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Supreme Court of Texas.  
Shirley Neeley, Texas Commissioner of Education, et al., Appellants,  
v.  
West Orange-Cove Consolidated Independent School District, Alvarado  
Independent  
School District, and Edgewood Independent School District, et al.,  
Appellees.  
Nos. 041144, 050145, 050148.

June 6, 2005.

Appearances:

R. Ted. Cruz, Solicitor General, Austin, Texas, for appellants.  
J. David Thompson, Phillip Fraissinet, Bracewell & Giuliani, LLP,  
Attorney for West Orange-Cove, for respondent.  
David G. Hinojosa, San Antonio, TX, Attorneys for Edgewood ISD,  
for respondent.  
Randall Buck Wood, Ray, Wood & Bonilla, L.L.P., Austin, Attorneys  
for Alvarado I.S.D, for respondent.

Before:

Chief Justice Wallace B. Jefferson; Don R. Willett, Harriet  
O'Neill, Dale Wainwright, Paul W. Green, Phil Johnson, Nathan L. Hecht,  
Scott A. Brister, and David M. Medina, Justices.

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JUDGE: The Court is ready to hear argument from the appellant  
Commissioner of Education, Shirley Neeley.

COURT MARSHALL: May it please the Court. Mr. Ted Cruz represent  
argument for appellant Neeley et al. Appellant have reserve 15-- 16  
minutes for rebuttal.

ORAL ARGUMENT OF R. TED. CRUZ ON BEHALF OF THE PETITIONER

MR. CRUZ: Mr. Chief Justice and may it please the Court. Education  
matters. From the very first days the Republic of Texas are declaration  
of independence has proclaimed the valuable of education to the future  
of Texas. Accordingly, our constitution, a Court's special protection  
to education and assigns the responsibility of providing for education  
to the Texas legislature. This case concerns three issues: adequacy,  
tax, and efficiency. My argument will addressed each in terms.  
Beginning with the first argument, "Adequacy." The states argument are

two fault. First, we argue the adequacy is none justiciable. It presents a political question to the Texas Constitution assigns to the Texas Legislature and not to the Court. And Second, that given Texas is long standing demonstrated extraordinary results, the system is at the very list rational which survives this Court's standard late out in Mumme versus Marrs in an Edgewood IV and in the West Orange-Cove decision. Beginning with the political question argued, in Edgewood III some 13 years ago. The majority of this Court observed "We do not contemplate that our review of the school finance system in this litigation will continue indefinite." Justice Cornett and that opinion was even mognasp -

JUDGE: Uhum.

MR. CRUZ: - observing than this case if it has not already will became like the notorious of the fictional case of Jarnice versus Jarndas did ends his case that never ends and he went on to observe. We may begin to wonder if we have been assigned to some judicial purgatory were we must hear the same case over and over again. That was on 1992, 13 years ago. With respect to the question about adequacy, this Court has never had before it an adequacy case from the merits.

JUDGE: But we've crossed this bridge, haven't we? When we've said that we're going to review the standard as, as emphasize as then maybe that the Court has an obligation to review a constitutional forum.

MR. CRUZ: Justice O'Neill. The Court has cross the bridge with respect to efficiency and, and we will admit that our argument of political question is asking the Court to reconsider free existing precedent.

JUDGE: But in Edgewood IV didn't really say all three adequacy, suitability, and efficiency?

MR. CRUZ: There is language to that affect but the Court also explicitly said that adequacy had been severed and there was not an adequacy case report. And this Court cannot make a binding rule of justiciability without having before than adequacy challenge. This is the first adequacy challenge on the merits it's been before the Court.

JUDGE: So your saying your stand understand that there was a dicta?

MR. CRUZ: It, it, it was.

JUDGE: So at your point about non-justiciability of adequacy is correct and that constitutional standard cannot be legally enforced.

MR. CRUZ: It cannot be enforced in the Court but that constitutional standard remain ...

JUDGE: Which may they cannot be legally enforced, correct?

MR. CRUZ: Incorrect because enforcing a right in Court is not the only way to enforce it. The text to the constitution explicitly assigns it to the legislature of the state of Texas. And the fact that are right is none justiciable does not mean it ceases to exist or have real meaning. It simply means that the constitution has assigned a coordinate breach, the responsibility for administering and determining remains the real constitutional limitation. It is simply not the rule of the Court to this rather the rule fiduciary to apply. I, I ...

JUDGE: We're, we're with the legal parameters for the boundaries of adequacy then come from.

MR. CRUZ: The one of the critical reasons why we suggest that adequacy is a political question, is because there are no clear legal boundaries for what is and isn't acted. School finance cases are not we need to Texas. Most of the states in the country had faced it and there's real divide in terms of what is Supreme Court of the state adapt. Some states most notably New York and New Jersey had made the

decision to guide it and to say, "We the Courts will decide adequacy." And that result has been consistent when the Courts have done that they had been become mired. It continue a trap because ...

JUDGE: Well, somehow-- I mean, when you agree that has majority of states nation why have decided the way in but give quite difference to the legislature in making the policy choices.

MR. CRUZ: If the Court rejects the argument that it is a political question. It will do so only on the basis that the Court will find a clear judicial standard that isn't been as-- and we suggest the only standard that is been suggested that even argued the needs that test discretionary basis. And so those Courts that have manage to avoid the trap of New Jersey. And I would note the Court in particular on page 38 of our brief to the passage we've po-- in the Rhode Island Supreme Court on 1995. Describing the experience of the juries in which with 31 years. And the words of the Rhode Island Court, the volume of litigation and the extents of judicial over cited New Jersey provides shilling example of the tickets that can entrap the Court that takes solemnly duties of the legislature.

JUDGE: But now the districts but that, that was a case that [inaudible] on the edge. That's not that Massachusetts.

MR. CRUZ: Okay. Massachusetts is a terrific case to talk about on two lefts. First of all, because two Justices of Massachusetts concurrence specifically on the ground that adequacy is non-justiciable. And I would know that would-- that did not carrying majority in Massachusetts. The Courts in Illinois and Alabama and Rhode Island and Florida and Pennsylvania have all concluded, have all taken what we would suggest is the more prudent path to say that adequacy is tremendously important but it is the legislature and not the Courts that has to applied. Likewise, in Massachusetts two Justices agreed with that. The plurality if the Court of Massachusetts took the other path we urge which is to say it is justiciable but only in ascertaining whether or not the legislature has a rational basis. And that is the only hope of a judicially manageable standard.

JUDGE: Have we articulated this standard to be if the legislature has substantially defaulted on its obligation to periodic constitutional dicta. How is that different from your conception of the rational basis that standard?

MR. CRUZ: Mr. Chief Justice, it is not different. That was the articulation in Edgewood IV. And Edgewood IV also the precluded that put the Courts precedent Mumme versus Marss which provides the legislative determination of the message, restrictions, and regulation is final except when so arbitrary is to violative to the constitutional rights to the citizens.

JUDGE: So if we determine that there was and that the record supports a substantial default here, then you would agree that we have responsibility to oversee that constitutional deprivation.

MR. CRUZ: That would be true, only if the Courts determines first the question is justiciable that, that, that there is a clear objective standard. And, and the basic question is, what is the legal standard that the Court applies to determine whether education is enough or not enough. And the problem every Court that's trying to do does is had, is there's no legal, legal [inaudible] to measure that, I guess. And indeed, the representation of departments says a lot. West Orange-Cove on page 110 of their brief and footnote 69 says, "It is impossible to identify a single dollar figure for what is the general diffusion of knowledge." Alvarado says, quote-- on page 18 of their brief, "No particular levels scrutiny is necessary." And Edgewood in a heading of

page 28 of their brief says, "The trial Court properly abandoned the accountability rating system as the Touchstone for measuring whether an adequate education system exist." All three of the plaintiff groups are embracing the notion that there is no clear objective legal standard rather what they urge this Court to do, is to set up the Courts, much like for New Jersey Court and the other Courts that have done this as the final arbiter of education policy.

JUDGE: Why is it so much different from so many other standards that Court's have to apply reasonable person, good [inaudible], due process, terms that while they have broad meanings and people can differ over them to some extent, nevertheless have [inaudible].

MR. CRUZ: Because all of those terms are applied to specific individual circumstances reasonable as for example, in at your context that an injury between two parties or the freedom of context of an individual search in cedure. Those are specific individual facts circumstances where Court can assess the facts and based it on developing standard of the common law. The quality that were different were at the end of the day. What all of the plaintiff districts are rely again is they are asking the Court to the State of Texas to order the legislature to raise taxes and spend the more money.

JUDGE: Is that in their prayer for relief that it where? The-- I, I've heard that the spells but what is-- what are the-- what is their prayer for relief in this case?

MR. CRUZ: Their prayer for relief is to enjoying the system but if the Court enjoying to the system because it ...

JUDGE: They, they enjoying the system for what? Their pra-- isn't their prayer for relief to enjoying the, the, the state from paying money in the non-constitutional manner.

MR. CRUZ: It, it is Justice Johnson but they are-- if they prevail an adequacy, this Court opinion would have to say, "The system is not adequate." And as West Orange-Cove is, is very candied in their brief. They say on page 99 of their brief, "All adequacy claims ultimately are about inputs, specifically money." So there should be no doubt about what this fight is about. The plaintiff's want this Court to order the legislature to spend more money. And if this Court enjoys the system unless and until the legislature spend more money, it is functionally the same as ordering the legislature to appropriate additional funds and that ...

JUDGE: But it isn't that a continue on as well? And in Edgewood IV we said, if the legislature can't defined what constitutes to general diffusion of knowledge so low as to avoid it's obligation suitably provide. What if the, the state define standards that gave their money define them or money that clearly could not accomplish the mandate of the legislatures given. There's going to be some point at which the Court can determine adequacy.

MR. CRUZ: Respectfully, Justice O'Neill. If it is a political question as Illinois and Rhode Island and Pennsylvania, Florida and Alabama have all concluded. Then the remedy is in the legislature and it's ...

JUDGE: It is not. If there's some floor we can review.

MR. CRUZ: If the Court determines adequacy is justiciable then the test that this Court has laid out is whether the systems the state has emplace satisfies irrational basis. None of the claim is like that test.

JUDGE: And so under my scenario there would be irrational basis if there were mandates and no funds commits this mandates.

MR. CRUZ: That is correct although under the approach this Court

laid out in Edgewood IV, the focus is on the outputs not on the inputs. This Court considered whether to examine inputs specifically say, if there enough money or teachers getting paid enough for this books too old or not too old. Is the library big enough? And the Court said, "Those inquiries are the runs from which the Court cannot escape." And so terms of applying the the rational basis analysis, the inquiry should be is the system is uphold producing outputs.

JUDGE: What-- how much of that inquiry is forward looking in how much is retrospective? So that if you know-- let say the legislature inactive some mandates with no funding to go along with them at all. Do we have to wait until the system fails or can we examine inputs as some for rational level?

MR. CRUZ: Under this Courts Edgewood IV decision, the examination is on outputs. And given that there is a consistent path for over ten years of regularly raising the bar and student achievement regularly rising. There would be basis for district court to conclude that the system is irrational.

JUDGE: West Orange-Cove argues and it's brief that-- and there's a chart of page 17 of that the--4 17 of 6th grade has been a students. There's not a single grade between grades between grades 5 and 11 in which the simple majority is the Spani-- in American economically disadvantage or limited English proficiency students was able to pass all text as if the panel recommended levels. Now is this result of output that you are asking Court to review?

MR. CRUZ: Mr. Chief justice. This charge in West Orange-Cove brief is, is highly mislead because what they have done is they could take in the 20-- 2004 results and they reply to 2005 standards. So that chart is not what actually happened in 2004. That chart said-- and, and remember this is a system were everyone agrees. The plaintiff and defendants agreed. The rational way to do with the education is said on way to do in this system is to face in scores so each year you raise the standard. And what they ask is if the 2004 results were applied into the much higher standard, here's what would happen. That assumes that all of the students learn nothing in the year between 2004 and 2005. And that best prove upon misleading this chart is, is the actual 2005 results are not this and they are [inaudible] the pattern in the state of Texas has been consistent improvement for over a dec-- I mean there won't ...

JUDGE: If there is not consistent improvement and let's say the chart is correct and, and were constant over a-- the period of the, of the decade. Would you concede that the Court is obligated by its constitutional responsibility to, to inter intervening his plead case that properly before the Court.

MR. CRUZ: Not necessarily. For example, the, the, the plaintiff districts full of great of reliance and the facts that the current passing rate of the science test is 25 percent. And they argued 25 percent, means 75 percent of the students are plunking it. That is inherently irrational. The problem with that argument is any pass rate for any test means nothing in the abstract. It only has meaning when compared to the question on the test. 25 percent maybe a terrific pass rate or very difficult test and 90 percent maybe allows a pass rate or a really easy test.

JUDGE: Mr. Cruz Can I have filed by [inaudible] Institute to believe in the social studies in page five of the brief and in the case if we're looking at outputs here, the Texas rates fifth lowest rate on the nation as far as to just go in at college and they, they transitionally were African-American and the Spaniards students

[inaudible] lower. Are, are those outputs that the Courts should consider the term whether or not the system failed?

