No. 126212

IN THE
SUPREME COURT OF ILLINOIS

CAHOKIA UNIT SCHOOL DISTRICT NUMBER 187, GRANT CENTRAL CONSOLIDATED SCHOOL DISTRICT NO. 110, PANA COMMUNITY UNIT SCHOOL DISTRICT NO. 8, BETHALTO COMMUNITY UNIT SCHOOL DISTRICT NO. 8, BOND COUNTY COMMUNITY SCHOOL DISTRICT NO. 2, BROWNSTOWN COMMUNITY UNIT SCHOOL DISTRICT 201, BUNKER HILL COMMUNITY UNIT SCHOOL DISTRICT NO. 8, GILLESPIE COMMUNITY UNIT SCHOOL DISTRICT NO. 7, ILLINOIS VALLEY CENTRAL COMMUNITY UNIT SCHOOL DISTRICT NO. 321, MERIDIAN COMMUNITY UNIT SCHOOL DISTRICT 223, MT. OLIVE COMMUNITY UNIT SCHOOL DISTRICT NO. 5, MULBERRY GROVE COMMUNITY UNIT SCHOOL DISTRICT NO. 1, NOKOMIS COMMUNITY UNIT SCHOOL DISTRICT NO. 22, OSWEGO COMMUNITY UNIT SCHOOL DISTRICT 308, OREGON COMMUNITY UNIT SCHOOL DISTRICT 220, SOUTHWESTERN COMMUNITY UNIT SCHOOL DISTRICT 9, STAUNTON COMMUNITY UNIT SCHOOL DISTRICT NO. 6, STREATOR TOWNSHIP HIGH SCHOOL DISTRICT 40, VANDALIA COMMUNITY UNIT SCHOOL DISTRICT NO. 203, WOOD RIVER-HARTFORD SCHOOL DISTRICT NO. 15, CARLINVILLE COMMUNITY UNIT SCHOOL DISTRICT NO. 1, and TAYLORVILLE COMMUNITY UNIT SCHOOL DISTRICT NO.3, Plaintiffs-Appellants v. J.B. PRITZKER, Governor of the State of Illinois, Defendant-Appellee	) Appellate Court, Fifth)Judicial District, Case No. 5-18-)0542))) Circuit Court, St. Clair) County,) Illinois) Twentieth Judicial Circuit,) Case No. 2017-CH-301))) The Honorable) JULIE K.KATZ,) Judge Presiding.)

BRIEF AND APPENDIX OF PLAINTIFFS-APPELLANTS

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POINTS AND AUTHORITIES

NATURE OF THE ACTION

The plaintiffs are twenty-two school districts in Illinois. On April 5, 2017 in the Chancery Division of the Circuit Court of St. Clair County, plaintiffs filed this action claiming a constitutional right to the necessary funding for all their students to have the opportunity to meet or achieve the Learning Standards. The plaintiff districts sought declaratory and injunctive relief both against the State of Illinois and the Governor. The original complaint sought to require that the State defendants adopt an evidence based or other appropriate methodology to determine the amounts necessary for the plaintiff districts to have the capacity to ensure their students could meet or achieve the Learning Standards which the General Assembly had required in 2010 in 105 ILCS 5/2-3.64a-f. That part of the case became moot when the General Assembly then adopted the Evidence Based Funding for Student Success Act (EBF Act). That Act established a formula for the additional spending necessary to give each district the necessary capacity if the additional spent were spent on certain proven educational practices, 27 in number, designed to have the effect of raising test scores of students generally. In January 2018, under the formula set out in 105 ILCS 18/8-15(a)(1) the State Board of Education determined that an additional $7.2 billion in State aid for educational instruction annually would be necessary to provide the capacity in every school district for students to meet or achieve the Learning Standards under which they were assessed.

On May 21, 2018, plaintiffs filed an amended complaint against the same State defendants to obtain the specific additional funding calculated as due to them under the EBF Act. Plaintiffs sought a declaration and order directed to the Governor

to achieve such funding by no later than June 30, 2027, which is the goal set in the EBF Act.

The State defendants moved to dismiss on the ground that the action was barred by sovereign immunity, lack of standing and failure to state a claim. On October 17, 2018 the Circuit Court dismissed the action on the ground of sovereign immunity. The Circuit Court also held in the alternative that the complaint failed to state a claim for relief, relying on this Court's decision in *Citizens for Educational Rights v. Edgar,* 174 Ill 2d 1 (1996). Plaintiffs filed an appeal to the Illinois Appellate Court for the Fifth Judicial District. On April 17, 2020, in a Rule 23 order, with a dissent, the Appellate Court affirmed the dismissal of the State of Illinois but not the Governor, and found that the claims under the Illinois Constitution were barred by *Edgar.* The Rule 23 order was published as an opinion on May 13, 2020.

On July 22, 2020 plaintiffs filed with this Court their Petition for Leave to Appeal. Plaintiffs did so only against the defendant Governor and not against the defendant State of Illinois, thereby voluntarily dismissing the State itself from the case. On September 30, 2020, this Court granted the Petition for Leave to Appeal.

STATEMENT OF THE ISSUES

1. Under Article X, section 1 of the Illinois Constitution do the plaintiff districts and their students have a constitutional right to be in "an efficient system of high quality educational institutions" with the resources and capacity to educate all students to meet or achieve the Learning Standards which the State uses to assess them?

2. Does the failure of the State to provide the necessary additional funding for the plaintiff districts and their students to meet or achieve the Learning Standards deny them of their right to equal protection of the laws under Article I, section 2?

JURISDICTION

The Court has jurisdiction over this appeal as Plaintiffs' Petition for Leave to Appeal, pursuant to Ill. Sup. R.315, was granted by this Court on September 30, 2020.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

Ill Const Art. I, section 2:

> DUE PROCESS AND EQUAL PROTECTION
>
> No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws.

Ill Const. Art X:

> SECTION 1. GOAL - FREE SCHOOLS
>
> 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. Education in public schools through the secondary level shall be free. There may be such other free education as the General Assembly provides by law.
>
> The State has the primary responsibility for financing the system of public education.
>
> SECTION 2. STATE BOARD OF EDUCATION - CHIEF STATE EDUCATIONAL OFFICER
>
> (a) There is created a State Board of Education to be elected or selected on a regional basis. The number of members, their qualifications, terms of office and manner of election or selection shall be provided by law. The Board, except as limited by law, may establish goals, determine policies, provide for planning and evaluating education

programs and recommend financing. The Board shall have such other duties and powers as provided by law.

(b) The State Board of Education shall appoint a chief state educational officer.

105 ILCS 5/2-3.64a-5:

(a) For the assessment and accountability purposes of this Section, "students" includes those students enrolled in a public or State-operated elementary school, secondary school, or cooperative or joint agreement with a governing body or board of control, a charter school operating in compliance with the Charter Schools Law, a school operated by a regional office of education under Section 13A-3 [105 ILCS 5/13A-3] of this Code, or a public school administered by a local public agency or the Department of Human Services.

(b) The State Board of Education shall establish the academic standards that are to be applicable to students who are subject to State assessments under this Section. The State Board of Education shall not establish any such standards in final form without first providing opportunities for public participation and local input in the development of the final academic standards. Those opportunities shall include a well-publicized period of public comment and opportunities to file written comments.

(c) Beginning no later than the 2014-2015 school year, the State Board of Education shall annually assess all students enrolled in grades 3 through 8 in English language arts and mathematics. Beginning no later than the 2017-2018 school year, the State Board of Education shall annually assess all students in science at one grade in grades 3 through 5, at one grade in grades 6 through 8, and at one grade in grades 9 through 12.

The State Board of Education shall annually assess schools that operate a secondary education program, as defined in Section 22-22 [105 ILCS 5/22-22] of this Code, in English language arts and mathematics. The State Board of Education shall administer no more than 3 assessments, per student, of English language arts and mathematics for students in a secondary education program. One of these assessments shall be recognized by this State's public institutions of higher education, as defined in the Board of Higher Education Act [110 ILCS 205/0.01 et seq.], for the purpose of student application or admissions consideration. The assessment administered by the State Board of Education for the purpose of student application to or admissions consideration by institutions of higher education must be administered on a school day during regular student attendance hours.

Students who do not take the State's final accountability assessment or its approved alternate assessment may not receive a regular high school diploma unless the student is exempted from taking the State assessments under subsection (d) of this Section because the student is enrolled in a program of adult and continuing education, as defined in the Adult Education Act [105 ILCS 405/1-1 et seq.], or the student is identified by the State Board of Education, through rules, as being exempt from the assessment.

The State Board of Education shall not assess students under this Section in subjects not required by this Section.

Districts shall inform their students of the timelines and procedures applicable to their participation in every yearly administration of the State assessments. The State Board of Education shall establish periods of time in each school year during which State assessments shall occur to meet the objectives of this Section.

(d) Every individualized educational program as described in Article 14 [105 ILCS 5/14-1.01 et seq.] shall identify if the State assessment or components thereof require accommodation for the student. The State Board of Education shall develop rules governing the administration of an alternate assessment that may be available to students for whom participation in this State's regular assessments is not appropriate, even with accommodations as allowed under this Section.

Students receiving special education services whose individualized educational programs identify them as eligible for the alternative State assessments nevertheless shall have the option of also taking this State's regular final accountability assessment, which shall be administered in accordance with the eligible accommodations appropriate for meeting these students' respective needs.

All students determined to be English learners shall participate in the State assessments. The scores of those students who have been enrolled in schools in the United States for less than 12 months may not be used for the purposes of accountability. Any student determined to be an English learner shall receive appropriate assessment accommodations, including language supports, which shall be established by rule. Approved assessment accommodations must be provided until the student's English language skills develop to the extent that the student is no longer considered to be an English learner, as demonstrated through a State-identified English language proficiency assessment.

(e) The results or scores of each assessment taken under this Section shall be made available to the parents of each student.

In each school year, the scores attained by a student on the final accountability assessment must be placed in the student's permanent record pursuant to rules that the State Board of Education shall adopt for that purpose in accordance with Section 3 [105 ILCS 10/3] of the Illinois School Student Records Act. In each school year, the scores attained by a student on the State assessments administered in grades 3 through 8 must be placed in the student's temporary record.

(f) All schools shall administer the State's academic assessment of English language proficiency to all children determined to be English learners.

(g) All schools in this State that are part of the sample drawn by the National Center for Education Statistics, in collaboration with their school districts and the State Board of Education, shall administer the academic assessments under the National Assessment of Educational Progress carried out under Section 411(b)(2) of the federal National Education Statistics Act of 1994 (20 U.S.C. 9010) if the U.S. Secretary of Education pays the costs of administering the assessments.

(h) (Blank).

(i) For the purposes of this subsection (i), "academically based assessments" means assessments consisting of questions and answers that are measurable and quantifiable to measure the knowledge, skills, and ability of students in the subject matters covered by the assessments. All assessments administered pursuant to this Section must be academically based assessments. The scoring of academically based assessments shall be reliable, valid, and fair and shall meet the guidelines for assessment development and use prescribed by the American Psychological Association, the National Council on Measurement in Education, and the American Educational Research Association.

The State Board of Education shall review the use of all assessment item types in order to ensure that they are valid and reliable indicators of student performance aligned to the learning standards being assessed and that the development, administration, and scoring of these item types are justifiable in terms of cost.

(j) The State Superintendent of Education shall appoint a committee of no more than 21 members, consisting of parents, teachers, school administrators, school board members, assessment experts, regional superintendents of schools, and citizens, to review the State assessments administered by the State Board of Education. The Committee shall select one of its members as its chairperson. The Committee shall meet on an ongoing basis to review the content and design of the assessments (including whether the requirements of subsection

(i) of this Section have been met), the time and money expended at the local and State levels to prepare for and administer the assessments, the collective results of the assessments as measured against the stated purpose of assessing student performance, and other issues involving the assessments identified by the Committee. The Committee shall make periodic recommendations to the State Superintendent of Education and the General Assembly concerning the assessments.

(k) The State Board of Education may adopt rules to implement this Section.

Illinois Evidence Based Funding for Student Success Act:

(105 ILCS 5/18-8.15)

Sec. 18-8.15. Evidence-based funding for student success for the 2017-2018 and subsequent school years.

(a) General provisions.

(1) The purpose of this Section is to ensure that, by June 30, 2027 and beyond, this State has a kindergarten through grade 12 public education system with the capacity to ensure the educational development of all persons to the limits of their capacities in accordance with Section 1 of Article X of the Constitution of the State of Illinois. To accomplish that objective, this Section creates a method of funding public education that is evidence-based; is sufficient to ensure every student receives a meaningful opportunity to learn irrespective of race, ethnicity, sexual orientation, gender, or community-income level; and is sustainable and predictable. When fully funded under this Section, every school shall have the resources, based on what the evidence indicates is needed, to:

(A) provide all students with a high quality education that offers the academic, enrichment, social and emotional support, technical, and career-focused programs that will allow them to become competitive workers, responsible parents, productive citizens of this State, and active members of our national democracy;

(B) ensure all students receive the education they need to graduate from high school with the skills required to pursue post-secondary education and training for a rewarding career;

(C) reduce, with a goal of eliminating, the achievement gap between at-risk and non-at-risk students by raising the performance of at-risk students and not by reducing standards; and

(D) ensure this State satisfies its obligation to assume the primary responsibility to fund public education and simultaneously relieve the disproportionate burden placed on local property taxes to fund schools.

(2) The evidence-based funding formula under this Section shall be applied to all Organizational Units in this State. The evidence-based funding formula outlined in this Act is based on the formula outlined in Senate Bill 1 of the 100th General Assembly, as passed by both legislative chambers. As further defined and described in this Section, there are 4 major components of the evidence-based funding model:

(A) First, the model calculates a unique adequacy target for each Organizational Unit in this State that considers the costs to implement research-based activities, the unit's student demographics, and regional wage difference.

(B) Second, the model calculates each Organizational Unit's local capacity, or the amount each Organizational Unit is assumed to contribute towards its adequacy target from local resources.

(C) Third, the model calculates how much funding the State currently contributes to the Organizational Unit, and adds that to the unit's local capacity to determine the unit's overall current adequacy of funding.

(D) Finally, the model's distribution method allocates new State funding to those Organizational Units that are least well-funded, considering both local capacity and State funding, in relation to their adequacy target.

STATEMENT OF FACTS

A. The Proceedings Below

The twenty-two petitioner districts are located in St. Clair, Bond, Christian, Fayette, Jersey, Macoupin, Madison, Montgomery and Peoria counties. C 148 ¶ 13.[1] The original defendants in this case were the State of Illinois and the Governor. This action is now proceeding only against the defendant Governor. On April 5, 2017, in the Circuit Court of St. Clair County, the plaintiffs filed this action to seek full funding of the Illinois Learning Standards, under which the students are assessed. The Illinois Learning Standard prescribe what all students in Illinois must know and what skills they must demonstrate at different grade levels. The Learning Standards are aligned with the Common Core State Standards which were adopted by the General Assembly in 2010 and codified in 105 ILCS 5/2-3.64a5.

The original complaint specifically sought to require the State to adopt a so called "evidence based funding methodology" used in other States to determine the amount of state aid to each district necessary to meet or achieve the Learning Standards. In August 2017, however, the General Assembly enacted the Evidence Based Funding for Student Success Act ("EBF Act") and in effect provided at least part of the relief sought in the complaint. Under this Act, codified in 105 ILCS 18/8-15(a)(1), the State Board of Education is required to calculate the amount due to each school district in the State to meet or achieve the Learning Standards. The calculation is made based district's available local resources, current State aid, and the necessary additional aid deemed necessary under the EBF methodology for all students in a particular district to be able to meet or achieve the Learning Standards.

[1] All citations here in are to the common law record filed with the Appellate Court in this action.

In January 2018, pursuant to the EBF methodology required by the EBF Act, the State Board of Education determined that an additional total of $7.2 billion in State aid— that is, above the aid the State currently provided — would be necessary for students in low wealth districts like the plaintiff districts to meet or achieve the Learning Standards. The plaintiff districts were just over half to two thirds of the level that the State Board of Education determined they should be spending.

The EBF Act declares that the State has a "goal" of providing such additional aid, that is, the $7.2 billion, in ten years, or by no later than June 30, 2027. 105 ILCS 5/18-8.15(a)(1). The Act recognizes that such additional aid is necessary in order to achieve the constitutional rights of the students to a high quality education as required by Article X, Section1 of the Illinois Constitution. The Act states in part:

> "The purpose of this Section is to ensure that by June 20 2027 and beyond, the State has a kindergarten through grade 12 public education system with the capacity to ensure the educational development of all persons to the limit of their capacities in accordance with Section 1 Article X of the Constitution of the State of Illinois."

105 ILCS 5/18-8.15(a)(1).After the EBF Act became law, the plaintiff districts filed their amended complaint which sought a declaratory judgment that the State defendants had a legal duty to provide this additional funding by no later than June 30, 2027, as set out above. Plaintiffs alleged a violation both of Article X, section 1 and the right to equal protection of the laws under Article I, section 2. In addition to declaratory relief, plaintiff districts sought an order that Governor submit a financial

plan for successive budgets that would reach the goal of full funding by June 30, 2027, as set forth in the EBF Act.

