties and local districts hold title as trustee for the state (citation omitted.) School moneys belong to the state and the apportionment of funds to a school district does not give the district a proprietary interest in the funds (citing *California Teachers Assn. v. Huff* (1992) 5 Cal.App.4th 1513,1524.)." (*Hayes v. Comm. On State Mandates* (1992) 11 Cal.App.4th 1564, fn.5 at p.1578.)

properly pled (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591 [*Serrano* I]) and those facts that may be implied or inferred from those expressly alleged. (*Marshall v. Gibson, Dunn & Crutcher* (1995) 37 Cal.App.4th 1397, 1403.)

However, a court will not assume the truth of contentions, deductions or conclusions of fact or law, and the court may disregard allegations that are contrary to law, or are contrary to a fact of which judicial notice may be taken. (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126.) Thus, "where an allegation is contrary to law or to a fact of which a court may take judicial notice, it is to be treated as a nullity." (*Fundin v. Chicago Pneumatic Tool Co.* (1984) 152 Cal.App.3d 951, 955.) The court "will not close [its] eyes to situations where a complaint contains . . . allegations contrary to facts which are judicially noticed." (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.)

Consistent with the fundamental principle of truthful pleading, a complaint otherwise good on its face, can be rendered defective by judicially noticed facts. (*Watson v. Los Altos School Dist.* (1957) 149 Cal.App.2d 768, 771-772; see Code Civ. Proc., § 430.30, subd. (a).) Thus, a demurrer may be sustained on the ground that matters properly subject to judicial notice show that the complaint fails to state facts sufficient to constitute a cause of action. (See, *Saltarelli & Steponovich v. Douglas* (1995) 40 Cal.App.4th 1, 5.)

B. Declaratory Relief

"Declaratory relief is not available unless there is a real dispute between parties, 'involving justiciable questions relating to their rights and obligations.'" (*Taxpayers for Improving Public Safety v. Schwarzenegger* (2009) 172 Cal.App.4th 749, 768 [citation omitted].) "The fundamental basis of declaratory relief is an actual, present controversy.' *Id.* An actual controversy is 'one which admits of definitive and conclusive relief by judgment within the field of judicial administration, as distinguished from an advisory opinion upon a particular or hypothetical state of facts. The judgment must decree, not suggest, what the parties may or may not do.'" (*Ibid.*, quoting *In re Claudia E.* (2008) 163 Cal.App.4th 627, 638.)

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C. Injunctive Relief

"An '[i]njunction is an equitable remedy available to a person aggrieved by certain torts or other wrongful acts . . . .' (5 Witkin, Cal. Procedure (5th ed. 2008) Pleading, § 822, p. 238-39, italics added and omitted.) The fact that a void law is on the books is not sufficient, by itself, to justify the issuance of an injunction. (*Golden Gate S. T., Inc. v. San Francisco* (1937) 21 Cal.App.2d 582, 584.) To obtain an injunction, a party must show injury as to himself. 'To have standing, a party must be beneficially interested in the controversy; that is, he or she must have '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.'" (*Connerly v. Schwarzenegger* (2007) 146 Cal.App.4th 739, 748 [citations omitted].)

ARGUMENT

I. THE COMPLAINTS FAIL TO STATE A CLAIM FOR RELIEF BECAUSE THE STATE CONSTITUTION ITSELF SETS THE MINIMUM FUNDING LEVELS FOR EDUCATION

In their Complaints, plaintiffs broadly contend that defendants are in violation of the California Constitution by failing to adequately fund state education. (Complaint I at p. 6:17-27; Complaint II at p. 1:5-18.) Plaintiffs allege each "Cause of Action" under separate provisions of the State Constitution, including those calling for the establishment of "common schools" (First and Second Causes of Action [Article IX, §§ 1 and 5]; Complaint I at pp. 53:6-20; 22-28; 54:1-4; Complaint II at pp. 36-37:25-11; 36:12-23]),[5] equal protection, (Third Cause of Action [Article I,

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[5] Article IX, § 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."

Article IX, § 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, after the first year in which a school has been established."

With respect to § 5, the phrase, "common schools," refers to primary and grammar schools, as opposed to other types of schools like kindergarten, high school, evening schools, etc. (*Los Angeles County v. Kirk* (1905) 148 Cal. 385, 389; *Wilson v. State Sd. of Educ.* (1999) 75 Cal.App.4th 1125, 1136.) And the term "system" requires nothing more than the establishment of a single, state-wide system that is "uniform in terms of the prescribed course of study and educational progression from grade to grade." (*Serrano v. Priest* (1971) 5 Cal.3d 584, 596 (*Serrano* I). In *Serrano* I, 5 Cal.3rd at pp. 595-596, the Supreme Court held:

(continued...)

§§ 7(a) and (b) and Article IV, § 16];[6] Complaint I at p. 54:5-13; Complaint II at pp. 37-38:24-4), and the provision for setting apart funding for education (Fourth Cause of Action [Article XVI, § 8(a)]; Complaint I at p. 54:15-23; Complaint II at p. 38:5-14.)[7] What plaintiffs fail to address, however, is that the Constitution itself identifies the minimum level of school funding required in the State of California.

Article XVI, § 8, of the State Constitution implements Proposition 98. "Proposition 98 provides for the improvement of public education . . . [in that it] establishes a minimum

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(...continued)

> [W]e reject [plaintiffs'] contention that the school financing system violates article IX, section 5 of the California Constitution . . . . Plaintiffs' argument is that the present financing method produces separate and distinct systems, each offering an educational program which varies with the relative wealth of the district's residents. [W]e have never interpreted the constitutional provision to require equal school spending; we have ruled only that the educational system must be uniform in terms of the prescribed course of study and educational progression from grade to grade. We think it would be erroneous to hold otherwise.

It is firmly established by the Constitution and case law that California's system of common schools are created by the Legislature. (See *Reed v. Hollywood Professional Sch.* (1959) 169 Cal.App. 2d Supp. 887, 889 ["The legislature has provided for a system of common schools."].)

To the extent plaintiffs contend that section 5 creates a judicially enforceable right to educational opportunities or basic educational necessities, courts have explicitly rejected the argument that those things are constitutionally prescribed by section 5. (*Wilson v. State Bd. of Educ.*, 75 Cal.App. 4th at p. 1135; *California Teachers Ass'n v. Board of Trustees* (1978) 82 Cal.App.3d 249, 255 [curriculum and courses of study "are not prescribed by the Constitution . . . [and] do not constitute a part of the system"].) In *Wilson*, 75 Cal.App. 4th at p. 1135, the Court held that:

> The public school system is the system of schools, which the Constitution requires the Legislature to provide--namely kindergarten, elementary, secondary and technical schools, as well as state colleges--and the administrative agencies which maintain them. However, the curriculum and courses of study are not constitutionally prescribed. Rather, they are details left to the Legislature's discretion. Indeed, they do not constitute part of the system but are merely a function of it. The same could be said for such functions as educational focus, teaching methods, school operations, furnishing of textbooks and the like.

