Cause No. GV1-00528

WEST ORANGE-COVE CONSOLIDATED I.S.D., COPPELL I.S.D., LA PORTE I.S.D. PORT NECHES-GROVES I.S.D.,	§	IN THE DISTRICT COURT
Plaintiffs,	§	
vs.	§	
JIM NELSON, TEXAS COMMISSIONER OF EDUCATION, THE TEXAS EDUCATION AGENCY, CAROL KEETON RYLANDER, TEXAS COMPTROLLER OF PUBLIC ACCOUNTS, AND THE TEXAS STATE BOARD OF EDUCATION,	§	
Defendants,	§	
and	§	
ALVARADO I.S.D., ANTHONY I.S.D., AUBREY I.S.D., BANGS I.S.D., BELLS I.S.D., COMMUNITY I.S.D., COOPER I.S.D., COVINGTON I.S.D., DETROIT I.S.D., EARLY I.S.D., FANNINDEL I.S.D., HUTTO I.S.D., KARNES CITY I.S.D., KAUFMAN I.S.D., KIRBYVILLE I.S.D., KRUM I.S.D., LAJOYA I.S.D., MERCEDES I.S.D., MERIDIAN I.S.D., NEW BOSTON I.S.D., NOCONA I.S.D., OLFEN I.S.D., ORANGE GROVE I.S.D., POTEET I.S.D., ROBINSON I.S.D., ROSEBUD-LOTT I.S.D., RUSK I.S.D., SOUTHSIDE I.S.D., TORNILLO I.S.D., TRENTON I.S.D., TULIA I.S.D., UVALDE I.S.D., VENUS I.S.D., AND WEATHERFORD I.S.D.,	§	TRAVIS COUNTY, TEXAS
Intervenors,	§	
and	§	
EDGEWOOD I.S.D., YSLETA I.S.D., LAREDO I.S.D., SAN ELIZARIO I.S.D., SOCORRO I.S.D., AND SOUTH SAN ANTONIO I.S.D.,	§	
Intervenors.	§	250th JUDICIAL DISTRICT

FINAL ORDER

On June 28, 2001, the court heard the state defendants' and the school district intervenors' special exceptions and pleas to the jurisdiction. All parties appeared through counsel. While the court heard extensive argument, the court took no evidence. The court has decided the exceptions and pleas based solely on the pleadings in light of the laws and official acts of the state and its school districts, including state appropriations and district tax levies, of which the court takes judicial notice.

I.
The Present

The plaintiffs seek a declaration that the $1.50 cap on a school district's tax rate for maintenance and operations imposes a state ad valorem tax in violation of article VIII, section 1-e of the Texas Constitution. The Supreme Court, however, has expressly held that the public school finance system, including the $1.50 cap, does not impose a state ad valorem tax in violation of article VIII, section 1-e of the Texas Constitution. *Edgewood Independent School District v. Meno*, 917 S.W.2d 717, 737-38 (Tex. 1995)("*Edgewood IV*").

The Supreme Court, though, warned that circumstances could change:

> However, if the cost of providing for a general diffusion of knowledge continues to rise, as it surely will, the minimum rate at which a district must tax will also rise. Eventually, some districts may be forced to tax at the maximum allowable rate just to provide a general diffusion of knowledge. If a cap on tax rates were to become in effect a floor as well as a ceiling, the conclusion that the Legislature had set a statewide ad valorem tax would appear to be unavoidable because the districts would then have lost all meaningful discretion in setting the tax rate.

Edgewood IV, 917 S.W.2d at 738.