MR. CRUZ: Texas faces a challenging student body population to Edgewood. And in the face of the challenging student body population to ed-- to educate student body population that face language difficulties that faces reason and recreation difficulties that faces socioeconomic challenges. Texas is pattern of success has been extraordinary. For example, on the [inaudible] which is the National Assessment Educational Progress which is the one of the, the plaintiff's school districts describe that is "The goal standards" and all of the plaintiff's experts agree the [inaudible] is the single best the national major of educational achievement. Texas in 2000-- Texas support an eight graders rank, first in the nation in math. In 2002 Texas support prayers were first in nation and reading. And most importantly for your question Justice Medina. In 2003 Texas rate first in the nation in closing the gap between African-American and white fourth-graders in math. And second in the nation inclosing the gap between the his panic white fourth-graders in math and in [inaudible]. Those result are extraordinary indeed. The West Orange-Coves owned expert Dr. Grisler despite Texas is results in a mandate as the first in the nation over all. That is what makes their argument all the more extraordinary. A system is producing some of the best results in the nation. And particular some of the best results from minority students facing serious socioeconomic language challenges. That system is being emulated by states throughout the country and yet their argument is that system that is the property of country is none limits constitutionally adequate. That stretches the language of the constitution beyond where it would be.

JUDGE: But it doesn't, it doesn't say that there is no stand. It just says that disagree about the performance in math. But it seems like the their emerges is from the evidence here and the parties decisions. The parameters of a standard that while there's [inaudible] about first case falls in the middle, nobody is suggesting that an adequate system would not to teach English or teach Math or Science and all of this things have to be component parts. And so it coming back to the standard issue. It's not clear to me why that's not-- as much of a standard as Court's have the rest all with in many other contries.

MR. CRUZ: Justice Hecht, I agree that if this Court applied rational basis with some real difference of the legislature which is the path Massachusetts [inaudible]. That that income the closes to judicially manageable standard.

JUDGE: And of course we never said rational basis but I'm wondering whether that fits very well here because it some pretty easy to see that legitimate judgment calls but coming back to the Chief Justices question that isn't more like substantial people that it is their-- is there's kind of a-- it's not just could reasonable [inaudible] this up it is that on the-- at the end of the date when we heard all of the evidence. Do you a-- do you come away with the conviction that we just enough met. What we said, we we're going to meet.

MR. CRUZ: An-- respectfully we suggest substantial default and arbitrary in the Mumme versus Marss and rational basis are all the same thing. If their not-- if the involve more than examination of the merits. We would submit that that is put in the Court but in each district court in the state of Texas in the rule of policy making because there is no right answer as to whether teachers need to be paid. What their paid now \$4000 or more. There is no legal answer as to

whether a given book is too old or is not old enough. There is no legal answer as to whether the way you improve education is to spend more money or the any respond about the report such as something like school choice program. All of those are pure policy questions and ...

JUDGE: But they put again to the edge of something. Well, I, I-- or I think you make a good point that's hard to decide whether to pay teachers a thousand dollars more or thousand dollars less. It's not so hard the points to say, "Should we pay them a third as much of three times" which in some point you get the edges.

MR. CRUZ: At some point on the examination of rational basis, one would reaches system, that was not rational. What we had presented in our argument is that even the methodology where on system was developed given the fact that involve hundreds of educators, community leaders leaders that involve the entire systems stand in years developing an educational system given at the results had been consistently among the best in the nation. Even the other states are modeling their programs after Texas is that by any measure that this system is so far beyond that rational that rational as to the exempt and so any does apply. The Texas system we would submit [inaudible] but they torn to the tax case.

JUDGE: Can you address standing briefly?

MR. CRUZ: With respect to standing. This Court West Orange-Cove reasonably rejected the standing its kind. He did some by motivating one with one you said that ...

JUDGE: As you, as you said there was no adequacy challenge in West Orange-Cove.

MR. CRUZ: And the argument we have presented on standing is that an order to have standing an individual plaintiff must have a concrete real of injury. And in this instance the districts are not alleging their own rights rather they alleging rights the tax payers.

JUDGE: The article seven of the constitution that provides for-- that the legislature shall make a suitable provision for sort Court for maintenance of an efficient exist about the public free schools. Is that constitutional right that's intended to protect school districts or school children?

MR. CRUZ: By the terms of it we would suggest that it is designed up to the textbook Texas school children.

JUDGE: And how many school of children are involve in this case?

MR. CRUZ: There, there are none [inaudible] to this case.

JUDGE: And in Edgewood I, II, and III are we addressed adequacy their worst [inaudible].

MR. CRUZ: Absolutely.

JUDGE: And that makes a different?

MR. CRUZ: Well, the majority of the Court in West Orange-Cove involve with the state nothing previously raised and, and, and we responded that given that there were individual plaintiff in all of those cases raising standing was not this policy.

JUDGE: West Orange-Cove-- when your talking about the state property tax because to some provision in August eight that says, those state property tax 'cause we're going to live that for the districts of tax. Good reason to give district standing there because they need to protect their own revenue. That is for school districts not necessarily school of children and we ever said their standing for school districts to determine adequacy in a case whether were no-- let me-- how many school of children testified in this trial?

MR. CRUZ: I'm not aware that we [inaudible]

JUDGE: Any parents from Edgewood or Alvarado testified.

MR. CRUZ: I'm not aware of that.

JUDGE: So just have a trial with nobody but school employees, school experts, and state experts. None of the actual people better end this for a districts with their to say whether this is what wanted to be or not. Not one?

MR. CRUZ: That is my understanding.

JUDGE: But then again one of the arguments that districts make is the [inaudible] mandates on the [inaudible] so we cannot make this mandates and they would think that it would extending at least raise the issue that we don't know the resources that you-- that we need to reach this results.

MR. CRUZ: Well, except that argument is [inaudible] by the facts because the districts are meeting those levels and the students are achieve it.

JUDGE: But in terms of a certain claims for standing purposes, that standing issue as they claim it.

MR. CRUZ: But, but their claim is not based upon statutory basis. It's, it's a constitutional claim. They are claiming there's a violation of the tax to the Texas constitution. And the Texas constitution protects school children. It does not protect school districts which are subdivision in the state.

JUDGE: What's your definition of adequacy? Can you put it in the sentence?

MR. CRUZ: The only definition of the constitution is, is, is a general diffusion of knowledge. And a general diffusion of knowledge, we would suggest this Court has used to language such as, a basic, a minimum education. It only [inaudible] we would suggest it is a possible to judicially define the contours of what is and isn't a basic level of education sure not engaging in policy-making.

JUDGE: The trial judge pointed to the state board of the legislatures mandates regarding Tex-- Texas curriculum or requirements recommended past in the Court. And then certain enrichment programs. You disagree I'll take it with the trial judges explanation of what adequacy means. Even though the board-- two of the legislature mandated certain curriculum or requirements.

MR. CRUZ: Yes, Justice Wainwright and, and, and for two reasons. First of all, you, you were right and conclusion is well said and the trial judge defined the general diffusion if knowledge with reference to the state statutory education provisions. That approach was explicitly rejected by this coordinates with the Court. Same argument was made that this statutory provisions define what is require. And this Court said, "The legislature funding obligation are generally limited to what are the appropriates regardless of what it promises in the statutes and that is on page 736 of Edgewood IV." So first of all with the trial court did is contrary to this Court's precedent. But secondly with the trial-- they had makes no sense because it establishes a provision of Senate for the state not to reach high. The state should endeavor to produce the best education humanly possible. But if the plaintiff's standard applies anytime the state tries to do something, it would be sue id it doesn't reach perfection. Anytime it raises the bar under the trial courts theory and to the plaintiff's theory, the constitutional floor raises right up to that bar and suddenly insanities keep the bar as long as possible.

JUDGE: But you state that-- I think, accurately in the brief that the constitution does not mandate perfection. Are you arguing that the constitution mandates [inaudible]?

MR. CRUZ: The constitution mandate and general diffusion of knowledge -



JUDGE: Which is ...

MR. CRUZ: - a basic minimum education which is the language. This Court has used Edgewood III and Edgewood IV. That's how it is discussed. And the, the state commendably aims for much more than a basic minimum education but the ...

JUDGE: But, but doesn't that rise over time just [inaudible] hundred years ago basic in education been reading, writing in arithmetic. Now if yet to get in the college you have to [inaudible] that foreign language, that there always sciences to make a basic minimum requirements to achieve.

MR. CRUZ: Sure. That does change in time this Court has, has said [inaudible].

JUDGE: To release mandates are given and perhaps on [inaudible] very well be a political question. But how are this schools to rise [inaudible] with expectation is they can't gone with the revenue to find this, this mandates.

MR. CRUZ: The clear record of performance demonstrate that they could done just that.

JUDGE: They have met the minimum requirements?

MR. CRUZ: They, they have met the minimum requirements over and not just met the minimum requirements but, but the Texas system to the better part of the decade. The pattern in Texas is follow so successfully is each year making the test harder. Each year raising the standards and gradually seeing student performance, district performance [inaudible] performance clear that next [inaudible]. That has been the consistent matter for over a decade. It remains through the 2005. All of the plaintiffs arguments about saying the districts can't meet the standards and the students can't make the standards are directly refuted by the fact that they keep meeting the standards and the standards keep going up every single years.

JUDGE: Counsel. The, the trial court might findings of fact. And I don't find any record with the state request of any additional findings of fact. And many of those findings of fact are that for example the plaintiff west [inaudible] plaintiffs and focus districts lack sufficient funds to provide an adequate in education. Now, those were finally expect or we bound by those or as at your possession that is a matter of a law. This record demonstrates that the adeq-- that the state has met the constitutional standard.

MR. CRUZ: Our, our possession is the letter. The state did not request additional findings of that. And fundamental error with what the district court did is that apply the wrong legal standard. It apply the basic standard of this contrary what this Court has laid out in Mumme versus Marss and Edgewood IV and West Orange-Cove. And in particular it-- if it examine all of the inputs and that it made its own policy determination about what was and it wasn't good educational policy for the state of Texas. That is directly contrary to the approach, this Court has laid out.

JUDGE: And, and your talking about procedure just a moment. We would not have-- it is not the rule that we have when the trial court makes findings that if those findings are, are in challenge then we are bound by those find-- those findings here and any implied findings and that go along with those -

MR. CRUZ: That is true.

JUDGE: - to support the judgment.

MR. CRUZ: That is true but only for the extent for defining the factually in nature. Whether the system is adequate, is a legal judgment.

JUDGE: But if I-- if the trial court found the state lack sufficient and the, the plaintiff lack sufficient funds were provide the education.

MR. CRUZ: Or ...

JUDGE: Is that not a fact finding?

MR. CRUZ: But if I-- if the trial court found is the state lack-- or the district lack sufficient funds meet its definition of adequacy. What it believe was require which is very different from the legal standard. And so it's fact finding is that the facts do not meet the wrong legal standard. That is not finding on this Court.

JUDGE: And won't fact findings are recall. We properly found that the state that the plaintiffs lack funds provide a constitutional and or statuto-- accreditation standards. Would that not to cover both standards?

MR. CRUZ: There is-- with respect to the accreditation standard, there is no evidence. The districts is count need your accreditation standard [inaudible]

JUDGE: So as a matter of-- your possession as a matter of law this evidence shows as matter of law it had-- they have been made.

MR. CRUZ: Correct.

JUDGE: Okay. No fact question at all?

MR. CRUZ: Correct. And that the numbers around the dispute there on ...

JUDGE: How about the constitutional standard?

MR. CRUZ: The constitutional standard there is a dispute but the dispute is what's the appropriate legal [inaudible] because with the di-- district court found is the facts did not need its legal definition of an adequate education. And its legal definition of an adequate education, what the trial court's own policy decision about what did and didn't make sense for educational policy in the state of Texas. That judgment is explicitly the judgment of the legislature and did in West Orange-Cove. This Court said that precisely.

JUDGE: Let me then your-- is it your possession now that Cour-- that the constitutional standard has been met as a matter of law by the evidence in this record.

MR. CRUZ: Absolutely. As this Court noted in West Orange-Cove but in did held, it is outside the scope of judicial authority to review the legislatures policy choices in determining what constitutes an adequate education. And we emphasize that Court cannot undertake to review those choices one by one or attempt to define in detail adequate education. Be over 600 findings of fact that the trial court issued was exactly what this Court's said West Orange-Cove Texas Court account.

JUDGE: You are about to discuss the tax question and I think you are well familiar with up raise for prior opinion that if the floor and the ceiling come together then there's no meaningful discretion. And the legislature could be held to have implemented and unconstitutional [inaudible] state like [inaudible] that's why is that not the case here when there are clearly a number of, of a majority to look at student population of districts that have come to the \$50 cap or within a few sense of that cap. Why is that none-- what is that record not show as there's been in affect to the state right tax?

MR. CRUZ: Because the plaintiffs orderly failed to carry the burden of proof. There is a basic disagreement between the parties about what constitutes the floor. The fact that the districts are taxing at a \$50 or near a \$50 is not discussing illegal question. The legal question that this has said out is whether the state has force them to do so and so ...