[6] Article I, § 7(a), provides, in pertinent part, that "[a] person may not be . . . denied equal protection of the laws . . . ." Article I, § 7, subdivision (b), provides in pertinent part that "[a] citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens . . . ." Article IV, § 16, subdivision (a), provides that "[a]ll laws of a general nature have uniform operation."

[7] Article XVI, § 8(a), provides, in part, that from state revenues there shall first be set apart the moneys to be applied by the state for the support of the public school system and institutions of higher education.

guaranteed state education funding level for 'the moneys to be applied by the State for the support of school districts and community college districts . . . .' (Cal. Const., art. XVI, § 8, subd. (b).)" (See, *California Teachers Association v. Hayes* (1992) 5 Cal.App.4th 1513, 1518-1519.)

In approving Proposition 98 in 1988, California voters adopted amendments to the State Constitution that were intended, as set forth in the law's statement of "purpose and intent," to "enable Californians to once again have one of the best public schools systems in the nation," and ensure that "our schools spend money where it is most needed." (Proposition 98, §§ 2(c), (e).) In particular, Proposition 98:

> [A]mended article XVI, section 8 of the California Constitution to provide a minimum level of funding for schools. (Ballot Pamp., Gen. Elec. (Nov. 8, 1988) p. 78.) The measure, supported by the California Teachers Association and the state Parent Teacher Association, set up two tests, later expanded by the passage of Proposition 111 in 1990 to three tests, for determining the mandated minimum funding level for the coming year. [Citation and footnote omitted.] The first formula uses a percentage of General Fund revenues appropriated to schools in fiscal year 1986-1987. The second and third formulas use a measure that includes both General Fund revenues and "allocated local proceeds of taxes." (Cal. Const., art. XVI, § 8, subd. (b).)

(*County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1289-1290.)

Through Proposition 98, the voters of the State of California established a scheme under the State Constitution for determining the minimum level of funding required to support public education. Adherence to this funding scheme – as appears to be conceded by plaintiffs in their complaints – fulfills defendants' duties under the State Constitution with respect to funding education. (Complaints [4th Cause of Action challenges only art. XVI, § 8(a)].) It is important to note that there is no allegation that defendants have violated the provisions of Proposition 98 as set forth in article XVI, section 8(b) – 8(h). (See Complaint I at pp. 31-33, ¶¶ 97-105; Complaint II at pp. 21-21, ¶¶ 84-90.)

And, while plaintiffs generally complain about funding levels for education, the present action does not seek to enjoin any particular action of the California Legislature. Indeed, the California Legislature is not even a named party even though the constitutional provisions relied on by plaintiffs provide plenary jurisdiction and authority to the Legislature over education policy and budget appropriations for education.

To the extent plaintiffs suggest a conflict between Proposition 98 and other more general rights under the Constitution, as noted above, the specific provisions under the Constitution must govern. In *Strauss v. Horton* (2009) 46 Cal.4th 364, 407, the California Supreme Court recently held that, "'when constitutional provisions can reasonably be construed so as to avoid conflict, such a construction should be adopted. As a means of avoiding conflict, a recent, specific provision is deemed to carve out an exception to and thereby limit an older, general provision.'" (*Ibid.*, quoting *Bowens v. Superior Court (People)* (1999) 1 Cal.4th 36, 45] [italics in original].)

In *Strauss*, the Court upheld a constitutional provision that effectively limited the right of same-sex couples to marry as adopted by California voters by initiative in 2008 under Proposition 8. (*Strauss*, 46 Cal.4th at p. 457.) Opponents of Proposition 8 argued that the measure violated their rights of privacy, due process, and equal protection under the State Constitution, and therefore constituted an impermissible revision of the State Constitution by initiative. The Court rejected these arguments, holding that, "we properly must view the adoption of Proposition 8 as carving out an exception to the preexisting scope of the privacy and due process clauses of the California Constitution." (*Id.*, 46 Cal.4th at p. 408.) The *Strauss* decision rejected the argument that Proposition 8 was invalid because it purported to limit "fundamental" or "inalienable" rights. (*Id.*, 46 Cal.4th at pp. 465-468.)

The *Strauss* decision confirms that California voters may, through constitutional amendment, define State constitutional rights. Thus, even if Proposition 98's funding scheme conflicts with the constitutional clauses invoked by plaintiffs – which defendants do not concede – the funding scheme under Proposition 98 must be given effect, along with the other alleged inter-related constitutional spending limits on state and local government, and school districts under Proposition 13 and Proposition 4 (Gann). (Cal. Const art. XIII.B and art. XVI, § 8(e); see, also, *Hayes v Comm. on State Mandates*, 11 Cal.App.4th at 1578-1581, for a recap of the various constitutional amendments in response to *Serrano*, including Propositions 13, 4, 98 and 111.)

Thus, the Complaints fail to allege facts sufficient to support any of their causes of action challenging the constitutional adequacy of the level of education funding that has resulted from the present, constitutionally based, educational funding system.

II. THE COMPLAINTS ARE NONJUSTICIABLE BECAUSE THEY VIOLATE THE SEPARATION OF POWERS DOCTRINE

Adjudication of plaintiffs' complaints would violate the separation of powers doctrine because the Complaints ask this court to: (1) order the appropriation of more money for California's schools; and (2) order the re-design and implementation of an entirely new education finance system. Under the California Constitution and applicable case law, the California Legislature: (1) has sole constitutional authority to appropriate funds; and (2) maintains plenary power over the public school system. Accordingly, the Complaints present a nonjusticiable political question, and this demurrer should be sustained for failing to state facts sufficient to constitute a cause of action. As the United States Supreme Court has held, the "nonjusticiability of a political question is primarily a function of the separation of powers." (*Baker v. Carr* (1962) 369 U.S. 186, 210.)

The separation of powers doctrine should also inform the court's analysis should it reach the merits of the complaints. Even if a challenge to the education finance system is justiciable, the judgments of the Legislature should only be overturned when they are irrational. Separation of powers concerns also foreclose judicial imposition of the remedies sought by plaintiffs. Analyzing California case law and the litigation in other state courts, each of these issues are addressed below.

A. The Separation of Powers Doctrine in California

In California, the separation of powers doctrine is embodied in the Article III, section 3, of the Constitution, that provides:

> The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution.

This constitutional principle has been further defined by the courts. The California Supreme Court has explained that "[p]rinciples of comity and separation of powers place significant restraints on courts' authority to order or ratify acts normally committed to the discretion of other branches or officials." (*Butt v. State of California,* 4 Cal. 4th at p. 695.) "In particular, the separation of powers doctrine (Cal. Const., art. III, § 3) obliges the judiciary to

respect the separate constitutional roles of the Executive and the Legislature." (*Ibid*; see also, *Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 445 ["The courts may not order the Legislature or its members to enact or not to enact, or the Governor to sign or not to sign, specific legislation."].)

Moreover, "[i]t has long been clear that these separation-of-powers principles limit judicial authority over appropriations." (*County of San Diego v. State* (2008) 164 Cal. App. 4th 580, 594; *Mandel v. Myers* (1981) 29 Cal.3d 531, 539 ["The separation of powers doctrine has generally been viewed as prohibiting a court from directly ordering the Legislature to enact a specific appropriation."]; *Long Beach Unified Sch. Dist. v. State of California* (1990) 225 Cal.App.3d 155, 180 ["A court cannot compel the Legislature either to appropriate funds or to pay funds not yet appropriated"].)