Under this changed circumstances warning, for the approved tax to become a prohibited tax, circumstances must have changed in a way that compels some constitutionally significant

number of districts to tax at the maximum rate to provide a general diffusion of knowledge. 917 S.W.2d at 738. For reasons that the court will explain in Part III, by "a general diffusion of knowledge," the Supreme Court meant—and meant only—what is required to provide an accredited education. Thus, the changed circumstances warning under *Edgewood IV* is straightforward: If a constitutionally significant number of districts must tax at the maximum rate to provide an accredited education, then they have lost discretion, and the tax has become a state ad valorem tax.[1]

The defendants and intervenors have specially excepted to the plaintiffs' petition on the ground that the plaintiffs do not and cannot plead a claim within the changed circumstances warning of *Edgewood IV*. The court has carefully reviewed the pleadings in light of the laws and official acts of the state and its school districts. Where, as here, a special exception has been taken contending that the plaintiffs do not and cannot assert a claim upon which relief can be granted, then undisputed facts, such as the laws and official acts of the state and its school districts, may be used to define the pleadings in order to decide the exception. *Sepulveda v. Krishnan*, 839 S.W.2d 132, 135 (Tex. App.—Corpus Christi 1992), *aff'd on other grounds*, 916 S.W.2d 478 (Tex. 1995). For the reasons explained in this order, considering the pleadings, as defined by the laws and official acts of the state and its school districts, the court has concluded that at present the plaintiffs do not and cannot state a claim within the changed circumstances warning of *Edgewood IV*.

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[1] In its Opinion of December 3, 1993, in *Edgewood IV*, at pages 3 – 40, this court found that the $1.50 tax cap did not create a state ad valorem tax on a very different rationale than that of the Supreme Court. Should the present case be considered by the Supreme Court, this court respectfully urges a reconsideration of its original rationale in *Edgewood IV* for finding that the tax was not a state ad valorem tax: If a political subdivision has to raise taxes to comply with a state law, those taxes do not become state taxes. The constitution authorizes the Legislature to assign duties that require funding to its political subdivisions and to cap local ad valorem taxes. In the opinion of this court, for the reasons explained in its original opinion in *Edgewood IV*, nothing in section 1-e restricts either power. Of course, the Supreme Court has taken a different view, and the court today has faithfully followed the teachings of the Supreme Court.

As a general rule, after granting a special exception, a court must allow a plaintiff to amend its pleadings to attempt to state a claim consistent with the order of the court. This case, however, comes within an exception to the general rule: When on the face of the pleadings, a plaintiff does not and cannot state a claim, a court need not give the plaintiff an opportunity to amend; dismissal with prejudice is appropriate. *Sepulveda*, 839 S.W.2d at 134. For the reasons explained in this order, this is such a case.

Moreover, the court understood from the hearing on the exceptions that the Plaintiffs' First Amended Petition, which plaintiffs filed in response to the exceptions, fully states the plaintiffs' case as best as they can state it. When a plaintiff has no desire to amend, then a court need not grant leave to amend, but may instead dismiss the case with prejudice. *Townsend v. Memorial Medical Center*, 529 S.W.2d 264, 267 (Tex. App.—Corpus Christi 1975, writ ref'd n.r.e.). The court now turns to its analysis of the plaintiffs' allegations.

A single number decides this case—the percentage of districts that must tax at the cap of $1.50. The plaintiffs do not and cannot state a claim upon which relief can be granted because a constitutionally insignificant number of districts, if any at all, are required to tax at the cap of $1.50. The constitutional question is not how many are at the cap, but how many must be at the cap to provide an accredited education.

Only 19% of the school districts even tax at the cap of $1.50, which means that 81% do not. Indeed, two of the plaintiff districts do not tax at the $1.50 rate. Moreover, many districts, including all four plaintiffs, have granted local option tax exemptions. Only 12% of the school districts tax at the cap of $1.50 without a local option exemption, which means that 88% do not. Of course, the decision to grant a local option exemption in and of itself is the exercise of meaningful local discretion. By granting a local option exemption, for whatever worthy reason,

a school district takes a great amount of taxable wealth out of the system. Since property-rich districts by definition have property of more value, when a property-rich district grants an exemption, it shelters a disproportionate share of wealth. For example, Coppell I.S.D.'s local option exemption shelters $380,194,804; La Porte I.S.D.'s local option exemption shelters $137,006,710; West Orange-Cove I.S.D.'s local option exemption shelters $42,450,500; and Port-Neches I.S.D.'s local option exemption shelters $106,397,853. The court is not implying that these exemptions are not appropriate; the court is merely saying that they have the same effect as substantially lowering the tax rate. As long as a district has an exemption therefore, it is not at the tax cap.

