

STATE OF INDIANA) IN THE HAMILTON SUPERIOR COURT
) SS:
 COUNTY OF HAMILTON) CAUSE NO. 29 D01 1002 PL 198

HAMILTON SOUTHEASTERN)
 SCHOOLS, Hamilton County, Indiana;)
 MIDDLEBURY COMMUNITY)
 SCHOOLS, Elkhart County, Indiana;)
 FRANKLIN TOWNSHIP COMMUNITY)
 SCHOOL CORPORATION, Marion)
 County, Indiana; HOLLY KINCAID, ON)
 BEHALF OF HERSELF AND HER)
 MINOR CHILD, KATHRYN KINCAID;)
 KRISTA SCHULZ, ON BEHALF OF)
 HERSELF AND HER MINOR)
 CHILDREN, JAMES SCHULZ AND)
 CAITLIN SCHULZ; JULIE WHITEHEAD,)
 ON BEHALF OF HERSELF AND HER)
 MINOR CHILDREN, NATHAN)
 WHITEHEAD AND ETHAN)
 WHITEHEAD; and TRICIA REYNOLDS)
 AND DANNY REYNOLDS, ON BEHALF)
 OF THEMSELVES AND THEIR MINOR)
 CHILDREN, and NATHANIEL REYNOLDS)
 AND MAGDALENA REYNOLDS,)

Plaintiffs,)

vs.)

MITCH DANIELS, Governor of the State)
 of Indiana; TONY BENNETT, Indiana)
 State Superintendent of Public Instruction)
 and Chair of the State Board of Education;)
 the INDIANA STATE BOARD OF)
 EDUCATION; the INDIANA STATE BOARD OF)
 EDUCATION MEMBERS GWENDOLYN)
 ADELL, JO BLACKETOR, STEPHEN GABET,)
 SARAH M. O'BRIEN, NEIL PICKETT,)
 MICHAEL PETTIBONE, DANIEL J. ELSENER,)
 VICKI SNYDER, JAMES D. EDWARDS, AND)
 DAVID SHANE, in their official capacities; and)
 the STATE OF INDIANA,)

Defendants.)

FILED
 2010 FEB 23 AM 8:10
 PEGGY BEAVER (2)
 CLERK
 HAMILTON COUNTY COURTS

COMPLAINT

Plaintiffs, Hamilton Southeastern Schools (“HSE”), Middlebury Community Schools (“MCS”), and Franklin Township Community School Corporation (“FTCSC”) (collectively “School Corporation Plaintiffs”); and Individual Plaintiffs, Holly Kincaid, Krista Schulz, Julie Whitehead, and Tricia and Danny Reynolds, on behalf of themselves and their minor children (collectively “Individual Plaintiffs”); by their attorneys Franczek Radelet P.C.¹ and Riley Bennett & Egloff, LLP, state as follows for their complaint against Defendants Mitch Daniels, Governor of the State of Indiana (“Governor”); Tony Bennett, Indiana State Superintendent of Public Instruction and Chair of the State Board of Education (“Bennett”); the Indiana State Board of Education (“State Board”); Individual State Board Members Gwendolyn Adell, Jo Blacketer, Stephen Gabet, Sarah M. O’Brien, Neil Pickett, Michael Pettibone, Daniel J. Elsener, Vicki Snyder, James D. Edwards, and David Shane, in their official capacities (collectively “Individual State Board Members”); and the State of Indiana (“State”) (collectively “Defendants”):

NATURE OF ACTION

1. This action arises from the State’s non-uniform school funding scheme, and the negative impact that scheme has on students attending HSE, MCS, and FTCSC. This lawsuit challenges the constitutionality of Title 20, Article 43 of the Indiana Code, which sets out the State’s scheme for distributing education funds to school corporations (“Funding Scheme”). The Funding Scheme violates Section 1 of Article 8 (the “Education Clause”) of the State Constitution, as administered through Section 2. The Funding Scheme also violates Section 23 of Article 4 of the State Constitution because it is a special law without justification.