In the context of education financing, the Court of Appeal has confirmed the fundamental principle that only the Legislature can determine education funding. In *Grossmont Union High School District v. State Department of Education,* 169 Cal.App.4th 869, 886, the Court of Appeal held that "[t]he allegation that the Legislature is not providing enough funding for special education is not a basis for a lawsuit. How much money to collect and how to spend it are matters entrusted to the Legislature, not the judiciary." (*Ibid.*)

Beyond appropriations, it is also well-established that designing and implementing California's education policy is the prerogative of the Legislature or by initiative, the People. California's Constitution provides 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 at least six months in every year, after the first year in which a school has been established." (Article IX, § 5 (emphasis added).) There is "no doubt that our Constitution vests the Legislature with sweeping and comprehensive powers in relation to our public schools including broad discretion to determine the types of programs and services which further the purposes of education." (*Wilson v. State Board of Education*, *supra*, 75 Cal. App. 4th at pp. 1134-35 (internal citations omitted).) The "Legislature's power over our public school system is plenary, subject only to constitutional restraints." (*Ibid.*) In this case, plaintiffs ask the court to violate these fundamental precepts by

overriding 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. But this, the court cannot do.

Accordingly, the court should sustain this demurrer on the additional ground of the separation of powers doctrine. Beyond the fact that allocating scarce public monies and implementing an entirely new system of public school finance exceeds the institutional capacity of the judiciary, there is 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. (*Baker v. Carr*, 369 U.S. at p. 210.)

This court should also avoid what the Nebraska and Rhode Island Supreme Courts have dubbed the "swamp," and "morass" of constitutional challenges to public school funding systems. (See *Nebraska Coalition for Educational Equity and Adequacy (Coalition) v. Heinemen* (2007) 273 Neb. 531, 557 ["[t]he landscape is littered with courts that have been bogged down in the legal quicksand of continuous litigation and challenges to their states' school funding systems. Unlike those courts, we refuse to wade into that Stygian swamp."]; *City of Pawtucket v. Sundlun* (1995) 662 A.2d 40, 58-59 [The "absence of justiciable standards could engage the court in a morass comparable to the decades-long struggle of the Supreme Court of New Jersey that has attempted to define what constitutes the 'thorough and efficient' education specified in that state's constitution," a case that "provides a chilling example of the thickets that can entrap a court that takes on the duties of a Legislature."].)

Moving beyond California law, education finance litigation in other states provides additional persuasive authority for dismissing this lawsuit as a nonjusticiable political question.

B. Separation of Powers and Public School Funding Litigation in Other States

The separation of powers doctrine has played a prominent role in public school funding litigation nationwide. Many state supreme courts have affirmed the dismissal of lawsuits challenging the adequacy of school funding as nonjusticiable political questions. And even state courts that permitted school financing litigation to proceed have upheld the constitutionality of

their states' education financing system because of the substantial deference extended to the legislatures under the separation of powers doctrine.

1. Public School Financing as a Nonjusticiable Political Question

a. Missouri

In *Committee for Educational Equality v. Missouri* (Mo. 2009) 294 S.W. 3d 477, 490, the Missouri Supreme Court, sitting *en banc*, held that Missouri's Constitution did not require school funding "adequacy" or per pupil expenditure equality, thereby affirming Missouri's school funding system.[8] Plaintiffs asserted that "Missouri's school funding formula results in a public education system that is unconstitutionally disparate and inadequate." (*Id.* at p. 481.) Plaintiffs' adequacy assertion was based on Article IX, section 1(a), of the Missouri Constitution – the operative clause which is identical to California's Article IX, section 1 – that reads:

> A general diffusion of knowledge and intelligence being essential to the rights and liberties of the people, the general assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this state within ages not in excess of [21] years as prescribed by law.

(*Id.* at p. 488.)

The Missouri Supreme Court held that section 1(a)'s language reflected a "community aspiration" that did not "describe a free-standing right to an 'adequate' education," nor did it require an "equalizing mandate." (*Id.* at p. 490.) The language provided "no specific directive or standard for how the State must accomplish a 'diffusion of knowledge.'" (*Id.* at p. 488.) Moreover, the court emphasized that the "judiciary cannot invade the legislative branch's province to fund schools beyond the requirements of section 3(b)" [a separate Missouri constitutional requirement to set apart no less than 25% of state revenue for education]. (*Id.* at p.

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[8] A number of state courts – without explicitly addressing the separation of powers doctrine – have similarly held that their constitutional education clauses do not provide a judicially enforceable quality standard. (See, e.g., *Bonner v. Daniels* (Ind. 2009) 907 N.E.2d 516, 517 [holding that the education clause in the Indiana Constitution "does not mandate any judicially enforceable standard of quality, and to the extent that an individual student has a right, entitlement, or privilege to pursue public education, this derives from the enactments of the General Assembly, not from the Indiana Constitution."]; *Charlet v. Legislature of the State of Louisiana* (La. 1st Cir. 1998) 713 So.2d 1199, 1207 [holding that the Louisiana Constitution "does not require that the educational funding provided by the state be 'adequate' or 'sufficient' or that it achieve some measurable result for each pupil or each school district."].)

489.) "The aspiration for a 'general diffusion of knowledge and intelligence' concerns policy decisions, and these political choices are left to the discretion of the other branches of government." (*Ibid.*)

b. Nebraska

In *Coalition*, *supra*, 273 Neb. at p. 534, the Nebraska Supreme Court held that plaintiffs' assertions that Nebraska failed to provide sufficient funds for an "adequate" and "quality" education "posed a nonjusticiable political question." Plaintiffs averred that Nebraska's educational funding system violated two provisions of the Nebraska Constitution: (1) the "religious freedom clause," that required the legislature to "pass suitable laws . . . to encourage schools and the means of instruction; and (2) the "free instruction clause," that required the legislature to "provide for the free instruction in the common schools of this state of all persons between the ages of five and twenty-one years." (*Id.* at p. 535.)

Examining the constitutional history of the free instruction provision, the Nebraska Supreme Court concluded that the framers intentionally omitted any language that "would have placed restrictions or qualitative standards on the Legislature's duties regarding education." (*Id.* at p. 552.) Further, the religious freedom clause did not add qualitative standards to the legislature's duty to provide free instruction. (*Ibid.*) The court held that "[a]ny judicial standard effectively imposing constitutional requirements for education would be subjective and unreviewable policymaking by this court" and that "the relationship between school funding and educational quality requires a policy determination that is clearly for the legislative branch." (*Id.* at p. 553.)

c. Oklahoma

In *Oklahoma Educational Association v. Oklahoma* (Okla. 2007) 158 P.3d 1058, 1065, the Supreme Court of Oklahoma held that an action, seeking a declaratory judgment that state funding of public schools was inadequate, presented "a nonjusticiable political question." (*Ibid.*) Plaintiffs contended that Oklahoma school children had a constitutional right to "receive a basic, adequate education" and that they were deprived of that right. (*Id.* at p. 1062.)