JUDGE: What the this from money as the legislature appropriated during this year they documented tax and, and there's the tax as in their promotional gage in other standards that the, the state has required in this-- what additional money as the legislature appropriated to meet those new requirements.

MR. CRUZ: The budget has consistently recent and in deed as recent dramatically. In fact, if, if one compares at the time of Edgewood I on 1989 the state live budget was \$12 billion. Now, 16 years later, it's almost \$35 billion.

JUDGE: As there for the percentage of state money from general revenue equally recent of the ...

MR. CRUZ: That the percentage of the state money has not equally recent but the, the tax analysis this Court has apply has not ask if what is the percentage of state money with the [inaudible]. What this Court analysis is ask is whether the state so controls of the levy, assessment, and dispersement of the rate that the districts lack meaningful discretion.

JUDGE: And the question is, as the requirements and, and I think you have, you have very care from agree to say, say the state as impo-- previous requirements go up. There is no additional general revenue given to the states where there was a school districts in order to meet that. So that they have to rely on property tax rate in order to, to achieve the standard of the legislature has imposed. And I guess my question is and has been present in West Orange brief. How is this-- how has have they not been require to tax at the maximum rate to meet standards imposed by the legislature.

MR. CRUZ: There is no disputing that the state requirements have increased with the new curriculum and the new credibility standard that being said a trial. There is a basic disagreement between the parties because the plaintiffs refused to meet their burden of proof that the expenditures that we're making were require by the state rather the standard they argued was anything the districts choose to spend money on. They had to spend money on. And it is worth considering under their definitions the Court has repeatedly talk about lawful enrichment. And the other-- and their definition everything is required. It's unclear what possibly could be enrichment because they argue every single statute that the district makes is required in some [inaudible] sense in the system.

JUDGE: What-- that you'd agree there's been some necessity for that because for example to get an academically skeptically for writing, you don't-- you have to pay to the permission gage for example. Whereas that the states-- the district are require to meet this permission gage so if, if you've, you've taken something out of the accountability system but made the schools meet it without giving them funds or, or objectives in which to me acquired.

MR. CRUZ: The aggravate funds both in the districts and the state have going on. But secondly, we're, we're not disputing that the requirements have increased. What with the plaintiff's failed to do despite repeatedly being ask by the defendant's to do so is make any intent to segregate their expenditures. Those required by the states versus those their lawful options.

JUDGE: Would you-- you'd agree that remediation is required by the state?

MR. CRUZ: Yes.

JUDGE: And a lot of the measures that the school districts are strictly required to do or design to address remediation.

MR. CRUZ: Some of the measure to design to address remediation and

they could have put all the evidence that specific remediation programs were design to meet state requirements. They choose not to the ...

JUDGE: They-- and you would call any remediation efforts local preference.

MR. CRUZ: No. No. If they put on evidence and prove a that they are spending money in order to meet state requirements that it is the state legislature that's decision then that would properly captured the floor.

JUDGE: Well, so summer school to, to help those who haven't pass the motion gage test. Is that a local preference?

MR. CRUZ: If they had put on the evidence that that was design and is producing results to meet state requirements that it would it would follow. Instead what they simply put on was your school districts. The superintendents who was serving one after the other that every expenditures was design for example to minimize dropouts-- I mean that's the theory that prove so much. One of the focus district [inaudible] it erected an enormous outside water slot and it was justified as well it reduce his drop house 'cause the kids like the water slide. That argument-- if it is the case that anything the district decide this been money on them nebulously required. That means the state has no ability to ever prevent their from state life property tax cause of the [inaudible] raises the \$2 or \$3 dollars. The district can just spend their way up to that level and argue their required to spend that in ...

JUDGE: But is there any suggestion about the [inaudible]. From historical prospective if he draw back, if he draw back and look at what's happen ten years ago the district were not bunched up within the cap. They were all spend that. And it seems from the record they have to it the one cap or get more much higher. Once again made all of the spread out some would go higher, some would stay [inaudible], some would [inaudible]. Isn't that bunched enough just the phenomenon have it some indication that the state had it's controlled that maximum levels.

MR. CRUZ: It is certainly the states control the maximum and, and the question upon which the parties permanently disagree is when the state of control the minimum. We would agree that the require less of the increase but what they had to demonstrate if this Court said the two become one or effectively so so there's no meaningful discretion. The district shows to do make no effort to segregate any of their expanded reason say, these are state requirements, these are not. Data and that Justice Hecht you act as if there's any education limit would go out with at that place. Well, one of the West Orange-Cove experts [inaudible] who's a former employee to the state of Texas. Explicitly envies this clients school districts ratios tax right up to the cap without maximum of your state money. And that's in the record at the [inaudible] under the Court on page 134.

JUDGE: Right. But that's on a \$50 and, and stop [inaudible] the same thing would be true to cap [inaudible]. That some point that theh local taxpayers [inaudible]

MR. CRUZ: That, that, that, that may will be true and then it certainly true that the taxpayers have to approve the tax inquiries and so, so that that making [inaudible] with the districts do. But the legal test that district court has apply. And whether a tax in a system is a non constitutional state like property tax is whether the decision maker on the [inaudible] assessment and dispersement and this Court has used all three and the conjunctive not with this is injunctive. Is so controlled by the state that there is no meaningful discretion and the

other that we go through in our brief in about 12 pages of our brief. Every district is making a hose to discretionary decisions. Their all different and there are argue that is not that those expenditures are bad. Those expenditures maybe terrific. They maybe benefit in the students. They maybe responding to desire to their community. But their all different. Each district decides to do different ones and in none of those expenditures is the state required so under under the test ...

JUDGE: Well, but let's talk again about the permission gage and the, the accelerated instruction that, that is required. I think you just said that there could be some programs implemented that you would not consider local preferences. Tell me what one of these would look like.

MR. CRUZ: Well, the, the example you gave to us to setting about summer school ...

JUDGE: So what would the district have to do to, to justify summers school-- I mean, at what point do you start forcing the stand if they said we need full time kindergarten. And you say that, "But this-- that's not require [inaudible] preference." But what if the district said, "We need full time kindergarten to get, get ready to pass appropriate permission gage." How do you make the-- how do you divide the language between local preference in ...

MR. CRUZ: Beyond the simple assertion from the superintendents that every single expenditure-- and I would know, once superintendent said with respect to the out source and it's school buses which some district have saved over a million dollars by out sources school buses. One of the superintendent responded, "Well, how do the school bus drivers as district employees helps our our students not drop-out 'cause the drivers feel more apart of the community and so it's required by the state that may not help." So where's our school bus driver?

JUDGE: So your argument is if there's any fact in the system at all remediation programs. You can't look at them.

MR. CRUZ: Our ...

JUDGE: So another words if you can count your transportation budget, that matter compare remediation programs.

MR. CRUZ: With respect to remediation have the districts put on the evidence that facing significant challenges promotion gates in terms of drop-outs that this programs were permanently working to do that that were design to do that. It will target at the students that needed a-- and they will working. That could well have proven up the case that they out of the floor. The districts made the decision not to prove up that case rather just to assert -

JUDGE: But ...

MR. CRUZ: - everything [inaudible].

JUDGE: But your argument within the-- okay, you've made the case that that goes to the floor but there's some fact on another side that you need to deduct from the floor.

MR. CRUZ: And that's correct. And, and one example of that is for example Dallas I.S.D. which is a local property tax exemption of 10 percent which is the equivalent 5 cents in their property tax. Dallas is the only one in the West Orange-Cove focus district. There were nine focus district. The other rate have all eliminate-- eliminated their optional hosted exemption. Dallas testified that they believe to that, that that would be politically problematic. Whether it is or isn't that's not a requirement from the state and it can't be the case that the district can simply tax themselves into a lawsuit.

JUDGE: Let me ask you again. Except the 89 figures state education

budget was 12 billion?

MR. CRUZ: Yes. [inaudible]

JUDGE: And current 39 billion?

MR. CRUZ: That's correct.

JUDGE: Is that real dollars or a same dollars or-- I'm little rusty on what's happen to the dollar [inaudible]

MR. CRUZ: I, I do not believe that is inflation of justice. So I, I think that that is, that is of budget such other some in placed legislature but that is on ...

JUDGE: But assuming the dollar has a tripled in valued between 89 and now there has been in actual inquiries since that time.

MR. CRUZ: That, that, that's correct and, and those, those figures and both-- it can, can both be found on the T.A. website and in the [inaudible].

JUDGE: Is that the [inaudible]

MR. CRUZ: I just-- that's, that's total expenditure education which cruises-- which assume for your Second argument that this is a political question for the legislature that said this adequacy issue. What if the legislature failed-- fails that as it deed. The special session lies to your-- certainly that's far. And what point-- if it any point would you invasion this Court getting involved in that issue.

MR. CRUZ: If the Court determines that adequacy is non-justiciable, it means that the responsibility isn't exclusive responsibility of the legislature which means that there's not a remedy in Court that it ultimately has left to the political process and to the process from constituents and to the obligation the legislature feel to carry out its constitutional mandate.

JUDGE: And, and in your brief you are also asking the Court to essentially come backs in 19 years about decision making and not involve itself in this political question.

MR. CRUZ: That is correct. With respect to efficiency, all together different issue. We do heard to the Court to reconsider its earlier decision-- and that's not also-- is a political question. Between the two in, in, in, in, in my judgment adequacy is much more clearly a political question efficiency. Efficiency is a closer call. We are urging the Court enlightened the experience in other states and enlightened the demonstrated experience in Texas to reconsider its precedent. But between the two that is in a [inaudible] what a much [inaudible].

JUDGE: Any further questions? Thank you, Counsel. The Court is ready to hear argument from the appellant, appellant Commissioner Shirley Neely. Under-- from the, from the appellee-- I'm sorry, West Orange-Cove.

Court Attendant: May it please the Court. Mr. David Thompson [inaudible] an argument for appellees. West Orange-Cove consolidated Independent School District et al.

ORAL ARGUMENT OF J. DAVID THOMPSON ON BEHALF OF THE RESPONDENT

MR. THOMPSON: May it please the Court. This Court's pathetic [inaudible] in 1995 [inaudible]. The state system of public education memorize so heavily a [inaudible] property of Texas which primary support that the system now operates as if that has been supported by non constitutional state property tax.

JUDGE: Now, that argument does depend on how we measure the floor.

MR. THOMPSON: Absolutely, your Honor. We, we agree with the state that the key issue is the definition of Court we completely disagree with the states statement but that legal test or the factual measurement of that floor. It's very interesting and, and I listen very carefully that it's [inaudible] the statement but this Court is previously stated the standard. The standard is whether the state so controlled that let the assessment for this [inaudible] of local property [inaudible] to use directly or indirectly that districts have no meaningful discretion. This Court has stated that statement for a tax. Those keyword directly and indirectly go to the part of the discussion this Court was just having about how did you define the floor ...

JUDGE: Well, how is it, how is it that your school districts have no discretion in this dispersing your funds?

MR. THOMPSON: A dispersement takes to the expenditures of the funds, your Honor. Let me give you a good example about the-- of the criticalness about that. But the Court some standard that direct or indirect. The state extensive considerable about time in its briefing arguing that well, the state saves a minimum salary schedule for teachers. And that's all the [inaudible] and every expenditures of a salaries about that minimum cash must be local discretion. That ...

JUDGE: But where, where he stop that because -

MR. THOMPSON: The ...

JUDGE: - the argument can be argument can be made. Well, lets pay [inaudible] money said that will get up to the floor

MR. THOMPSON: Right.

JUDGE: - and-- I mean at what point deed for the led on that?

MR. THOMPSON: You-- your Honor, I think that that there are obviously limits of very candidly the-- I think the trial court and the, the findings of, of various witness is focus from very specific types of expenditures. They are necessary to make the state of the requirements ...

JUDGE: It deed but but those word broad, broad range.

MR. THOMPSON: So-- some of them are that the state requirements of rule. As an example, the state requires all districts to employ certified qualified teachers.

JUDGE: Is it significant that your expenditures were not segregated at the trial court?

MR. THOMPSON: No, your Honor. We do not believe of the, the segregation of the, the state is, is, is describe in its, its key to our, our [inaudible] exactly do not the grade of that assessment. We take the, the record of the testimony-- the expert testimony of, of secret [inaudible]. The other evidence in the record in the case that district is taking ultimately in the current system to meet the state requirements.

JUDGE: Including water slides?

MR. THOMPSON: That testimony was was done from one of our witnesses. I, I did not know the, the state of the expenditure of water slides and, and think if that's the case. It's a magic double instance and certainly it's not a [inaudible] system.

JUDGE: So your, your-- but your feeling is that there is not one school district in Texas has little bit a fluff and whether spending their money.