¹ Franczek Radelet is presently serving as Of Counsel. Simultaneous with the filing of this Complaint, Petitions for Temporary Admission pursuant to Indiana law are being submitted.

2. Defendants, including the Governor, Bennett, State Board, Individual State Board Members, and State, are individually and collectively responsible for establishing and implementing the Funding Scheme.

3. The Plaintiffs are three school corporations, HSE, MCS, and FTCSC, located in Indiana; and five parents and their minor children who live in and attend HSE, MCS, and FTCSC. Plaintiffs seek a declaration of rights pursuant to IND. CODE § 34-14-1-1, *et seq.* and Indiana Trial Rule 57, that the Indiana Constitution imposes an enforceable duty on the General Assembly to provide education funding for all of Indiana's children in a manner that allows all suitable means to be employed for education, to provide a general and uniform system of schools, and to provide tuition without charge. Plaintiffs further seek a declaration that the Defendants are violating their constitutional duty because Indiana's current system of financing education violates the Indiana Constitution by not allowing all suitable means to be used for education, by failing to fund a general and uniform system of schools, and by failing to provide schools where tuition is not charged. Accordingly, Plaintiffs further seek a permanent injunction enjoining Defendants from funding Indiana school corporations according to the Funding Scheme, and ordering Defendants to enact and implement a system for funding school corporations in a manner that complies with the Education Clause of the Indiana Constitution.

PARTIES

The Plaintiffs

4. Plaintiff HSE is a public school corporation, established and existing under the laws of Indiana, having its principal place of business located at 13485 Cumberland Road, Fishers, Indiana, 46038, in Hamilton County, Indiana. HSE houses twelve elementary schools, three intermediate schools, three junior high schools, and two high schools. Approximately 70,000 people currently live in the HSE

district, with approximately 18,000 students currently attending HSE. HSE is a rapidly growing school corporation, having increased in size from 1999 to 2009 by approximately 10,000 students.

5. Plaintiff MCS is a public school corporation, established and existing under the laws of Indiana, having its principal place of business located at 56853 Northridge Drive, Middlebury, Indiana, 46540, in Elkhart County, Indiana. MCS houses four elementary schools, one intermediate school, one middle school, and one high school. Approximately 20,000 people currently live in the MCS district, with approximately 4,400 students currently attending MCS. MCS is a rapidly growing school corporation, having increased in size from 1999 to 2009 by approximately 1,000 students.

6. Plaintiff FTCSC is a public school corporation, established and existing under the laws of Indiana, having its principal place of business located at 6141 S. Franklin Road, Indianapolis, Indiana, 46259, in Marion County, Indiana. FTCSC houses seven elementary schools, two intermediate schools, two middle schools, and one high school. Approximately 30,000 people currently live in the FTCSC district, with approximately 9,000 students currently attending FTCSC. FTCSC is a rapidly growing school corporation, having increased in size from 1999 to 2009 by approximately 4,000 students.

7. Individual Plaintiff Holly Kincaid sues on her own behalf and on behalf of her minor child, Kathryn Kincaid. Kathryn attends Fishers High School which is part of HSE. Ms. Kincaid and her child reside in Fishers, Indiana, located in Hamilton County, Indiana. Ms. Kincaid owns a home and pays property taxes on that home in Fishers, Indiana.

8. Individual Plaintiff Krista Schulz sues on her own behalf and on behalf of her two minor children, James and Caitlin Schulz. James attends Fishers Junior High School and Caitlin attends Sand Creek Intermediate School, both of which are part of

HSE. Ms. Schulz and her children reside in Fishers, Indiana, located in Hamilton County, Indiana. Ms. Schulz owns a home and pays property taxes on that home in Fishers, Indiana.

9. Individual Plaintiff Julie Whitehead sues on her own behalf and on behalf of her two minor children, Nathan and Ethan Whitehead. Ethan attends Middlebury Elementary School and Nathan attends Heritage Intermediate School, both of which are part of MCS. Ms. Whitehead and her children reside in Middlebury, Indiana, located in Elkhart County, Indiana. Ms. Whitehead owns a home and pays property taxes on that home in Middlebury, Indiana.