However, the Oklahoma Supreme Court found that the Oklahoma Constitution "charges the Legislature with the duty of establishing a public school system," and that the matter of discharging this duty "is a question that rests solely with the Legislature." (*Id.* at pp. 1065-1066.) Further, fiscal policy and appropriating funds "is exclusively within the legislature's power." (*Id.* at p. 1066.) Therefore, the court found that "plaintiffs are attempting to circumvent the legislative process by having this Court interfere with and control the legislature's domain of fiscal-policy decisions and of setting educational policy by imposing mandates on the Legislature and by continuing to monitor and oversee the Legislature. To do as plaintiffs ask would require this Court to invade the Legislature's power to determine policy. This we are constitutionally prohibited from doing." (*Ibid.*)

d. Alabama

In *Ex Parte James* (Ala. 2002) 836 So.2d 813, 819, the Alabama Supreme Court – after Alabama courts handed down four education financing decisions spanning nearly a decade – dismissed all pending education funding cases because it "now recognize[d] that any specific remedy that the judiciary could impose would, in order to be effective, necessarily involve a[n] usurpation of that power entrusted exclusively to the Legislature." (*Ibid.*) After years of litigation involving remedial plans requiring the legislature to formulate a constitutional educational system, the Alabama Supreme Court "complete[d] our judicially prudent retreat from this province of the legislative branch" and dismissed all pending cases challenging the constitutionality of the state's funding of public education as nonjusticiable. (*Ibid.*)

e. Illinois

In *Lewis v. Spagnolo* (1999) 186 Ill.2d 198, 206, 210, the Illinois Supreme Court held that plaintiffs "may not state a claim based upon violation of the education article of the Illinois Constitution" because "questions relating to the quality of education are solely for the legislative branch to answer." (*Ibid.*) Plaintiffs averred that Illinois' Constitution granted them the right to a "minimally adequate education," which they alleged were denied. (*Id.* at p. 205.) The Illinois Constitution provides that "[a] fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities. The State shall provide for an

efficient system of high quality public educational institutions and services . . . . The State has primary responsibility for financing the system of public education." (*Ibid.*) Among other claims, plaintiffs asserted that the education system did not provide "high quality" education as the constitution required. (*Ibid.*)

The court rejected the plaintiffs' claims, holding that "questions relating to the quality of education are solely for the legislative branch to answer." (*Id.* at p. 206, quoting *Committee for Educational Rights v. Edgar* (1996) 174 Ill.2d 1, 24.) The court explained that "what constitutes a 'high quality' education cannot be ascertained by any judicially discoverable or manageable standards and that the constitution provides no principled basis for a judicial definition of 'high quality.'" (*Id.* at p. 207, quoting *Committee*, 174 Ill.2d at pp. 28-30.) The court expressed concern that judicial determination of educational quality would "largely deprive members of the general public of a voice in a matter which is close to the hearts of all individuals in Illinois" and therefore "[s]olutions to problems of educational quality should emerge from a spirited dialogue between the people of the state and their elected representatives." (*Ibid.*) Requiring the "judiciary to ascertain from the constitution alone the content of an 'adequate' education" was improper because "these determinations are for the legislature, not the courts, to decide." (*Id.* at p. 209.) Thus, the Illinois Supreme Court affirmed the lower court's dismissal with prejudice.

f. Pennsylvania

In *Marrero v. Commonwealth of Pennsylvania* (1999) 559 Pa. 14, 20, the Supreme Court of Pennsylvania held that school district funding was a nonjusticiable political question and dismissed the lawsuit. In *Marrerro*, plaintiffs claimed that the state legislature failed "to provide funding for the Philadelphia School District in violation of Article III, section 14 of the constitution, which obligates the General Assembly to 'provide for the maintenance and support of a thorough and efficient system of public education.'" (*Id.* at p. 15.)

The Pennsylvania high court found that the education clause did "not [sic] confer an individual right upon each student to a particular level or quality of education, but, instead, [sic] impose[d] a constitutional duty upon the legislature to provide for the maintenance of a thorough and efficient system of public schools throughout the Commonwealth." (*Id.* at p. 17.) The

Pennsylvania Supreme Court affirmed the lower court's finding that the education clause in Pennsylvania's Constitution was met by the state enacting "a number of statutes relating to the operation and funding of the public school system in both the Commonwealth and, in particular, in the City of Philadelphia." (*Id.* at p. 20.) In terms of adequacy, the court was "unable to judicially define what constitutes an 'adequate' education or what funds are adequate to support such a program. These are matters which are exclusively within the purview of the General Assembly's powers, and they are not subject to intervention by the judicial branch of our government." (*Ibid.*) Thus, the matter was dismissed as a nonjusticiable political question.

g. Florida

In *Coalition for Adequacy and Fairness in School Funding, Inc. v. Chiles* (Fla. 1996) 680 So.2d 400, 408, the Florida Supreme Court held that separation of powers and political question considerations precluded a finding that Florida failed to provide an adequate education to its children under Florida's Constitution. The education clause of Florida's Constitution stated that "[a]dequate provision shall be made by law for a uniform system of free public schools and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require." (*Id.* at p. 405.)

The Florida Supreme Court found that Florida's Constitution expressly assigned the power to appropriate state funds to the legislature, and therefore, "judicial intrusion" was not justified. (*Id.* at pp. 407-08.) The court further held that plaintiffs failed to demonstrate "an appropriate standard for 'adequacy' that would not present a substantial risk of judicial intrusion into the powers and responsibilities assigned to the legislature, both generally (in determining appropriations) and specifically (in providing by law for an adequate and uniform system of education)." (*Id.* at p. 408.) The remedies plaintiffs sought would "require the Court to pass upon those legislative value judgments which translate into appropriations decisions," which constituted a violation of the separation of powers doctrine. (*Id.* at pp. 406-07.)

h. Rhode Island

In *City of Pawtucket v. Sundlun* (R.I. 1995) 662 A.2d 40, 55, the Rhode Island Supreme Court held that the education clause of the Rhode Island Constitution conferred no right or

guarantee of receiving an equal, adequate, and meaningful education. Plaintiffs sought a declaratory judgment that Rhode Island's method of funding public education was unconstitutional under the education and equal protection clauses of the state constitution. (*Id.* at pp. 42-43.) The education clause of the Rhode Island Constitution reads:

> The diffusion of knowledge, as well as of virtue among the people, being essential to the preservation of their rights and liberties, it shall be the duty of the general assembly to promote public schools . . . , and to adopt all means which it may deem necessary and proper to secure to the people the advantages and opportunities of education and public library services.

(*Id.* at pp. 49-50.)

The court held that this clause "confers no such [fundamental] right, nor does it guarantee an 'equal, adequate, and meaningful education.'" (*Id.* at p. 55.) To the contrary, the education clause explicitly leaves "all such [educational] determinations to the General Assembly's broad discretion" under its "plenary" powers. (*Id.* at p. 56.)