Because at best no more than 12% of the districts are even at the cap, on the face of the pleadings, the plaintiffs have no present claim. The plaintiffs do not allege that there is even one district in the state that must have a $1.50 tax to provide an accredited education. Since 88% of the districts admittedly do it on less, it is dubious that the 12% at the cap cannot. Certainly, the plaintiffs have not pleaded that the 12% cannot (which would require pleading that the 12% are academically unacceptable school districts at $1.49) Because the court is deciding the case on a special exception, however, the court has assumed they cannot. (In reality, they are probably providing an accredited education on less than $1.50 and going to $1.50 for enrichment.)

Though *Edgewood IV* provides limited guidance on how many districts must have to tax at the cap to be constitutionally significant, based upon what the Supreme Court does teach, this court holds that for the approved tax to become a prohibited state ad valorem tax, some significant number more than 12% of the districts must have to tax at the $1.50 cap in order to provide an accredited education. In this extremely important and difficult area, the constitution allows the Legislature a fair amount of flexibility in designing and funding a system. While the

court need not decide the limits of that flexibility today, it stands to reason that for the legislative design to be an unconstitutional state ad valorem tax, the design must require a significant number of districts to tax at the cap.[2]

II.
The Future

While the tax is constitutional today, of course, it might become unconstitutional in the future. The plaintiffs cite concerning trends as to how many and how fast districts are moving to the cap. The defendants and intervenors, however, have urged pleas to the jurisdiction regarding any future claim. For the reasons stated in this order, the court has concluded that any future claim is not ripe for adjudication.

When does a future claim ripen? It never ripens. For the court to have jurisdiction over a claim where the real defendant is the Legislature, rather than merely ripen, the fruit has to actually fall from the tree. That the fruit is likely to fall will never confer jurisdiction. To understand why, consider the three possible scenarios.

First scenario: The fruit has fallen from the tree, meaning that the tax has become unconstitutional. Such a present claim is within the court's jurisdiction. As shown in Part I, however, the plaintiffs do not make such a claim and cannot make such a claim because the fruit has not yet fallen.

Second scenario: The fruit has not yet fallen, but is likely to fall after the next regular session of the Legislature. Such a future claim is not ripe because at its next regular session, the Legislature can take whatever steps are necessary to maintain the constitutionality of the tax.

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[2] The court notes in passing that any litigation about the cost of education would be mean. The state defendants would undoubtedly want to conduct a forensic audit of the cost of education in the districts, including administrative overhead and such things as, heaven forbid, football. Contrary to popular belief, though perhaps it should be, football is not protected by the constitution or required by state law.

Even if the plaintiffs alleged that the Legislature would not likely do its duty, the allegation would be meaningless because the court is constitutionally required to presume otherwise. The court has no jurisdiction to issue an advisory opinion to the Legislature premised upon a finding that in the future, the Legislature will not do what it is constitutionally required to do.

Third scenario: The fruit has not yet fallen, but is likely to fall before the next regular session of the Legislature. This future claim is also not ripe. The court must presume that the Legislature has adequately provided for the biennium. The presumption that a co-equal branch of government has met its constitutional duty is so strong that the plaintiffs cannot overcome it based upon an allegation that the fruit is likely to fall, but only upon an allegation that the fruit has actually fallen. Moreover, even a claim that the fruit will likely fall before the next regular session of the Legislature is not ripe because the Governor could call a special session, and the Legislature could act before the fruit falls. Again, the presumption that the co-equal branches of government will do their duty is so strong that the plaintiffs cannot overcome the presumption based upon an allegation that in the future, the Governor and the Legislature will likely fail to do their duty.