10. Individual Plaintiffs Tricia and Danny Reynolds sue on their own behalf and on behalf of their two minor children, Nathaniel and Magdalena Reynolds. Nathaniel and Magdalena both attend Thompson Crossing Elementary School, which is part of FTCSC. Mr. and Mrs. Reynolds and their children reside in Indianapolis, Indiana, located in Marion County, Indiana. Mr. and Mrs. Reynolds own a home and pay property taxes on that home in Indianapolis, Indiana.

The Defendants

11. Defendant Mitch Daniels is Governor of the State of Indiana. Governor Daniels is responsible for directing the affairs of the State, including administering and enforcing the Indiana Constitution and statutes providing for the financing of elementary and secondary public education. Governor Daniels has a usual place of business in Indianapolis, Indiana.

12. Defendant Dr. Tony Bennett is the Indiana State Superintendent of Public Instruction and is Chair of the State Board. In these capacities, he is responsible in part for ensuring the Department of Education (a) performs its duties as required by statute; (b) implements the policies and procedures established by the Indiana State Board of Education; (c) conducts analytical research to assist the State Board of

Education in determining the State's educational policy; (d) compiles statistics concerning the ethnicity and gender of students in Indiana schools, including statistics for all information that the Department of Education receives from school corporations on enrollment, number of suspensions, and number of expulsions; and (e) provides technical assistance to school corporations. He is further responsible for supervising all elementary and secondary educational work supported by the State, including the financing of elementary and secondary public education, all in accordance with the State's obligations under the Indiana State Constitution. Dr. Bennett has a usual place of business in Indianapolis, Indiana.

13. Defendants State Board and Individual State Board Members are responsible for establishing the educational goals of the State, developing standards and objectives for local school corporations, assessing the attainment of established goals, assuring compliance with established standards and objectives, making recommendations to the Governor and the General Assembly concerning the educational needs of the State, including financial needs, and authorizing the distribution of State funds. The State Board has a usual place of business in Indianapolis, Indiana. Defendant Gwendolyn Adell has a usual place of business in Gary, Indiana. Defendant Jo Blacketer has a usual place of business in South Bend, Indiana. Defendant Stephen Gabet has a usual place of business in Fort Wayne, Indiana. Defendant Sarah M. O'Brien has a usual place of business in Avon, Indiana. Defendant Neil Pickett has a usual place of business in Indianapolis, Indiana. Defendant Michael Pettibone has a usual place of business in Monroe, Indiana. Defendant Daniel J. Elsener has a usual place of business in Indianapolis, Indiana. Defendant Vicki Snyder has a usual place of business in Evansville, Indiana. Defendant James D. Edwards has a usual place of business in Santa Claus, Indiana. Defendant David Shane has a usual place of business in Indianapolis, Indiana.

14. Defendant State of Indiana ("State") is the governmental body which allocates funding to units of local government for the purpose of providing a general and uniform system of common schools. The State has a usual place of business in Indianapolis, Indiana.

FACTUAL ALLEGATIONS

Constitutional Framework

15. Article 8, Section 1 of the Indiana Constitution (the "Education Clause") specifically provides that:

Knowledge and learning, generally diffused throughout a community, being essential to the preservation of a free government; it shall be the duty of the General Assembly to encourage, *by all suitable means*, moral, intellectual, scientific, and agricultural improvement; and to provide, by law, *for a general and uniform system of Common Schools, wherein tuition shall be without charge*, and equally open to all. [Emphasis added.]

16. Article 8, Section 4 further provides that the General Assembly "shall invest, in some safe and profitable manner, all such portions of the Common School fund, as have not heretofore been entrusted to the several counties; and shall make provision, by law, for the distribution, among the several counties" of the interest of the Common School Fund.

17. This language requires that the State have laws providing the same funding under the same circumstances and conditions for the instruction of students, regardless of where in the State they reside.

18. Article 4, Section 23 of the Constitution provides that "all laws shall be general, and of uniform operation throughout the State."