The court further expressed strong separation of powers concerns. It characterized plaintiffs as urging "us to interfere with the plenary constitutional power of the General Assembly in education" and asking "the judicial branch to enforce policies for which there are no judicially manageable standards." (*Id.* at p. 58.) The "proper forum for this deliberation is the General Assembly, not the courtroom." (*Ibid.*) Further, the "absence of justiciable standards could engage the court in a morass comparable to the decades-long struggle of the Supreme Court of New Jersey that has attempted to define what constitutes the 'thorough and efficient' education specified in that state's constitution," a case that "provides a chilling example of the thickets that can entrap a court that takes on the duties of a Legislature." (*Id.* at p. 59.)[9]

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[9] Plaintiffs' Complaints also aver that added financing will result in improved educational outcomes for students and better performing schools. However, this core premise is faulty. Indeed, even the Stanford study that plaintiffs cite in the Complaints (Complaint I at p. 48 [¶ 161]; Complaint II at p. 32 [¶ 140]) states that "[a]s discussed much more fully below, we do not yet have a good way of determining the exact dollars a district would need to achieve a given outcome for its students." (See, Loeb, Byrk, and Hanushek, "Getting Down to Facts: School Finance and Governance in California" ("Getting Down to Facts") (Stanford University 2007) at p. 43, found at http://irepp.stanford.edu/projects/cafinance.html). More importantly, one of the key conclusions of the study is that:

(continued...)

Therefore, many state supreme courts have affirmed the dismissal of public school funding litigation in the first instance as nonjusticiable political questions, or expressed strong separation of powers concerns when interpreting their state constitution's education clauses. This court should similarly dismiss this lawsuit as a nonjusticiable political question. However, even if this court determines that the amount of funding and the design of an education finance system is justiciable under the California Constitution – a finding the defendants strongly oppose – California's constitutionally designated public school financing should be considered under a very deferential rationality standard. Other state courts such as New York and Massachusetts (see below) have relied upon the separation of powers doctrine when according the legislature substantial deference in devising constitutionally permissible public school finance systems.

2. The Separation of Powers Doctrine Requires Judicial Deference to the Legislature's Education Policy Choices

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(...continued)

> It is clear, for example that solely directing more money into the current system will not dramatically improve student achievement and will meet neither expectations nor needs.

("Getting Down to Facts" at p. 4.)

> More money in the current system without significant [education] reforms is unlikely to result in students meeting challenging state standards: As Imzaeki [2007/GDFT] shows, the relationship between dollars and student achievement in California is so uncertain that it cannot be used to gauge the potential effect of recourse on student outcome.

("Getting Down to Facts" at p. 47.)

The Study also states that: "For a number of reasons, however, determining whether the dollars provided by the state are adequate is not an easy task . . . . If we do not know how to achieve a given level of student performance, we cannot estimate the cost of such a goal." ("Getting Down to Facts" at p. 44.)

To this end, if educational experts and current studies fail to identify all the variable factors needed to improve student achievement, what standards will this court rely on to determine whether the state's current education financing system is unconstitutionally inadequate? What standard is to be applied to determine whether a student or school's failure to meet proficiency or content standards result from inadequate funding or the result of a lack of other non-monetary reforms?

It is because of the complexity of issues presented, that so many other state courts, as noted *infra*, have dismissed these types of lawsuits as involving complex public policy questions that are not traditionally within the expertise or constitutional purview of a court.

Even state courts which have found that their state constitution's education clause confers a justiciable right have cited separation of powers concerns in upholding the constitutionality of their states' education finance systems.

a. New York

For example, in *Campaign for Fiscal Equity, Inc. v. New York* (2006) 8 N.Y.3d 14, 19-20, the Court of Appeals of New York held that the Governor and Senate's estimated cost for providing a "sound basic education" to New York City's public schoolchildren was a reasonable estimate, entitled to judicial deference. (*Ibid.*) This was the third appeal by plaintiffs challenging the state's funding of New York City's public schools. (*Ibid.*) The Court of Appeals previously held that the state constitution required the state to provide a "sound basic education" for all children in New York, and found constitutionally inadequate funding in certain respects. (*Id.* at pp. 20-21.) On remand, the Supreme Court (the lower court) rejected the state's estimated cost for providing a sound basic education to New York City schools. (*Id.* at p. 25.)

The Court of Appeals disagreed, holding that the role of the courts was simply "to determine whether the State's proposed calculation of that cost [of a sound basic education] is rational." (*Id.* at p. 27.) This deferential standard was grounded in separation of powers considerations. The judiciary "has a duty 'to defer to the Legislature in matters of policymaking, particularly in a matter so vital as education financing . . . . We have neither the authority, nor the ability, nor the will, to micromanage education financing.'" (*Id.* at p. 28 [internal citations omitted].) "Deference to the Legislature is especially necessary where it is the State's budget plan that is being questioned." (*Ibid.*) The court found that the state's calculation for providing a sound basic education was neither "unreasonable" nor "irrational," and declared that amount to be the constitutionally required funding for New York City's schools. (*Id.* at pp. 29-31.)

b. Massachussets

Similarly, in *Hancock v. Commissioner of Education* (2005) 443 Mass. 428, 434, the Massachusetts Supreme Court concluded that Massachusetts was meeting the constitutional requirements of that state's education clause. Plaintiffs alleged that Massachusetts was failing its constitutional obligation to educate children in the poorest communities. (*Id.* at p. 432.) The

superior court judge agreed that significant failings existed in certain school districts and determined that the Department of Education lacked sufficient resources to address those failings. The court recommended that the department determine the "actual cost" of funding a constitutionally adequate level of education. (*Ibid.*)

The Massachusetts Supreme Court reversed, holding that the state was not violating the state's education clause. (*Id.* at p. 454.) Two key facts emerge from the court's detailed analysis and ultimate holding. First, the court extended substantial deference to the legislature. It noted that plaintiffs "have not shown that defendants are acting in an arbitrary, nonresponsive, or irrational way to meet the constitutional mandate." (*Id.* at p. 435.) Second, the court emphasized separation of powers issues in holding that the education system was constitutional. The court noted that "the education clause leaves the details of education policymaking to the Governor and the Legislature" and stressed that "[b]ecause decisions about where scarce public money will do the most good are laden with value judgments, those decisions are best left to our elected representatives." (*Id.* at pp. 454, 458-59.) In particular, the court found that ordering a cost study was "rife with policy choices that are properly the Legislature's domain" which would entail "judicial directives concerning appropriations." (*Id.* at p. 460.) Accordingly, the court determined that Massachusetts was not violating its constitutional obligations. (*Id.* at p. 454.)