Indeed, since *Edgewood IV*, the Legislature has taken steps to ensure that the districts can pay for the accredited program with a tax rate less than $1.50. The course of events has been interesting. In *Edgewood IV*, Justice Hecht, joined by Justice Owen, predicted in dissent that school districts would move immediately or at least within a few years to $1.50. Justice Hecht described the move to $1.50 as "imminent and inexorable." As it turns out, Justice Hecht was wrong on both counts. Eight tax years after the $1.50 cap, only 12% of the districts are at $1.50

without a local option exemption, and only 19% are at $1.50 with a local option exemption, and tax rates go as low as $.86.

What Justice Hecht did not take into account is that the Legislature reviews the system every two years. Based upon its review, the Legislature has put more money into the system. In 1999, the Legislature increased the wealth level for the guaranteed yield in Tier II from $205,000 per weighted student to $247,700; and in 2001, the Legislature increased the wealth level for the guaranteed yield to $258,000 in the coming school year to just over $271,000 in the following school year. Thus, the guaranteed yield in Tier II has gone from $20.50 per weighted student to $24.70, to $25.31, and will go to $27.14. The Legislature has also increased state assistance for facilities under the Instructional Facilities Allotment in 1997 and the Existing Debt Allotment in 1999. Among other adjustments and provisions, the Legislature has also provided funds for school employee health insurance.

Of course, as Justice Cornyn wrote for the majority in *Edgewood IV*, if local districts voluntarily raise their tax rate to $1.50 merely to enjoy the advantages of additional Tier II funding from the guaranteed yield, they are acting within their discretion; as the majority held, the state can entice the districts to raise taxes, just not compel them to do so. While Justice Hecht predicted that the districts would all be enticed to do so, as it turns out, they have balanced the advantages of more state dollars against the disadvantages of increased local taxes and have not gone to the $1.50 cap. That Justice Hecht's prophecies failed to come true illustrates the inability of courts to speculate accurately about the future.

Speculation is not only beyond the court's ability, it is beyond the court's jurisdiction. To make this clear, consider the possible remedies in the three different scenarios. In the first scenario, where the fruit has fallen, the court could prohibit the collection of an unconstitutional

tax. In the second and third scenarios, where the fruit is yet to fall, what is the court to do? At best, the court could merely advise the Governor and the Legislature to act before the fruit falls. Both could ignore the court, and probably would, and the court could take no further action until the fruit actually fell. Thus, the plaintiffs have asked for a classic advisory opinion of the worst sort. The well of the court is no place for political theatre. Suffice it to say, the court must wait until the fruit drops.[3] *Patterson v. Planned Parenthood of Houston and Southeast Tx., Inc.*, 971 S.W.2d 439, 442 (Tex. 1998); *Waco I.S.D. v. Gibson*, 22 S.W.3d 849, 852 (Tex. 2000).

III.
The Hypothetical Tax

In an effort to bring their case out of the future and into the present, the plaintiffs allege that at this very time 1) the accredited program is not adequate to provide a general diffusion of knowledge, and 2) paying for a program that is adequate to provide a general diffusion of knowledge requires at least a $1.50 tax rate, and 3) that the $1.50 tax cap is therefore an unconstitutional state ad valorem tax.

At first blush, the plaintiffs seem to state a plausible claim under *Edgewood IV*, until one realizes that instead of complaining that the state is imposing a state ad valorem tax, the plaintiffs are actually complaining that the state is not imposing a state ad valorem tax. They are complaining about something that is not happening—a hypothetical tax.

Consider each step in the plaintiffs' chain of reasoning: 1) the Legislature has set the standards too low in the accredited program to obtain a true general diffusion of knowledge; 2) if the Legislature actually set the standards high enough in the accredited program to obtain a true general diffusion of knowledge, then the school districts would have to set a tax rate of at least

[3] Under the court's view of jurisdiction, the state defendants' plea in abatement is moot. The court does note, however, that Governor Rediff and Speaker Laney are appointing a joint select committee to comprehensively review the public school finance system in Texas in anticipation of action by the 78th Legislature.

$1.50 to pay for the program; and 3) if the school districts had to set a tax rate of at least a $1.50 to pay for an accredited program that required enough to obtain a true general diffusion of knowledge, then the state would have an unconstitutional state ad valorem tax.