19. Article 4, Section 23 requires that unique circumstances justify special laws.

Indiana's Public School Funding Framework

20. The Indiana Code provides that the State Board shall adopt rules concerning the "distribution of funds and revenues appropriated for the support of schools in the state." IND. CODE § 20-19-2-8(7). In turn, the Indiana Department of Education is responsible for "implementing the policies and procedures established by the [State Board]." IND. CODE § 20-19-3-4. The State Superintendent of Public Instruction serves as both the Chairperson of the State Board and Director of the Department of Education. IND. CODE §§ 20-19-2-2(d); 20-19-3-2.

21. The State allocates basic tuition support to each school corporation to cover each school corporation's basic programs. IND. CODE §§ 20-43-2; 20-43-6-1. The State uses various formulas to calculate a school corporation's basic tuition support level for a given calendar year. IND. CODE §§ 20-43-5-2; 20-43-6-3.

22. The State Funding Scheme includes several features that result in a non-uniform distribution of funds and revenues and fail to account for new circumstances and conditions confronting school corporations, schools, and students such as, for example, rising enrollment levels.

23. For example, the Funding Scheme relies on adjusted average enrollment levels of school corporations ("Adjusted ADM") to reduce the funding consequences of declines in student enrollment on a school corporation's basic tuition support. The Adjusted ADM prevents a school corporation from receiving a proportionate decrease in basic tuition support because of a decrease in enrollment.

24. A school corporation's Adjusted ADM is determined by adding the sum of one-third of the corporation's actual ADM for the current year and each of the two previous years. That sum is then compared to the corporation's current ADM. The greater of the two figures is used as the corporation's Adjusted ADM. IND. CODE § 20-43-4-7.

25. School corporations experiencing increases in enrollment must use their actual ADM, while corporations experiencing declining levels of enrollment are treated as having artificially higher enrollments. Accordingly, this method of calculating student enrollment has the effect of disproportionately shifting available State revenue each year from schools with rising enrollment to schools with declining enrollment. This aspect of the Funding Scheme unjustly harms school corporations with rising enrollment levels.

26. The Funding Scheme also includes a feature called the "Complexity Index" designed to reallocate funding towards school corporations with higher percentages of students eligible for free or reduced price lunches. IND. CODE § 20-43-5-3. As designed, the Complexity Index, unsupported by empirical evidence, creates non-uniformity and disparate allocation of educational resources among students confronting the same circumstances and conditions in different areas of Indiana

27. The Funding Scheme utilizes a base-line student level, which is then adjusted by a number of factors, including those mentioned above. In 2010, the State reduced the base-line per-student support level from \$4,825 in 2009 to \$4,550 in 2010. IND. CODE § 20-43-5-4. The reduction in the base-line per-student support level has a greater negative impact on students attending some school corporations, such as School Corporation Plaintiffs, than other students confronting the same circumstances and conditions.

28. The State has recently implemented the Restoration Grant provision, which is another feature of the Funding Scheme that unjustly shifts funds away from the School Corporation Plaintiffs. IND. CODE § 20-43-12.

Effect of School Funding Scheme on Plaintiffs

29. Over the last 10 years, HSE, MCS, and FTCSC have grown dramatically. While the State of Indiana's total student population has seen a 5% increase over the

last ten years, HSE has experienced a 114% increase in its student population over the last ten years. FTCSC has experienced a 68% increase in its student population, and MCS has experienced a 27% increase in its student population.

30. The Funding Scheme distributes resources to school corporations, and thereby Indiana's schools and students, through a non-uniform system. School Corporation Plaintiffs receive dramatically less funding than other school corporations. For example, Table 1 below illustrates the growing gap in per-pupil funding between School Corporation Plaintiffs and two selected school corporations (Indianapolis Public Schools ("IPS"), Gary Community School Corporation ("GCSC")). The disparities illustrated below are evident among school corporations across Indiana.