MR. THOMPSON: Your Honor. I'm, I'm not going to represent to this Court that every district did to Texas is spending every single dollar, a matters required to make state requirements. That was our argument

and, and if you do not believe that is our argument file which believe that each [inaudible] that our plaintiff's-- and, and in deed that it affects some of that districts in the state that it is, is to make that enough. That the finding is inescapable that, that school districts in Texas must spend the money to the [inaudible] with in the current system to make state requirements. And, and brief came in the brightly different place so for example, the, the-- by the studies by the Legislative Budget Board which this Court look to [inaudible] it forward. I concluded that it takes basically all of the remedy being generated in the current system to meet the outer lower performance statements to get 50 percent or the students in the district to meet the passing statements under the-- under lower accreditations standards. So, so we think the [inaudible] the exhaustion of capacity or an exhaustion of discretion with district of a was well a states is a trial.

JUDGE: Is it treated-- there are some districts that are, that are cutting funds and expenditures currently while still taxing at the maximum rate and how does that figure in to your argument -

MR. THOMPSON: You, your Honor,

JUDGE: - that absolutely correct and the evidence of our first witnesses in trial by those [inaudible] from Austine of the testified about the terrible situation that districts five minutes of the courted your having to cut programs that, that they acknowledge or, or recorded to their statements are important for meeting state requirements. Austin is a-- it is in our particular [inaudible] possession. It's government district about-- that are focused districts that is a recapture district and at, at that [inaudible] testified that Austin pay at themselves at the, at the extraordinary possession of having it to reduce their budget that may cuts out of their own budget but they were speaking at their own students at the very side [inaudible] for the recapture payments or increase.

JUDGE: On a [inaudible] talk about the standing issue with Justice Brister raise and that is very significant. Is it significant that there are no individual students main as parties in this [inaudible].

MR. THOMPSON: Your Honor. We do not believe that that is significant.

JUDGE: And why not?

MR. THOMPSON: But those we believe this Court has previously under the districts themselves up stating at the brief this would say, implied where ...

JUDGE: If you look at the education code section 11.003. It's starts up passing that the state has chosen school districts and his given school districts in primary responsibility to carry out the educational functions that they actually belong to the statements said [inaudible]

JUDGE: But, but you here-- your, your not have claiming the current school finance system violates the education code. Your here saying it violates the constitution.

MR. THOMPSON: We are here claiming that the implementation of the education code provision to particularly check those 41 and 42 define in provisions of the violated for part of the constitution.

JUDGE: Right. Because if it done violate the constitution -

MR. THOMPSON: Correct.

JUDGE: - would that limits what our rule in the system that-- do you agree with Mr. Cruz? That article 7 section 1 of the constitution providing for general diffusion the legislature show makes suitable support? Is that a right that the Cruz and protects school of districts



or school of children?

MR. THOMPSON: And the right, ultimately belongs to, to children and in the, the citizens of the state of Texas agree ...

JUDGE: None of them are parties.

MR. THOMPSON: And they are not parties, your Honor. And but, but again we believe looking at this Court's hard decisions but that is not necessary. It would ...

JUDGE: Which decision?

MR. THOMPSON: The West Orange-Cove one decision [inaudible]

JUDGE: Which was not an adequacy check article 7, that was article 8 case.

MR. THOMPSON: That, that is correct and West-- and Edgewood IV which was an article 7 section [inaudible]

JUDGE: I, I mean the reason is not adult curiosity. I'm looking through Judge Ditz's extensive findings of fact or one of the school system is not adequate. And I see the-- putting aside the facilities issue separate question that it's inadequate because when it bigger by [inaudible] for teachers bigger salaries, bigger signing bonuses, bigger loan forgiveness more in service training for teachers, more recruitment dollars for teachers, more librarians. If we had 20 families from Edgewood school district and ask them. "What's the three things you think make your schools inadequate? How many do you think would say librarians?"

MR. THOMPSON: I do do not know, your Honor.

JUDGE: How many would say, "We don't need to-- we just need more recruiting dollars for teachers."

MR. THOMPSON: I, I don't know it but [inaudible]

JUDGE: And on the major, the major fight in this case, do we look at inputs or outputs in determining ac-- adequacy. The districts fight strongly with some support from our cases saying, "We look at inputs," how much money are we given? The state says, "We look at outputs," how with the kids doing under tax. If we ask those 20 families from Edgewood. What would they say is wrong with their district if they said, "Which would they prefer?" Your kids do better on the test? Are the teachers make more money? Which one that they going to pick?

MR. THOMPSON: Your Honor. We don't believe that's an either or question.

JUDGE: Well, you don't concede that the-- you concede that the-- you argue that the outputs are inaccurate. If they were accurate and actually you could do a test [inaudible] could do a test that found out that who was educated and who was not. That would be the test of the school system. Even if the, if the state didn't spend dollar there was some invention were we could sat and that be [inaudible] in the Harvard. That would be a great school system even though no dollars went into.

MR. THOMPSON: If. Yes, your Honor.

JUDGE: Well, so isn't that a standing that we don't-- that we have [inaudible] did any school parents or kids testify to this trial last six weeks?

MR. THOMPSON: The parents testified not as parents. A number of the witnesses somehow they come back here at the Court. A number of the witnesses who did testify as experts on both sides in fact they have children in the school so, so [inaudible]

JUDGE: Not like an Edgewood-- I mean the Edgewood the-- Edgewood the districts has been found a suits for a 40 years. That any parents of Edgewood kids come in and say, "This is what's wrong with our school district, we need more librarians."

MR. THOMPSON: I did not-- they would-- their witnesses would testify more of parents. None of them testify as parents as, as their primary qualification. Our, our review of adequacy, your Honors is not focus [inaudible].

JUDGE: Well, you, you tell that as opportunity-- meaningful opportunity.

MR. THOMPSON: Yes, your Honor.

JUDGE: And as I understand the states argument, that grow with that semi ledge but they say that meaningful opportunity can only be measured by results. And if the result were steadily improving, how can you say that the students don't have any meaningful opportunity to meet [inaudible].

MR. THOMPSON: To-- first of all, your Honor. We, we do not could save the states-- somewhat-- where was the [inaudible] our progress that is occurring advisement. And in particular Counsel took's an exception to the chart and, and to page-- from page 17 of our brief as being inaccurate. It is not inaccurate ...

JUDGE: But the-- all that aside-- I mean that, that strikes as theory policy there even as to what test properly measure and which once to give. I mean that the tax test is significantly more difficult than the tax test. And I suppose that the, the state could decide the state with tax and they have high passing rates. And by reaching up the standards, it's going to result in low, low passing rates [inaudible]. But as long as that improvements made, how, how can we say that no meaningful opportunity is given?

MR. THOMPSON: You-- your Honor. Can you pay a 38 percent of 10th graders this year has in all tests but though we need to pay as [inaudible] of 22 percent of African-American 10th graders this year are passing from April 2005 that the standard necessary [inaudible]

JUDGE: But that's, that's looking at it in bank and that require us to say constitutional and the [inaudible]. There's a violation as long as steady improvements shown, why isn't that a measure of adequacy?

MR. THOMPSON: Steady improvements is important? It's not a substitute for ...

JUDGE: But you did know-- and you did knowledge steady improvements has been made?

MR. THOMPSON: Steady improvements has been made and pay it to them with the [inaudible], your Honor. If you look at this progress under tax from 1993-94, absolutely nine years later to 2001-2002. Average has in schools raised approximately 30 percent of students passing all portions of the exam inflation adjusted first implements expenditures growing up 24 percent. The evidence presented is that there's a co-relation and in positive co-relation. And the-- this Court bring back the Edgewood I and, and we think you have consistently said there is a co-relation between the quality of the child's education. And, and a lot of money that is been under on a child.

JUDGE: But it's not power for government.

MR. THOMPSON: It is not power for government..

JUDGE: And in the most recent years their have been cuts in many districts about this. And yet it's not clear that how badly in things that the [inaudible] in a law. But it looks to me like from a lot of the evidence that some of this cuts should have been made a long time ago that they've got a lot of money out of-- in a lot of different areas of their budgets and don't single [inaudible]

MR. THOMPSON: You-- your Honor, you, you mean more of the inflation of whether panel form or school district come sure that

efficiency is can and should achieve. The testimony of trial from the [inaudible] office. And, and most of [inaudible] have been performance review to the school districts for years. He found that approximately 1 percent on average of school district currently use the degree-- maybe directed or efficiently in another territory. Now, some of the case that are being made and I think this is quite to the, the, the definition of, of the both years of what's the stated? What's the general diffusion knowledge? And as this Court stated the standard next value price. It's whether there is a substantial default on providing that education that would allow all the students access to the education programs suited by my fully participate.

JUDGE: But again, how, how do you measure that?

MR. THOMPSON: He maybe writes these for -

JUDGE: It would not or out ...

MR. THOMPSON: - ourselves

JUDGE: Well, and, and, and input side. It's hard for me to see anything that wouldn't be covered with policy determinations that is not problems of the Courts to get involved in.

MR. THOMPSON: And your Honor, we're, we're not asking and I think that there was a difference of-- between accusation in the state. We are not asking this Court to constitutionalize all of the inputs. What we are saying -

JUDGE: What's about ...

MR. THOMPSON: - districts had to have access to the major capacity that has to be suitable provision so that districts can make choices of programs to admit the high standards that the state is [inaudible].

JUDGE: And the state said that that's been done. With districts involved in this litigation on, the minimum state requirements. So one is that at the-- does that evidence put you on the Court?

MR. THOMPSON: Your Honor, the accreditation system measures quality measures but it doesn't pertain the measure of all the students do and in frankly it doesn't measure much beyond the few minutes.

JUDGE: Mr. Thompson If we, if we beyond the few-- in a few ...

MR. THOMPSON: But if you-- we got a few minimum requirements.

JUDGE: Which both of the states obligation as policy maker to, to determine. Is that correct?

MR. THOMPSON: The, the, the state has for all discretion to determine its ranking system or grading system or accreditation system for students but, but it's our position, we have to lingered with their also state requirements for children and the accreditation system if two thirds - three fourths of the students can't give-- can't-- the items or an-- on math and science. The district ...

JUDGE: [inaudible]

JUDGE: 'Cause the, cause the answer to this-- the answer to this-- the answer to that problem that the citizens of the state need to know that legislature both add those were not prepare in their students adequately both in those who are raise the standards and upon the may-- is, is the answer of a political answer rather than one that the Court are equal to have.

MR. THOMPSON: But that, that, that, that is certainly part of, of the resolution but that does not mean that there's not rule for this Court. This Court has, has, previously said that the standards of article 7 section 1 are judicially interpretable and more important judicially enforceable. And, and frankly is that-- it's the standard, the rule of this Court to set the constitutional standard what id suitable provision within an sufficient system for the purpose of providing the general diffusion of knowledge.

JUDGE: And Mr. Thompson. First, I'm not assert for getting all Texas students to Harvard is necessarily a good thing. Buy have-- but having said that. What evidence depending was presented at the lower Court that more funding. There are more dollars in this political problem has going to resolve the issue about of her that Washington D.C. is, is lower from it. Those school districts are low from it. But consistently their approach are, are poor so how is more funding, the answer to this question?

MR. THOMPSON: You-- your Honor. The, the witnesses-- expert witnesses superintendents and others who testify. The, the testified for a number of very specific areas of which expenditures are necessary to meet requirements by the state as an example the 31st witness on Justice-- Dr. Forsia testified that this district, a new state requirement that [inaudible] is the districts has to develop individualized plans for all the students who are addressed falling behind in that meeting about state requirements for arrangement. Dr. Forsia testified that in this district alone that result to 28 percent of the 6th-12th graders and if that one requirement to this taxpayers is in the range of \$1.2 million.

JUDGE: So do we look at the problems of individual districts? And then we look at the system as a whole to determine, determine if the state is [inaudible] to meeting it's constitution.

MR. THOMPSON: Your Honor, I think you have to look at both. We presented testimonies find that equal districts and we presented evidence of, of the systemic of the [inaudible] from the statements where we ...

JUDGE: This seems that no matter what, what the scheme maybe you can always find individual school districts that I haven't met the states birth and then you would always have a cause of action and always be up here. Wish it would never been resolve?

MR. THOMPSON: You-- your Honor. We-- as we understand the states standard or that the Court standard is that the issue as whether their is a substantial default. And we believe that's the way this Court is articulated. We're not argued for some types if [inaudible] -

JUDGE: The ...

MR. THOMPSON: - when district are won't stated concern about the ...

JUDGE: The states has its the same discretional [inaudible]

MR. THOMPSON: And we do not agree with, with that decision. First of all, your Honor we, we did not believe this Court has, has ever vibration by system analysis. The article VII, section 1 and I believe that very careful not to that as under state have been ...

JUDGE: Didn't we do that in Mummme?

MR. THOMPSON: No. Your Honor.

JUDGE: Why-- why all we-- with that, with that areas decision ...

MR. THOMPSON: Mummme was not. Excuse me.

JUDGE: Go ahead.

MR. THOMPSON: Mummme is not an article VII, section 1 claim. There was not the allegation in Mummme that there is a violation in article VII, section 1. The claims of Mummme, the article VII claims was first the violation of article VII, section V.

JUDGE: But we said, since the legislature has the mandatory duty to make a suitable provision for the support and maintenance of an efficient system of a public school sounds like, like article VII, section I. Then the legislatures determination of methods, restrictions, and regulation is final, except when so arbitrary as to be violative of the constitutional rights in the [inaudible].