The original State defendants, namely, the State and the Governor, moved to dismiss on the ground that the action was barred by sovereign immunity, lack of standing and failure to state a claim. By order of October 17, 2018, the Circuit Court found that the action was barred by the doctrine of sovereign immunity and that plaintiffs had failed to state a claim as well. Plaintiffs then appealed to the Appellate Court for the Fifth Judicial District. On April 17, 2020, in a Rule 23 order, the Appellate Court upheld the Circuit Court's judgment. On May 13, 2020, the Court granted the motion of the petitioner districts to publish the order as an opinion. The Appellate Court held that while sovereign immunity barred the claim against the State, it assumed that the action could proceed against the defendant Governor. In affirming the judgment below, Appellate Court held that complaint did not state valid claims under the education clause of Article X and the Equal Protection Clause. The court held that while the EBF Act and the Learning Standards may have affected the rationale for the Illinois Supreme Court's ruling in *Citizens for Educational Rights v. Edgar,* 174 Ill.2d 1 (1996), dismissing claims under Article X and the Equal Protection Clause, it was up to this Supreme Court alone to determine whether that *Edgar* was still good law.

B. The Role of the Learning Standards

Until 1996, at the time of this this Court's decision in *Edgar,* the State had no academic standards, no Learning Standards — nothing like the Common Core requirements — such as those under which all Illinois students

are now assessed. In 1997, however, the State Board of Education adopted the first so called Illinois Learning Standards. These initially were not the Common Core requirements, but they were an initial attempt to define what the specific knowledge Illinois students must have and the skills they must demonstrate at different grade levels. C 149 ¶ 21, C 150 ¶ 24. Since 1997, the State Board's Learning Standards have increased in the rigor of the requirements and the benchmarks that the students must achieve. C 149 ¶ 22. Most significantly, in 2010, in a major change, the General Assembly adopted the Common Core State Standards for English language arts and mathematics which are now codified in 105 ILCS 5/2-3.64a-5 and are now incorporated into the Learning Standards. C 149 ¶ 23.

The Learning Standards including the Common Core State Standards now run to hundreds of pages. (The Learning Standards are set out in full at https://www.isbe.net/Pages/Learning-Standards.aspx (last accessed March 28, 2019)). Pursuant to 105 ILCS 5/2-3.64a-5, they are also developed and revised with extensive public input. C 150 ¶ 26. The Learning Standards are intended to be and are the consensus of the legislative and executive branches and the people of the State as the specific educational experience that all children of Illinois are entitled to have. C 150 ¶ 27.

At the time the first amended complaint was filed, all students in the plaintiff districts—and throughout the State—were required to take the examinations of the Partnership for Assessment for Readiness for College and Careers (PARCC). C 153 ¶ 57. In 2019, the State Board began to use a new test, the Illinois Assessment for Readiness (IAR), for grades 3 through 8, and

to use PSAT and SAT examinations for students in secondary education. These examinations are aligned with the Learning Standards. C 155 ¶ 55. At least one such assessment in high school is used to determine the readiness of these students for post-secondary education, including institutions of higher learning paid for by taxpayers of the State. C 153 ¶ 58. That assessment becomes part of the student's permanent record. This assessment, made part of the permanent record, is used as one factor to determine admission or acceptance to State supported institutions of higher education. C 153 ¶58.

C. Disproportionate Failure Rates of Students in Low Wealth Districts

As demonstrated by the chart below — set out in paragraph 59 of the First Amended Complaint - students in the plaintiff districts and other low wealth districts *fail* these exams at high rates. C 154 ¶ 59. By contrast, the students in affluent or high wealth districts *pass* at high rates, *id.* Per-pupil-revenue is a major determinant in whether students meet or achieve the Learning Standards. *Id.* In the plaintiff districts, as in other low wealth districts, the pass rates typically range from 20 to 30 percent, with some variation. In the "comparator" or high wealth districts in paragraph 59 in the First Amended Complaint, the pass rates are typically in the range of 80 percent or higher. The fail rates in low wealth districts have increased considerably since the State implemented the more rigorous Common Core State Standards in 2010. C 154 ¶ 59.

Profiles of Plaintiff School Districts and Selected Affluent School Districts				
		2016-2017	**FY 2016 per pupil revenue**	**% Meeting or Exceeding**

	Type	Students	% low income	Local	State	Local & State	2011-12 ISAT[2]	2016-17 PARCC
Plaintiff Districts								
Bethalto CUSD 8	Unit	2509	49.3	4,384	4,325	8,709	82.1	31.4
Bond County CUSD 2	Unit	1840	48.8	4,602	4,023	8,625	86.1	40.5
Brownstown	Unit	376	50.8	2,810	6,456	9,266	85.3	33.3
Bunker Hill CUSD 8	Unit	605	45.1	3,793	4,802	8,595	82.9	28.8
Cahokia CUSD 187	Unit	3371	88.9	2,874	8,706	11,580	69.0	5.2
Carlinville CUSD 1	Unit	1495	48.4	4,450	3,283	7,733	89.5	42.3
Gillespie CUSD 7	Unit	1342	68.3	2,435	5,360	7,795	80.1	35.4
Grant CCSD 110	Elem	575	52.3	8,012	3,429	11,441	79.8	25.7
Illinois Valley Central USD 321	Unit	2131	37.3	6,458	2,469	8,927	86.1	50.6
Meridian	Unit	1698	27.4	6,127	6,864	12,991	90.8	28.8
Mount Olive CUSD 5	Unit	474	42.4	4,170	4,823	8,993	85.8	30.6
Mulberry Grove CUSD 1	Unit	391	48.6	3,707	5,178	8,885	81.2	25.6
Nokomis CUSD 22	Unit	634	46.4	4,102	4,742	8,844	78.1	49.8
Oregon CUSD 202	Unit	18,208	20.2	$7,770	$3,542	$11,312	90	47
Oswego CUSD#308	H.S.	2728	18.9			9,996		n/a
Pana CUSD 8	Unit	1312	61.7	4,789	4,885	9,674	83.9	27.9
Southwestern CUSD 9	Unit	1461	41.8	4,699	4,374	9,073	86.6	39.7
Staunton CUSD 6	Unit	1303	42.2	3,084	3,294	6,378	87.2	28.4
Streator	H.S.	943	55.4	7,190	4,221	11,411		n/a

[2] The ISAT was the standardized test that preceded the current PARCC test.

Taylorville CUSD 3	Unit	2559	55.7	4,857	3,667	8,524	85.7	28.6
Vandalia CUSD 203	Unit	1465	57.3	5,171	4,690	9,861	78.2	27.6
Wood River-Hartford ESD 15	Elem	753	70.5	5,465	2,649	8,114	79.7	20.3
Comparison Districts								
Deerfield SD 109	Elem	2956	0.4	17,313	753	18,066	96.0	76.7
Glencoe SD 35	Elem	1182	0.7	22,312	589	22,901	95.9	66.5
Gower SD 62	Elem	876	13.7	15,499	754	16,253	95.7	62.6
Hinsdale CCSD 181	Elem	3837	3.6	17,456	708	18,164	98.2	71.8
Kenilworth SD 8	Elem	476	0	27,346	608	27,954	99.0	74.9
LaGrange Highlands SD 106	Elem	880	6.1	14,114	903	15,017	95.3	71.1
Lake Forest SD 67	Elem	1755	2.1	19,483	665	20,148	96.3	66.6
Lincolnshire-Prairieview SD 103	Elem	1743	1.4	17,215	872	18,087	97.9	80.7
Lisle CUSD 202	Unit	1487	30.3	20,655	1,627	22,282	91.2	43.5
Northbrook ESD 27	Elem	1298	3	19,418	764	20,182	96.1	81.2
Northbrook/ Glenview SD 30	Elem	1168	2.3	18,606	651	19,257	97.1	77.3
Oak Grove SD 68	Elem	889	0.4	16,695	750	17,445	95.3	72.0
River Forest SD 90	Elem	1411	5.7	15,195	1,010	16,205	96.2	68.0
Sunset Ridge SD 29	Elem	466	2.1	28,110	977	29,087	96.0	73.3
Wilmette SD 39	Elem	3691	3.3	14,842	792	15,634	96.9	67.5
Wilmette SD 36	Elem	1789	0.2	23,689	652	24,341	97.9	69.0

STATEWIDE AVERAGES	-	-	50.2	–	–	12,973	84.3	34.1

The correlation between the pass rates and the per-pupil-revenue from local *and* state sources is also demonstrated in the table at paragraph 59 of the First Amended Complaint. The disparity in per-pupil-revenue can range from $6,378 per pupil (Staunton) to $24,341 per pupil (Wilmette). The increased failure rates under the Common Core State Standards have made it difficult for students in the plaintiff districts to be admitted to the State's public institutions. C 156 ¶ 68.

For the plaintiff districts, a special problem has been the decline in State aid in the years just after the adoption of the Common Core State Standards. C 155 ¶¶ 61-62. While the plaintiff districts increased their own local revenue per pupil on average by $576 per pupil in the period from 2011 to 2015, these districts lost on average $871 per pupil in aid from the State. C 155 ¶ 61.

D. The Calculation of the Adequacy Funding Gap

The EBF Act of 2017 swept aside the entire framework in the past of providing aid to local school districts. Previously, there was a statutory formula setting a "Foundation Level," but the "Foundation Level" of State aid had no relation to the achievement of the Learning Standards, even after they had been aligned by law in 2010 with the Common Core requirements. The EBF Act was intended to correct this misalignment. The new EBF formula for State aid requires the State Board of Education to calculate the so called "adequacy targets," which set the amount of

additional State aid necessary for the districts to meet or achieve the Learning Standards. C 157-158 ¶¶ 73-77. Each district has its own individual adequacy target.

The process works as follows: First, the State Board calculates the cost of "research based" activities that will improve student ability, demographic characteristics of the student population, and regional wage differences for teachers and other staff. Then the State Board calculates each district's local funding capacity and the State's present contribution. From these calculations, there is a determination of just how much additional State aid, if any, the local districts need for their students to meet or achieve the Learning Standards. C 157 ¶ 75.

For the plaintiff districts, as set out in the first amended complaint, the adequacy funding gap —the shortfall in the funds necessary to meet or achieve the Learning Standards—is substantial. For each district, the gap is in the millions of dollars—and as shown in the table at C 158 ¶ 77—the plaintiff districts are just over half to two thirds of the levels they should be spending this year.

District Name	Adequacy Funding Gap	Final Adequacy Level
Plaintiff Districts		
Bethalto CUSD#8	12,192,536.71	58%
Bond County CUSD#2	8,087,152.76	62%
Brownstown CUSD#201	1,892,573.10	56%
Bunker Hill CUSD#8	2,984,004.84	59%
Cahokia Unit SD#187	16,398,455.61	66%
Carlinville CUSD#1	6,790,771.93	60%
Gillespie CUSD#7	7,089,281.96	54%

Grant Central Consolidated SD# 110	1,582,610.66	77%
Illinois Valley Central Unit D#321	6,389,604.57	72%
Mount Olive CUSD#5	2,195,153.20	61%
Meridian CUSD#223	6,496,197.94	67%
Mulberry Grove CUSD#1	2,006,355.27	58%
Nokomis CUSD#22	2,841,877.92	60%
Oregon CUSD#220	4,747,915.47	72%
Oswego CUSD#308	82,543,953.13	62%
Pana CUSD#8	6,473,520.69	59%
Southwestern CUSD#9	6,506,111.76	62%
Staunton CUSD#6	6,017,751.22	58%
Streator Township HS D#40	5,963,055.48	51%
Taylorville CUSD#3	10,179,995.36	65%
Vandalia CUSD#203	7,377,417.14	58%
Wood River-Hartford Elem SD#15	3,140,815.78	62%

Comparison Districts	**Adequacy Funding Gap**	**Final Adequacy Level**
Deerfield SD#109	(13,494,098.17)	142%
Glencoe SD#35	(11,240,104.43)	187%
Gower SD#62	(1,740,872.76)	118%
Hinsdale Township HS D#86	(17,666,430.49)	132%
LaGrange Highlands SD# 106	(2,304,478.70)	124%
Lake Forest SD#67	(10,689,769.28)	156%
Lincolnshire-Praireview SD#103	(6,513,926.16)	134%
Lisle CUSD# 202	(8,675,149.16)	147%
Northbrook Elem SD#27	(10,905,913.60)	178%
Northbrook/Glenview SD#30	(8,196,324.54)	163%
Oak Grove SD#68	(3,611,586.59)	135%
River Forest SD#90	(5,988,877.33)	139%
Sunset Ridge SD#29	(6,925,536.15)	230%

At the same time, the affluent "comparator" districts are spending up to twice

the level deemed necessary. C 159 ¶ 78.

In the press release of January 18, 2018, the State Board described these disparities as "shocking." C 159 ¶ 79. The State School Superintendent Tony Smith stated at that time:

> "But the [evidence based funding] formula does not address the deep inequity we see—we now have to fund the formula to create the conditions for every child to thrive. The children in school today are not able to wait for another opportunity for a quality education. a better social and economic future for the state depends on providing all children with the quality education they deserve today."

E. The Ten-Year Goal for Full Funding

As set forth above in the EBF Act the General Assembly has adopted a ten-year goal of bringing the plaintiff districts—and other low wealth districts—up to the adequate targets. *See* 105 ILCS 18/8-15(a)(1). It has declared a goal of full funding of the Learning Standards by June 30, 2027. *Id.* However, in fiscal year 2018 (FY 2018), at the time the action was dismissed, the General Assembly has appropriated just $350 million in additional state funding, with $50 million of that sum going for property tax relief. That is far less than a tenth of the sum necessary to reach the ten-year goal of full funding by June 30, 2027. C 147 ¶ 8. Since the State Board has calculated that the State would have to spend an additional $7.2 *billion* in *additional* State aid for the plaintiff districts and other low wealth districts to meet or achieve the Learning Standards, the achievement of this goal would take place at the current levels of new funding not by June 30, 2027 but no earlier than June 30, 2037 or even decades later. As set forth below, the $300 million was the

minimum funding target set by the EBF Act. The State did meet the minimum funding target in FY 2018, FY 2019, and FY 2020 but this was far from adequate for meeting the ten-year goal of full funding. This year, in FY 2021, there is no increase in funding at all. Nor are the sums being adjusted for inflation. Without relief from this Court, there is no possibility that the State will reach the goal of full funding in ten years, twenty years, or thirty. More than one generation of students would then go through the public school system in the low wealth districts from K through 12 without ever receiving the educational experience that the General Assembly deemed to be necessary to achieve the Learning Standards. The State will have permanently damaged the life chances of these students.

ARGUMENT

I. Standard of Review

This is an appeal from an order and final judgment of the Circuit Court granting the State defendants' motion to dismiss pursuant to 735 ILCS 5/2-610 on the ground of sovereign immunity and granting the State defendants' motion to dismiss pursuant to 735 ILCS 5/2-619 for failure to state a claim for relief. With one dissent, the Illinois Appellate Court for the Fifth Judicial District affirmed the judgment of the Circuit Court as to the bar of sovereign immunity only as it applied to the State; it otherwise found that plaintiffs had failed to state claims for relief under the Illinois Constitution. The standard of review in this matter is *de novo.*

II. Introduction

The twenty-two plaintiff school districts and the students they represent seek a declaratory judgment of their right under the education article, Article X, section 1,

and under the equal protect clause to the funding necessary for the districts and students to meet or achieve the Illinois Learning Standards. Plaintiffs also seek an order directing the defendant Governor by his authority under Article VIII, section 2 of the Illinois Constitution to submit successive annual budgets calculated to achieve that funding by June 30, 2027, the goal set in the 2017 EBF Act. Without such relief, there is a serious risk that the State will never provide the funding which the 2017 EBF Act acknowledges to be necessary for all students in Illinois to have the education required by Article X, section 1 of the Illinois Constitution.

The new role of standards in public education

The State now assesses annually every student in this State under the Illinois Learning Standards. As set forth above, the Illinois Learning Standards now run to hundreds of pages. They describe in detail what the students must know and the skills they must demonstrate at every grade level. At least one assessment in high school becomes part of every student's permanent record. 105 ILCS 5.2-3.64a5(c). These assessments or determinations of the State affect eligibility for admission or acceptance in the State's own institutions of post-secondary education. *Id.* They profoundly affect the life chances of the students in this State.

The vindication of the constitutional right of the plaintiff districts and their students is urgent. The irreparable harm to thousands of students is more irreparable each school year that an education capable of achieving the Learning Standards is denied. In this year alone, thousands of students will graduate with permanent records that they failed to achieve the Learning Standards. In turn, the plaintiff districts are classified as underperforming and often lose students and tax base as parents choose to move and place their children in higher wealth districts. The pass

rates in low wealth districts compared with the pass rates and high wealth districts set out in the Statement of Facts show the correlation between the resources of the districts where the students live and their ability to pass the State assessments..

It is a matter of fundamental fairness that the State should meet its obligation under Article X, section 1 of the Illinois Constitution – its express duty to "provide an efficient system of high quality educational institutions," that are capable of allowing students in those institutions to meet the Learning Standards.

In *Committee for Educational Rights v. Edgar,* 174 Ill.2d 1 (1996), this Court held that it could not enforce this Article X because there were no "discoverable standards" for the required education. *Id* at 27-28. Today, such standards are not just "discoverable" but common knowledge – they are the foundation of public education in this State. The Illinois Assessment for Readiness (IAR) tests aligned with the Learning Standards are required every year for students in grades 3 through 8 and are part of their "temporary" record. In a similar way, the PSAT and SAT tests are now required every year for students in secondary education. These tests are aligned with Common Core standards required not just in Illinois but in every part of the country: the Common Core requirements have now been adopted in 41 States and the District of Columbia. Academic standards are not going away; and the student's success or failure at meeting these standards is literally now part of the student's "permanent" record.