This reasoning does not state a claim under *Edgewood IV*. Recognizing the distinction between what the Legislature should require to provide a general diffusion of knowledge and what the Legislature has required in the accreditation standards is critically important in determining whether the Legislature has imposed a state ad valorem tax. In *Edgewood IV*, the Supreme Court reasoned that the $1.50 cap would be a state ad valorem tax if the tax were both "a floor and a ceiling," meaning that the Legislature "imposed" the tax or "compelled" the tax, and the districts were not free to set a lower rate. 917 S.W.2d at 737-38.

Thus, in determining whether the Legislature has imposed a state ad valorem tax, the only constitutionally relevant inquiry is whether the Legislature has compelled—directly by levy or indirectly by program mandate—a tax rate of $1.50. Regardless whether the Legislature should raise the accreditation standards, the districts are only legally required to meet those standards. Because the Legislature only compels a district to meet accreditation standards, the court must determine whether a tax rate cap has become a floor and a ceiling only by reference to the accreditation standards.

To escape the force of this logic, the plaintiffs seize upon the "general diffusion of knowledge" language in the "however" paragraph containing the changed circumstances warning. Under this language, the plaintiffs seek to establish 1) what educational program is necessary for a true general diffusion of knowledge, 2) what such a program costs, and 3) that it takes at least, if not more than, what the state now gives the districts plus what the districts can raise at a $1.50 tax rate.

In interpreting "a general diffusion of knowledge" in this way, the plaintiffs are taking the language out of context. In the "however" paragraph, the Supreme Court uses the term "general diffusion of knowledge" synonymously with the accreditation standards, not as a separate standard. The court comes to this conclusion for two reasons.

First, as explained above, the logic of the Supreme Court's reasoning compels this conclusion. The school districts are under no legal obligation to fund what they may believe necessary in their hearts for a general diffusion of knowledge. The school districts are only legally obligated to fund what the Legislature has determined in the accreditation standards is required for a general diffusion of knowledge.

Second, the Supreme Court expressly says it is equating the accreditation standards with a general diffusion of knowledge. 917 S.W.2d at 730 n. 9. In *Edgewood IV*, when discussing a state ad valorem tax, the Supreme Court uses the terms interchangeably because it found that the Legislature had defined the one as the other.

While there may be some set of facts under which the constitution might compel the judiciary to review the suitability of an educational program or the adequacy of educational funding to ensure a general diffusion of knowledge, such a set of facts simply does not arise in the context of determining whether the Legislature has imposed a state ad valorem tax.

Of course, the court understands why the plaintiffs seek to change the test from the accreditation standards to a general diffusion of knowledge. If the test is the accreditation standards, the plaintiffs have no wrong because the districts can satisfy those standards on less than $1.50, and they have no remedy because if it takes $1.50 to meet the standards, and that makes the tax unconstitutional, rather than raise the cap, the Legislature could merely lower the standards.

That the districts have no remedy may be a disquieting observation, until one realizes that with regard to section 1-e what is at stake is not educational policy, but tax policy, and the plaintiff with the real complaint is not a school district, but a taxpayer. What is in question under section 1-e is not whether the state has an adequate education system but whether a local ad valorem tax has become a state ad valorem tax. No taxpayer is paying the hypothetical tax about which the plaintiff school districts are complaining.

Nothing could make it more vividly clear that the plaintiffs complain of a hypothetical tax than a hypothetical 6:00 P.M. newscast:

> John Q. Taxpayer went to court today complaining that the state was imposing an unconstitutional state property tax on his house. The court agreed and struck down the tax. With no funds for schools, the Governor promptly called the Legislature into special session. Acting swiftly, the Legislature repealed the unconstitutional state property tax by raising the local ad valorem property tax cap and passing a massive sales and gasoline tax increase for state funds for the property-poor school districts to keep up with the property-rich school districts as required by the Supreme Court. The Legislature also placed a constitutional amendment on the November ballot to authorize a state income tax. Our own local school board acted swiftly to raise our local ad valorem tax to just under the new cap, but complained that educational needs are so great that the district "should" be taxing at even the new cap, so the tax is still an unconstitutional state property tax. The district is threatening litigation. In an exclusive with this station, John Q. Taxpayer lamented: "I'd have been better off with the hypothetical tax. I will never go to court again!" Tune in at 10:00 P.M. for a breaking story of rioting in the streets.