MR. THOMPSON: Yes, your Honor. The issue in *Mumme*, once this Court is posted of the article VII, section 5 claim in torn to your attention to the equal protection claim arising on the Article I, section 3 of our constitution. The question was, was the types of the vacation of districts into two categories, smaller and poorer and larger and wealthier. Was that place for patience being file with the equal protection. Before we look to article VII, section 1 to authority that legislature to make the classification in the first place. that's now article VII, section 1 ...

JUDGE: Yeah. But we said that the word "suitable" used in connection with the word "provision" in this section of the constitution is elastic term depending from the necessity is a changing terms, clearly needs the legislature the right to determine what is suitable. Termination will not be reviewed by the Court so that the act has a real relation to the subject and the object of the constitution. So your saying, everything we said there that was just equal protection. The word "suitable" is not so elastic and none of this applies. You, you just ...

MR. THOMPSON: Your, your Honor, what I'm saying is the discussion in *Mumme* with that section 1, the point that I think was being made with, with the section 1 was that if the legislature has been, it has to have a means to meet the three, the three of [inaudible]. And if the classification was authorized by such one-- in other words if the legislature have the power to make the classification. and if that classification was not arbitrary then there was no violation of, of equal protection provision. So I think that's the context in which section 1 is discussed in *Mumme*. But, but again, *Mumme* was not alleging a violation of article VII, section 1.

JUDGE: Well, that mean it wasn't not like. It was a, it was a student in a property which district saying particular people lies in scheme. I'm not get any of that money which is not like what people are saying in here.

MR. THOMPSON: But that plaintiff law is an equal protection claim which give this Court going back the *Edgewood I* has carefully abort.

JUDGE: But as a practical matter, we have to give the legislature substantial difference. And what's the difference between substantial difference and just making sure what they guess not arbitrary?

MR. THOMPSON: Your Honor, we think, we think the standard that this Court has articulated of whether there is a substantial default in leading a mandatory de jure. It's the proper standards of this Court and other Courts to judge a legislative action under the suitable provision policy that the concern of how rational-basis is that we-- from our our view the state is trying to blue the Court in [inaudible] that the Court students re-avoided and rational basis is the Court now is part of equal protection analysis for the choices proclaim rational basis for [inaudible]. This Court is very carefully for that in our understanding of, of equal protection approach to this submitted. We would certainly opened up to innocent fact to work an equal protection analysis by adapting a rational-basis procedure.

JUDGE: That, that was an issue in the *Edgewood I*. And of course we have torn to them but if we haven't, what the standard do you think would apply?

MR. THOMPSON: Your Honor, I don't know that the-- first of all, I don't think that Texas has ever to my knowledge consider the question of whether education is a fundamental [inaudible] under, under our, under our state constitution. And, and I think we've been -

JUDGE: No. Where ...

MR. THOMPSON: -- is we really presented with that issue. So I ...

JUDGE: It seems like-- I mean if, if it says general diffusion of knowledge is essential to the preservation of liberties and rights to the people by it self?

MR. THOMPSON: Yeah. But it certainly sounds fundamental. If your, your Honor, I think part of the reason by this Court has, has been cautious in that area. I would direct the Court attention particularly to the recent have to be placed in Arkansas and to the [inaudible] of place in your assign of that have, that have very good of discussions about whether equal protection rational basis applies. I, I think the Court are concerned applying every legislative action affecting education district scrutiny. And it was very interesting to me that both of those Courts after doing the analysis. And you know they don't have to get in with that way reviewing this because there's a mandatory education clause that imposes an affirmative duty on, on the state. And it simply a question for the Court whether that duty has been made or not. But they, but they should court in, in Arizona actually noted that their Court a couple of day-- dates earlier, it found the education was fundamentalized but apply for rational basis. And I think that the Court finally said that, that make and you seems[inaudible]. And so if, if in fact this Court ever should approach the, the issue when you look at the, the question if whether education is a fundamental right. We think it would be clear districts scrutiny. It apply now rational-basis.

JUDGE: Let me ask someone different question. If the Court were to conclude that the legislature has not appropriated. What we owned to be sufficient funds to meet their constitutional obligation. What the Court done, the obligated to determine the correct amount and actually order the legislature to appropriate that amount.

MR. THOMPSON: Your Honor, we're not asking this Court or, or the trial court to determine the right member and we're definitely not asking as, as remedy for this Court or any Court to affirmatively invade the legislature funding ...

JUDGE: If we were to say that the funding is not appropriate. Why would we not then have an obligation if the legislature of some idea of what an appropriate amount of coming with the ...

MR. THOMPSON: And if-- your Honor, I think guidance is-- much guidance is can be given to the legislature so I think this always welcome. Probably that, that the issue here would be where, where the Court would give that information. But again there were a number of different studies presented in trial using variety of different methodologies to show different policies submitting higher levels of performance. We certainly hope the stated [inaudible] will, will take a [inaudible] at the very out said that should be a state responsibility to the honestly [inaudible] as the-- for all says that requirement that we imposed from districts and, and decide from this policies

JUDGE: And then if we believe that the legislatures not-- doesn't have and, and, and make the time that addresses the issue and has been still does not adequately funded. Then what we've-- one of the masters who make that determinations. Do we take over the schools-- I mean, how far this is go?

MR. THOMPSON: You-- your Honor, all we-- again we believe the standard would always be a substantial default standard so we, we did not engage in-- that this Court enhancing micro managing, managing every legislative appropriation. I don't ...

JUDGE: Well, I don't get to those-- how did you to the substantial default -

MR. THOMPSON: 'Cause the state -

JUDGE: I maybe the problem analyzing that when was evidence certainly from the state or that, that said on your brief and schools have improve significantly since the last this Court heard is heard that decision. And yet you can greatly point out the isolated incidence in other school districts where their faith. So how, how do we measure that?

MR. THOMPSON: Your Honor, we think if you, if you look-- first of all, whether there is a substantial default. And I, I believe this Court has clearly said that if there is a substantial default that that violates the suitable provision policy. And, and we could give look at-- if not these Court, certainly the trial court. If you look at the variety of measure certainly one expert and, and we have to be respectfully but vigorously disagree with the states prospective that things are final. When you have performance found the passing requirement for 10th writers this year. With 39 percent of all the students ...

JUDGE: But that would have been a high tax rate on the task. Those same questions would appeal that in 98 percent tax rate under task. So your finalizing the state for raising the standards in placing in [inaudible] time.

MR. THOMPSON: Your Honor, they are raising the standard but, but I want to respect precisely these [inaudible]. Your not placing in it. This is the standard that they will be held that accountable to for legislation. And you give that ...

JUDGE: But, but the, but the problem that we-- the struggling point is you could lower that standard and we have the [inaudible].

MR. THOMPSON: Right. And, and your Honor, we support high standards -

JUDGE: All right. Of course, you did but ...

MR. THOMPSON: But in fact the testimony of that at the trial-- We just need a funding system that is actually [inaudible] to annual support. The high standards that -

JUDGE: If ...

MR. THOMPSON: - we're establishing for all the students.

JUDGE: If the state had stuck with tax with the system be adequate.

MR. THOMPSON: We don't believe so your Honor. And, and we did not filed in, in ...

JUDGE: Why not?

MR. THOMPSON: We-- that the-- 'cause ...

JUDGE: 'Cause then you'd have, you'd have very high pass rate.

MR. THOMPSON: 'Cause it, it probably when it supports it, did live its life cycle as, as districtA instrument. It, it certainly was time for replace it for a ...

JUDGE: But that's a policy question.

MR. THOMPSON: The, the policy question to move to the new high standard and if we completely support Court ...

JUDGE: Okay. But they could acknowledge -

MR. THOMPSON: Yes.

JUDGE: - what test to give is a policy question.

MR. THOMPSON: Absolutely.

JUDGE: And so if the state had stuck with us and were already 98 percent pass rate, these system would be adequate.

MR. THOMPSON: But, but we would not concede that, your Honor. If the test again is a low standard that does not meet change in times needs to the public education.

JUDGE: Even that you had said that's a policy question.

MR. THOMPSON: The, the, the test itself is a policy question. Simply keeping the best, we would not concede that that's the end of the discussion [inaudible]. If the state about the in-- inadequate measures that did not meet the, the constitutional standard of general diffusion of knowledge. I don't want to conceive that any measure of the state adapted is so would beyond-- that beyond the review.

JUDGE: Or you would concede Mr. Cruz is correct. How many-- to present to the request is a directly and proportion to the-- how hard the test is.

MR. THOMPSON: I, I, I would agree with that, your Honor.

JUDGE: So the fact that 75 percent of the students flunk the science exam doesn't really tell us that the school system inadequate unless we know what all the questions where.

MR. THOMPSON: Your Honor, what it tells us about the evidence process found is that it go back if where we started with test. And, and has-- in its day who was a part of their instrument. You started with local performance and performance gaps between the student groups. But you have capacity in the system and what the testimony shows is that over a decade period scores went up because districts have the capacity to that resources and to meaning that there a programs that those students make to agree. The difference where we are today with a new test is we have rights to standards performance gaps between students brief the three of them at the very moment that most districts and most students of Texas are accurate have. There are no capacity ...

JUDGE: For now. But the projections are is going steadily improve.

MR. THOMPSON: None on the economic sides. It's going to only view it was.

JUDGE: But, but, but in terms if that comes.

MR. THOMPSON: Your Honor, the projection that we think is totally optimistic that things will just magically keeping it in better -

JUDGE: But I guess that ...

MR. THOMPSON: - without, without resolutions.

JUDGE: - place to my next question. Is, is this really right for our review? If the standard has been raised and there is a speed of a weather is going to continue to rise or not, that we have to wait and see.

MR. THOMPSON: Your Honor, we think it is right. We think the testimony the-- of the evidence is that districts need to make an investments mail. And the states of some witness is their own expert who concede that you don't like until a proper of the trial date from year spindle of money and inspective and measurable result in, in the spring of that year. Education is the [inaudible]

JUDGE: Mr., Mr. Thompson. If I can interrupt to just [inaudible] issue. And I ask you the similar question that what I ask to Mr. Cruz. Trial court in this case support the evidence and does make findings of the state not challenge among those findings for example as 10-- finding fact 101 that says that the, that the-- in affect that the districts are unable to meet the statutory resume on accreditation accountability and assessment without taxing at a merely with maximums. Now, is that a finding of fact that are supported by the evidence in the review and are we bound by that in our review of what were going to be of there's [inaudible].

MR. THOMPSON: And your Honor, we believe that is a fact final that was fully supported by the evidence. And we don't believe that those fact question of before this Court. And we believe Court should take those fact findings as subject.



JUDGE: As conclusive because if not been challenge.

MR. THOMPSON: Yes, your Honor.

JUDGE: And that they should bind us.

MR. THOMPSON: Yes, your Honor.

JUDGE: Why is in the solution to raised gap and continue the basic recapture architecture of [inaudible]

MR. THOMPSON: If, if the state wants to explore rising the property tax cap and, and continuing to shift the prosecute to a local districts and ...

JUDGE: Would not shift, shift the cost local districts. If the district and state upon this amount and because property values go like this between the 89 and 75. And the state funding goes like this one could look at this what we've shifted that cause to the-- what, what we have really done is property-tax-- property values in Texas in 16 years have going up a lot faster. That's source you have for funding has going to be lot faster -

MR. THOMPSON: Right.

JUDGE: - than the states sources -

JUDGE: Right.

JUDGE: - for funding. So we didn't really shift to the counties. The counties just got richer faster that at least a lot of your, your districts prerogatives.

MR. THOMPSON: You-- your Honor, we did shift because under our school finance system as values to-- for spoons. That does not translate in to more money for education. It, it, it doesn't work the way it works was cities on counties. That money doesn't stay local increases in values [inaudible] a savings to the state because they reduce the state obligation. And in fact the state looks to increases in values as a primary source of remedy into its, its funding to re-meet by any [inaudible].

JUDGE: So has the state real dollars taking up recapture from shifting property-tax around. What is the state claiming more of our less amount of education?

MR. THOMPSON: At the state share, if you look your Honor ...

JUDGE: That share is the state funding more opens ...

MR. THOMPSON: In, in, in prudent's-- in prudent dollars for state and, and the state contribution is gone that, that in, in total dollars in the system the, the state share-- the state [inaudible].

JUDGE: But some of those [inaudible] to our districts [inaudible].

MR. THOMPSON: At what-- and your Honor we're going in Texas buying [inaudible] in students and your-- or adding a school district besides of all students or for order every year in Texas. So, so a significant amount of revenue does don't hang for simply more students in the states. But if you look on our-- on an inflation adjust to the first basis. We think it is clear that local property taxes are, are carrying in a much larger share [inaudible] in any kind of modern history.

JUDGE: It is your argument that there's a disproportion of share paid by the state or that the state should increase its funding and that's straight-- state should increase its funding. And what point would the school district be satisfied with the funding given by the state?