Table 1

School Corporation	2007 Per-Pupil Revenues	2008 Per-Pupil Revenues	2009 Per-Pupil Revenues
HSE	\$5,048	\$5,095	\$5,057
FTCSC	\$4,918	\$5,035	\$5,190
MCS	\$4,783	\$4,904	\$5,099
IPS	\$6,848	\$7,338	\$7,822
GCSC	\$8,444	\$8,368	\$8,881

The revenues identified above consist of regular state support, plus local taxes for commercial vehicles, financial institutions, and auto excise, plus tuition support for the years 2007 and 2008. The revenues identified above are divided by actual ADM in each year.

31. The weighted average enrollments used to compute the Adjusted ADM in the funding formula results in other school corporations receiving dramatically more funding. For example, Table 2 below illustrates the impact of the Adjusted ADM on School Corporation Plaintiffs as compared to two selected school corporations (IPS, GCSC). The disparities illustrated below are evident among school corporations across Indiana.

Table 2

School Corporation	Actual ADM 2008-09	Adjusted ADM 2008-09	Foundation Level with Actual ADM	Foundation Level with Adjusted ADM	Funding Difference (Adjusted ADM Minus Actual ADM)
HSE	16,318.93	16,318.93	\$81,927,760.20	\$81,927,760.20	\$0
FTCSC	8,321.12	8,321.12	\$45,256,408.20	\$45,256,408.20	\$0
MCS	4,086.36	4,086.36	\$21,706,100.70	\$21,706,100.70	\$0
IPS	34,080.00	37,867.75	\$255,467,769.60	\$283,861,228.10	\$28,393,458.50
GCSC	11,569.50	13,655.60	\$81,857,444.30	\$96,605,381.50	\$14,757,937.10

Foundation funding with actual ADM is calculated by multiplying \$4,825.00 by the Complexity Index and the actual ADM. Foundation funding with Adjusted ADM is calculated by multiplying \$4,825.00 by the Complexity Index and the Adjusted ADM.

32. Indiana school corporations are not authorized by law to levy taxes for general fund expenses, such as teacher salaries. See Ind. P.L. 146-2008 (repealing the authority to impose levies for general fund purposes); *see also* IND. CODE. § 20-43-1-17. Moreover, school corporations are not allowed to utilize revenues from taxes levied for other purposes, such as capital and debt expenditures, for general fund expenses. Therefore, School Corporation Plaintiffs are prohibited from using local resources – other than by passing a referendum – to provide their students the same level of funding received from the State by other school corporations.

33. By way of example, Table 3 below illustrates the net effect of the Funding Scheme on School Corporation Plaintiffs, and two selected school corporations (IPS, GCSC), by comparing the school corporation’s 2009 Basic Tuition Support Foundation Level to what they would have received at the State average per-pupil funding level. The disparities illustrated below are evident among school corporations across Indiana.

Table 3

School Corporation	2009 Basic Tuition Support	Funding at State Average Per-Pupil Level	Difference
HSE	\$82,519,281	\$93,738,069	-\$11,218,788
FTCSC	\$43,184,865	\$47,797,602	-\$4,612,737
MCS	\$20,835,410	\$23,472,586	-\$2,637,176
IPS	\$266,574,570	\$195,759,978	\$70,814,592
GCSC	\$102,751,835	\$66,456,721	\$36,295,114

34. The 2010 changes to the school Funding Scheme – namely the reduction in the base-line per-pupil funding level and the newly implemented Restoration Grant – will further add to this disparity. For example, Table 4 below illustrates the effect that the 2010 amendments will have on School Corporation Plaintiffs, as compared to two selected school corporations (IPS, GCSC). The disparities illustrated below are evident among school corporations across Indiana.

Table 4

School Corporation	Reduction in Base-line Per-Pupil Funding Level	Effect of Restoration Grant	Net Gain or Loss in Per-Pupil Funding
HSE	-\$275	\$125	-\$150
FTCSC	-\$275	\$0	-\$275
MCS	-\$275	\$0	-\$275
IPS	-\$275	\$382	+\$107
GCSC	-\$275	\$454	+\$179

35. As a result of this disparity, School Corporation Plaintiffs have been forced to reduce both instructional and support positions and cut educational programs, all while educating more students. Plaintiff HSE was forced to eliminate over 60 positions during the 2008-09 and 2009-10 school years. Plaintiff MCS has eliminated 8 positions and plans to eliminate up to an additional 21 positions for the 2010-11 school year. Plaintiff FTCSC also plans to eliminate 86 positions. School Corporation Plaintiffs have been forced to eliminate course offerings. Furthermore, the inevitable

result of teaching more students with less staff is an increase in class sizes. In addition, FTCSC was forced to close two elementary schools and restructure two other schools.