IV.
Remedies

This hypothetical newscast brings us to the question of real remedies. What is it the plaintiffs want? Significantly, the plaintiffs have expressly disclaimed any allegation other than that the state is imposing an unconstitutional state ad valorem tax. The plaintiffs have carefully eschewed any question of "suitability" of program or "adequacy" of funding to achieve a general

diffusion of knowledge except as it relates to their claim that the state is imposing a state ad valorem property tax. If one is concerned about educational policy as opposed to tax policy, one might wonder why they have chosen to place adequacy in issue indirectly instead of directly. The reason relates to their desired remedy. To understand, one must—follow the money.

The state has limited funds and significant needs. Upon certifying the budget for the present biennium, the Comptroller issued a stern shortfall warning, advising that the state may be $5 billion dollars in the red at the beginning of the next session. On top of any shortfall in other areas, the amount of money needed under the plaintiffs' theory is substantial. For example, as the plaintiffs concede, raising the wealth level for the guaranteed yield from the $271,000 to $315,000 would cost approximately $6 billion a biennium. To do even more, would cost even more. From where is this money to come?

Frankly, because there is no good answer to that question, what the plaintiffs seek to do is win on a claim that the local ad valorem tax has become a state ad valorem tax rather than on a claim of suitability or adequacy. If the plaintiffs win a declaration that the $1.50 tax cap makes the local ad valorem tax a state ad valorem tax, then they will seek an order striking down the $1.50 cap, though they strategically do not ask for it in this petition. Even if the plaintiffs do not ask for such an order, certainly some taxpayer would. Whether such an order comes with or without an additional order that the state increase funding for education does not matter to the plaintiffs because, as property-rich districts, they can met their educational needs out of their greater tax base.

With this remedy, however, the property-poor districts would be back where they started before *Edgewood* except that the Supreme Court would have struck down every possible plan to ensure equity other than 1) massive school district consolidation or 2) an increase in present state

taxes or the imposition of new state taxes, or both, sufficient to obtain the billions of dollars needed to raise the local ad valorem property tax cap or go to full state funding. This is why the property-poor districts have aligned with the state defendants, even though the property-poor districts share the property-rich districts' concerns about adequacy. The property-poor districts worry that under the plaintiffs' theory, the lack of a real-world remedy will mean the demise of *Edgewood*, both as a constitutional principle and as a TEA Recognized school district.

With the property-rich districts focused on killing the cap and the property-poor districts focused on keeping the cap, both have overlooked the real reason that no school district should ask the court to find that the local ad valorem tax has become a state ad valorem tax. Under the plaintiffs' theory, what is invalid is the tax itself, not the cap. The constitutional question is not whether the school districts have a local tax; the constitutional question is whether the state has imposed a state tax. Under article VII, section 3, the Legislature does not have to authorize school districts to levy an ad valorem tax at all. Under article VIII, section 1-e, however, the Legislature itself cannot levy an ad valorem tax.

If the plaintiffs' complaint is that the Legislature has itself levied an ad valorem tax, then the only remedy is to prohibit collection of the tax. The Legislature then would have to address any resulting funding problem by 1) raising the cap to give districts back discretion over the local tax, while giving the districts *more* state dollars for equity, or 2) keeping the cap, but giving the districts more state dollars to give them back discretion over the local tax, or 3) abolishing the ad valorem tax altogether and going to full state funding.

While waiting for legislative action, however, the districts do not just get to tax without a cap. Constitutionally, while the court can prohibit collection of an unconstitutional tax, the court cannot turn a legislative authorization to tax with a cap into a legislative authorization to tax

without a cap. Under the constitution, the authorization to tax and the cap are integral to and dependent upon each other.