MR. THOMPSON: Your Honor, school districts are going to want every student in their district to be successful. So, so I hope we never satisfy until, until we reach that cap with the-- from the funding stand point. If, if we have a funding system, think about the structure of article VII, section 1. Suitable provision within in a efficient system for the purpose of general diffusion of knowledge. If, if we

have a system that based from the state studies-- properties of state studies other information that establishes that there's a leakage or a relationship and not just that this Court has said on the funds [inaudible] of the basis that there's a relationship between suitable provision and the great purpose of general diffusion of knowledge. And I, I think that districts are going to slowly return to the Court.

JUDGE: So, so your content with raising gap and keeping the chapter 41 and 42 basic architecture in place.

MR. THOMPSON: Your, your Honor, we're, we're not educate in that and in fact there are an, an, an apologized for not-- for the, for the answering your question [inaudible]

JUDGE: Or you would answer.

MR. THOMPSON: If you, if you do raise the cap, that is not a solution in-- about itself-- you know, it's, it's our reading of particularly, of this Court's of our decisions that if you do raised the cap, districts done automatically have to the amount of revenue [inaudible] by have, have a inflations within their communities to access that your authority. Frankly those are going to pass in some districts. They are not going as another districts. And so what you applying different, it is raised the cap. It is probably access by the use of this [inaudible] increasing recapture, increasing the reliance of local property of Texas and that is not a solution that [inaudible].

JUDGE: Any further questions? Thank you Counsel. The Court will now take a brief recess.

JUDGE: All right.

JUDGE: [inaudible]. The Court is now ready to hear argument from the appellees, Edgewood Independent School District.

COURT ATTENDANT: May it please the Court. Mr. David G. Hinojosa will open the 10 minutes argument for appellees, Edgewood Independent School District et al. Mr. Buck Wood will going to intent 10 minutes of argument for appelees, Alvarado Independent School District et al. And finally Mr. Ted Cruz will conclude to the argument with 15 minutes of rebuttal for Shirley Neely et al.

MR. HINOJOSA: May it please the Court. The Edgewood districts a group of 22 property-poor districts stand before this Court because the state has their key from a remedy that enhance it have to the prop-- that more than 800 property-poor district and its opinions of Edgewood I to Edgewood IV. This Court has projected the property-poor districts and help the state accountable to our constitution by directing the legislature to provide a general diffusion of knowledge to all students in efficient and suitable manner. This Court cannot follow the states league and reverse course now, not only because our state cannot afford it but because our constitution does not allow it. The trial court consider five and a half weeks of testimony. Testimony from dozens of witnesses over 7000 trial exhibits.

JUDGE: Were there any parents and children's from Edgewood who testified?

MR. HINOJOSA: No, Your Honor. But I would like to ...

JUDGE: What if-- why is that not a standing prominent?

MR. HINOJOSA: That's not the standing prominent because under the, the next standard that the Court used in West Orange-Cove is we see the districts have been delegated the responsibility, not necessarily say that that duty is the state of legislature. But they have been delegated the responsibility of providing a general diffusion of knowledge to each and everyone of their students. And now they are at that point where they have been-- we, we acting with that particular authority that don't have the resources that have followed in order to

carry out that particular duty. So therefore the the harm is there. And, and secondly, a remedy by this Court can-- you know-- address the harm that they've suffer.

JUDGE: But normally like this is-- we're concern about this like in class actions cause for instance as I read the Courts Judge Ditz's findings about what's inadequate. You all can reach an agreement with the state to eliminate all that. State says, "We'll pay bigger by Liculs Stephens bigger salaries, bigger signing bonuses, bigger money for in service training and you all agree to all adequate and you all could have-- districts could agree to that 'cause that's all the evidence that could on for what was inadequate with the exception of facilities." But not as I do some striking short comings on facilities. But as far as maintenance and operations, you all could agree to that. And yet the people in west-- in Edgewood might say, "We were in here for librarians." We were here for something else.

MR. HINOJOSA: I, I believe the, the board is the one who pass the resolution about the school they should, so that they could bring this support in that award can-- it is represented above the community.

JUDGE: Well, but, but the fact to the matter is the pe-- the schooling employee ask the employees of any out at-- what make this better place to work a generally say, "higher salaries." If you ask the people to buy up in the business, they will say "lower prices." And so what we say, what will make the schools better if all we ask school employees, we may get a different answer than we would get from-- if we ask school consumers?

MR. HINOJOSA: Yes, your Honor. I, I don't believe that it, it's quite simple that simple. I don't think that-- you know, we're looking at the system as a whole on whether or not the state has retreated from it's duty to provide a general diffusion of knowledge. You know, and have those resources available so that every single child in all of those districts can benefit and that's how they will benefit in to ...

JUDGE: Well, I mean less-- lets not go too far in a point on it. Probably there's some of your residence in Edgewood but what is the spending per pupil in Edgewood, currently roughly?

MR. HINOJOSA: Roughly from the state revenue resources?

JUDGE: Everything.

MR. HINOJOSA: Everything with the-- of public 5 thousand.

JUDGE: And probably there might be some people in the district, who would say, "Give me 35 hundred bucks and I'll take him home, teach him my self." Take him to private school but of course the school district would rather follow on their source and suggest school choice. Right?

MR. HINOJOSA: Well, I think that that's a policy decision that's better left to -

JUDGE: Right.

MR. HINOJOSA: To the legislature.

JUDGE: But-- so that's my point. If the people in Edgewood thought. It would be better for suitable provision prior education about kids, just to give us the money even if it's less. Your school districts could represent those because that the last thing you are want.

MR. HINOJOSA: That's still doesn't take away from the aspect of whether or not that them-- they-- the district have demonstrated the real controversy. They will actually be determined by this Court and that's the particular test we're standing on. And I'd like also to mention that in Edgewood IV among that represented school districts not school children and not particular lawsuit.

JUDGE: Of Course that's a particular tax lawsuit. That wasn't adequacy suit.

MR. HINOJOSA: I believe there was also an equity lawsuit.

JUDGE: Not one. Not here.

MR. HINOJOSA: And efficiency-- I believe that there was an article VII, section 1 and the Court did address the facilities and the maintenance and operation side of the inflation [inaudible].

JUDGE: Mr. Hinojosa, if you look at the system as a whole and you will said, why would in the Court apply a rational basis test to determine whether or not the system and itself fails or passes.

MR. HINOJOSA: This Court has never apply the rational basis test in reviewing this article VII, section 1 claims and ...

JUDGE: And why can we do that now?

MR. HINOJOSA: Because they have this test already that is sufficient reviewing the system as a whole determining whether or not there's a substantial default. There's no reason to go down to the standard where all the, all the state would have provide a this some sort of relation to the ultimate goal. And when you look at the stated accreditation system, the way it was said up. Just so that every district and this is the states on witness stand who stated this and said up so that every single district can have in-- meet that accreditation standard. It's not so that every single child can be provided the general diffusion of knowledge. They miss that particular point and so another accreditation system. And so -

JUDGE: Where are they look together?

MR. HINOJOSA: - looking at that.

JUDGE: Where are they look together?

MR. HINOJOSA: I'm sorry, your Honor?

Where are they look together? Why don't you think look together?

MR. HINOJOSA: Because it easier to find that an accredited education under their very low standards under this to find that the general diffusion of knowledge for every single child.

JUDGE: Under their higher standard.

MR. HINOJOSA: Under their lower accreditation standard system. The simple fact that you can add 16 percent of the students as the science test and still be accredited.

JUDGE: I'd be a ...

JUDGE: It look to me like as I ask earlier. It does gave an easier test that-- and a hundred percent would pass but the kids were not able.

MR. HINOJOSA: But at the same time they've lowered that, the cut's scores so low in this particular test. You know they're demonstrating a 42 percent proficiency rate even can be -

JUDGE: But again ...

MR. HINOJOSA: - can be intent.

JUDGE: That, that was a particular policy to have any decision. It start out into cuts below and they move it out there for times. So the districts won't feel your doing for failure of the out said. Isn't that a policy choice that we-- are in above in it. And let me ask you as well, my understanding was that the Edgewood was not really challenging the, the accountability system as representing a general diffusion of knowledge. It was not having knees to get there.

MR. HINOJOSA: I think it's both, your Honor. I think that-- you know, this Court has establish a presumption that the accre-- accreditation system provides a general diffusion of knowledge. What we provided overwhelming evidences done by the trial court, that we were voted that particular presumption.

JUDGE: But, but I, I thought that your, your argument was that not enough. Kids were getting to that measure as supposed to challenging the measure itself.

MR. HINOJOSA: I, I think it was a two fold. One is that certainly what is the required of a general diffusion of knowledge. That's a quality access to a quality education that enables every child to fully participate in the educational social and economic opportunities. And also needs the change in times needs an expectations. And when you have-- so one we have that's-- that certainly higher than what in the accreditation system accounts where-- and then on top of that, we don't have a resources to meet that higher level for all of our district [inaudible].

JUDGE: So if a hundred percent of district students has to talks not the completion and the dropout rate. And it say, that's still there was no general diffusion.

MR. HINOJOSA: No, your Honor. What were saying is that the pers-- the ...

JUDGE: So you don't, you don't call with the standards. If your saying the standards aren't be met.

MR. HINOJOSA: The standard for the individual students is to pass all of those tests that become professional. And that when those students are able to take advantage of a full teach curriculum when their able to take advantage of this states default recommended high school program. When they're able to take advantage of extra curriculum-- full curricular activities, only then. But at the level funding that the state has right now particularly for lowing and limited English proficient children. The level of funding is set arbitrarily so low. The state studies came back. The states on expert came and had a study and they say, "Well, how much will it take to bring the 55 percent of the students" a two I see in below, two standard areas of measurement below the standard that would believe that you shouldn't have. I said well, we're only been that look bringing in math. We're going to look at I see in below. How much more should been it take to bring up this level to bring those profession ' cause it's the, the testimony-- the stated and review the testimony that-- you know, does have additional research been looking back they do provide additional resources. But when you look at their level of funding, the, the particular la-- the latest study. The state expert recommend the 19 hundred dollars-- have been in cost 19 hundred dollars to bring the slow in [inaudible] just to meet this minimal standards in this particular test that we've said. And then it's going to cost over 12 hundred dollars to build up a limited English profession. Did the state-- what have involve that? No. The state did not. They continued to fund at raise that [inaudible] that were already arbitrarily said well below the recommendedly, some another state. That in the 1980's and it follows the same thing with facilities were they haven't even address that issue.

JUDGE: Counsel, you say that numbers that are internal to the state comparisons to accreditation levels and the legislature on the state for comparisons that passage of pa-- test passage rates internal to the state that you think indicate that the education system is not doing so well. The state that list in argument today cites comparisons between our states and other states. What is the more relevant comparison which, which would-- which should be pay more attention to the ba-- the Texas is doing well compared to New Jersey or how Texas is doing compared to our internal standards, and why?

MR. HINOJOSA: Well, I think that if you look at New Jersey and,

and if you work he even compare our, our established ...

JUDGE: It was just an example -

MR. HINOJOSA: Okay.

JUDGE: - not same. They didn't pick that on your particular reason.

MR. HINOJOSA: Okay. But let me have to look in some particular states standards because of high speaks. There's high speaks for the kids to graduate and need all the standards that means pass all the curriculum that they must take. There-- that means passing the tax exam. That means being able to access those particular resources that are necessarily kip that child in the school. Get back child to achieve at the level not just 25 percent of the kids to pass one particular test. And when you look at LEP children in particular-- they're not even part of the accreditation system as, as the desegregated subject. You know, they are lamb together-- you know, possibly with the standards of other-- the standard that they improve that they might belong to. But and the end when the states cites that make to test for us in about how great they found. One that's a selected-- they, they have a selected number of students. Only 2000 students, I believe took these particular test that they mention.

JUDGE: But they are pressed -

MR. HINOJOSA: And in ...

JUDGE: - the goal standard by here on witness.

MR. HINOJOSA: I'm not sure that was by our witness, your Honor. But that witness in the trial. Actually could up the witness we've state that specially given the fact that in state-- our state holds every single child into the same standards says, "No matter how you come to us, your going to have to meet the same standards." Unlike the than a test where the results that the state tells is after they control for certain-- you know, economic factors. Our state this to the-- our state even no affirmative action points. But that-- were not saying, you need to give affirmative action points or anything like that for this. But if you want us to meet standards, the testimony on then numerous findings of fact show that given the cut for a manner of resources, this students can achieve, they can succeed. And at all of the same levels, we can close the achievement gap and that respect ...

JUDGE: Other, other further question?

JUDGE: That what won't-- that only question is, is the, is the issue to proper amount of resources or say the issue-- the resources are on allocated properly in a local school districts.

MR. HINOJOSA: I don't think-- you-- your Honor. I don't believe that there was any findings of fact made by the trial court that ...

JUDGE: Or this some discussion about the expenditures on slide in so many employees that to stay the same question?

MR. HINOJOSA: Yes. I recognize that and exactly how my new that particular project cost. I'm not so sure. [inaudible] -

JUDGE: How can I be ...

MR. HINOJOSA: - it's one isolated that that-- and there were no findings made by the trial court.

JUDGE: Very well. But how can I be determined here of those, those expenditures were not segregated by the trial court?