In sum, defendants respectfully submit that this court should decline to wade into the "Stygian swamp" of determining appropriate levels of public school financing. Policy decisions concerning the level of funding and the optimal design of the public school financing system reside exclusively with the Legislature.[10] Plaintiffs' allegations do not state facts sufficient to

[10] During his tenure, the Governor has made funding education his first priority. He continues to sponsor education reforms to ensure a quality education for all California students. He has sought federal funds to supplement efforts to improve school-wide accountability to ensure students will achieve and be successful. Even as California's economic recession continues into this new budget year, the Governor proposes General Fund expenditures of approximately $35.1 billion (42%) for K-12 education plus $11.7 billion (14%) for higher education for a total of $46.9 billion (56%) of the total proposed General Fund expenditures of $83.4 billion for the proposed 2010-11 budget. Among the competing needs for various government services, funding for education receives the largest percentage of the General Fund pie. (Governor's Proposed Budget May Revisions of 2010-2011 at pp. 3-5, 11, 14 marked as Exh. A in Defendants Request for Judicial Notice.) The Governor's proposed revised 2010-11 budget maintains his commitment to avoid additional cuts to K-14 education despite a $19.1 (continued...)

constitute a cause of action, and therefore, the court should sustain this demurrer without leave to amend.

III. THE COMPLAINTS FAIL TO NAME THE PROPER PARTIES

This demurrer should also be sustained because there "is a defect or misjoinder of parties." (Cal. Code Civ. Proc., § 430.10(d).) It is well established that, "in actions for declaratory and injunctive relief challenging the constitutionality of state statutes, state officers with statewide administrative functions under the challenged statute are the proper parties defendant." (See, *Serrano* II, 18 Cal.3d at p. 752.) In the present action, there are no "state officers" named in the complaint as defendants other than the Governor of California. Because "appropriate administrative officers [or administrative agencies]" are not joined – in particular the California Legislature – the demurrer must be sustained on this ground as well.

A. The "State of California" is an Improper Defendant

The State of California is not a proper party to this litigation. Plaintiffs' claims are based on the alleged unconstitutionality of the State's current education finance system as a whole. In this regard, plaintiffs broadly contend that the State "is the legal and political entity required by the California Constitution to maintain and oversee the system of public education in California." (Complaint I at pp. 18-19:25-2 [¶ 51]; Complaint II at p 11:12-18 [¶39].) Yet, as noted above, in actions for declaratory and injunctive relief challenging the constitutionality of state statutes, state officers with statewide administrative functions under the challenged statute are the proper defendants. (*Serrano* II, 18 Cal.3d at p. 752.) Plaintiffs, therefore, are not entitled to relief from the "State of California."

The California Supreme Court has confirmed that, in claims for writ or injunctive relief, the "State" – as distinct from a specific agency or officer – is not a proper party defendant as to which relief may be granted. (*State v. Superior Court* (1974) 12 Cal.3d 237, 255.) In *State v. Superior Court*, developers sued the State, the California Coastal Zone Conservation Commission, and two

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billion deficit. (*Id.* at p. 36.) However, the Governor can only propose a budget. It is the Legislature that must make the appropriation decisions and enact the budget.

Commission employees, seeking a writ of mandate, and declaratory and injunctive relief, based on the denial of a permit and the alleged unconstitutionality of the California Coastal Zone Conservation Act. (*Id.* at pp. 243-244.) The Court sustained the State's demurrer because the plaintiffs made no allegations establishing any right to relief against the State "as distinguished from the Commission acting as its agent." (*Id.* at p. 255.) Because the "State" can only act through its agencies and officers, it is not a proper party defendant from which relief may be obtained here.

It also appears that plaintiffs named the "State" because they want the court to compel the "State" to create a new public school finance system. (Complaint I at pp. 56-57; Complaint II at pp. 39-40.) However, the "State" does not pass legislation; the Legislature does.[11] The "State of California" is an improper party.

B. The Governor is An Improper Defendant

Similarly, Governor Schwarzenegger does not exercise administrative functions pertaining to education-related legislation or implementation of California's public school finance system. In fact, the Supreme Court expressly held that the Governor would not be a proper defendant in a similar constitutional challenge to California's prior public school finance system. (*Serrano* II, 18 Cal.3d at p. 751.)

Moreover, as discussed above, courts may not order the Governor to sign or veto legislation, because this would violate the separation of powers doctrine. (See, *Serrano* II, 18 Cal.3d at 751 ["courts may not order the . . . Governor to sign or not to sign, specific legislation."]; *Jenkins v. Knight* (1956) 46 Cal.2d 220, 223, 226 [courts will not interfere with discretionary acts of the Governor, such as signing or vetoing bills, which are inherently executive or political in nature]; *California State Employees Assn. v. State* (1973) 32 Cal.App.3d

[11] As discussed in defendants' concurrently filed Motion to Strike, plaintiffs' request for injunctive relief impermissibly encroaches upon the duties of the Legislature. It is a "well-established principle, rooted in the doctrine of separation of powers (Cal. Const., art III, § 3), that the courts may not order the Legislature or its members to enact or not to enact . . . specific legislation." (*Serrano* II, 18 Cal.3d at p. 751; Defendants' Motion to Strike.)

103, 107-110 [same].) Accordingly, the Governor is not a proper defendant here and should be dismissed.

IV. THE ALLEGATIONS IN THE COMPLAINTS FAIL TO SUPPORT STANDING

"Because standing goes to the existence of a cause of action, lack of standing may be raised by demurrer or at any time in the proceeding, including at trial or in an appeal." (*Buckland v. Threshold Enterprises, Ltd.* (2007) 155 Cal.App.4th 798, 813.)

A declaratory relief action requires an "actual controversy relating to the legal rights and duties of the respective parties." (Code Civ. Proc., § 1060.) Courts will decline to resolve lawsuits that do not present a justiciable controversy, and justiciability "involves the intertwined criteria of ripeness and standing." (*California Water & Telephone Co. v. County of Los Angeles* (1967) 253 Cal.App.2d 16, 22.)

> As a general principle, standing to invoke the judicial process requires an actual justiciable controversy as to which the complainant has a real interest in the ultimate adjudication because he or she has either suffered or is about to suffer an injury of sufficient magnitude reasonably to assure that all of the relevant facts and issues will be adequately presented to the adjudicator. To have standing, a party must be beneficially interested in the controversy; that is, he or she must have '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.' The party must be able to demonstrate that he or she has some such beneficial interest that is concrete and actual, and not conjectural or hypothetical.

(*Holmes v. California Nat. Guard* (2001) 90 Cal.App.4th 297, 314-315.) Here, as more fully discussed below, the allegations of the complaint fail to confer standing on the individually named plaintiffs as well as the associational plaintiffs.

A. The Individually Named Student/Plaintiffs Lack Standing; There are No Allegations Regarding Direct Injury

Plaintiffs in these actions include sixty two minors, appearing through their guardians *ad litem*, who are described as students attending grades at various school districts. (See, Complaint I at pp. 9-14, [¶¶ 14-38]; Complaint II at pp. 1-6, [¶¶ 1-25] .) Except for being listed as parties in the complaint, there are no further allegations regarding any specifically named Student/Plaintiffs.

For example, Complaint I alleges that "California . . . has the largest proportion of English-learner students in the nation by a wide margin, with English learners comprising 24 % of the

student population." (Complaint I at p. 26:7-8 [¶ 78].) The complaint adds that "[c]hronic under-funding leaves many schools and districts without the educational resources necessary to ensure that students, especially those struggling with poverty or learning the English language, have an opportunity to master the standards set by the State." (*Ibid.*)

The complaint also alleges that "[s]upport services, enrichment and extracurricular activities are an integral, fundamental part of the education program." (Complaint I at p. 38:13-14 [¶ 123].) The complaint adds that "[i]n recent years, unstable and insufficient funding has forced districts to reduce the already inadequate number of academic and mental health counselors. As a consequence students do not have the necessary access to academic advice and counseling, basic mental health services, and other services to reduce barriers to success and keep students in school." (Complaint I at pp. 38-39:26-2 [¶ 125].)