The relief sought and nature of the controversy

Plaintiffs ask this Court to perform an inherently judicial role – to determine what obligation Article X imposes on the State when it has detailed Learning Standards under which the plaintiff districts and the students are assessed by the

State.. It is also to determine whether the failure to fund the Learning Standards in the manner required by the 2017 EBF Act deprives the plaintiff districts and the students of their rights to equal protection. In the 2017 EBF Act, now codified at 105 ILCS 5/18-8.15, the General Assembly has already determined the necessary funding needed by the plaintiff districts for the students to achieve the Learning Standards. It has required the use of the EBF methodology, which replaces the old Foundation Grant formula which existed at the time of *Edgar.* Unlike that old Foundation Grant formula, EBF methodology is tied to the achievement of the Learning Standards, and the State Board uses the formula set out in the Statement of Facts to determine the additional State resources necessary for the plaintiff districts. This legislative finding as to method of determining the proper additional amounts of State aid due to each school district – and the amounts determined by the State Board – should be accepted by this Court, and deemed binding in this case. The relief sought here is vindication of the constitutional right to the funding that the State itself has deemed to be necessary.

What gives new urgency to this controversy is the back sliding by the State on meeting the ten-year funding goal set out in the EBF Act. The level of funding in FY 2018, FY 2019, and FY 2020 since the filing of the first amended complaint is set out in "The Impact of Underfunding the Evidence Based Formula," Center for Tax and Budget Accountability, June 24, 2020, as well as in "Fully Funding the Evidence Based Formula: 2020 Update," August 4, 2020, available at www.ctbaonline.org. This Court can take judicial notice of the actual State funding since the filing of the amended complaint. Under the EBF Act, the State is required set aside at least an additional $350 million a year in State aid for districts throughout the State. After deduction of $50 million for property tax relief, that leaves a "minimum funding

target" of at least $300 million every year for improved educational instruction. The amounts allocated to the districts are based upon need. Under the EBF Act, all 859 districts of the State are divided into four classes or "tiers," based on resources available to achieve the Learning Standards. To date, the additional $300 million has gone largely to the Tier I and Tier II districts, which are the lowest wealth districts in the State. The Tier I and Tier II districts are under 67 percent and under 90 percent respectively in terms of having the capacity to meet the Learning Standards. Only small amounts have gone to Tier III and Tier IV districts.

By meeting only the minimum funding target in FY 2018, FY 2019, and FY 2020, the State is nowhere close to meeting the goal of reaching the necessary funding by June 30, 2027. As noted by the Center for Tax and Budget Accountability, by just meeting the minimum funding target each year, and if inflation is also taken into account, it would take the State until the year *2059* – or forty years – to reach the level of funding or capacity sought by the EBF Act. *CTBA, supra,* "The Impact of Underfunding the Evidence Based Formula." Worse still, for FY 2021, the current fiscal year, there is no increase in funding *at all*. This zero funding for the current fiscal year is likely to lead to loss of gains in capacity achieved by many districts – with Tier II districts slipping back to Tier I districts. This is especially serious because all the low wealth Tier I and Tier II districts in the State are still recovering from cuts in State aid that were made in prior administrations: so called "pro rating" of funds due under the former Foundation Grant formula that the EBF formula has replaced.

A declaratory judgment in this case will be meaningful at least by bringing an end to the legal controversy between plaintiffs and the Governor, who denies there is any constitutional obligation to provide the funding. The vindication of plaintiffs'

constitutional rights will also make clear to legislators and policy makers that the rights under Article X *are* constitutional in nature, and should have the same or equal parity with the obligations of the State to pay the undiminished pensions of its public employees. The relief is also meaningful by directing the Governor to prepare budgets or a funding plan calculated to achieve the plaintiffs' constitutional rights by June 30, 2027.

Plaintiffs now turn to the reasons to distinguish this Court's decision in *Edgar* and to vindicate the rights of the plaintiffs and students to achieve the Learning Standards now imposed by the State.

III. Under Article X, plaintiffs have a constitutional right to receive the necessary funding to meet or achieve the Learning Standards set by the State and under which they are assessed by the State.

A. This Court's decision in *Edgar* should be deemed no longer applicable in a system of public education based on the Learning Standards.

This Court's decision in *Edgar* is no longer on point or applicable. The bar to enforcement of Article X, section 1 given by the Court in *Edgar* was "a lack of judicially discoverable and manageable standards," because there was no legislative or statutory definition of a "high quality" education. *See Committee for Educational Rights v. Edgar,* 174 Ill.2d at 27 (quoting *Baker v. Carr,* 369 U.S. 186, 210). Now these standards missing at the time of *Edgar* are not just "discoverable" but the common knowledge of every teacher and student in this State. *Edgar* had called for a "spirited dialogue" between the people and their elected representatives to determine what a "high quality" education might be. The people and their representatives did indeed do so – so that *Edgar* is now irrelevant to the system of standard-based public education that now exists. In 2010, the General Assembly has adopted the rigorous

Common Core standards – which also exist in 41 states. As required by law, the State Board of Education has developed the Learning Standards that are aligned to the Common Core. As required by law, these Learning Standards determine what children should know and what skills they should demonstrate at every grade level. The entire factual premise of *Edgar* is gone. The State now assumes the role of determining what students must learn and skills they must have; and the State has also taken over the role of assessing the students as well. There are annual assessments at every grade level – from 3 to 8 under the so called IAR examinations, and every year in secondary school under the PSAT and SAT tests. The State is now a gatekeeper in determining the readiness of the students for college and careers. The State even determines in the EBF Act the methodology to be used to determine how much the districts need to meet the Learning Standards. There is no longer any valid reason to be in doubt as to what is an "efficient system" of "high quality educational institutions." It is a system capable to achieve the specific standards the State requires. In 2017 the Pennsylvania Supreme Court found that the adoption of learning standards like those in this State required a reversal of a prior Pennsylvania case that was like *Edgar*. *See William Penn Sch. Dist. v. Pa. Dep't of Educ.* 642 Pa 236 (PA 2017). As that Court held in *William*, decisions like *Edgar* are relics of another century, when standards-based education did not exist.

B. The plain language of Article X, section 1 requires judgment in favor of plaintiffs.

The text of Article X, section 1 should receive an interpretation that fits the way public education is conducted in Illinois today. Article X, section 1 states:

> "The state *shall* provide for an *efficient* system of *high quality* public educational institutions and services (emphasis supplied)."

First, Article X has the word "shall." As even *Edgar* stated, "there is no doubt as to the nature of this guarantee in the abstract." *Edgar, supra,* at 23. Nor should there be any doubt as to what an "efficient" system is now supposed to do. "Efficient" in the dictionary sense means capable or being competent of achieving a particular end or result. The end or result of public education in Illinois is the achievement of the Learning Standards. The EBF Act sets out an efficient way of giving low wealth districts the capacity to be high quality educational institutions. Or stated otherwise, such funding is the preferred and efficient way of assuring that that all the educational institutions are "high quality," and allow their students to achieve the Learning Standards.

C. The General Assembly has declared funding of the Learning Standards to be a constitutional right under Article X, section 1.

The General Assembly has affirmed that this is the right way to interpret Article X. In the EBF Act,105 ILCS 5/18-8.15(a)(1) the General Assembly defines what is "an efficient system of high quality education institutions" for the purpose of Article X – namely, a system where "every school [would] have the resources based on what the evidence indicates is needed, to: (A) provide all students with a high quality education that offers the academic, enrichment, social and emotional support, technical and career focused programs that will allow them to become competitive workers, responsible parents, productive citizens of this State and active members of our national democracy…"

Full funding, the General Assembly has declared in the same 105 ILCS 5/18-8.15(a)(1), is also necessary to "(B) ensure that "all students receive the education

they need to pursue post-secondary education and training for a rewarding career…" Full funding, the General Assembly has declared, is necessary to "(C) reduce, with the goal of eliminating, the achievement gap between at risk and non-at-risk students by raising at-risk. Last but far from least the General Assembly declared, full funding is necessary to overcome the racial and class barriers to the education required by the state. The vindication of a constitutional right under Article X sought by plaintiff in this case creates no conflict with the legislative branch, which has acknowledged as the very premise of the EBF Act that such a constitutional right under Article X exists. In 105 ILCS 5/18-8.15(a)(1)(D), the General Assembly is emphatic that in this new standard based public education, the State does in fact have the "primary responsibility to fund public education."

D. Enforcement of Article X, section 1 is not barred by the political question doctrine.

The declaration or vindication of a constitutional right is not barred by the "political question" doctrine. Not even one of the six factors of the political question doctrine set out in *Baker v. Carr* applies here.

(1) There is no "textually demonstrable commitment" of Article X to the decision of a coordinate political department. The obligation set out in Article X is placed not on the General Assembly, or the Governor, but the "State," that is, on all three branches including the judicial branch.

(2) There is no "lack of judicially discoverable and manageable standards" for the Court to apply. As noted above, the Learning Standards run to hundreds of pages, and students are assessed under the Learning Standards every year.

Even the amounts due for the plaintiffs and their students to meet the Learning Standards have been determined under the EBF formula by the State Board.

(3) The relief sought here does not show a "lack of respect for a coordinate branch of government." In 105 ILCS 5/18-8.15(a)(1), General Assembly itself has declared that students have a constitutional right to funding of the Learning Standards, and set a ten year goal for achieving them. This Court is not asked to require an appropriation from the General Assembly. Nor does it show "lack of respect" to require the Governor at least to offer a funding plan that will achieve the legislative goal of providing the necessary State aid by June 30, 2027.

Nor do any of the other three *Baker* factors apply. This case does not require an "initial policy determination" as to whether there are or should be Learning Standards. It is already the law. Nor does this case involve an "unusual need for unquestioning adherence to a political decision." Nor would the relief sought create an "embarrassment from multifarious pronouncements by various departments on one question." The *Edgar* decision itself is now at variance with a system of standard based public education and the principles set out in the EBF Act.

E. Article X, section 1 requires fundamental fairness to students who are required to meet the Learning Standards and to plaintiff districts listed as underperforming.

Enforcement of Article X, Section 1 – requiring the State to provide a single "efficient" system of high-quality educational institutions that permit all students to meet or achieve the Learning Standards – is a matter of fundamental fairness. As

noted above, every student in Illinois now assessed very year in English language arts and mathematics and is assessed at least once for "college and career ready determinations," as set forth 105 ILCS 5/2-3.64a-5(c).That assessment goes into the student's permanent record and "shall be accepted by this State's public institutions of higher education… for the purpose of student application or admissions consideration." *Id.*

It is difficult to ascertain what might be the emotional impact on students being classified as not meeting State standards when t is due to the bad luck or accident of being in an underfunded district. Article X, section 1 states: "A fundamental goal of the People of the State is the educational development of all persons to the limits of their capacity." It is bad enough for the State to fail that "fundamental goal," and worse to place an unfair stigma in a permanent record that will be there for the rest of the student's life.

It is also fundamentally unfair to the districts which are listed as underperforming. –The plaintiff districts then suffer the loss of students and even taxable base as families that can afford to do so move out of the district into one with more local and state resources. Their de facto exclusion from an "efficient system of high quality educational institutions" is a deprivation of their right to equal protection of the laws.

IV. The State's failure to fund the Learning Standards deprives plaintiffs of the right to equal protection of the laws.

By requiring a single efficient system, Article X section 1 necessarily establishes the equal right of every student not to be excluded from an efficient system. Article X states: "The State shall provide an efficient system of high-quality

educational institutions." This is not a mandate to have an identical educational education experience, or to have the same amounts spent on each student, or to prohibit variation, but there has to be a single *efficient* system of high quality institutions open to all the persons of this State.

This is a more limited equal protection claim than that put forward in *Edgar.* It appears from the record that the plaintiffs in *Edgar* were seeking absolute identity of funding per student throughout the State, without regard to the property wealth of the local districts. Plaintiff districts are seeking instead the right to be part of a system allowing all students a fair opportunity to meet or achieve the learning standards. They are not seeking equality of per pupil spending, or replacement of the local property tax, but just the remedy put forward in the 2017 EBF Act, namely, the additional spending that the EBF formula indicates will give them the capacity they need.

Though *Edgar* denied that there is a fundamental right to education in the abstract, plaintiffs do have a fundamental right to meet the Learning Standards. This right may or may not be a fundamental right under the Constitution of the United States as well, notwithstanding the decision in *San Antonio School District v. Rodriguez,* 411 U.S. 1 (1973). At the time of that Supreme Court decision, there were no standards in public education anywhere. Also in the U.S. Constitution, there is also no mention of education at all, or even a notion of public education when the Constitution was adopted in 1787. By contrast, there is an emphatic right to public education in the Constitution of Illinois adopted in 1970. This Court should take this occasion to declare that under the Illinois Constitution, there is fundamental right of

plaintiffs and students to be in a single "efficient system of high-quality educational institutions."

Even if this were not a fundamental right, it is irrational to regard the disparity in funding of the plaintiff districts as a reasonable means toward the overriding State goal of achieving the Learning Standards. In a considerable distinction from *Edgar,* the State is classifying districts and students as underperforming at least partly because of circumstances out of their control – and that is irrational, even absurd. In *Edgar,* this Court found the inequality in the funding of public education be "rationally related" to the purported State goal of "local control" which supposedly existed at the time. It seems that this Court just surmised that was the State goal. Today, however, no one can plausibly make that claim. Since *Edgar,* the State has adopted as a goal the achievement of the Learning Standards and adopted as a goal the full funding by June 30, 2027. Plaintiffs are not aware of any reference to local control in any statute as now being a goal of the State. Article X, section 1 sets out only one goal: to educate all persons in the State to the limit of their capacity. There is precedent in striking down a classification when it has no rational basis. *See Jacobsen v. Department of Public Aid,* 171 Ill.2d 314 (1996). The State Board has made clear that the achievement of the Learning Standards is the paramount goal of the State. The acknowledged underfunding of the plaintiff districts has no rational relationship to that goal, and no goal of local control – if it is even still a goal – has priority over it.

V. This Court's order vindicating plaintiffs' constitutional rights will provide meaningful relief.

A declaratory judgment is one that ends a legal controversy – with res judicata effect. As noted above, such a controversy exists with the defendant Governor who

argues that plaintiffs and their students have no constitutional right to have the funding necessary to achieve the Learning Standards. By ending that controversy, a declaratory judgment has some coercive effect, or a likely effect on the behavior of the parties.

Likewise, this Court can grant injunctive relief against the Governor as a public official when that official is not "doing the public's business." See *Leetaru v. Board of Trustees of the Univ. of Ill.* 2015 IL 117485, *47 (April 16, 2015). The "public's business" is to provide an efficient system of high-quality educational institutions." The Governor is failing to do the "public's business" and acting outside of his authority he fails to propose the necessary funding for a an efficient system of public education capable of achieving the Learning Standards that he and the State Board of Education require.

Plaintiffs recognize that this Court by itself – as the judicial branch – cannot order up a world in which all students can achieve the Learning Standards. That will require the cooperation of the legislative and executive branches, and the public as well. But the judicial branch has a role to play as well, as Justice Freeman's dissent in *Edgar* recognized. *Edgar, supra,* at 47, The obligation to provide a high quality education is not the responsibility of the legislative branch alone, as it is in some other state constitutions, but the obligation of "the State," all three branches. *Id.* It is far more likely that even in a time of budget stringency, the State will reach the goal of funding the Learning Standards if all three branches cooperate to that end. The vindication of a constitutional right will make it more likely to reach that goal. Even with the fiscal constraints which this State is under, it will lead to a response. Even the increases that plaintiffs have received from the minimum funding target in the

EBF Act – the $300 million in FY 2018, FY 2019, and FY 2020 – have already made a difference to many low income and high-risk students. Every increment that the plaintiff districts can get has the potential to change the lives of many students.

The plaintiffs do not seek this Court to order an appropriation of the sum due. That sum in total is a daunting $7.2 billion at the time the EBF Act was passed. However, the Governor as an executive officer is subject to the jurisdiction of this Court, with no bar of sovereign immunity, for purpose of declaratory and injunctive relief. The Governor has a constitutional responsibility under Article VIII, section 2 of the Illinois Constitution to "prepare and submit to the General Assembly… a State Budget… and a plan for the obligations of the State. It is legitimate that in performing this executive responsibility under the Constitution, the Governor will ensure or set aside the funding necessary to achieve the obligations to plaintiffs and their students under Article X, section 1 – just as the Governor does with respect to other non-discretionary obligations, including Medicaid and the payment of public employee pensions. In preparing successive budgets the Governor has a constitutional responsibility to achieve the funding of the Learning Standards under which the students will be assessed and their life chances determined. It is important to emphasize that the budget proposed by the Governor in his executive role under Article VIII, section 2 typically has an enormous impact on the actual budget that the General Assembly will pass. The Governor has such leverage because of access to information and data readily available to officials of the Executive Branch and not as readily available to individual legislators. It is the Governor's budget with which legislators work.

Plaintiffs are not naïve about the fiscal realities faced by the Governor: but those realities make the vindication of the constitutional right more and not less urgent. As noted above, in decisions such as *Heaton v. Quinn (In re Pension Reform Litig.*) 2015 IL 118585 (May 8, 2015), this Court has declared constitutional rights for public employees and impacted decisions of the Governor and General Assembly in the annual budgets. Plaintiffs respectfully submit that the funding of their constitutional rights should have the same priority – and be on the same legal parity as those protected by this Court in *Heaton.* This is the occasion to end the legal controversy with the defendant Governor as to whether there is a constitutional right to the funding necessary to achieve the Learning Standards.