36. By way of example, Table 5 below illustrates the current disparity in the student-to-teacher and student-to-administrative staff ratios between School Corporation Plaintiffs, as compared to two selected school corporations (IPS, GCSC). The disparities illustrated below are evident among school corporations across Indiana.

Table 5

School Corporation	Basic Tuition Support Per-Pupil in 2009	Students Per Administrative Staff in 2009	Students Per Teacher in 2009
HSE	\$5,056.66	153.23	18.62
FTCSC	\$5,189.79	139.85	18.23
MCS	\$5,098.77	134.42	17.35
IPS	\$7,822.02	47.84	13.90
GCSC	\$8,881.27	40.88	15.30

37. By way of example, Table 6 below illustrates the teacher and administrative staff shortages in three selected school corporations with rising enrollments by comparing each school corporation's actual student-to-teacher and student-to-administrative staff ratios to the State averages. The disparities illustrated below are evident among school corporations across Indiana.

Table 6

School Corporation	2009 Student-to-Teacher Ratio	Additional Teachers Needed to Reach State Average Ratio	2009 Student-to-Administrative Staff Ratio	Additional Administrative Staff Needed to Reach State Average Ratio
HSE	18.62	179.76	153.23	73.08
FTCSC	18.23	72.64	139.85	30.47
MCS	17.35	12.30	134.42	11.73

38. In addition to harming fundamental instructional services, the Funding Scheme also harms the supplemental services that the School Corporation Plaintiffs provide for students, such as academic support programs and extracurricular activities. While students may not have the same entitlement to these services as fundamental instructional services, the harm done to the fundamental services is more accurately understood in context of the reduction in supplemental services.

39. As students of HSE, FTCSC, and MCS, Individual Student Plaintiffs have been negatively impacted by these budget cuts, including being forced to enroll in classes with large student-to-teacher ratios, being denied educational programs, and attending over-crowded schools.

40. In addition to having their fundamental instructional programs negatively impacted, Individual Student Plaintiffs have also been denied academic support programs and extracurricular activities.

41. Because of the structural deficit caused by the Funding Scheme, HSE in effect has been forced to seek funding for its instructional programs from the taxpayers, including Individual Plaintiffs Kincaid and Schulz, through a referendum.

42. Individual Student Plaintiffs are confronted with the same circumstances and conditions as students attending other school corporations that receive considerably more State funds to educate those students.

43. For example, students are confronted with the same circumstances and conditions at Thompson Crossing Elementary School, located in FTCSC, and Robey Elementary School, located in the Metropolitan School District of Wayne Township. Yet, FTCSC receives approximately two thousand dollars (\$2,000.00) less State funding per student than the Metropolitan School District of Wayne Township.

44. School Corporation Plaintiffs' schools are confronted with the same circumstances and conditions as schools located in other school corporations that receive considerably more State funds to support those schools.

45. If the Funding Scheme remains unchanged, School Corporation Plaintiffs' per-pupil funding will continue to decline, forcing more reductions in staff, increases in class sizes, and elimination of educational programs.

CAUSES OF ACTION

COUNT I: Violations of the Uniformity Provision of the Education Clause of the Indiana State Constitution

46. Plaintiffs incorporate paragraphs 1 through 45 above as if fully stated herein as Count I.

47. The Education Clause imposes an enforceable duty on the Defendants.

48. Defendants, including the Governor, Bennett, State Board, Individual State Board Members, and State, are individually and collectively responsible for executing and implementing the Funding Scheme.

49. The Defendants violated the Education Clause by establishing and implementing the Funding Scheme under Title 20, Article 43 of the Indiana Code.