However, none of the individually named Student/Plaintiffs are alleged to be English-learners much less that any of them are directly harmed by "chronic under-funding." The Complaints also fail to allege that any of the Student/Plaintiffs used the academic services described or that any of them were directly affected by the alleged reduction of academic services. There are no allegations in the Complaints that any of the Student/Plaintiffs have failed to meet proficiency requirements or content standards or failed any high school exit exam as a result of the State's alleged inadequate funding of California's school system. There are no allegations that Student/Plaintiffs are being deprived of equal educational opportunities as compared to any other students in other school districts.

The Student/Plaintiffs' standing cannot be established solely on allegations that they are subject to the allegedly unconstitutional statutory scheme. Instead, plaintiffs must identify some direct, personal injury resulting from the allegedly deficient system:

> At a minimum, standing means a party must "show that he [or she] personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant[.]" "[I]t is well-settled law that the courts will not give their consideration to questions as to the constitutionality of a statute unless such consideration is necessary to the determination of a real and vital controversy between the litigants in the particular case before it. It is incumbent upon a party to an action or proceeding who assails a law invoked in the course thereof to show that the provisions of the statute thus assailed are applicable to him and that he is injuriously affected thereby.

(*In re Tania S.* (1992) 5 Cal.App.4th 728, 736-737.)

The Court's analysis in *Tania S.* demonstrates that a party does not have standing to raise hypothetical constitutional infirmities of a statute or – as stated in the Complaints, an educational financing scheme – when the statute, as applied to the party, does not occasion any injury to the party. The claims raised by the individually named Student/Plaintiffs thus fail to state any cause of action, and the demurrer should be sustained accordingly.

B. The Claims of the California State PTA, ACSA, CSBA, CTA and School Districts Lack Justiciability and Standing to Complain about the Distribution of Education Resources

The Complaints list the California State PTA, ACSA, and the CSBA as party plaintiffs. (See, Complaint I at pp. 17-18 [¶¶ 48-50]; Complaint II at pp. 8-10 [¶¶ 35-37]) and adds the California Teachers Association (CTA) (Complaint II at p. 10 [¶ 38].) The interests of these associations are, as alleged in part, purportedly aligned with the students and the various school districts. Their purpose is "support sufficient funding to meet the educational needs of K-12 students" and to advance the policies of the school districts. (See, e.g., Complaint I at p. 18 [¶ 50].) However, where the complaints fail to support standing or justiciability on behalf of the students and school districts, these associations likewise lack standing in this matter. School districts, associations, and their members have no standing, as third parties, to assert equal protection claims of the Student/Plaintiffs. Only the person who has been inured has standing to sue to vindicate his or her constitutional rights to equal protection. (See, *Elk Grove Unified School Dist. v. Newdow* (2004) 542 U.S. 1, 12 [citations omitted].) In this case, because the Student/Plaintiffs are minors, only the custodial parent or legal guardian may bring an action for the minor child's claim to equal protection.

The Complaints also identify various school districts as plaintiffs. (See, Complaint I at pp. 14-17 [¶¶ 39-47]; Complaint II at pp. 6-8 [¶¶ 26-34].) Complaint I alleges that the current finance system "prevents districts from providing the required education program" and that, for example, state funding fails to support student "intervention programs." (Complaint I at pp. 33-34; 37-38 [¶¶ 118-122].) The school districts, however, lack standing to object to the amount education

funding that is allocated to their individual school districts. (See, *Hayes v. Commission on State Mandates*, 11 Cal.App.4th 1564, fn. 5 at p. 1578 ["School moneys belong to the state and the apportionment of funds to a school district does not give the district a proprietary interest in the funds."].) Thus, the associations and individually named school districts lack standing to assert any of the claims in the Complaints.

V. THE COMPLAINTS FAIL TO STATE AN EQUAL PROTECTION CLAIM

Plaintiffs suggest that they are being denied equal protection by the operation of the State's education finance system. However, the Complaints fail to identify any disparities relating to the allocation of education resources between students or between school districts. Rather, the claim is that the State's allocation of education resources is not adequate to pay school districts for the actual costs "of providing the programs and services required by the State," that the State's overall education funding is "insufficient to provide all students with the programs and services necessary to meet academic proficiency goals, to maintain teacher-student ratios and class size," or that the State provides "insufficient funds to pay for categorical programs" or to meet costs of "federal programs and services that districts are legally required to implement." (See, e.g., Complaint I at ¶¶ 106, 107, 108, 116-117, 133-135, 136, 137-139.) These allegations do not establish an equal protection claim.

Here, there no allegations that any of the Student/Plaintiffs have suffered or are about suffer any "real and appreciable impact" in the form of any "extreme and unprecedented disparity in education services or progress." (*Butt,* 4 Cal.4th at pp. 686-687.)

As the California Supreme Court held in *Butt*, "the principles of equal protection have never required the State to remedy all ills or eliminate all variances in services." (*Id.* at p. 686.) Equal protection only precludes the State from maintaining its common school system in a manner that denies students in one district an education basically "equivalent" to that in other districts in the State based on funding inadequacies. (*Id.* at pp. 686-687.)

Here, the Complaints allege that the State's inadequate education funding affects all students in all California school districts. There is no allegation in the Complaints that inequitable funding among school districts exists. These allegations are insufficient for an equal

protection claim because all California students and all school districts are affected similarly by the State's education budget decisions. (*Butt,* 4 Cal. 4th at pp. 686-687; see, e.g. *Serrano* I, 5 Cal.3d 584 [court struck down the district property-tax funding scheme because it created "substantial" funding disparities among different school districts throughout the state].) Plaintiffs appear to claim that allegedly inadequate school funding has a disparate impact on certain groups. However, to allege such a claim, plaintiffs must allege that defendants were motivated by discriminatory animus:

> The Equal Protection Clause of our state constitution forbids the state from denying a person equal protection of the law. (Cal. Const., art. I, § 7, subd. (a).) The clause prohibits the state from granting a citizen, or class of citizens, "privileges or immunities not granted on the same terms to all citizens." (Cal. Const., art. I, § 7, subd. (b).) "Most laws which run afoul of the equal protection Clause discriminate explicitly between groups of people, but the Clause also might apply to laws which, though evenhanded on their face, in operation have a disproportionate impact on certain groups." (*Kim v. Workers' Comp. Appeals Bd.* (1999) 73 Cal.App.4th 1357, 1361.) "But neither explicit discrimination nor discrimination by 'disparate impact' is unconstitutional unless motivated at least in part by purpose or intent to harm a protected group." (*Id.* at pp. 1361-1362.)

(*Sanchez v. State* (2009) 179 Cal.App.4th 467, 487.)