In the landmark desegregation case of *Brown v. Board of Education*, 347 U.S. 483 (1954) (*Brown I*) the U.S. Supreme Court did not achieve the immediate end of de jure segregation. Though not styled that way, the *Brown* decision was little more than a declaratory judgment. The Court recognized that the decision would begin a process that would require the cooperation of the legislative and executive branches at the local and federal level. *See Brown v. Board of Education,* 349 U.S. 294, 299 (*Brown II*) ("Full implementation of these constitutional principles may require solution of varied local school problems. School authorities [including elected officials] have the primary responsibility for elucidating, assessing and solving these problems."). While the implementation of such constitutional principles did not happen overnight, their vindication in *Brown I* was the crucial starting point.

Plaintiffs respectfully submit that the declaration of a constitutional right and a directive to the Governor to act with all deliberate speed to achieve that right offers a similar role for this Court to play.

CONCLUSION

For all the above reasons, plaintiffs seek the reversal of the judgment of the Circuit Court and the Illinois Appellate Court and the entry of a declaratory judgment in their favor pursuant to 735 ILCS 5/2-701 and the remand of this case to the Circuit Court for further relief, including injunctive relief against the Governor, consistent with such declaratory judgment.

Dated: November 25, 2020

By: /s/Thomas H. Geoghegan
One of Plaintiffs' Attorneys

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 35 pages.

s/Thomas H. Geoghegan
Attorney for Plaintiffs

Dated: November 25, 2020

Notice of Filing and Proof of Service

On November 30 , 2020, I filed the attached Brief and Appendix, via electronic filing, with the Illinois Supreme Court and caused to be served a copy on counsel of in this action for J.B. Pritzker, Richard Huszagh, at his email address, RHuszagh@atg.state.il.us. Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

___November 30,2020____ ____/s/Thomas Geoghegan_____

Date Thomas Geoghegan

No. 126212

IN THE SUPREME COURT OF ILLINOIS

CAHOKIA UNIT SCHOOL DISTRICT NUMBER 187, *et al.*	)	
Plaintiffs-Appellants,	)	
	)	On appeal
v.	)	
	)	From the Appellate Court,
J.B. PRITZKER, Governor of the State of Illinois,	)	Fifth District,
	)	Case No. 5-18-0542;
	)	
	)	And from,
	)	
	)	The Circuit Court
	)	of the 20th Judicial District, Saint
	)	Clair County, Chancery Division
	)	No. 17-CH-301.
	)	

RULE 342 APPENDIX TO APPELLANTS' BRIEF

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IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

CAHOKIA UNIT SCHOOL DISTRICT NUMBER 187, et al.,	)	
Plaintiffs,	)	
vs.	)	No. 17-CH-301
BRUCE RAUNER, GOVERNOR OF ILLINOIS, et al.,	)	
Defendants.	)	

ORDER

This matter having been called for hearing on October 2, 2018 on the *Motion to Dismiss Amended Complaint* filed by the Defendants, BRUCE RAUNER, GOVERNOR OF ILLINOIS and STATE OF ILLINOIS, on July 20, 2018; the Plaintiffs being represented by their attorneys, THOMAS H. GEOGHEGAN and MALINI RAO; and the Defendants being represented by their attorney, THOMAS A. IOPPOLO, Assistant Attorney General, and the Court, having heard argument of the attorneys, having reviewed the applicable case law and being fully advised in the premises, finds as follows:

1. That the *Complaint* was filed by the Plaintiffs herein on April 7, 2017.

2. That a *First Amended Complaint* was filed by the Plaintiffs herein on May 21, 2018.

3. That the Defendants filed a *Motion to Dismiss Amended Complaint* pursuant to 735 ILCS 5/2-619.1 on July 20, 2018.

4. That arguments on the *Motion to Dismiss Amended Complaint* were held on October 2, 2018.

5. That the *Motion to Dismiss Amended Complaint* asserts several arguments as to why the *First Amended Complaint* should be dismissed: (1) that the *First Amended Complaint* should be dismissed pursuant to 735 ILCS 5/2-619 because it is barred by the doctrine of sovereign immunity; (2) that the *First Amended Complaint* should be dismissed pursuant to 735 ILCS 5/2-619 because the plaintiffs lack standing to assert the rights of their students; and (3) that the *First Amended Complaint* should be dismissed pursuant to 735 ILCS 5/2-615 because it fails to state a valid cause of action.

6. That, with regard to the argument that the *First Amended Complaint* should be dismissed because it is barred by the doctrine of sovereign immunity, the Defendants rely on the State Lawsuits Immunity Act, 745 ILCS 5/1, et seq. That Act provides that "the State of Illinois shall not be made a defendant or party in any court."

7. That the Plaintiffs argue in the *Response in Opposition to Defendants' Motion to Dismiss* that they filed on August 24, 2018 that a statute cannot insulate the Defendants when they invade the rights of the Plaintiffs under the Constitution, which is a higher order law.

8. The doctrine of sovereign immunity was discussed in a recent Illinois Supreme Court case entitled *Leetaru v. Board of Trustees of University of Illinois*, 32 N.E.3d 583 (Ill. 2015). In that case, the plaintiff was a graduate student at the University of Illinois, and he filed suit to enjoin the University from proceeding in a disciplinary investigation against him. The doctrine of sovereign immunity was asserted by the defendant university, and the Court made the following statements:

> "Whether an action is in fact one against the State and hence one that must be brought in the Court of Claims depends on the issues involved and the relief sought. [Citations]. The prohibition 'against making the State of Illinois a party to a suit cannot be evaded by making an action nominally

> one against the servants or agents of the State when the real claim is against the State of Illinois itself and when the State of Illinois is the party vitally interested.' *Healy*, 133 Ill.2d at 308, 140 Ill.Dec. 368, 549 N.E.2d 1240 (quoting *Sass v. Kramer*, 72 Ill.2d at 491, 21 Ill.Dec. 528, 381 N.E.2d 975)…The purpose of the doctrine of sovereign immunity, after all is to 'protect the State from interference in its performance of the functions of government and preserve its control of State coffers.' *S. J. Groves & Sons Co. v. State*, 93 Ill.2d 397, 401, 67 Ill.Dec. 92, 444 N.E.2d 131 (1982).

Id., 32 N.E.3d at 595-596.

9. That the *Leetaru* case did point out that there is an exception to the doctrine of sovereign immunity when the action brought is one to prevent a state officer from performing an unconstitutional act or acting beyond his or her authority. The Court made the following statement:

> "The doctrine of sovereign immunity 'affords no protection, however, when it is alleged that the State's agent acted in violation of statutory or constitutional law or in excess of his authority, and in those instances an action may be brought in circuit court.' "

Id., 32 N.E.3d at 595.

10. That the Plaintiffs argue in their *Response in Opposition to Defendants' Motion to Dismiss* that this action is in fact one being brought against the Governor to enjoin him from violating the Constitution by failing to carry out the mandates of the Learning Standards and the Evidence Based Funding for Student Success Act (hereinafter referred to as the "Evidence Based Funding Act") enacted by the legislature.

11. That the Defendants state in the *Memorandum of Law in Support of Motion to Dismiss Amended Complaint* that they filed on July 20, 2018 as follows:

> "An examination of the issues and the relief sought shows "that the Governor is not being sued for *his* conduct. There were no allegations that *he* is acting unconstitutionally. There is no relief aimed at preventing *him* from taking some action alleged to be wrongful. The challenge is to the school funding statutes and amounts appropriated under them – which the Governor does not control through any discretionary act on his part. Nor does the Governor directly administer the Learning Standards. And the relief sought is to award money out of the state treasury to the plaintiff school districts, who complain they are not being given adequate state tax dollars to fulfill their educational mission."

Id., Memorandum of Law in Support of Motion to Dismiss Amended Complaint, p. 6.

12. That the Plaintiffs are seeking the following relief: (1) a declaratory judgment that the State of Illinois and the Governor are violating both the Education Article and the equal protection clause of the Constitution; (2) an order directing the Defendants to submit a schedule of additional state aid to the plaintiff districts through the year 2027 in order to fully fund the Evidence Based Funding Act; (3) ancillary orders to ensure the State sets aside sufficient money to meet the payment schedule; and (4) an order directing the Defendants to modify their usage of the Partnership for Assessment for Readiness for College and Careers (hereinafter referred to as "PARCC") exams so as to not penalize students in low wealth districts when they apply for admission to college.

13. That the Court believes that granting the relief sought by the Plaintiffs would in fact interfere in the government's performance of its functions and would usurp the State's control over its coffers, which the *Leetaru* court indicated is barred by the doctrine of sovereign immunity.

14. That the Defendants' Motion to Dismiss pursuant to 735 ILCS 5/2-619 should be granted because the action brought by Plaintiffs is barred by the doctrine of sovereign immunity.

15. That the Court does not need to rule on the issue of standing because the action is being dismissed pursuant to 735 ILCS 5/2-619 because it is prohibited by the doctrine of sovereign immunity.

16. That, even if this Court were wrong on the issue of sovereign immunity, the Court believes that the Amended Complaint fails to state a valid cause of action and should be dismissed pursuant to 735 ILCS 5/2-615.

17. That, as indicated above, the Plaintiffs are requesting that this Court enter an Order declaring that the Defendants are in violation of certain provisions of the Constitution by failing to fully fund the Evidence Based Funding Act in an effort to achieve compliance with the Learning Standards, and by utilizing the PARCC examinations in a discriminatory manner.

18. That, in addition to the issuance of a declaratory judgment, the Plaintiffs are requesting that this Court order the Defendants to submit a schedule of funding for the plaintiff districts through 2027 that would fully fund the Evidence Based Funding Act, and further to enter enforcement orders on an ongoing basis that would guarantee that sufficient funds are appropriated in accordance with the payment schedule.

19. That, finally, the Plaintiffs request that the Defendants be enjoined from utilizing the results of the PARCC examinations in a manner that penalizes students in low-wealth districts.

20. That the Illinois Supreme Court has heard a similar claim that would, according to the Defendants, mandate dismissal of the Plaintiffs' *First Amended Complaint* herein. *Committee for Educational Rights v. Edgar*, 174 Ill.2d 1, 672 N.E.2d 1178 (Ill. 1996), involved an action brought by school districts, students and parents against the Governor and the State Board of Education, claiming that the statutory scheme of funding for public schools violated

several provisions of the Illinois Constitution. After the case was dismissed by the trial court, and the dismissal was affirmed by the appellate court, the case proceeded to the Supreme Court. In upholding the lower courts' dismissals, the Supreme Court made the following observations:

> "The remaining question under section 1 of the education article pertains to its guarantee of a system of 'high quality' educational institutions and services. There is no dispute as to the nature of this guarantee in the abstract. Instead, the central issue is whether the quality of education is capable of or properly subject to measurement by the courts. Plaintiffs maintain that it is the courts' duty to construe the constitution and determine whether school funding legislation conforms with its requirements and cite a number of decisions from other jurisdictions in which courts have concluded that similar constitutional challenges are capable of judicial resolution. As explained below, however, we conclude that questions relating to the quality of education are solely for the legislative branch to answer…
>
> To hold that the question of educational quality is subject to judicial determination would largely deprive the members of the general public of a voice in a matter which is close to the hearts of all individuals in Illinois. Judicial determination of the type of education children should receive and how it can be best be provided would depend on the opinions of whatever expert witnesses the litigants might call to testify and whatever other evidence they might choose to present. Members of the general public, however, would be obliged to listen in respectful silence. We certainly do not mean to trivialize the views of educators, school administrators and others who have studied the problems which public schools confront. But nonexperts --- students, parents, employers and others --- also have important views and experiences to contribute which are not easily reckoned through formal judicial factfinding. In contrast, an open and robust public debate is the lifeblood of the political process in our system of representative democracy. Solutions to problems of educational quality should emerge from a spirited dialogue between the people of the State and their elected representatives…
>
> In closing, it bears emphasis that our decision in no way represents an endorsement of the present system of financing public schools in Illinois, nor do we mean to discourage plaintiffs' efforts to reform the system. However, for the reasons explained above, the process of reform must be undertaken in a legislative forum rather than in the courts."

Id., 872 N.E.2d at 1189, 1191, 1196.

21. That the Plaintiffs in *Edgar* also raised an equal protection argument, contending that the system of funding public education causes great disparities in funding throughout the State as a result of the fact that local property wealth varies greatly from district to district. In upholding the dismissal of the Plaintiffs' claim on that issue, the Supreme Court stated as follows:

> "In accordance with *Rodriguez* and the majority of state court decisions, and for all the reasons set forth above, we conclude that the State's system of funding public education is rationally related to the legitimate State goal of promoting local control. Plaintiffs' claims under the equal protection clause of the Illinois Constitution were properly dismissed.

Id., 872 N.E.2d at 1196.

22. That the Plaintiffs argue that *Edgar* is distinguishable because the plaintiffs in *Edgar* were asking the Court to determine what constitutes the "high quality" education that is promised by the terms of the Illinois Constitution. In the case before the Court, however, the Plaintiffs contend that they do not need to have that issue determined; the Illinois Learning Standards were promulgated after *Edgar*, and the Plaintiffs argue that the Learning Standards set forth the contents of a "high quality" education. It is their further position that the enactment of the Learning Standards is an indication that the state goal of "local control" that was viewed by the *Edgar* court as being a legitimate state goal that justified the system of funding public education has been eliminated.

23. That the Illinois Supreme Court had an opportunity to address a similar argument made in a case that it heard after the Illinois Learning Standards were put into place. In *Carr v. Koch*, 2012 IL 113414, the plaintiffs sued the Governor and the State Board of Education, alleging that the education funding system violated the equal protection clause of the Illinois

Constitution. Specifically, they alleged that the funding system had the effect of requiring taxpayers in school districts with low property values to pay property taxes to fund local public schools at a higher rate than similarly situated taxpayers in school districts with high property values. Those plaintiffs argued that the promulgation of the Illinois Learning Standards abrogated local control over education, and that, as a result, *Edgar* no longer barred the action. The trial court found, however, that *Edgar* still controlled and defeated their equal protection argument. The trial court also found that the plaintiffs did not have standing because the variations in tax-assessment rates were the result of local decision-making and could not be firmly traceable to the defendants. The Illinois Supreme Court affirmed the trial court's dismissal of the action. It did not take that opportunity to hold that *Edgar*'s rationale of maintaining local control was no longer a legitimate goal, even though the Illinois Learning Standards had been promulgated at that point. Nor did the court overrule *Edgar* as a result of the implementation of the Learning Standards. This Court is bound by *Edgar* unless and until the Supreme Court sees fit to overturn that decision.

24. The reasoning set forth in *Edgar* as to why the judicial branch should not encroach upon the legislature's authority to appropriate the funds necessary for its legislative enactments is fully applicable here. The Plaintiffs are requesting, among other things, that the Court order the Defendants to submit a schedule, setting forth the amount of state aid funding that would be sent to the plaintiff districts between now and 2027 in order to achieve full funding of the Learning Standards by that date. Further, they request that the Court monitor the appropriations set aside by the Defendants in the future to ensure that they adhere to that schedule. Finally, the Court is being asked to direct the Defendants to modify the use of the PARCC examinations so as to not discriminate against low-wealth districts. Even if this Court

were to feel that it had the authority to order the Defendants to submit a schedule of funding, how is this Court to enforce that Order? This Court would be tasked with evaluating the schedule to determine whether or not it would achieve full funding by 2027, a task which this Court is ill-equipped to perform. In order to achieve the full funding requested by the plaintiff districts, the other 837 school districts in the State of Illinois would undoubtedly have their budgets affected by the funds that would have to be diverted to the 22 plaintiff districts. This Court does not have the expertise to make that determination.

Moreover, if this Court were to order the Defendants to utilize the PARCC examination results in a nondiscriminatory manner, the Court would again be called upon to determine whether or not the proposed use of the results would achieve the stated goal of nondiscrimination. Once again, the Court does not have the education expertise to evaluate whether or not its Order has been complied with. These concerns illustrate the reasons that this Court should not interfere with the province of the legislature to make these decisions. As the Court stated in *Edgar*:

> "It would be a transparent conceit to suggest that whatever standards of quality courts might develop would actually be derived from the constitution in any meaningful sense. Nor is education a subject within the judiciary's field of expertise, such that a judicial role in giving content to the education guarantee might be warranted. Rather, the question of educational quality is inherently one of policy involving philosophical and practical considerations that call for the exercise of legislative and administrative discretion."

Id., 672 N.E.2d at 1191.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

A. That Counts I and II of the *First Amended Complaint* are hereby dismissed with prejudice pursuant to 735 ILCS 5/2-619 under the doctrine of sovereign immunity as set forth above.

B. That, in addition, Counts I and I of the *First Amended Complaint* are hereby dismissed with prejudice pursuant to 735 ILCS 5/2-615 for failure to state a cause of action.

DATED this 17th day of October, 2018.