MR. HINOJOSA: We didn't try necessarily a tax case what we put on evidence was this is what our districts are spending. And we focus primarily on the limited English profession in low income children that they transfer their true failings are. You have seven out of ten in all of the students [inaudible]. It brings standard-- standard out of this question. You have eight out of ten fail in the eight and eleventh free

test-- you know, and, and you have the superintendents and experts coming and say, "Look this is what's required to bring up this child up to this standards." But the districts are having to basically [inaudible]. And they shouldn't have to do that, not only talking about the quality of the education that are children received.

JUDGE: Was there any evidence that the trial court to rebut that?

MR. HINOJOSA: Not to my knowledge, your Honor.

JUDGE: And so we take that finding of fact has to be conclusive as Justice Johnson said?

MR. HINOJOSA: Yes, your Honor. There was no challenge to this particular findings as Justice Johnson pointed out earlier by [inaudible].

JUDGE: [inaudible] would ask the question.

JUDGE: Of the question.

JUDGE: Mr. Hinojosa. I'm looking in the map here. There are county where Edgewood is. Here's to me. If you drive around and look for ten, you pass through 14 different school districts that one every two exits apparently. Has the Edgewood injunction and your asking for is equitable relief of course to get equity. You got to do it equity and 40 years Edgewood district has been filing lawsuits. Has Edgewood ever considered trying to consolidate was San Antonio School District?

MR. HINOJOSA: Ahy there was testimony, your Honor by Dr. Christine Drenun who talked about how the different districts develop-- you know, because of residential segregation that they had and they [inaudible] segregation within the city. And there was testimony that Edgewood had try to consolidate with. I-- I'm not sure if that was [inaudible] but it was for the San Antonio ISD at one time but SAISD is said "no."

JUDGE: Any time in the last 10 years or so?

MR. HINOJOSA: I'm not aware of that, your Honor.

JUDGE: And so that would certainly raised the average property value for student available to Edgewood if they consolidated with Down Town San Antonio.

MR. HINOJOSA: Then there would also probably likewise lower the property value of San Antonio Independent School District and they would have more need the students and instances. Students are being under [inaudible] by the state. It's probably not much of an option for as -

JUDGE: But -

MR. HINOJOSA: - [inaudible] your Honor.

JUDGE: - understand for-- well, two things from it. Number one, if you consolidate districts the states has to give extra funds to the new district to make up for what your getting currently. That state has to make some allocation for that.

MR. HINOJOSA: Yes, your Honor.

JUDGE: Right? And number two, if the state, state can make you do that. If the schools academically unacceptable and make it consolidate. They did-- Whelmer Hadson in that. Right?

MR. HINOJOSA: Yes, your Honor.

JUDGE: So the fact that matter is have been scared put the floor down here in 25 percent of people pass. If they raise it, something what's been suggested 50 or 75 percent pretty soon they could make Edgewood join San Antonio and that would equalized to some degree. The funding disparity in Texas if we made tiny school districts that are rich and tiny school districts that are poor consolidate with districts that are more in between.

MR. HINOJOSA: There might be an option that our legislature can consider but it's still doesn't solve the fact because then you going

to be depending on the wings of, of, of the constituents-- you know, a mother or not [inaudible] to go to have a consolidation ...

JUDGE: I mean, how fair is it? Your, your here asking for an, how fair is it to say, "We refused to join with the reacher district but we want some of their money."

MR. HINOJOSA: I don't believe that that's necessarily an argument, your Honor. The, the Supreme Court has already stated that all districts must have substantially equal access to similar revenue at similar, at similar tax factors and ...

JUDGE: And joining with the bigger district with a lot revenue who do that.

MR. HINOJOSA: And that's, that's a possibility. Yes, but it doesn't-- still doesn't result here.

JUDGE: And again, who would object to consolidate? We keep-- to keep-- people going to the same elementary schools. Probably the same teachers ' cause more property valued for person. The only people that lose their jobs are properties and administrators. Right?

MR. HINOJOSA: With all the once we have present and the Court objected.

MR. HINOJOSA: Well, it just might be some of the property wealth in district. I'm not so sure, maybe we can ask Hellen Parks whether or not they would like to consolidate with Dallas ISD and absorbs on happen in-- and it's still not going to result [inaudible]

JUDGE: Hellen Parks not here objecting they don't have enough property, you are.

MR. HINOJOSA: Well,-- and we're not necessarily objecting that we don't have enough property. We're objecting to the fact that our districts are not provided the standards that this Court has said non-substantially equal access the similar-- similar fact separate.

JUDGE: We understand it's not going to be a poor-property distribution but this are countless that enter those of schools every single day during the school year. And why should they be held to a much lower standard. All we're is saying, "Level the system up." We're not talking about leveling the system down. We're talking about leveling it up so that all children can at least have access to the opportunities that present themselves. No more limitations were beyond that. We should be beyond that because this Court has say, that we're beyond that. But yet the state continues to fund in it's arbitrary manner. You know, the state really needs to look at this and ...

MR. HINOJOSA: Thank you, your Honors. Thank you.

JUDGE: Yes.

JUDGE: Thank you Counsel. Any further questions? The Court then is ready to hear argument from Mr. Wood for the Alvarado Independent School District.

MR. WOOD: This Court is instructed the litigants in all of this cases that-- you know, look at the system as a whole. Not suppose to be same orders just little far over here and just a little far over here. Also, look at the system as a whole. And this word was said, "The state must provide a general diffusion of knowledge to students," didn't say it is suppose to provide a general diffusion of knowledge to some of its students. Now, can all of the students perform? "No," but lets talk about what the divils below in is-- and is really undisputed. Is the state providing a general diffusion of knowledge to each student in the state when over 30 percent of the students never graduate from high school.

JUDGE: Under what scenario would state need it's burden?

MR. WOOD: The state about with scenario, what?



JUDGE: Under what scenario would state need it's burden -

MR. WOOD: The state ...

JUDGE: - providing the general diffusion of knowledge?

MR. WOOD: They would-- the state would have to at least graduate the vast majority of their kids from high school. They are not doing that. That is-- if nothing else-- if this Court's stated that state has providing a system that's adequate and it's dropping out. Probably 40 percent of the Spanish students. Somewhere in that neighborhood of this have-- neighborhood would ask to her students. And probably 25 percent of a time goes defense. Those kids are by definition not hitting the general diffusion of knowledge. The states own witness is agreed to that.

JUDGE: Doesn't that ...

MR. WOOD: I [inaudible], I [inaudible] with that. She ...

JUDGE: Well, I, I present that the [inaudible] how you measure dropout. I mean, getting a GED equivalent say, the account then in the dropout rate, someone moves form the state. You would count that in the dropout rate. Understand this big argument as to what is an accurate dropout rate.

MR. WOOD: There is an argument only because-- let me back up. They are say senses-- last and that they senses show the Texas has a net in migration students. We get more students come in than we grew lately. I don't care [inaudible] or other state. We haven't met in migration of students so we got more students in year to year, to year, to year in Texas. Then we have the year before. Now, we are-- by the states own calculations and certainly by the calculation that can-- that this Court can even do. You go and look at the 8th grade population in Texas, five years ago. And look at the 8th grade-- I mean the 12th grade graduation. And your going to find the 620 some of thousand students that are graduating. But we know if hold everything easy that even we know that we have more students coming in than we do leaving. So it makes no really difference of what reason that they might give for leaving. We're losing 600 some of thousand students, the 8th grade and the 12th grade. And when you figure that out, that's a dropout rate and I know a dropout rate.

JUDGE: When will you makes-- made-- makes no difference. What if, what if an indigent family wants a 16 year old to start working that understand that you and a I would more than 16 year old to do that. But if from very poor family wanted them to help support the family, your saying, "We need the school districts that says absolutely not. You get back to school right now."

MR. WOOD: They are all absolutely requires that. Through as a laws so you can't make that decision.

JUDGE: Not really. We have cons-- with the parent, with the parents consent.

MR. WOOD: That-- I think there was good parents consent, the terms [inaudible]. The fact is we are losing that number of students between the 8th grade and the 12th grade. Are we providing-- do we have a system who's providing a general diffusion of knowledge? And I won't agree ...

JUDGE: Counsel, does-- Counsel doesn't that depend on your definition of adequacy? If the state find the adequacy and it--and assuming the adequacy is justiciable and they defined it to the 8th grade education in your statistics would not prove to substantial default. It comes down to your definition of adequacy and what's required on the constitution. The state is taking the position in our argument today that the TEKS requirement T-E-K-S and then recommended

task in program are not required by the constitution that those mandates from the state board and the state legislature are much higher than any constitutional requirement. The adequacy requirement in the constitution assuming as justiciable. The state is [inaudible] today is basic minimum education. Minimum that I ask-- that's would what would that means. So their definition of adequacy is a much different one of-- than yours. One of our fundamental question today is, "Who gets the pick," which definition is to be followed. The legislature or the Court's or the legislature with Court over cite in judging whether the legislative decision satisfies us-- satisfies the constitutional standard. So I hear your argument but, but your, your closing over a fundamental question here.

MR. WOOD: This Court in this case, West Orange-Cove stated the legislature may not define what constitute the general diffusion of knowledge so low as to 45 to get reason to make a suitable provision as support by this constitution.

JUDGE: And that had submit the [inaudible] or what does that ...

MR. WOOD: It-- not-- we, we ...

JUDGE: What that does mean?

MR. WOOD: We have testimony of the state are undisputed that in developing a tax test, they went into Edgewood tremendous not on the evidence that that test is developed by the state in an attempt to measure whether or not the trial was getting a general diffusion of knowledge.

JUDGE: Let, let me, let me get that ...

MR. WOOD: That's the-- that's their development. They went through the development. That's state definition if what's general diffusion of knowledge.

JUDGE: And, and, and let, let me just-- my impression has going top be briefing that you don't quarrel with the accountability system as it is. Your quarrel as with the number of state that's he could meet that system.

MR. WOOD: No. She-- that is not our position.

JUDGE: So do you say that test ...

MR. WOOD: That is not our position. Our pos ...

JUDGE: Hundred percent of students passing test that meeting the dropout standards. Meeting the completion rates. If a hundred percent of the students met that, you say that's still met the general diffusion.

MR. WOOD: Well, what, what we have here is an accountability system.

JUDGE: Exactly, as my point.

MR. WOOD: But that -

JUDGE: You, you-- your not a pro ...

MR. WOOD: - the accountability system is being implemented in such a way that he allows this bust discrepancy both in test scores ...

JUDGE: So you don't dispute the measure of adequacy. You dispute the the number of the students, you can reach it.

MR. WOOD: I dispute the way the acc-- accountability system. My plan of dispute the way accountability system is being applied. In the other words, it's being-- it's Judge-- we don't have any unaccredited district except one or two in a whole state. We whole the students only is test. We hope the one hundred percent to that test. But we don't hope this districts to, to, to, to accountability-- anything like that which is powers been discussed and I want to go back up. I don't want to go back over it that if I'm a in the school system, I have held to that test being able to pass all, all those test that your part of main

order be a big promoted. We don't do anything like that school districts. Now, I'm not suggesting that that you should be wholesale under credit to school districts in Texas but I will say the way the accountability is been implemented and is continue to be implemented is to make certain that there are almost no one accredited the school districts or unacceptable students. What is that tell legislature. That tells the legislature they only to do anything. In actuality those standards are actually are so low that they are allowing. The two districts in Texas to helps be accredited when they are not delivering the general diffusion of knowledge.

JUDGE: Counsel, you said that something's high standards mandated by the legislature, the school board or the state board were could in place in order to satisfy the general diffusion of knowledge requirement. Is that in the statute? Where is that?

MR. WOOD: Has delegated to the test, test statement by the legislature so to the extent they send [inaudible]

JUDGE: And we're, we're still trying. Where's the statement that the legislature tied this higher standards to the constitutional general diffusion of standard of, of education standard. Where is that statement, is that in the statute?

MR. WOOD: Well, of course we have. We have the general statutory provision that for [inaudible] number one that sets up the, the general if what the statements the olds are, the appellant inspiration? The state they have took that test toward no develop an accountability system as suppose to meet that goal. And what we're saying is they are relying school districts because they are not really enforcing the accountability system. They are relying in school districts not to meet those standards and all the accredited. And, and I'd like torn that one quick-- not but those eventually talk about equity, a major trust of my clients as we have been in every equity case. And as they started in, in 1986 what-- but 40 years ago.

JUDGE: Well, -

MR. WOOD: Well, ...

JUDGE: - San Antonio versus Rodriguez [inaudible] almost transaction ...

MR. WOOD: That was not, that was not-- I'm talking about the states who finance every occasion. What is happen is, is that we're, we're all intend here talking about ad-- talking about adequacy and certainly that's part of our case. We're financial equity both that [inaudible] or just mention operations and facilities that people would talked about a little bit about the facilities issue. Really that issue seems to me the big free to re-cut. In Edgewood IV this Court said, you can have a non-set gap. You can have the moneys or as enrichment that between poorest districts and the richest districts. And that fairly, that fairly was constitutional as the equity of prison of history and that the state must be better. The undisputed evidence is far as equity is concern and the workers concern by the states on expert that that 9 cents is now 17 cents. So now it is a state now than better. It is going to be worst, much worst in equity this-- between the riches districts and the poorest districts have basically don't.

