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October 5, 2011

Superintendent or Board Member  
Texas Public School District

Re: School Finance Litigation – Time for Unified Action for All Texas School Districts

Dear Superintendent or Board Member:

We are writing to you, a leader in Texas public education, to share some information about school finance litigation and to invite your school district to participate in a broad, diverse coalition of school districts in a unified effort to challenge the constitutionality of the Texas public school finance system. As you know, there has been significant discussion in the last year, particularly since the end of the 82<sup>nd</sup> Legislature, regarding the possibility of litigation against the State over school funding. We have never taken lightly the matter of school finance litigation, and we strongly believe that a lawsuit should be undertaken only when other avenues for significant structural improvements in our system are closed and when a real possibility of success is achievable through litigation. Ultimately, we must remember that we will all work with the legislative and executive branches to implement needed changes in our school funding system. We have concluded that a broad-based, unified, and forceful challenge to the current funding system is now needed to move Texas forward. We invite your district to participate in this effort.

Our legal team will be led by me and Philip Fraissinet of our firm, Thompson & Horton. We plan to retain top-quality experts, including Lynn Moak, Dan Casey and others from Moak Casey & Associates. Attached at the back of this letter is a summary of the claims and strategies we believe have the most likely probability of success under current law and circumstances.

Enclosed with this letter are the following three documents:

- A resolution for your board to adopt to participate in this coalition
- An engagement letter to retain our law firm for representation in this effort



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- A sample media statement that can be modified/used to announce your District's support of this effort

In order to have your board act on this matter, we suggest that you include the following language on your board agenda:

**"Consider adoption of resolution to participate in school finance litigation and to engage Thompson & Horton LLP regarding same."**

If you would like us to meet with your board to answer any questions, we will be happy to do so. We truly hope you and your district will consider being a part of this effort. Once your board acts, please return to us a copy of the signed resolution and a copy of the signed engagement letter.

Please do not hesitate to contact me (at 713-554-6752) or Philip Fraissinet (at 713-554-6743) if you have any questions or wish to discuss any aspect of our efforts.

We sincerely appreciate your consideration of this invitation.

Very truly yours,  
Thompson & Horton LLP

  
J. David Thompson

  
Philip D. Fraissinet

JDT/PDF/sjr  
Attached Summary  
Enclosures

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## SCHOOL FINANCE LITIGATION

We believe that the coming litigation will affect and, if successfully handled, should positively impact all Texas school districts. The fact is this: districts can spend their time and resources fighting each other or they can spend their time and resources working together to assert common concerns about the State system. It always has been our team's approach in school finance lawsuits to assert those claims that a broad and diverse group of Texas school districts can support rather than issues that divide districts. That will be our approach now.

### *Why litigation, and why now?*

Less than six years ago, the Texas Supreme Court struck down the State school funding system. In November of 2005, the Court found that over time the Texas legislature had come to rely too heavily on local property tax revenue even as it deprived school districts of meaningful discretion over tax rates. The Court found the system amounted to a State property tax in violation of the Texas Constitution. Our coalition was the only plaintiff group in *West Orange Cove vs. Neeley* that challenged the State on these successful issues.

Importantly, in its decision the Texas Supreme Court also warned legislators about the school funding system's march toward constitutional inadequacy. The Court stated that structural change was needed and warned the legislature: "it remain[ed] to be seen whether the system's predicted drift toward constitutional inadequacy will be avoided by legislative reaction to widespread calls for changes."

In April and May of 2006, the 79<sup>th</sup> Texas Legislature met in a third special session to address public school finance. Just days ahead of the Court's June 1, 2006 deadline, after which school operations statewide would have been enjoined, the Legislature passed House Bill 1. Initially, House Bill 1 afforded a substantial increase in funding to schools. At the same time, it compressed local property tax rates by one-third over a two-year period, making up the difference with a newly enacted business margins tax plus a portion of State general revenues and other state-sourced funds. With House Bill 1, legislators also created a massive new State hold-harmless provision for school funding, commonly known as target revenue, which locked many districts' funding at 2006 levels per weighted student.

Six years after the Supreme Court's decision, it is evident that the Texas legislature's supposedly temporary solution to the last Court decision has failed to answer the call for needed change, and Texas is once again operating under an unconstitutional school funding system. Revenue added since the Supreme Court's 2005 decision now has been significantly reduced by the 82<sup>nd</sup> Legislature's cuts this year of more than \$5 billion. The new business tax has failed to generate sufficient revenue to make up for the reduction of local property tax rates. And the "temporary" target revenue system adopted by the legislature in 2006 has become a permanent, parallel and large unexplainable funding system.



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As it currently stands, the system utterly fails to address growth. Texas has added, on average, more than 80,000 students per year since the Court's decision. It will add about 170,000 students in the next two years. Yet this past spring—and for the first time since World War II—the Texas legislature failed to appropriate funding to cover the costs of student population growth under existing formulas over the next biennium. To fund enrollment growth, the legislature reduced funding for the FSP, effectively deciding that all Texas students are worth about \$500 per year less.