ENTER:

Julie K. Katz

JUDGE

FILED
ST. CLAIR COUNTY
OCT 17 2018
14
CIRCUIT CLERK

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IN THE CIRCUIT COURT OF THE 20TH JUDICIAL CIRCUIT
ST. CLAIR COUNTY

CAHOKIA UNIT SCHOOL DISTRICT NUMBER 187, GRANT CENTRAL CONSOLIDATED SCHOOL DISTRICT NUMBER 110, PANA COMMUNITY UNIT SCHOOL DISTRICT NUMBER 8, BETHALTO COMMUNITY UNIT SCHOOL DISTRICT NUMBER 8, BOND COUNTY COMMUNITY UNIT SCHOOL DISTRICT NUMBER 2, BROWNSTOWN COMMUNITY UNIT SCHOOL DISTRICT 201 BUNKER HILL COMMUNITY UNIT SCHOOL DISTRICT NUMBER 8, GILLESPIE COMMUNITY UNIT SCHOOL DISTRICT NUMBER 7, ILLINOIS VALLEY CENTRAL COMMUNITY UNIT SCHOOL DISTRICT NUMBER 321, MERIDIAN COMMUNITY UNIT SCHOOL DISTRICT 223 MT. OLIVE COMMUNITY UNIT SCHOOL DISTRICT NUMBER 5, MULBERRY GROVE COMMUNITY UNIT SCHOOL DISTRICT NUMBER 1, NOKOMIS COMMUNITY UNIT SCHOOL DISTRICT NUMBER 22, OSWEGO COMMUNITY UNIT SCHOOL DISTRICT 308, OREGON COMMUNITY UNIT SCHOOL DISTRICT 220 SOUTHWESTERN COMMUNITY UNIT SCHOOL DISTRICT 9, STAUNTON COMMUNITY UNIT SCHOOL DISTRICT NUMBER 6, STREATOR TOWNSHIP HIGH SCHOOL DISTRICT 40, VANDALIA COMMUNITY UNIT SCHOOL DISTRICT NUMBER 203, WOOD RIVER-HARTFORD SCHOOL DISTRICT NUMBER 15, CARLINVILLE COMMUNITY UNIT SCHOOL DISTRICT NUMBER 1, and TAYLORVILLE COMMUNITY UNIT SCHOOL DISTRICT NUMBER 3, Plaintiffs, v.	)	Case No. 2017-CH-301 The Honorable Judge Julie Katz

BRUCE RAUNER, GOVERNOR OF ILLINOIS, in his official capacity, and STATE OF ILLINOIS,)

Defendants.)

FIRST AMENDED COMPLAINT

Introduction

1. As set forth in Count I, the plaintiff school districts seek to enforce Article X, Section 1 of the Illinois Constitution by requiring defendant Governor Bruce Rauner and the State of Illinois (hereafter, collectively, "the State" or "the State defendants") to pay to plaintiff districts the funds that the Illinois State Board of Education ("ISBE") has calculated are necessary to meet or exceed the Illinois Learning Standards mandated under 105 ILCS 5/2-3.64a-5. These Learning Standards represent the position of the State as to what constitutes a "high quality education" under Article X, Section 1 of the Constitution. Section 1 states in part: "The State *shall* provide for an efficient system of *high quality* education." Ill. Const. Art. X, § 1 (emphasis supplied).

2. Furthermore, under this same Article X, Section 1, the State also has the primary responsibility for financing public education when the State itself – not the local district – now determines what students must know and what skills they must demonstrate. Article X, Section 1 states: "The state has the primary responsibility for financing the system of public education." While this Section may not impose such an obligation when the State defers to the plaintiff districts as to what they must spend, the Section does impose that "primary responsibility" to fund mandates that the State itself imposes - including those costs necessarily incurred to meet or achieve the Learning Standards.

3. As set forth in Count II, and as currently described by ISBE on January 17, 2018, the present inequities in the financing of public education in the State are "shocking" and violate

the rights of the plaintiff districts and their students to receive equal protection of the laws as guaranteed by Article I, Section 2 of the Illinois Constitution. The "shocking" inequities in the State's system of public education can no longer be justified as advancing the goal of local control since the Learning Standards significantly displace the local control that previously existed. Furthermore, under both Article X, Section 1, and Article I, Section 2, the students represented by the plaintiff districts have a fundamental constitutional right to an education that allows them to meet or achieve the Learning Standards. This is especially the case when meeting or achieving the Learning Standards will determine in part whether the students are to be admitted to the State's own institutions of post-secondary education.

4. Until 1997, the State had no official State definition of “high quality education” or any specific type of education – namely, what students in the plaintiff districts had to know and what skills they had to demonstrate at various grade levels. But the Illinois Learning Standards first adopted by ISBE in 1997 – and thereafter revised by ISBE and aligned with the Common Core requirements adopted by the General Assembly in 2010 – now set out in detail what constitutes a "high quality" education. Accordingly, under Article X, Section 1 of the Constitution, the State itself has incurred a constitutional obligation to "provide" that "high quality education."

5. The State itself has now calculated this financial obligation to plaintiffs in specific dollar amounts. On August 31, 2017, the State adopted Public Act 100-465, the Evidence Based Funding for Student Success Act (the "2017 Evidence Based Funding Act" or "Act"), now codified as 105 ILCS 5/18-8.15. Sec. 18-8.15(a)(1) of the Act specifically invokes the State’s obligations under Section 1 of Article X of the Illinois Constitution, and states as follows:

> "The purpose of this Section is to ensure that, *by June 30, 2027 and beyond,* the State has a kindergarten through grade 12 public education

> system with the capacity to ensure the educational development of all persons to the limits of their capacities in accordance with Section 1 Article X of the Constitution of the State of Illinois... When fully funded under this Section, every school shall have the resources, based on what the evidence indicates is needed, to: (A) provide all students *with a high quality education...* (B) ensure all students receive the education they need to... *pursue post secondary education*... (C) reduce, with a goal of eliminating, the achievement gap between at-risk and non-at-risk students... and (D) ensure this State satisfies its *obligation* to assume the primary responsibility to fund public education....." (emphasis supplied)

6. The Evidence Based Funding Act sets forth a formula or model that establishes "adequacy targets" for each of the plaintiff districts, and these "adequacy targets" are set forth below at para. 72 et seq.

7. In the current fiscal year (2018), the State has failed to appropriate the funds necessary to meet the adequacy targets.

8. The State has appropriated only $350 million in additional funding out of the additional $7.2 billion that ISBE has determined to be necessary for the plaintiff districts and other districts to meet or achieve the Learning Standards.

9. The Evidence Based Funding Act recognizes that the State now has the "primary responsibility for funding the system of public education" as set out in Article X of the Constitution of Illinois.

10. ISBE in particular has recognized that obligation and in the press release issued on January 17, 2018, it stated: "At this point in time, the state has not fulfilled its constitutional mandate to assume the primary responsibility for financing the system of public education."

11. Accordingly, plaintiffs seek a judgment that the plaintiff districts are entitled in the current fiscal year to the full amount necessary for the plaintiff districts to meet or achieve the adequacy targets and to consider appropriate measures to enforce the judgment and to ensure

as soon as possible the necessary additional funding to achieve their constitutional rights under Article X, Section 1 and Article I, Section 2 of the Illinois Constitution.

Parties

12. Plaintiffs Cahokia Unit School District Number 187, Grant Central Consolidated School District Number 110, Pana Community Unit School District Number 8, Bethalto Community Unit School District Number 8, Bond County Community Unit School District Number 2, Brownstown Community Unit School District 201, Bunker Hill Community Unit School District Number 8, Gillespie Community Unit School District Number 7, Illinois Valley Central Community Unit School District Number 321, Mt. Olive Community Unit School District Number 5, Meridian Community Unit School District 223, Mulberry Grove Community Unit School District Number 1, Nokomis Community Unit School District Number 22, Oregon Community Unit School District 202, Oswego Community Unit School District 308, Southwestern Community Unit School District Number 9, Staunton Community Unit School District Number 6, Streator Township High School District 40, Vandalia Community Unit School District Number 203, Wood River-Hartford School District Number 15, Carlinville Community Unit School District Number 1, and Taylorville Community Unit School District Number 3 are school boards created by Article 10 of the Illinois School Code, 105 ILCS 5/10-1, *et seq.*

13. Plaintiffs are located in St. Clair, Bond, Christian, Fayette, Jersey, Macoupin, Madison, Montgomery, and Peoria counties.

14. Defendant Bruce Rauner is the Governor of Illinois, sued in his official capacity.

15. Defendant State of Illinois is responsible for providing a high quality education under the Illinois Constitution.

Facts

A. How the State Defines a "High Quality Education"

16. In 1985, Illinois was one of the first states to adopt “goals” for learning and specifically adopted 34 State Goals.

17. These goals were broadly stated, relatively timeless expressions of what the State of Illinois wants and expects its students to know and be able to do as a consequence of their elementary and secondary education.

18. These goals were so broadly worded as not to be susceptible to assessment or accountability by the local plaintiff districts.

19. In 1997, however, Illinois recognized that such goals were not sufficiently definite, clear and specific as to what kind of education Illinois students had to receive.

20. Consequently, in 1997 ISBE adopted the Illinois Learning Standards with the purpose of holding the plaintiff districts accountable for meeting or achieving such Learning Standards.

21. The original Illinois Learning Standards adopted in 1997 have been revised repeatedly and expanded to state what students must know and what skills they must demonstrate.

22. In particular, since 1997 the Illinois Learning Standards have significantly increased in the rigor of requirements and benchmarks and in the specificity of the direction to plaintiff districts.

23. In June 2010 and as required by 105 ILCS 5/2-3.64a-5, ISBE adopted the Common Core State Standards for English language arts and mathematics as part of the Illinois Learning Standards.

24. As ISBE previously stated on its website, the Illinois Learning Standards, including the Common Core standards, are designed to "establish clear expectations for what students should learn" and "ensure that students are prepared for success in college and the workforce."

25. Pursuant to 105 ILCS 5/2-3.64a-5, the General Assembly requires that ISBE receive public comment in developing the Learning Standards.

26. The current Learning Standards have been developed with significant public outreach and comment.

27. Accordingly, the Learning Standards represent a consensus of the citizens of Illinois as to an appropriate "high quality" education for purposes of Article X, Section 1.

28. As previously set forth by ISBE on its web site, the Learning Standards "should reflect what Illinois citizens generally agree upon as constituting a core of student learning."

B. The State's Failure to Fund the Learning Standards

29. As previously set forth by ISBE, "Illinois students cannot be held accountable for achieving these standards if they do not have adequate and sufficient opportunities for doing so."

30. Nonetheless students in the plaintiff districts are being held accountable for Learning Standards that the districts cannot fund and that the State defendants fail to fund.

31. Since 1997, the cost to plaintiff districts of meeting or exceeding the Illinois Learning Standards has increased significantly as well.

32. The additional cost of complying with the Illinois Learning Standards as they now exist is beyond the financial means available to plaintiff districts from the combination of state and local resources, in particular the revenue from local property taxes.

33. Furthermore, State law bars the plaintiff districts from going into debt to meet or achieve the Learning Standards.

34. At the same time, plaintiff districts receive insufficient financial aid from the State of Illinois to meet or achieve the Learning Standards.

35. For all the plaintiff districts, the combined state and local revenue per pupil is below the average of all districts in the State, and far below that of the districts in the top fifth of local resources per pupil.

36. Each of the plaintiff districts is spending significantly under the state average of $7,712 per student for instructional expenses and $12,821 for operating expenses (including instruction).

37. After fiscal year 2011, the State financial aid received by the plaintiff districts from the State actually *dropped,* even as the costs necessary to meet the Illinois Learning Standards required by State law increased.

38. Through fiscal year 2017, and until adoption of the 2017 Evidence Based Funding Act, the largest form of State funding for local school districts had been General State Aid ("GSA"), which had two main components: regular GSA to deal with inadequate local resources; and supplement GSA to help districts with low-income students.

39. Regular GSA grants represented the state share of the "Foundation Level," which had been designed to provide a minimum amount of funding per pupil from the combination of state and local resources.

40. GSA had been calculated as the Foundation Level minus a district's "available local resources" per pupil, which is based primarily on property tax wealth.

41. For the last eight years, without any change, the Foundation Level as determined by the General Assembly had been fixed at *only* $6,119 per student, despite the increasing education costs incurred by the local districts.

42. Each school district also had received a Supplemental GSA grant based on the number and concentration of low-income students in the district.

43. Through GSA, the State defendants were supposed to bring the funding available to the plaintiff districts up to the Foundation Level.

44. The Foundation Level of the old funding system was not tied in any way to the cost of meeting the Illinois Learning Standards.

45. Furthermore, the costs of the Learning Standards had been increasing, especially after 2010 when the State aligned the Learning Standards with the Common Core State Standards in place in Illinois and certain other states.

46. In the eight years prior to the 2017 Evidence Based Funding Act, the Foundation Level, adjusted for inflation, had dropped by $920 per student, or by 15 percent of its original value.

47. Even worse, the General Assembly had failed to appropriate even the nominal amount of the Foundation Level.

48. Instead, when even the nominal Foundation Level was not being appropriated, the State adopted a system of "proration," cutting GSA to all districts equally, whether wealthy or poor.

49. Such a model of funding – and the pro ration of that funding – had a severe and disparate impact on the plaintiff districts and other districts most in need of State aid.

50. Some plaintiff districts are at a disadvantage not only because of their low property wealth or low spending resources but because they also have high concentrations of low-income students.

51. The increasing concentration of low income students in so many districts of the State, including the plaintiff districts, has increased substantially the cost of meeting or achieving the Learning Standards.

52. On many occasions, ISBE itself has declared that the current system of funding for the Learning Standards is shockingly unfair and unequal.

53. ISBE has been forthright in rejecting the notion that such inequities in funding the State's own Learning Standards can be justified by any other goal, such as local control.

C. The Failure to Meet or Achieve the Learning Standards

54. As shown below, the disparity in funding and inadequate State funding correlates with the disparity of meeting or achieving the Learning Standards.

55. The State defendants have recently used assessments that are prepared by the Partnership for Assessment for Readiness for College and Careers (PARCC).

56. The 2010 law required that the assessments – now conducted in elementary schools primarily through the PARCC exams – be aligned to the Illinois Learning Standards.

57. The State in effect grades the plaintiff districts by the percentage of students who meet or exceed expectations in the PARCC examinations.

58. Furthermore, the State also uses the scores on PARCC examinations as one factor in determining whether to grant admission to Illinois funded institutions of post-secondary education.

59. The following table uses the school district characteristics, including combined state and local resources and percentage of low-income students, to show the increasing disparity in the test results between the plaintiff districts and more affluent districts of the state:

Profiles of Plaintiff School Districts and Selected Affluent School Districts								
		2016-2017		FY 2016 per pupil revenue			% Meeting or Exceeding	
	Type	Students	% low income	Local	State	Local & State	2011-12 ISAT[1]	2016-17 PARCC
Plaintiff Districts								
Bethalto CUSD 8	Unit	2509	49.3	4,384	4,325	8,709	82.1	31.4
Bond County CUSD 2	Unit	1840	48.8	4,602	4,023	8,625	86.1	40.5
Brownstown	Unit	376	50.8	2,810	6,456	9,266	85.3	33.3
Bunker Hill CUSD 8	Unit	605	45.1	3,793	4,802	8,595	82.9	28.8
Cahokia CUSD 187	Unit	3371	88.9	2,874	8,706	11,580	69.0	5.2
Carlinville CUSD 1	Unit	1495	48.4	4,450	3,283	7,733	89.5	42.3
Gillespie CUSD 7	Unit	1342	68.3	2,435	5,360	7,795	80.1	35.4
Grant CCSD 110	Elem	575	52.3	8,012	3,429	11,441	79.8	25.7
Illinois Valley Central USD 321	Unit	2131	37.3	6,458	2,469	8,927	86.1	50.6
Meridian	Unit	1698	27.4	6,127	6,864	12,991	90.8	28.8
Mount Olive CUSD 5	Unit	474	42.4	4,170	4,823	8,993	85.8	30.6
Mulberry Grove CUSD 1	Unit	391	48.6	3,707	5,178	8,885	81.2	25.6
Nokomis CUSD 22	Unit	634	46.4	4,102	4,742	8,844	78.1	49.8
Oregon CUSD 202	Unit	18,208	20.2	$7,770	$3,542	$11,312	90	47
Oswego CUSD#308	H.S.	2728	18.9			9,996		n/a
Pana CUSD 8	Unit	1312	61.7	4,789	4,885	9,674	83.9	27.9
Southwestern CUSD 9	Unit	1461	41.8	4,699	4,374	9,073	86.6	39.7
Staunton CUSD 6	Unit	1303	42.2	3,084	3,294	6,378	87.2	28.4
Streator	H.S.	943	55.4	7,190	4,221	11,411		n/a
Taylorville CUSD 3	Unit	2559	55.7	4,857	3,667	8,524	85.7	28.6
Vandalia CUSD 203	Unit	1465	57.3	5,171	4,690	9,861	78.2	27.6
Wood River-Hartford ESD 15	Elem	753	70.5	5,465	2,649	8,114	79.7	20.3
Comparison Districts								
Deerfield SD 109	Elem	2956	0.4	17,313	753	18,066	96.0	76.7
Glencoe SD 35	Elem	1182	0.7	22,312	589	22,901	95.9	66.5

[1] The ISAT was the standardized test that preceded the current PARCC test.