The cap is literally the keystone of the public school finance system. In its opinion in *Edgewood IV*, the Supreme Court recognizes that the Legislature crafted the cap in response to *Edgewood I* and notes that without the cap, the property-rich districts would have much greater access to revenue for maintenance and operations purposes than property-poor districts at similar rates. 917 S.W.2d at 732. The legislature authorized a local ad valorem tax conditioned upon a cap to ensure equity. No cap; no tax. *See County School Trustees of Orange County v. District Trustees of Prairie View Common School*, 153 S.W.2d 434, 439 (Tex. 1941).

It would be egregiously unconstitutional for the judiciary to favor the constitutional rights of the property rich to be free of a state ad valorem tax over the constitutional rights of the property poor to equity in educational funding by prohibiting collection of a tax with the cap needed to ensure equity, which was authorized by the Legislature, while allowing collection of a tax without the cap needed to ensure equity, which was not authorized by the Legislature. It simply cannot be done. Accordingly, the court would have to strike down the tax, not the cap, which would create a crisis in Texas. One must be careful for what one prays.

Of course, if the tax were unconstitutional, the court would have to strike it down regardless of the consequences. Given the consequences, however, the court must be analytically rigorous and must indulge every presumption in favor of constitutionality. Fortunately, for the reasons outlined in Parts I and III, the plaintiffs have no claim that the tax is unconstitutional.

V.
Equity

The mandate of *Edgewood* is the Supreme Court's greatest legacy. *See generally* Farr and Trachtenberg, 17 Yale Law & Policy Review 607-727 (1999). As a result of *Edgewood*, resources for education wrongfully set aside by the state for the few have been shared with the many. *Edgewood* has ensured that billions of dollars for educational opportunity have been available for millions of school children. Those school children have made the most of this opportunity. In poor school districts across the state, in significant part because of the equity dollars, test scores and accountability ratings have risen significantly.[4] *Edgewood* righted a great wrong for a great number. On our oath to uphold the constitution, the judiciary should never retreat from defense of the great principle of equal educational opportunity.

The public school finance system that ultimately emerged from the struggle to achieve this principle is as ugly as the principle is grand. It has only one virtue—it works.[5] The public school finance system has provided reasonable equity. Whether or not it has yet provided adequate funding, it has left everyone in the same political position—forced to rely upon their elected representatives in the Legislature.

At least in the normal course of events, and the court has no reason to think that we are not in the normal course of events, it is not for the judiciary to say that the Legislature has not spent enough and to order increased funding for education from the courtroom. If the Legislature has not spent enough, then the citizens will say so in their own time and order

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[4] The Texas Education Agency's Snapshots 2000 at pages 11-18 discusses student performance: "Performance over time shows dramatic improvement. The percent of students passing TAAS increased significantly for all subjects and all student groups between 1994 and 2000." Farr and Trachtenberg, *The Edgewood Drama: An Epic Quest for Education Equity*, 17 Yale Law & Policy Review 705-07 (1999), further document improvements in student performance and link them directly to equity. Happily, with student performance rising everywhere and falling nowhere, the state has not "dumbed down" but instead "smartened up."

[5] *Quality Counts 2001*, A Better Balance, by Education Week, reports on education spending per student by state in 1999 after adjusting for regional cost differences. The report gives Texas a B- for equity and a C+ for adequacy.

increased funding for education from the voting booth. An order to spend more from the citizens would be both legitimate and effective. The court fears that an order to spend more from the judiciary would be neither. With steely eyes, the judiciary must stay the course.

VI.
Conclusion

Accordingly, the court hereby dismisses this case. The court dismisses allegations about the present discussed in Parts I and III with prejudice. The court dismisses allegations about the future discussed in Part II for lack of jurisdiction. Each party shall bear its own costs. The court denies all relief not expressly granted. The court's judgment is final and appealable.

Signed this 11TH day of July, 2001.

F. Scott McCown

F. Scott McCown
Judge Presiding