50. The Funding Scheme violates the Education Clause by establishing a system of funding that applies to each School Corporation Plaintiff differently without justification. The Funding Scheme, therefore, is not general and uniform.

51. Likewise, the Funding Scheme violates the Education Clause because it is not general and uniform where considerable disparity exists in funding for schools confronted with the same circumstances and conditions.

52. Furthermore, the Funding Scheme violates the Education Clause by granting less rights and privileges to Individual Student Plaintiffs than to other Indiana students confronted with the same circumstances and conditions throughout

Indiana. The Funding Scheme, therefore, is not general and uniform as it applies to Individual Student Plaintiffs.

53. The Plaintiffs have been harmed by the Funding Scheme.

COUNT II: Violations of the Funding Provision of the Education Clause of the Indiana State Constitution

54. Plaintiffs incorporate paragraphs 1 through 45 above as if fully stated herein as Count II.

55. Defendants, including the Governor, Bennett, State Board, Individual State Board Members, and State, are individually and collectively responsible for executing and implementing the Funding Scheme.

56. The Funding Scheme violates the Education Clause by denying School Corporation Plaintiffs their right to provide instruction to Indiana students by all suitable means.

57. Local property tax revenue is a suitable revenue source to fund public schools.

58. The Funding Scheme prohibits the use of property tax revenues for general fund expenses.

59. The School Corporation Plaintiffs' schools are harmed by not having access to local property tax revenues for general fund expenses.

COUNT III: Violations of the Tuition without Charge Provision of the Education Clause of the Indiana State Constitution

60. Plaintiffs incorporate paragraphs 1 through 45 above as if fully stated herein as Count III.

61. The Education Clause mandates a system of schools where tuition is without charge.

62. Defendants, including the Governor, Bennett, State Board, Individual State Board Members, and State, are individually and collectively responsible for executing and implementing the Funding Scheme.

63. As a result of the Funding Scheme, HSE in effect has been forced to seek funding for its instructional programs from the taxpayers, including the parents of HSE students, through a referendum.

64. The Funding Scheme violates the Education Clause by denying Individual Plaintiffs Kincaid and Schulz schools where tuition is without charge.

65. Similarly, the Funding Scheme violates the Education Clause by failing to afford School Corporation Plaintiff HSE the ability to provide schools where tuition is without charge.

COUNT IV: Violations of Article 4, Section 23 of the Constitution

66. Plaintiffs incorporate paragraphs 1 through 45 above as if fully stated herein as Count IV.

67. Defendants, including the Governor, Bennett, State Board, Individual State Board Members, and State, are individually and collectively responsible for executing and implementing the Funding Scheme.

68. The Funding Scheme is a special law that treats each school corporation in Indiana differently.

69. There are not unique circumstances that justify the individual treatment of school corporations.

70. School Corporation Plaintiffs are harmed by the Funding Scheme because they receive less per-pupil funding than other school corporations without justification.

WHEREFORE, the Plaintiffs respectfully request this Court:

(1) Declare, pursuant to Indiana Code § 34-14-1, *et seq.* and Indiana Trial Rule 57 the respective rights and duties of Plaintiffs and Defendants, and enter a judgment that the Funding Scheme violates the Education Clause of the Indiana Constitution;

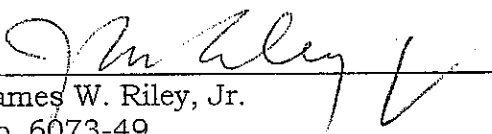
(2) Issue a permanent injunction enjoining Defendants from funding, or causing to fund, Indiana school corporations under the existing Funding Scheme or in any manner that violates the Education Clause of the Indiana Constitution;

(3) Issue a permanent injunction ordering Defendants to enact and implement a scheme for funding Indiana school corporations in a manner that complies with the Education Clause of the Indiana Constitution;

(4) Award Plaintiffs costs, including reasonable attorneys fees; and

(5) Award any and all further relief as the Court deems just and equitable.

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(Petitions for Temporary
Admission to be filed)

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