Profiles of Plaintiff School Districts and Selected Affluent School Districts								
		2016-2017		FY 2016 per pupil revenue			% Meeting or Exceeding	
	Type	Students	% low income	Local	State	Local & State	2011-12 ISAT[1]	2016-17 PARCC
Gower SD 62	Elem	876	13.7	15,499	754	16,253	95.7	62.6
Hinsdale CCSD 181	Elem	3837	3.6	17,456	708	18,164	98.2	71.8
Kenilworth SD 8	Elem	476	0	27,346	608	27,954	99.0	74.9
LaGrange Highlands SD 106	Elem	880	6.1	14,114	903	15,017	95.3	71.1
Lake Forest SD 67	Elem	1755	2.1	19,483	665	20,148	96.3	66.6
Lincolnshire-Prairieview SD 103	Elem	1743	1.4	17,215	872	18,087	97.9	80.7
Lisle CUSD 202	Unit	1487	30.3	20,655	1,627	22,282	91.2	43.5
Northbrook ESD 27	Elem	1298	3	19,418	764	20,182	96.1	81.2
Northbrook/Glenview SD 30	Elem	1168	2.3	18,606	651	19,257	97.1	77.3
Oak Grove SD 68	Elem	889	0.4	16,695	750	17,445	95.3	72.0
River Forest SD 90	Elem	1411	5.7	15,195	1,010	16,205	96.2	68.0
Sunset Ridge SD 29	Elem	466	2.1	28,110	977	29,087	96.0	73.3
Wilmette SD 39	Elem	3691	3.3	14,842	792	15,634	96.9	67.5
Wilmette SD 36	Elem	1789	0.2	23,689	652	24,341	97.9	69.0
STATEWIDE AVERAGES	-	-	50.2	–	–	12,973	84.3	34.1

Note: Revenue per pupil based on 9-month average daily attendance.

60. As set forth in the last two columns of the table, the disparities in test results have significantly increased since ISBE adopted the Common Core requirements after 2010.

61. From fiscal year 2011 to fiscal year 2015, the plaintiff districts, on average, lost $871 in state revenue per pupil.

62. While the plaintiff districts, on average, increased local revenue per pupil by $576 during that time period, the result was an average $295 loss in combined state and local revenue per pupil.

63. During that same time period, from fiscal year 2011 to fiscal year 2015, the "Comparison Districts" listed above have only lost, on average, $54 in state revenue per pupil.

64. These "Comparison Districts" have, on average, increased local revenue per pupil by $2,719 during that time period, resulting in an average gain of $2,665 in combined state and local revenue per pupil.

65. During that same time period, from fiscal year 2011 to fiscal year 2015, the statewide average in state revenue per pupil has declined by $123.

66. The statewide average in local revenue increased by $896 per pupil during that time period, resulting in an average gain of $772 in combined state and local revenue per pupil.

67. The scores of the students who take these assessments are part of the records of students in the plaintiff districts.

68. The increasing disparity in test results for the Illinois Learning Standards that the State defendants fail to fund have made it more difficult for the students in the plaintiff districts to be admitted or to be deemed qualified for admission to the State's public institutions for post-secondary education.

69. Furthermore, the increasing disparity has made it even more difficult for the plaintiff districts to prevent the loss of students who are not low-income and whose parents are able to place them in other schools or move to other school districts.

70. Such loss of population further reduces the local resources available to the plaintiff districts to fund the Illinois Learning Standards and leads to an even further increase in the disparity with wealthy districts.

D. The Calculation of Adequacy Targets by the State

71. The enactment last year of the 2017 Evidence Based Funding Act replaced the past funding formula used by the State – in particular, the Foundation Level.

72. In place of the Foundation Level, the 2017 Evidence Based Funding Act calls for the use of "evidence based" funding – that is, additional funding of education practices that have a demonstrated record of success.

73. The same 2017 Evidence Based Funding Act also allows the calculation of the specific additional amounts of evidence based funding necessary for under resourced districts to meet or achieve the Learning Standards.

74. The same 2017 Evidence Based Funding Act provides for under-resourced districts to have the priority in such additional amounts of funding, although other districts retain the same State aid they received before.

75. As set forth in the 2017 Evidence Based Funding Act, the funding formula now has four parts: (1) a calculation of the unique adequacy target that considers the costs of research based activities, student demographics, and regional wage differences (for teacher salaries); (2) a calculation of each district's local capacity; (3) a calculation of how much funding the state contributes; and (4) a calculation of the additional funding each district should receive, and targeting such funding to those districts that are least well funded in relation to their adequacy target.

76. This year, and pursuant to the 2017 Evidence Based Funding Act, ISBE has determined the appropriate share of the additional funding that each district shall receive and the respective shortfalls in meeting the adequacy targets, i.e., the ability to meet or achieve a "high quality" education for their students.

77. By ISBE's calculation, the gaps in adequate State funding for the plaintiff districts are as follows:

District Name	Adequacy Funding Gap	Final Adequacy Level
Plaintiff Districts		
Bethalto CUSD#8	12,192,536.71	58%
Bond County CUSD#2	8,087,152.76	62%
Brownstown CUSD#201	1,892,573.10	56%
Bunker Hill CUSD#8	2,984,004.84	59%
Cahokia Unit SD#187	16,398,455.61	66%
Carlinville CUSD#1	6,790,771.93	60%
Gillespie CUSD#7	7,089,281.96	54%
Grant Central	1,582,610.66	77%
Illinois Valley Central	6,389,604.57	72%
Mount Olive CUSD#5	2,195,153.20	61%
Meridian CUSD#223	6,496,197.94	67%
Mulberry Grove CUSD#1	2,006,355.27	58%
Nokois CUSD#22	2,841,877.92	60%
Oregon CUSD#220	4,747,915.47	72%
Oswego CUSD#308	82,543,953.13	62%
Pana CUSD#8	6,473,520.69	59%
Southwestern CUSD#9	6,506,111.76	62%
Staunton CUSD#6	6,017,751.22	58%
Streator Township HS	5,963,055.48	51%
Taylorville CUSD#3	10,179,995.36	65%
Vandala CUSD#203	7,377,417.14	58%
Wood River-Hartford	3,140,815.78	62%

78. By contrast, the following Comparison Districts have more than sufficient funding to meet or achieve the Learning Standards:

Comparison Districts	Adequacy Funding Gap	Final Adequacy Level
Deerfield SD#109	(13,494,098.17)	142%
Glencoe SD#35	(11,240,104.43)	187%
Gower SD#62	(1,740,872.76)	118%
Hinsdale Township HS D#86	(17,666,430.49)	132%
LaGrange Highlands SD# 106	(2,304,478.70)	124%
Lake Forest SD#67	(10,689,769.28)	156%
Lincolnshire-Praireview SD#103	(6,513,926.16)	134%
Lisle CUSD# 202	(8,675,149.16)	147%
Northbrook Elem SD#27	(10,905,913.60)	178%
Northbrook/Glenview SD#30	(8,196,324.54)	163%
Oak Grove SD#68	(3,611,586.59)	135%
River Forest SD#90	(5,988,877.33)	139%
Sunset Ridge SD#29	(6,925,536.15)	230%

79. As set forth in the above table, these are the disparities that ISBE found to be "shocking" in the press release of January 18, 2018.

80. As set forth expressly in the 2017 Evidence Based Funding Act, the General Assembly has adopted a goal of meeting the adequacy targets for the plaintiff districts and other under-resourced districts by June 30, 2027.

81. Consequently, over the next ten years – even if the General Assembly meets the goal – tens of thousands of students in both the plaintiff districts and other districts will leave the K through 12 system of public education.

82. As a result, under the timetable of the General Assembly, most if not all of the students in the plaintiff districts will have left the public education system without ever having experienced, even briefly, a constitutionally adequate education.

83. Furthermore, at the current rate of additional funding of just $350 million a year, there is no possibility that the State will meet the goal set out in the 2017 Evidence Based Funding Act.

84. The appropriation of only $350 million in additional funding for this fiscal year – if replicated in the same way for a ten year period – will take the State over twenty years to provide a "high quality" education.

COUNT I. ENFORCMENT OF ARTICLE X, SECTION 1.

85. Plaintiffs incorporate the preceding paragraphs as if set forth in detail herein.

86. As set forth above, ISBE has calculated that the State defendants must spend an additional $7.2 billion, or a total of $15.7 billion, in State aid to local districts *annually* to provide students in those districts with the "high quality" education required by Article X of the Illinois Constitution and the 2017 Evidence Based Funding Act.

87. As set forth above, ISBE has determined that such additional funding of $7.2 billion to under-resourced districts like the plaintiff districts is required, not at some indeterminate point in the future, but immediately to comply with Article X, Section 1.

88. The plaintiffs recognize the important advancement represented by the 2017 Evidence Based Funding Act toward the adequate funding of the Learning Standards.

89. However, as State Superintendent of Education Tony Smith stated in January 2018: “But the [evidence-based] formula alone does not address the deep inequity we see – we now have to fund the formula to create the conditions for every child to thrive. The children in

school today are not able to wait for another opportunity at a quality education. A better social and economic future for the state depends on providing all children with the quality education they deserve today."

90. Accordingly, in violation of the rights of plaintiffs and their students under Article X, Section 1, and notwithstanding the adoption of the 2017 Evidence Based Funding Act, the State has unlawfully failed and will continue to fail to provide the funding necessary for the plaintiff districts to meet or achieve the Learning Standards.

91. Defendant Rauner has also exceeded his lawful authority by operating a public education system that operates in this unconstitutional manner.

92. Likewise, in violation of the rights of plaintiffs and their students under Article X, Section 1, and by appropriating the grossly inadequate sum of $350 million in additional State aid to meet or achieve the Learning Standards for the State as a whole, the State defendants have unlawfully failed to provide the "high quality" education as it has been defined by the State itself and that plaintiffs and their students have a right to receive.

93. Furthermore, as set forth above, when the State acts to define the content of a "high quality education," and impose mandates like the Learning Standards that the plaintiff districts have to meet or achieve, the State defendants have the "primary responsibility" under Article X, Section 1 to fund such mandates as the State itself chooses to impose.

94. The failure of the State defendants to undertake the "primary responsibility" of funding these and other mandates that the State imposes violates the obligation for such funding to the plaintiff districts in violation of Article X, Section 1.

95. The plaintiff districts and their students will suffer irreparable injury every year that the students of the plaintiff districts advance to yet another grade and attend yet another year

of public education that denies them the fair opportunity, as determined by the State itself through ISBE, to meet and achieve the Learning Standards and to enjoy their constitutional right to a high quality education under Article X, Section 1.

WHEREFORE plaintiffs pray this Court to:

A. Declare that under Article X, Section 1, and in order to provide a high quality education within the meaning of that provision, the State defendants have a constitutional obligation to provide to the plaintiff districts the funding determined by ISBE and pursuant to the 2017 Evidence Based Funding Act to be necessary to meet or achieve the Learning Standards and to reach the adequacy targets set forth pursuant to the 2017 Evidence Based Funding Act.

B. Enter judgment on behalf of the plaintiff districts and against the State defendants for the amounts determined to be necessary by ISBE to meet or achieve the Learning Standards and to reach the adequacy targets set forth pursuant to the Evidence Based Funding Act.

C. Retain jurisdiction to enforce such schedule of payments and take additional measures in whatever manner the Court deems appropriate for the State defendants to comply with this judgment.

D. Grant plaintiffs their legal fees and costs, pursuant to Section 5 of the Illinois Civil Rights Act of 2003, for claims arising under the Illinois Constitution.

COUNT II. ENFORCEMENT OF ARTICLE I, SECTION 2.

93. Plaintiffs incorporate the preceding paragraphs as if set forth in detail herein.

94. As set forth above, and as described by ISBE, there are shocking inequities and disparities between the amounts that districts like plaintiffs are able to spend on operating expenses on a per pupil basis and the amounts that districts like the comparison districts set out above are able to spend.

95. In enacting the 2017 Evidence Based Funding Act, the General Assembly acknowledged that the prior funding formula for state aid had perpetuated or failed to reduce the disparities.

96. As set out above, the current disparities in per student expenditures across the districts of the State range as high as $10,000 to $15,000 per student

97. The disparities also correlate with the far lower pass rate of students in the low spending districts on the PARCC examinations.

98. Such disparities described by the ISBE have no legitimate constitutional or statutory basis when the State itself imposes the Learning Standards, which all students are expected to meet or achieve.

99. Such disparities can no longer be justified as an acceptable consequence of the State's goal of local control over local educational effort when in recent years the State has significantly displaced local control by imposing the Learning Standards.

100. Furthermore, by enacting the 2017 Evidence Based Funding Act, and by adopting the Common Core curriculum requirements in 2010, the General Assembly has established that achievement of the Learning Standards has higher priority than any other education related goal in the State.

101. A ten year or similar long term plan to reach the adequacy targets set out in the 2017 Evidence Based Funding Act will deprive the students of the plaintiff districts with a

constitutionally adequate education in the interim, and many will have left the K-12 education altogether before the State attains the long term goal set out in the 2017 Act.

102. Accordingly, by operating such an unconstitutional system of public education, the defendant Rauner has exceeded his lawful constitutional authority, and the State defendants have deprived the plaintiff districts and their students of the right to equal protection of the laws, in violation of Article I, Section 2 of the Illinois Constitution.

103. Furthermore, and in the alternative, and in violation of both Article X, Section 1 and Article I, Section 2 of the Illinois Constitution, the State defendants have denied the fundamental constitutional rights of the students in the plaintiff districts – namely, the fundamental constitutional right to a system of public education that allows them to meet or achieve the Learning Standards when doing so is a factor in determining their admission to State supported institutions of post-secondary education.

WHEREFORE plaintiffs pray this Court to:

A. Declare that under Article I, Section 2, as well as under Article X, Section 1, the State defendants have a constitutional obligation to provide to the plaintiff districts the funding determined by ISBE and pursuant to the 2017 Evidence Based Act to be necessary to meet or achieve the Learning Standards and to reach the adequacy targets set forth pursuant to the 2017 Evidence Based Funding Act.

B. Enter judgment on behalf of the plaintiff districts and against the State defendants for the amounts determined to be necessary by ISBE to meet or achieve the Learning Standards and to reach the adequacy targets set forth pursuant to the Evidence Based Funding Act.

C. Retain jurisdiction to enforce such schedule of payments and take additional measures in whatever manner the Court deems appropriate for the State defendants to comply with this judgment.

D. Grant plaintiffs their legal fees and costs, pursuant to Section 5 of the Illinois Civil Rights Act of 2003, for claims arising under the Illinois Constitution.

Dated: May 21, 2018

Respectfully submitted,

By: /s/ Thomas H. Geoghegan

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOR THE FIFTH JUDICIAL DISTRICT;

FROM THE CIRCUIT COURT OF
THE 20TH JUDICIAL CIRCUIT, ST. CLAIR COUNTY

CAHOKIA UNIT SCHOOL DISTRICT NUMBER 187, GRANT CENTRAL CONSOLIDATED SCHOOL DISTRICT NUMBER 110, PANA COMMUNITY UNIT SCHOOL DISTRICT NUMBER 8, BETHALTO COMMUNITY UNIT SCHOOL DISTRICT NUMBER 8, BOND COUNTY COMMUNITY UNIT SCHOOL DISTRICT NUMBER 2, BROWNSTOWN COMMUNITY UNIT SCHOOL DISTRICT 201 BUNKER HILL COMMUNITY UNIT SCHOOL DISTRICT NUMBER 8, GILLESPIE COMMUNITY UNIT SCHOOL DISTRICT NUMBER 7, ILLINOIS VALLEY CENTRAL COMMUNITY UNIT SCHOOL DISTRICT NUMBER 321, MERIDIAN COMMUNITY UNIT SCHOOL DISTRICT 223 MT. OLIVE COMMUNITY UNIT SCHOOL DISTRICT NUMBER 5, MULBERRY GROVE COMMUNITY UNIT SCHOOL DISTRICT NUMBER 1, NOKOMIS COMMUNITY UNIT SCHOOL DISTRICT NUMBER 22, OSWEGO COMMUNITY UNIT SCHOOL DISTRICT 308, OREGON COMMUNITY UNIT SCHOOL DISTRICT 220 SOUTHWESTERN COMMUNITY UNIT SCHOOL DISTRICT 9, STAUNTON COMMUNITY UNIT SCHOOL DISTRICT NUMBER 6, STREATOR TOWNSHIP HIGH SCHOOL DISTRICT 40, VANDALIA COMMUNITY UNIT SCHOOL DISTRICT NUMBER 203, WOOD RIVER-HARTFORD SCHOOL DISTRICT NUMBER 15, CARLINVILLE COMMUNITY UNIT SCHOOL DISTRICT NUMBER 1, and TAYLORVILLE COMMUNITY UNIT SCHOOL DISTRICT NUMBER 3, Plaintiffs,	)	Case No. 2017-CH-301 The Honorable Judge Julie Katz

	)
v.	)
	)
BRUCE RAUNER, GOVERNOR OF ILLINOIS, in his official capacity, IL and STATE OF ILLINOIS,	)
	)
Defendants.	)

NOTICE OF APPEAL

Notice is hereby given that Plaintiffs Cahokia Unit School District Number 187, Grant Central Consolidated School District Number 110, Pana Community Unit School District Number 8, Bethalto Community Unit School District Number 8, Bond County Community Unit School District Number 2, Brownstown Community Unit School District 201, Bunker Hill Community Unit School District Number 8, Gillespie Community Unit School District Number 7, Illinois Valley Central Community Unit School District Number 321, Mt. Olive Community Unit School District Number 5, Meridian Community Unit School District 223, Mulberry Grove Community Unit School District Number 1, Nokomis Community Unit School District Number 22, Oregon Community Unit School District 202, Oswego Community Unit School District 308, Southwestern Community Unit School District Number 9, Staunton Community Unit School District Number 6, Streator Township High School District 40, Vandalia Community Unit School District Number 203, Wood River-Hartford School District Number 15, Carlinville Community Unit School District Number 1, and Taylorville Community Unit School District Number 3 et al. hereby appeal to the Illinois Court of Appeals for the Fifth District from the Order and Final Judgment dated October 17, 2018, granting Defendants' Motion to Dismiss.