Exacerbating the funding crisis are the legislature's new requirements for school districts and students that dramatically increase accountability standards and testing requirements. Let us be clear: increased standards and a shift to an emphasis on post-secondary readiness for all students is a very positive direction. Though well-intentioned, these unfunded measures strain a system that is already overburdened financially. Thus, it is as if, over a five-year period from 2006-2011, the State has responded to the Court's decision declaring the system unconstitutional by raising standards and requirements without sufficient additional resources. Would this response have been acceptable in 2006? We believe that the answer is clearly no. So, why should this response be acceptable today?

In short, the legislature's funding commitment is more distanced than ever from its plans and dictates. It has failed to change the system fundamentally, and more particularly, in a way that will rationally connect resources to the requirements the State has set for all students. The Supreme Court's prediction now is reality: the Texas school funding system, as it currently stands, is unconstitutional.

#### *Unifying and Successful Claims*

Our legal team believes that the present Texas school finance system fails to meet the high standards of the Texas Constitution on multiple claims that can provide common ground for a diverse group of districts. We believe that the present Texas school finance system fails to meet the standards of the Texas Constitution in at least three respects:

1. **Adequacy** – Schools and students face significantly increased State performance requirements, curriculum mandates and “college ready” performance levels relative to those in place prior to 2005. Eliminated as part of the 82<sup>nd</sup> Legislature's dramatic reductions in State funding for public education, however, was funding for specific programs that the Legislature itself has identified as necessary to help the growing population of at-risk students in Texas reach these higher standards. These include programs such as full-day prekindergarten for at-risk students, credit recovery and tutoring, and the technology allotment, among others. The formula adjustments that were retained for student and community differentials are long out of date and have not been updated in decades. If the system is not structured and funded so that there is a close relationship between the State's performance expectations for all students and a funding system actually designed to support those expectations, we believe that it falls short of Constitutional requirements.



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2. **Statewide Property Tax** – the Texas Supreme Court held in 2005 that the system had deteriorated into an unconstitutional State property tax because districts did not have “meaningful discretion” over their own taxes to enrich the State’s required program. Ours was the only group that raised the state property tax issue in *West Orange Cove*. At present, a majority of districts in Texas find themselves with significantly increased State requirements as compared to 2005 and with little discretion remaining other than to cut programs important to parents and students.
3. **Efficiency/Suitability/Arbitrariness** – Many school districts continue to be locked into a target revenue hold-harmless funding system that was enacted as temporary in 2006. The system has significant differences between districts, in many cases differences that are difficult if not impossible to explain. If the system has become so complex that it is largely unexplainable, and if the funding levels for districts have become arbitrary and not reasonably connected to the State’s own high requirements for all students, it is not efficient or suitable as required by the Texas Constitution. Critically, we believe that this violation cannot be remedied simply by eliminating or lowering target revenue for some. Instead, it requires that the Legislature adopt a system that ties funding to the actual costs of meeting the State’s high standards for all Texas children. We must level up, not down.

We believe that these are claims upon which a broad coalition of districts can unite. We believe that having a broad and diverse coalition of districts was critical before, when we achieved success before the trial court and the Supreme Court in *West Orange Cove*. With similar participation and support of school districts across the State now, we believe we have a reasonable probability of succeeding again before *both* a Travis County District Court *and* the Texas Supreme Court.

#### *Goals of Litigation*

In the past, Texas courts have generally limited the remedy for a constitutionally deficient funding system to the threat of enjoining the operation of the public school system. We believe that more forceful and direct remedies are required to compel the legislature to implement more long-term and structural changes to the funding system. Specifically, we believe the following goals are ones that can benefit all districts in Texas, and around which all districts can unify:

- Meaningful discretion for ALL Texas school districts to be able to choose locally to provide enrichment beyond State requirements;
- Adequate funding that allows ALL Texas school districts to provide a meaningful opportunity for ALL students, regardless of background or condition, to meet or exceed the standards that we set in Texas; and



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- A finance system that provides funding for ALL Texas school districts in a way that is rationally connected to the standards and requirements set by the State and that offers the greatest opportunity for all schoolchildren in Texas to succeed.

*Next Steps*

In the very near future, a lawsuit asserting these claims and seeking this relief will be filed. Other school districts and interested parties will have an opportunity to join this effort.

Our goal is to have a diverse, representative, and unified coalition that will assert common claims and share in the costs of this effort. The enclosed engagement letter describes the terms under which each member will participate in the coalition. With regard to costs, we note that because of our success in the *West Orange Cove* case we were able to recover our coalition's legal expenses from the State, and we returned those funds to each and every district that participated in the effort. Although we cannot guarantee the outcome, we can assure you that we will vigorously pursue success and the recovery of legal costs to the fullest extent possible.