Plaintiffs do not – and cannot – allege that defendants were motivated by an intent to harm any protected group of students. Nor have they asserted that education is unequally allocated to different school districts. Accordingly, defendants' demurrers to plaintiffs' equal protection claims should be sustained.

VI. TO THE EXTENT THE COMPLAINTS CLAIM THAT STATE EDUCATION MANDATES ARE NOT BEING PROPERLY FUNDED, IT FAILS TO STATE A CLAIM FOR RELIEF; THE COMPLAINTS FAIL TO ALLEGE EXHAUSTION OF REMEDIES

While plaintiffs complain that defendants have failed to provide sufficient funding to support educational requirements imposed on school districts, they fail to allege that they have filed a claim and exhausted their sole and exclusive remedies with the California Commission on State Mandates. It is well-established that the filing of such claims is a pre-requisite to any lawsuit alleging a failure to fund a new or higher level of any state mandated program . (See, Gov. Code, §§ 17500 et. seq.; Cal. Const. art. XIII B, § 6; *Kinlaw v. The State of California* (1991) 54 Cal.3d 326.)

In 1984, the Legislature established the Commission on State Mandates (Gov. Code, §§ 17512, 17525) to provide the "sole and exclusive" administrative procedure to hear and determine all issues related to "subvention" claims under article XIII B, section 6, of the California Constitution. (Gov. Code, §§ 17500 et seq.; see also §§ 17550, 17552.) The "constitutional rule of subvention" under article XIII B, section 6, requires the State to provide funds to pay for costs of any "new programs," or for "higher levels of services of existing programs" imposed by the State on local agencies, including school districts. (Gov. Code, §§ 17550, 17551, 17552; 17557, 17560; *Kinlaw*, 54 Cal.3d at pp. 331-333; *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1577, 1580, citing *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.)

The express legislative purpose in establishing the Commission, with its "sole and exclusive" administrative procedure and jurisdiction (Gov. Code, §§ 17500, 17550, 17552), was to provide one exclusive administrative forum to hear all state mandate funding claims, to decrease the unnecessary and growing court congestion resulting from these complex state mandate funding claims, to provide for consistency in decision-making of complex legal issues by a quasi-judicial body with public finance expertise to determine whether a challenged law established a new mandate or an increased level of an existing mandate, and to determine the actual cost of such mandates to the protesting entity and similarly affected entities on a statewide basis. (Gov. Code, §§ 17500, 17525, 17553, 17555, 17556, 17557.2; *Kinlaw*, 54 Cal.3d at pp. 331, 333; *Grossmont*, 169 Cal. App. 4th at p. 885.)

Under the Commission's sole and exclusive administrative procedures, local agencies and school districts are required to file claims for state-mandated costs for new or higher level of services with the Commission. (Gov. Code, §§ 17551, 17560; *Kinlaw*, 54 Cal.3d at pp. 333-334.) The first claim filed that alleges a State mandate has been created by a State law or State agency order is called a "test claim," which is subject to a public hearing with evidence from the claimant, the Department of Finance, and the affected agency. (Gov. Code, § 17521.) The Commission determines if the claim involves a "new or higher level" of an existing State mandate that requires payment and the "parameters and guidelines" for reimbursement, and

calculates the actual costs for the claimant local or school district entity as well as the state-wide costs to other such entities of the unfunded or inadequately funded State mandate. The Commission's decision is required to be reported to the Legislature with notifications to the appropriate Senate and Assembly policy and fiscal committees, Department of Finance and Controller, among others. (Gov. Code, §§ 17555, 17557, 17558, 17600.)

Filing a claim with the Commission on State Mandates under its "sole and exclusive" administrative procedures is a legal pre-requisite to the filing of any action for declaratory or injunctive monetary relief for claims of unfunded or inadequately funded mandates imposed by the Legislature on local agencies, including school districts. (Gov. Code, §§ 17612, 17552; see also Gov. Code, §§17551, 17560, 17559.) Moreover, the court may look beyond plaintiffs' own characterization of their claims to find that their claims are "unfunded mandate" claims. (*Kinlaw*, 54 Cal.3d at p. 333 [affirming trial court's summary judgment against plaintiff taxpayer welfare recipients' and plaintiff County's declaratory and injunctive action against the State to compel restoration of funds cut by the Legislature for a county health care program on grounds that the gravamen of the action was reimbursement of an unfunded state mandate which was barred by the County's failure to file a claim with the State Mandates Commission]; see also, *Grossmont*, 169 Cal.App.4th at pp. 881-882 [affirming dismissal based on failure to exhaust plaintiff's "sole and exclusive" administrative remedies with the Commission on State Mandates based on finding that the gravamen of school district's action was state's alleged inadequate funding of increasing costs of general and special education mandates and budget "shortfalls" of millions of dollars under Proposition 98 and 111 education funding].)

It is clear that plaintiffs' key assertion is the Legislature's alleged failure to adequately fund various new or higher levels of state mandated education services and "prescribed educational" programs imposed on school districts the over the past several decades. (See, e.g., Complaint I, ¶¶ 3, 5, 7, 9, 136; Prayer for Relief) Complaint I, for example, alleges that, beginning in 1995, the Legislature "fundamentally changed" and developed new statewide "academic content standards and proficiency requirements" (Complaint I, ¶¶ 62, 100, 106, 107 114, 117); required schools to conduct grade level testing of students' proficiency and mandated

student exit exams based on theses new content standards (Complaint I, ¶¶ 63, 64); imposed additional school accountability requirements such as school wide assessments of student progress under new state and the federal laws, such as No Child Left Behind Act (NCLB); and that in January 2010, the Legislature adopted "mandated interventions" for persistently lowest achieving schools. (Complaint I, ¶¶ 64, 65, 66, 69, 136, 141.)

The complaints also allege that, although "the State is legally required to pay school districts for the costs of any state-mandated programs or services, it has nonetheless refused to do so." (Complaint I at p. 43; Complaint II at p. 28.) Complaint I adds that, since 2002, the State underfunded mandated education programs by $3.6 billon or approximately $400 million annually to school districts. (Complaint I, ¶¶ 141; 169-171.) Plaintiffs finally aver that there is inadequate funding under Proposition 98 to meet all the "significant programmatic changes that have taken place since Proposition 98 was adopted." (See, e.g., Complaint I at ¶¶ 100; 106.)

It is clear that these Complaints seek the court's intervention to obtain additional funding to redress the Legislature's alleged inadequate Proposition 98 funding of various new or higher levels of education mandates. Accordingly, the present action must be dismissed for failure to allege or exhaust available remedies before the Commission on State Mandates.

CONCLUSION

In light of the forgoing, defendants respectfully request that their demurrer to the complaints and the requests for declaratory and injunctive relief in this matter be sustained in its entirety and without leave to amend.

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Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California

DOUGLAS M. PRESS
Senior Assistant Attorney General
ISMAEL A. CASTRO
Supervising Deputy Attorney General
PAULINE GEE
ERNEST MARTINEZ
LISA TILLMAN
JOSHUA SONDHEIMER
JENNIFER A. BUNSHOFT
TRACEY ANGELOPOULOS
NIMROD ELIAS
Deputy Attorneys General
Attorneys for Defendants

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