Dated: November 13, 2018

Respectfully submitted,

s/ Michael P. Persoon
One of Plaintiffs' Attorneys

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
5th JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE 20th JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

CAHOKIA UNIT SCHOOL DISTRICT NUMBER '

Plaintiff/Petitioner

Appellate Count No: **5-18-0542**
Circuit Count No: **17-CH-0301**
Trial Judge: **HON. JULIE KATZ**

V.

RAUNER BRUCE

Defendant/Respondent

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Rule 23 order filed
April 17, 2020.
Motion to publish granted
May 13, 2020.

2020 IL App (5th) 180542

NO. 5-18-0542

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

CAHOKIA UNIT SCHOOL DISTRICT NO. 187, GRANT CENTRAL CONSOLIDATED SCHOOL DISTRICT NO. 110, PANA COMMUNITY UNIT SCHOOL DISTRICT NO. 8, BETHALTO COMMUNITY UNIT SCHOOL DISTRICT NO. 8, BOND COUNTY COMMUNITY UNIT SCHOOL DISTRICT NO. 2, BROWNSTOWN COMMUNITY UNIT SCHOOL DISTRICT 201, BUNKER HILL COMMUNITY UNIT SCHOOL DISTRICT NO. 8, GILLESPIE COMMUNITY UNIT SCHOOL DISTRICT NO. 7, ILLINOIS VALLEY CENTRAL COMMUNITY UNIT SCHOOL DISTRICT NO. 321, MERIDIAN COMMUNITY UNIT SCHOOL DISTRICT 223, MT. OLIVE COMMUNITY UNIT SCHOOL DISTRICT NO. 5, MULBERRY GROVE COMMUNITY UNIT SCHOOL DISTRICT NO. 1, NOKOMIS COMMUNITY UNIT SCHOOL DISTRICT NO. 22, OSWEGO COMMUNITY UNIT SCHOOL DISTRICT 308, OREGON COMMUNITY UNIT SCHOOL DISTRICT 220, SOUTHWESTERN COMMUNITY UNIT SCHOOL DISTRICT 9, STAUNTON COMMUNITY UNIT SCHOOL DISTRICT NO. 6, STREATOR TOWNSHIP HIGH SCHOOL DISTRICT 40, VANDALIA COMMUNITY UNIT SCHOOL DISTRICT NO. 203, WOOD RIVER-HARTFORD SCHOOL DISTRICT NO. 15, CARLINVILLE COMMUNITY UNIT SCHOOL DISTRICT NO. 1, and TAYLORVILLE COMMUNITY UNIT SCHOOL DISTRICT NO. 3, Plaintiffs-Appellants, v.	)	Appeal from the Circuit Court of St. Clair County. No. 17-CH-301

J.B. PRITZKER,* Governor of the State of Illinois, and THE STATE OF ILLINOIS,	)	
	)	Honorable
	)	Julie K. Katz,
Defendants-Appellees.	)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court, with opinion.
Presiding Justice Welch concurred in the judgment and opinion.
Justice Wharton concurred in part and dissented in part, with opinion.

OPINION

¶ 1 The plaintiffs, comprising 22 school districts, appeal the October 17, 2018, order of the circuit court of St. Clair County, which dismissed with prejudice their complaint against the defendants, J.B. Pritzker, Governor of the State of Illinois, and the State of Illinois. For the following reasons, we affirm.

¶ 2 FACTS

¶ 3 The plaintiffs filed a first amended complaint against the defendants on May 21, 2018. We set forth the allegations of this complaint in detail, as they are to be taken as true for the purposes of our analysis. The plaintiffs are school districts located in St. Clair, Bond, Christian, Fayette, Jersey, Macoupin, Madison, Montgomery, and Peoria Counties. In 1997, the Illinois State Board of Education (ISBE) adopted the Illinois Learning Standards, representing skills that Illinois students must demonstrate at different grade levels, especially in the areas of English and mathematics. According to the complaint, the Learning Standards have been revised and expanded over the years with more specific benchmarks imposed on the plaintiffs to ensure students meet the Learning Standards. This included the adoption of Common Core State Standards for English, language arts, and mathematics, which was required by statute. See 105

*This action was originally brought against Bruce Rauner in his official capacity as Governor of the State of Illinois. Pursuant to section 2-1008(d) of the Code of Civil Procedure (735 ILCS 5/2-1008(d) (West 2018)), we have changed the caption to reflect that the Governor is now J.B. Pritzker, who has been substituted as a defendant as a matter of law.

ILCS 5/2-3.64a-5 (West 2016). Pursuant to statute, the Learning Standards have been developed with significant public outreach and comment. See *id.* Accordingly, as per the complaint, the Learning Standards represent "a consensus of the citizens of Illinois as to an appropriate 'high quality' education for purposes of Article X, Section 1 of the Illinois Constitution." Ill. Const. 1970, art. X, § 1.

¶ 4 The complaint sets forth specific details outlining the ways the plaintiffs are being held accountable for the Learning Standards without adequate funding to meet them. This includes assessments of students, including the use of the Partnership for Assessment of Readiness for College and Careers (PARCC) examination for high school students, which is used as one factor to determine whether students are admitted to Illinois colleges and universities. According to the complaint, for all of the plaintiff districts, the combined state and local revenue per pupil is below the average of all districts in the State, and far below that of the districts in the top fifth of local resources per pupil. The complaint sets forth detailed tables illustrating the correlation between this disparity in funding and the disparity between the plaintiffs and other districts in the State in achieving the Learning Standards. According to the complaint, this situation led the General Assembly to enact Public Act 100-465 (eff. Aug. 31, 2017), the "Evidence-Based Funding for Student Success Act" (Funding Act). 105 ILCS 5/18-8.15 (West 2018).

¶ 5 According to the complaint, the Funding Act allows for the calculation of specific additional amounts of funding necessary for underresourced districts to meet or achieve the Learning Standards. *Id.* The formula set forth in the Funding Act provides for these districts to have the priority in allocating additional funding, although other, more affluent districts retain the same State aid they received before. *Id.* The complaint sets forth in detail how this formula works to allow ISBE to determine the appropriate share of additional funding that each district

shall receive in order to achieve a "high quality" education for students. According to the complaint, the Funding Act expressly adopts a goal of meeting the adequacy targets for the plaintiffs and other underresourced districts by June 30, 2027. *Id.* The complaint alleges that, at the then-current funding rate of $350 million a year, there is no possibility the State will meet this goal.

¶ 6 Count I of the complaint alleges that ISBE has calculated that the State must spend an additional $7.2 billion, or a total of $15.7 billion, annually, in order to provide students with the "high quality" education required by article X of the Illinois Constitution. Ill. Const. 1970, art. X. Accordingly, count I alleges that, in violation of the rights of the plaintiffs and their students under article X, section 1 (*id.* § 1), the State has unlawfully failed to provide the funding necessary for the plaintiffs to achieve the Learning Standards. In addition, count I alleges that the Governor has also exceeded his lawful authority by "operating a public education system that operates in an unconstitutional manner." Finally, count I alleges that the plaintiffs and their students will suffer irreparable injury every year that the students of the plaintiffs advance to another grade that denies them the fair opportunity, as determined by the State through ISBE, to achieve the Learning Standards and to enjoy their right to a high quality education under article X, section 1. *Id.*

¶ 7 Count II of the complaint alleges that the disparities in per pupil expenditures across the school districts of Illinois, ranging as high as $10,000 to $15,000 per student, have no legitimate basis in the law. According to count II of the complaint, such disparities "can no longer be justified as an acceptable consequence of the State's goal of local control over local educational effort when in recent years the State has significantly displaced local control by imposing the Learning Standards." Count II alleges that by operating "such an unconstitutional system of

public education," the Governor has exceeded his lawful authority, and the State has deprived the plaintiffs and their students of the right to equal protection of the laws, in violation of article I, section 2 of the Illinois Constitution. Ill. Const. 1970, art. I, § 2. Count I and count II of the complaint set forth identical prayers for relief, which we quote here due to some confusion in the briefing on this issue:

> "A. Declare that under Article I, Section 2, as well as under Article X, Section 1, the State defendants have a constitutional obligation to provide to the plaintiff districts the funding determined by ISBE and pursuant to the 2017 Evidence Based Act to be necessary to meet or achieve the Learning Standards and to reach the adequacy targets set forth pursuant to the 2017 Evidence Based Funding Act.
>
> B. Enter judgment on behalf of the plaintiff districts and against the State defendants for the amounts determined to be necessary by ISBE to meet or achieve the Learning Standards and to reach the adequacy targets set forth pursuant to the Evidence Based Funding Act.
>
> C. Retain jurisdiction to enforce such schedule of payments and take additional measures in whatever manner the [c]ourt deems appropriate for the State defendants to comply with this judgment.
>
> D. Grant [the] plaintiffs their legal fees and costs, pursuant to Section 5 of the Illinois Civil Rights Act of 2003, for claims arising under the Illinois Constitution."

¶ 8 On July 20, 2018, the defendants filed a motion to dismiss the complaint pursuant to section 2-619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2018)). Pursuant to section 2-619(a)(1) of the Code (*id.* § 2-619(a)(1)), the defendants asserted that this action is barred by the doctrine of sovereign immunity, and that the plaintiffs lack standing to

assert the rights of their students. Pursuant to section 2-615 of the Code (*id.* § 2-615), the defendants asserted that both count I and count II fail to state a cause of action for a deprivation of the plaintiffs' constitutional rights and the Governor could not effectuate the relief the plaintiffs requested in the complaint.

¶ 9 On August 24, 2018, the plaintiffs filed a response to the defendants' motion to dismiss. Inexplicably, in the response, the plaintiffs stated that they were seeking the following relief, which is different than that set forth in either the original complaint or the amended complaint:

> "A. A declaratory judgment that in violation of Article X, section 1 and Article I, section 2 of the Illinois Constitution, the defendants have deprived the plaintiff districts and their students of their rights to a high quality education as specified by the Learning Standards.
>
> B. An [o]rder that the State defendants submit a schedule for additional State aid to the plaintiff districts setting out how the defendants will meet their legislatively stated goal of fully funding the Learning Standards by June 30, 2027.
>
> C. Grant such other relief as may be necessary to ensure that the State sets aside or makes available the necessary funds to adhere to this schedule.
>
> D. Order the State defendants to modify as appropriate the use of the PARCC examinations, which currently penalize students in low wealth districts when they apply for admission to State institutions of higher education."

¶ 10 On October 2, 2018, the circuit court held a hearing on the defendants' motion to dismiss the complaint and took the matter under advisement. On October 17, 2018, the circuit court entered an order granting the defendants' motion and dismissing the complaint with prejudice. On November 13, 2018, the plaintiffs filed a timely notice of appeal.

¶ 11 ANALYSIS

¶ 12 The defendants brought their motion to dismiss the plaintiffs' complaint pursuant to section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2018)), which allows a party to file a motion combining a motion to dismiss pursuant to section 2-615 of the Code (*id.* § 2-615) with a motion to dismiss under section 2-619 of the Code (*id.* § 2-619). We review the circuit court's order dismissing the complaint under these sections of the Code *de novo*. *Schloss v. Jumper*, 2014 IL App (4th) 121086, ¶ 15.

¶ 13 1. The State of Illinois as Defendant

¶ 14 At the outset, we address the propriety of the circuit court's order dismissing both counts of the complaint as stated against the State of Illinois. The Illinois Supreme Court has summarized the law governing lawsuits against the State of Illinois as follows:

> "The doctrine of sovereign immunity 'protects the State from interference in its performance of the functions of government and preserves its control over State coffers.' [Citation.] The Illinois Constitution of 1970 abolished sovereign immunity '[e]xcept as the General Assembly may provide by law.' Ill. Const. 1970, art. XIII, § 4. Pursuant to this constitutional authorization, the General Assembly subsequently reestablished sovereign immunity by enacting the State Lawsuit Immunity Act, which provides that 'the State of Illinois shall not be named [as] a defendant or party in any court,' except as provided in the Court of Claims Act (705 ILCS 505/1 *et seq.* (West 2008)) and in several other statutes not pertinent here. 745 ILCS 5/1 (West 2008). The Court of Claims Act, in turn, established the Court of Claims as the exclusive forum for litigants to pursue claims against the State. 705 ILCS 505/8 (West 2008)." *Township of Jubilee v. State of Illinois*, 2011 IL 111447, ¶ 22.

¶ 15 In their brief on appeal, the plaintiffs present arguments as to the propriety of maintaining an action against the Governor in his official capacity but cite no authority and make no argument as to why the above-referenced principles of sovereign immunity do not apply to the plaintiffs' claims as stated directly against the State of Illinois. Irrespective of the merits of the plaintiffs' argument in favor of the circuit court's jurisdiction to entertain their claims against the Governor, we find nothing in the law that would allow the plaintiffs to pursue claims against the State of Illinois itself in the circuit court. Accordingly, we affirm the dismissal of the plaintiffs' complaint insofar as it is requesting relief from the State of Illinois as a defendant.

¶ 16 2. The Governor as Defendant

¶ 17 This appeal raises issues as to whether the doctrine of sovereign immunity bars this action as stated against the Governor. The plaintiffs argue that the "officer suit" exception to the sovereign immunity doctrine would operate to allow their suit against the Governor to move forward. See, *e.g.*, *Parmar v. Madigan*, 2018 IL 122265, ¶ 22 (where a plaintiff alleges that a State officer's conduct violates statutory or constitutional law or is in excess of his or her authority, such conduct is not regarded as the conduct of the State for sovereign immunity purposes). The defendants counter that the Governor is an improper party in this action because he does not have the power to effectuate the relief that the plaintiffs are requesting. See, *e.g.*, *Illinois Press Ass'n v. Ryan*, 195 Ill. 2d 63, 67-68 (2001) (governor was an improper party to a suit for declaratory relief due to the absence of a connection between governor and the subject of the suit such that governor had no power to effectuate judgment). Assuming, without deciding, that the Governor would be a proper party against whom the plaintiffs could bring their claims, we turn to the substance of the claims themselves to determine whether the circuit court erred in determining the plaintiffs could not proceed.

¶ 18 a. *Count I—The Quality Education Clause*

¶ 19 Count I of the complaint alleges that the defendants have violated article X, section 1 of the Illinois Constitution (quality education clause) (Ill. Const. 1970, art. X, § 1), which states that "[t]he State shall provide for an efficient system of high quality public educational institutions and services." Assuming the plaintiffs have standing to bring a claim to enforce the quality education clause, we find that the doctrine of *stare decisis* compels us to affirm the order of the circuit court dismissing count I with prejudice. Our supreme court has explained the role *stare decisis* is to play in our judicial process as follows:

> "The doctrine of *stare decisis* 'expresses the policy of the courts to stand by precedents and not to disturb settled points.' [Citation.] This doctrine 'is the means by which courts ensure that the law will not merely change erratically, but will develop in a principled and intelligible fashion.' [Citation.] *Stare decisis* enables both the people and the bar of this state 'to rely upon [the supreme court's] decisions with assurance that they will not be lightly overruled.' [Citation.]" *Vitro v. Mihelcic*, 209 Ill. 2d 76, 81-82 (2004).

¶ 20 In *Committee for Educational Rights v. Edgar*, 174 Ill. 2d 1 (1996), the Illinois Supreme Court considered the request of school districts, school boards, and students for a declaratory judgment against the Governor and ISBE that the then-current system for financing public schools violated the quality education clause. The court concluded that the question of whether educational institutions and services in Illinois are "high quality" is outside the sphere of judicial function. *Id.* at 32. That holding was reaffirmed in *Lewis v. Spagnolo*, 186 Ill. 2d 198, 210 (1999), where the court found that the plaintiffs, students in that case, could not state a claim based upon a violation of the quality education clause.

¶ 21 The plaintiffs argue that the reasoning set forth by the court in *Edgar* is no longer applicable because the ISBE has defined a quality education through adoption of the Learning Standards, and the General Assembly has defined what funding is required under the quality education clause by enacting the Funding Act. 105 ILCS 5/18-8.15 (West 2018). However, the plaintiffs do not seek to state a cause of action for enforcement of the Funding Act itself, but rather are asking this court to overturn *Edgar*'s holding based on the definition of quality to be gleaned from the Funding Act and the Learning Standards. While we agree that some of the reasoning in *Edgar* focused on the lack of measurability of "quality," the ultimate holding in *Edgar* was broadly stated, concluding that the determination of whether the State was fulfilling its duty of providing for a quality education was outside the judicial function. 174 Ill. 2d at 32. More recently, *Edgar*'s holding was again broadly stated in *Lewis*, where the supreme court reinforced its prior decision finding there was no cause of action for violation of the quality education clause. *Lewis*, 186 Ill. 2d at 210.

¶ 22 Recently, the Illinois Supreme Court reiterated the long-standing principle that our circuit and appellate courts are bound to apply supreme court precedent to the facts of the case before them, "[r]egardless of the impact of any societal evolution that may have occurred" since the decision was made. *Yakich v. Aulds*, 2019 IL 123667, ¶ 13. The court cautioned the appellate court that " '[w]hen th[e supreme] court "has declared the law on any point, *it alone can overrule and modify its previous opinion*, and the lower judicial tribunals are bound by such decision and it is the duty of such lower tribunals to follow such decisions in similar cases." ' (Emphasis in original)." *Id.* (quoting *Blumenthal v. Brewer*, 2016 IL 118781, ¶ 61, quoting *Price v. Philip Morris, Inc.*, 2015 IL 117687, ¶ 38). Bearing this in mind, we decline to disturb the holdings in *Edgar* and *Lewis*, and find that count I was properly dismissed.

¶ 23 b. *Count II—The Equal Protection Clause*

¶ 24 Count II of the plaintiffs' complaint alleges that the defendants' failure to fund the plaintiffs in the manner set forth in the Funding Act has resulted in disparities among school districts that constitute a violation of the equal protection clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 2). As with count I, our review of the circuit court's dismissal of count II is governed by the supreme court's decision in *Edgar*. 174 Ill. 2d at 40. Considering this exact claim, our supreme court held that the State's system of funding public education is rationally related to the legitimate State goal of promoting local control. *Id.* Accordingly, the court held that the circuit court properly dismissed the plaintiffs' claims alleging a violation of the equal protection clause based on disparities in educational funding. The plaintiffs argue that the adoption of the Learning Standards and the passage of the Funding Act illustrates a change in the goal of the State away from local control. However, based on the supreme court's recent pronouncement in *Yakich*, as described above, we find that it is for the supreme court to determine whether to alter the holding of *Edgar*. For these reasons, the circuit court properly dismissed count II of the plaintiffs' complaint.

¶ 25 CONCLUSION

¶ 26 For the foregoing reasons, we affirm the October 17, 2018, order of the circuit court, which dismissed the plaintiffs' complaint with prejudice.

¶ 27 Affirmed.

¶ 28 JUSTICE WHARTON, concurring in part and dissenting in part:

¶ 29 I concur with the majority's conclusion that the State of Illinois enjoys sovereign immunity and cannot be required to defend this lawsuit. *Township of Jubilee v. State of Illinois*,

2011 IL 111447, ¶ 22. I agree that the trial court's order dismissing the State as a defendant should be affirmed.

¶ 30 However, I respectfully disagree with the majority's affirmation of the trial court's premature dismissal and its conclusion that the Illinois Governor cannot be held accountable for violating both the quality education clause and the equal protection clause of the Illinois Constitution. My colleagues hold that this court is constrained to follow the precedent set in *Committee for Educational Rights v. Edgar*, 174 Ill. 2d 1 (1996), unless and until the Illinois Supreme Court reconsiders that holding. I dissent because I believe that we have a duty to address the education quality and funding issues presented by the 22 plaintiffs instead of ignoring or postponing this critical issue of utmost urgency and importance to our citizens and our State with an overly broad application of *Edgar*'s holding. While our supreme court has stated that case precedents must be applied "[r]egardless of the impact of any societal evolution that may have occurred," the issues in this case do not focus on "societal evolution"; instead, this case involves legislative evolution that has modified and established a *de facto* definition of the constitutionally mandated "quality education." *Yakich v. Aulds*, 2019 IL 123667, ¶13.

¶ 31 I will first address the issue involving the quality education clause as set forth in our constitution. Section 1 of article X of the Illinois Constitution of 1970 provides:

> "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. Education in public schools through the secondary level shall be free. There may be such other free education as the General Assembly provides by law.
>
> The State has the primary responsibility for financing the system of public education." Ill. Const. 1970, art. X, § 1.

In *Committee for Educational Rights v. Edgar*, the Illinois Supreme Court noted that the education committee of the Sixth Illinois Constitutional Convention was partially guided by the

United States Supreme Court's decision *Brown v. Board of Education*, 347 U.S. 483, 494 (1954). *Edgar*, 174 Ill. 2d at 14-15. The education committee stated that, " '[t]he opportunity for an education, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.' " *Id.* at 15 (quoting 6 Record of Proceedings, Sixth Illinois Constitutional Convention 231).

¶ 32 The Illinois Supreme Court explained that while the term "quality education" was not defined within the constitution, the framers of the 1970 constitution purposefully chose not to define the term and believed that the definition would mean " 'different things to different people.' " *Id.* at 27 (quoting 2 Record of Proceedings, Sixth Illinois Constitutional Convention 767). The constitutional framers determined that what constituted a "quality education" should be decided by the legislature and the local school districts. *Id.* In considering whether the quality education clause gives rise to a cause of action, the *Edgar* court explained that "the central issue is whether the quality of education is capable of or properly subject to measurement by the courts." *Id.* at 24. The court answered that question in the negative, finding that questions related to the quality of education are best resolved by the legislature rather than the courts. *Id.* In part, the court reached this conclusion due to Illinois courts' long-standing history of giving deference to the legislature in matters related to education. See *id.* at 24-26. Noting that education is a subject outside of the court's expertise, the supreme court stated that if it held "that the question of educational quality is subject to judicial determination[, that] would largely deprive the members of the general public of a voice in a matter which is close to the hearts of all individuals in Illinois." *Id.* at 29.

¶ 33 When the supreme court decided *Edgar*, it was impossible for courts to address alleged violations of the quality education clause without first determining what type of education

constituted a quality education because there was no legislative answer to that question. See *id.* at 26 (explaining that the state constitution does not define "quality education" (citing *Richards v. Raymond*, 92 Ill. 612, 617-18 (1879))).

¶ 34 In the 24 years subsequent to the *Edgar* decision, our legislature modified and expanded the requirements all Illinois schools must enact and employ in educating students. The legislature adopted legislation requiring the Illinois State Board of Education (ISBE) to establish academic standards for all Illinois public school students to meet. See 105 ILCS 5/2-3.64a-5(b) (West 2016). The legislation also requires the ISBE to assess public school students annually to determine whether those standards are being met. See *id.* § 2-3.64a-5(c). In 1997, the ISBE adopted the Illinois Learning Standards. "The Illinois Learning Standards establish expectations for what all students should know and be able to do in each subject at each grade." https://www.isbe.net/Pages/Learning-Standards.aspx. "The standards emphasize depth over breadth, building upon key concepts as students advance." *Id.* "The standards promote student-driven learning and the application of knowledge to real world situations to help students develop deep conceptual understanding." *Id.* "Intentionally rigorous, the Illinois Learning Standards prepare students for the challenges of college and career." *Id.* The ISBE has periodically revised and expanded those standards to include the administrative adoption of the Common Core standards.

¶ 35 Thus, Illinois schools have been required to adjust curriculums to ensure inclusion of material to meet legislative and administrative standards in mathematics, English, and language arts. The ISBE stops short of setting the precise curriculum to follow, leaving those specific methodology decisions to the school districts, but the ISBE does set the standards in terms of topics to be included and the concepts that the students must learn. In addition, the districts and

its educators are held accountable to meet these standards. Illinois students must take tests, including the Partnership for Assessment of Readiness for College and Careers assessment to measure students' progress towards college and career readiness in grades 3 through 8 and in high school.

¶ 36 Overall, I find that the legislature has modified the original balance between the goals of ensuring a quality education for all Illinois students and promoting local control of schools as was in application when *Edgar* was decided. As a result, much of the control that local school boards once enjoyed has been shifted to the State. To the extent local control remains a viable consideration, I would find that the plaintiffs only plead for adequate educational funding resources to exercise some degree of "local control."

¶ 37 As stated earlier, the report prepared by the education committee of the Sixth Illinois Constitutional Convention began with the premise that the mandated education must be on equal terms. I find that what began in 1970 with the ideal of equal treatment stemming from *Brown v. Board of Education* has transitioned to unequal treatment for schools like the plaintiffs in this case. This inequality in State-provided education is further exacerbated because the current state of the law gives underresourced school districts no recourse to attempt to enforce the Funding Act on behalf of their students.

¶ 38 In *Brown v. Board of Education*, the United States Supreme Court recognized that separating the children by race for educational purposes had a detrimental effect on the black children who felt inferior and were less motivated to learn. *Brown*, 347 U.S. at 494. The combination of the underfunding alleged by the plaintiffs and the State-mandated education and testing requirements have a similar detrimental effect on the students of the rural and urban schools involved in this case. Academic underperformance by a school district impacts the lives

of its students, who may encounter difficulties when applying for admission to postsecondary educational institutions. This outcome, based in part on the results of the skills assessment and accountability mandates, is contrary to our State's goal of providing quality education to all Illinois students. As an example, I highlight the makeup of the Cahokia Unit School District No. 187 as of the 2018-19 school year. The district is comprised of 89% black students. https://www.illinoisreportcard.com/district.aspx?source=studentcharacteristics&Districtid=5008 2187026. Children living in a low-income situation make up 93% of the total of all Cahokia students. *Id.* Seven of its ten schools are academically underperforming. *Id.* Further aggravating the issue of inadequate funding is the fact that the State's school funding formula considers attendance and the Cahokia district has a chronic absenteeism rate of 50% for the entire district and 60% at the high school level. *Id.* Cahokia High School also has a 64% chronic truancy rate. *Id.* Based upon the State assessments, the students of Cahokia are not receiving the education required by the legislature and the ISBE administrative regulations. The cycle of low academic achievement will perpetuate year after year if changes are not made.

¶ 39 The United States Supreme Court's statement about education in 1954 is more important and applicable to modern-day education. The Court stated:

> "Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms." *Brown*, 347 U.S. at 493.

It is important to note that the United States Supreme Court, although rendering a landmark decision focusing upon racial discrimination, phrased this statement to be inclusive of the education of all students. It is equally important to note that the plaintiffs do not seek funding for an "opportunity of an education" for their students funded at "equal terms" with more affluent school districts. They only seek a level of funding sufficient to fulfill the mandated educational requirements that the legislature and the ISBE have determined to be their responsibility. As I have previously stated, legislative and administrative enactments have resulted in the definition of a high quality education in Illinois. As a result, the courts do not have to define what constitutes a high quality education. If the students are not receiving a high quality education, the courts must hold the Governor accountable when and if schools are able to establish that the funding provided by the State is inadequate to achieve the high quality education that they are mandated to provide. Furthermore, courts must have the ability to shape a remedy to serve the educational interests of the students of this State.

¶ 40 As the 22 school districts assert in their complaint, the State-mandated Learning Standards represent a "consensus of the citizens of Illinois as to an appropriate 'high quality' education." Because the legislature and the ISBE have determined the education students must receive, courts no longer need to make that determination in order to resolve claims that students in underresourced districts are not receiving the high quality education mandated by our State constitution.

¶ 41 This case was dismissed by the trial court. On appeal, we accept all well-pleaded facts in the complaint as true and draw all reasonable inferences from those facts in favor of the nonmoving party. *Balmoral Racing Club, Inc. v. Gonzales*, 338 Ill. App. 3d 478, 484 (2003).

Considering this standard of review, I would reverse the trial court's order dismissing the quality education clause issue against the Governor.

¶ 42 Turning next to the plaintiffs' issue involving the equal protection clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 2), the majority concluded that *Committee for Educational Rights v. Edgar* is controlling and supports the trial court's order of dismissal. There, as here, plaintiffs argued that the disparity in funding between wealthy school districts and poor school districts violated the equal protection rights of students in poor districts. *Edgar*, 174 Ill. 2d at 32. In rejecting this claim, our Illinois Supreme Court explained that although education is a "vitally important" State function, "it is not a fundamental individual right for equal protection purposes." *Id.* at 37. As such, equal protection challenges in the context of public education are subject to review under the rational basis test. *Id.* Under that test, a public-school funding system passes constitutional muster if it is "rationally related to a legitimate state goal." *Id.* The court explained that the funding system in place at the time resulted from "legislative efforts to strike a balance between the competing considerations of educational quality and local control" of school districts. *Id.* at 39. The court emphasized the deferential nature of the rational basis test (*id.*) and concluded that the public education funding system then in place was "rationally related to the legitimate state goal of promoting local control" (*id.* at 40).

¶ 43 The rationale underlying the *Edgar* court's equal protection analysis has likewise been distinguished by subsequent changes to the law. Here, the plaintiff school districts argue that the State and the Governor's failure to fund the school districts as set forth in the Funding Act results in economic disparities among school districts and violates the equal protection clause. The Funding Act likewise represents a change in the State's priorities. The Funding Act includes an express statement of legislative purpose which provides that the overriding goal of the Act is to

ensure that all Illinois students have "a meaningful opportunity to learn irrespective of race, ethnicity, sexual orientation, gender, *or community-income level*." (Emphasis added.) 105 ILCS 5/18-8.15(a)(1) (West 2018). One stated aim of the legislation is to provide school districts with funding necessary to "reduce, with a goal of eliminating, the achievement gap between at-risk and non-at-risk students." *Id.* § 18-8.15(a)(1)(C). Low-income students are included in the statutory definition of "at-risk" students. *Id.* § 18-8.15(a)(4). These changes indicate that our legislature has made a policy determination that reducing inequities in school funding is an important goal. Considering these changes, I do not believe that the current funding system is rationally related to the State's legitimate goals.

¶ 44 The issue of fair and adequate funding for underresourced school districts is a crucial one for Illinois students. The impacts from the disparities among districts can be far-reaching and devastating. One of the most important benefits of receiving a good education is that it provides students with the skills necessary "to pursue post-secondary education and training for a rewarding career." *Id.* § 18-8.15(a)(1)(B). However, a school district that struggles with all available resources to ensure that its students minimally meet the basic requirements of the learning standards will not have the resources to offer students college preparation classes or vocational training programs. Inadequate preparation for a college education or a trade can have a lasting impact on a student's ability to earn a living and do work he or she finds meaningful.

¶ 45 It would be unconscionable for me to neglect to acknowledge one example of the devastating impacts that result when students do not receive a high quality education—the well-documented relationship between inadequate education and the incarceration of large numbers of predominately young persons. The Illinois Department of Corrections report for fiscal year 2018 reports that only 15.7% of prison inmates graduated from high school. See Illinois Department of

Corrections, Fiscal Year 2018 Annual Report, 76 (2018), https://www2.illinois.gov/idoc/reportsandstatistics/Documents/FY18%20Annual%20Report%20FINAL.pdf. It is also important to acknowledge the resulting monetary and human cost to our society and government.

¶ 46 For these reasons, I believe it is imperative that there be some avenue available to underresourced school districts like the plaintiffs to insist on funding that is adequate to serve their students and meet the goals of the Funding Act. The trial court's dismissal of this case was procedurally early in the case. By accepting all well-pleaded facts in the complaint as true and drawing all reasonable inferences from those facts in favor of the plaintiffs, I would reverse the trial court's order dismissing the equal protection clause issue against the Governor. *Balmoral Racing Club, Inc.*, 338 Ill. App. 3d at 484. This would provide an opportunity for the parties to fully develop the issues in the trial court in case the Illinois Supreme Court decides to revisit these matters.

2020 IL App (5th) 180542
NO. 5-18-0542
IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

CAHOKIA UNIT SCHOOL DISTRICT NO. 187, GRANT CENTRAL CONSOLIDATED SCHOOL DISTRICT NO. 110, PANA COMMUNITY UNIT SCHOOL DISTRICT NO. 8, BETHALTO COMMUNITY UNIT SCHOOL DISTRICT NO. 8, BOND COUNTY COMMUNITY UNIT SCHOOL DISTRICT NO. 2, BROWNSTOWN COMMUNITY UNIT SCHOOL DISTRICT 201, BUNKER HILL COMMUNITY UNIT SCHOOL DISTRICT NO. 8, GILLESPIE COMMUNITY UNIT SCHOOL DISTRICT NO. 7, ILLINOIS VALLEY CENTRAL COMMUNITY UNIT SCHOOL DISTRICT NO. 321, MERIDIAN COMMUNITY UNIT SCHOOL DISTRICT 223, MT. OLIVE COMMUNITY UNIT SCHOOL DISTRICT NO. 5, MULBERRY GROVE COMMUNITY UNIT SCHOOL DISTRICT NO. 1, NOKOMIS COMMUNITY UNIT SCHOOL DISTRICT NO. 22, OSWEGO COMMUNITY UNIT SCHOOL DISTRICT 308, OREGON COMMUNITY UNIT SCHOOL DISTRICT 220, SOUTHWESTERN COMMUNITY UNIT SCHOOL DISTRICT 9, STAUNTON COMMUNITY UNIT SCHOOL DISTRICT NO. 6, STREATOR TOWNSHIP HIGH SCHOOL DISTRICT 40, VANDALIA COMMUNITY UNIT SCHOOL DISTRICT NO. 203, WOOD RIVER-HARTFORD SCHOOL DISTRICT NO. 15, CARLINVILLE COMMUNITY UNIT SCHOOL DISTRICT NO. 1, and TAYLORVILLE COMMUNITY UNIT SCHOOL DISTRICT NO. 3, Plaintiffs-Appellants, v. J.B. PRITZKER, Governor of the State of Illinois, and THE STATE OF ILLINOIS, Defendants-Appellees.	)	Appeal from the Circuit Court of St. Clair County. No. 17-CH-301 Honorable Julie K. Katz, Judge, presiding.

Rule 23 Order Filed: April 17, 2020
Motion to Publish Granted: May 13, 2020
Opinion Filed: May 13, 2020

Justices: Honorable James R. Moore, J.

Honorable Thomas M. Welch, P.J., concurred
Honorable Milton S. Wharton, J., concurred in part and dissented in part

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