JUDGE: Judge, Judge ...

MR. WOOD: - that is a critical point that we ask this Court to address about. It say in Edgewood IV will submit 9 cents that she got to do better, well it done worst.

JUDGE: Well, Judge, Judge Ditz find that they would always constitutionally sound after other factors that going to the different between the 9 cents and the 17 cents like inflation in other

expenditures.

MR. WOOD: No. The states own-- up this, this analysis has been going on.

JUDGE: So anything over 9 cents is, is bad?

MR. WOOD: Well, the Supreme Court saying the say so in Edgewood IV and he did say and they said we will allow 9 cents but that's fairly mix the standard and only because in the middle of progress and equity. You must do that. Well, now it said you sense and it's not really -- there's no rule argument about that.

JUDGE: Any further question? Thank you, Counsel.

MR. WOOD: Thank you.

REBUTTAL ARGUMENT OF R. TED. CRUZ ON BEHALF OF PETITIONER

MR. CRUZ: Mr. Chief Justice and may it please the Court. In rebuttal I'd like to raise six for this [inaudible]

JUDGE: Mr. Cruz can you address the issue that I, I just ask Counsel on this 9 cents versus 17 cents. That's Ditz opinion that they may know whose constitutionally are?

MR. CRUZ: With, with respect to equity both concerning facilities and, and I know as the initial manner. Both of the interveners attempt to avoid clear holding of Edgewood IV, which is that financial efficiency required only up to the extent of qualitative efficiency which is adequacy. Which means that once the Court determines, adequacy has been provided that the core of article VII, section 1. The general diffusion of knowledge is present and the system is presumptively adequate. And beyond that the Court is said repeatedly starting in edgewood II, again in Edgewood III, again in Edgewood IV that local supplementation is allow above and beyond. Mr. Thompson begin by saying there was testimony and there was a co-relation between dollars and results. Abd the word co-relation is very carefully chosen because the testimony did not say there was any causation between the two, simply that there had been co-relation. And indeed Justice Cormen writing alone in Edgewood III and writing to the Court in Edgewood IV explicitly rejected the premise as being a disputed policy matter on which there was no clear legal answer as to whether more money yields better results. But focusing on the result, Justice Wainwright answer, "We look at the other states and what about Texas, looking just the Texas and looking for example at Dallas ISD, one of the walk districts." In 2003, the 10th grade test results in English 58 percent of the 10th graders passed, the English test. The next year 2004, the same students now on 11th grade that went from 58 percent to 84 percent. In one year, those students rose and clear the higher bar. In math that went for 45 percent in 10th grade to 79 percent the next year in 11th grade. In science from 36 percent of the 10th grade to 78 percent in 11th grade -

JUDGE: How do you ...

- in some ...

JUDGE: How do you address the statement that Mr. Wood's made. That, that that just seems like for preparable statement. And how can you call a system adequate on 30 percent of the students don't graduate?

MR. CRUZ: Well, focusing on dropouts that, that there are several responses. First of all, the method the state use of calculate dropouts

is an actual pet who will go and physically count every student. And if the student doesn't show up, will require the districts to go and find out why. That is surely a rational system. The Alvarado and Edgewood districts ask the ...

JUDGE: And what, what percentage of dropout was that assessment yield?

MR. Cruz: That yields our ruling dropout of depending another accreditation between 1 and 2 percent but it is surely rational to require in actual count versus what the Edgewood and Alvarado districts acts approaches an estimation. An estimation is an acceptable way to do it but it can't be a rational to go and physically count. And in deed, the superintendents for every plaintiff district testify that will made their own count. They report those numbers accurately. So the plaintiff themselves are saying, their numbers are accurate but at the same time their saying, don't count our own numbers, count the estimation. And we point out that there was unrepeatable expert testimony that using the federal standard of dropouts which is what Texas is uses. Texas is first in the nation in dropouts controlling for social economic factors. That is surely not irrational. The same increase result from 10th to 11th grade are present with Alvarado, one of the property poor districts where you have English, going from 66 percent to 87. Math, from 50 percent to 90. Science from 47 percent to 92. Social studies, from 71 percent to 96. But even focusing just on minority and economically disadvantage to show which is much of where interveners focused their attention. Looking at the state live results on math, the results are compelling from 2003 to 2005 of of the 11th grade test. African-Americans in math, went for 52 percent to 67 percent. In English, from 59 percent to 84 percent. In science, from 52 percent to 68 percent. The same pattern is true for this panic students. The same pattern as true for economically disadvantage is.

JUDGE: Assuming all those are correct and focusing on the Texas you-- can we conclude that the reason for these success is increased spending by the district up to the \$50 level to meet the requirements of the state has, has given in the last few years.

MR. Cruz: To conclude that Mr. Chief Justice, they were need to the evidence of causation and there was no evidence of causation. One of the things Mr. Thompson said is he put it to the fact that the district-- some districts have had to cut their budget. But the district are not immune from ordinary budget pressures which particularly in 2002-2003 when there was a national economic down to many organization state like governmental private organization face budgetary pressures. One point to keep in mind, in 1995 the cap for all MNL and all facilities was a \$50. Since that time was stated broken facilities up and given another 50 cents for facilities. So the cap that is comparable to Edgewood IV is now 2 dollars. It's not a \$50 'cause a \$50 is just MNL and now and there's another 50 cents on top of it. So between 1995 and the precedent in ten years, the cap was recent 50 cents. But what the district were saying, is they should not based budgetary pressures, they should never have to cap their budget. It's interesting Mr. Thompson focused on Austin. The same year Austin was cutting it to budget, it may the discretionary decision to give each teacher a favorites. Now, that maybe a terrific policy decision but it's clearly a policy decision and the question is not whether there's a waste. We don't, we don't issue with waste or not. The question is, is a conserves the tax claim is state control. And the state is not-- is clearly not controlling either the assessment of the tax or the dispersal maintenance.

JUDGE: But don't we, don't we-- would you agree that like most of the school districts from the state are operating add or [inaudible] in their actual capacity?

MR. Cruz: That, that is true that most of the districts around the state-- two thirds of the districts are around the state have chosen to, to tax at a \$45 or above.

JUDGE: And so all this gains that we've seen about test forced duties related-- where are we go from here or where did they go then in terms of future improvements of the school?

MR. Cruz: There was no necessary connection between increase spending and increase results to some of the districts that are producing the best results have not increase their tax rates correspondingly. And some of the districts to the previous in the worst results have increased.

JUDGE: 'Cause they, 'cause they have bigger property tax based the facts from or because your using the resources about [inaudible]

MR. Cruz: Well, even the system is, is largely equalized that, that the property tax base has unlimited intent and so at the end of the day there was considerable testimony and there was a considerable national evidence that there are many other factors to go and producing results rather than in just month.

JUDGE: Counsel, let me ask you-- make's you unclear. You assume adequacy is justiciable. Adequacy is define-- I think you said, by basic minimum education. Given that definition and the test requirement respond-- recommended has school program those are the requirement go beyond the constitutional requirement. When I ask you earlier, what the parameters are under the constitution, I think you got the verdict, didn't get the answer. It could base on your other comments. I think you have say there are no constitutional parameters that can be enforce to the judicial system. Correct?

MR. Cruz: That's correct.

JUDGE: So then there no parameters legally and the, and the justice system for what the legislature can or cannot require, can or cannot allow with regard to the quality of public school education. Is that based on your possession? Is that correct?

MR. Cruz: That is not necessarily correct. If the Court determines adequacy is justiciable, there is under this Courts precedents. The -

JUDGE: My ...

MR. Cruz: - assessment of rational basis so there is this ...

JUDGE: My, my question presumed your possession that adequacy was not justiciable.

MR. Cruz: If adequacy isn't-- is not justiciable then there is not standard that you will be applied in Court. It still a real constitutional obligation upon the legislature and it's worth [inaudible] actually the half of the decision of Mr. Thompson's record ...

JUDGE: That does, does, does come to that in a second. So then the only we're straight on the quality of education for public schools in Texas. Assuming adequacy is not justiciable is political guidance, political punishment and political actions by the people who elect the legislature.

MR. Cruz: Well, that and, and the assumption that, that, that, that, that this Court would know doubt make, the legislature will carry out its constitutional duty. The constitution gives it to the legislature. And as the Court met branch of government, it is not a reasonable presumption to this Court to presume that the legislature is not going to take seriously carry out its constitutional duty.

JUDGE: So if the legislature decided that the basic minimum education was a 4th grade education and was nothing in this Court could do about it in your opinion. According to the state.

MR CRUZ: If the matter was non-justiciable there would not be illegalized -

JUDGE: So the answer is "yes."

MR CRUZ: - in the Court. The answer is "Yes," but if that happened, there would be protest in the street. The system that would not end the decision here.

JUDGE: Well, it's do and I give you certainly their political considerations about the, the states possession is 'cause adequacy is not justiciable, the legislature could require that the constitutional standard the people adopted for general diffusion of knowledge is that a 4th grade education and there's nothing this Court could do about it, that's the states possession.

MR CRUZ: Justice Wainwright, that is correct and that is an current in saying something is a political question. Anytime, the says something it's political question which is a common place notion. Federal law in Texas. Well, anytime when the Court does that, it does mean that the political actor [inaudible] and trusted could considerably do some horrible hypothetical but because it's a political question, it's not the rule of the Court's to correct those horrible hypothetical acts.

JUDGE: Certainly, I agree the Court's their only act within its proper ruling. However, traditionally constitution provisions particularly [inaudible] the bill of rights in the US constitution would protects rights provides checks in parameters on the political system equal protection take its for speech. Your saying here the constitutional standard in article VII, section 1 provides no such parameters even though the people establish those standards.

MR CRUZ: That is incorrect. What the checks in knowledge is both work, both ways. And the political question doctrine is a check in balance on the judiciary. It is notable that the Arkansas decision-- that how could be decision from Mr. Thompson records explicitly distinguish Arkansas Constitution from the constitution in Alabama, Pennsylvania, Florida, and Road Island because all of those like Texas assign the responsibility for the legis-- for education to the legislature. They explicitly specify the legislature. In Arkansas said, our constitution doesn't assign a true legislature. It assigns it to the state and there's a difference between a constitutional language textually assigns to coordinate branch of government and constitutional language that makes to the general obligation.

JUDGE: Let ask you quickly about facilities funding.

MR CRUZ: Yes.

JUDGE: Would you agree that property toward districts did have not have substantially equal access or substantially similar access to facilities funding. Understanding, in understanding is you argue that has to be districts specific. Why should that be different from MNL funding?

MR CRUZ: What, what we argue with respect to facilities is there needs to be some demonstration of, of comfortable difference in need because facilities needs are not distributed uniformly.

JUDGE: Well, that neither are MNL needs and away-- I mean their argue has that districts have specific means that MNL funds addressed. And, and why, why is that same MNL is not analysis is not-- analysis is not applicable to facilities. In other words were facility is so different that we take it out at Edgewood construct?

MR CRUZ: Because the Court has assume with regard to MNL that cause to a roughly equal. The MNL needs a roughly equal with regard with facilities such a high portion of it is some cost. It depends upon on what building is there already. And some districts have, have great building. Some districts have a lousy buildings but there is not a uniformly that it says in the answer. Moreover, the Edgewood in Alvarado districts reputedly-- repeatedly refuse to address Edgewood IV square holding that financial efficiency only applies up to a level of a general diffusion of knowledge. And finally with regard the facilities is important to keep in mind that system equalizes 29 cents above the \$50. The first 29 cents of facility funding through the EDA and the IFA. The EDA in particular which is an existing down allotment, it says 1999 has allocated consistently between 4 and 500 million a year and the legislature has never once fail to rule those funds over from what it was inactive, which means the district can pass upon like one payment and they automatically qualified for equalized funds on under the EDX.

JUDGE: I have two questions. Just brief [inaudible]. We have ask whether the case might have trying to complete if they have been individual plaintiffs and that would have been ...

MR CRUZ: It, it, it may well, for, for example in, in Edgewood IV then the individual plaintiff's specifically saw that the remedy school choice and, and that was a remedy that those individual plaintiff's believe would fix the system more than would more money to the districts.

JUDGE: But still they were arguing for unconstitutionality.

MR CRUZ: They were.

JUDGE: And the commissioner under the cap [inaudible] under the injunction as of October 1st not to further for an-- the public school system. In the past when the Court has concluded that there was constitutional violation, the state haves had anywhere from couple of years to couple a weeks to do something about it. Obviously the deadline now is a couple of months away does the state have any knew of this point if it's loose the case on anyone of the [inaudible] that are argued have a deadline in changes on the school year function on the school.

MR CRUZ: As initial matter it's our judgment that, that the district court injunction os state by operation about the appeals so we do not view the October 1st deadline as constrained in this Court. In terms of remedies, if the Court were to conclude that this were unconstitutional state tax. There would be some of remedies open to the Court. One remedy would choose the Jus-- Justice Edward that they striking on the, the state cap and that would in some ways that clean this remedy. A second remedy would be striking the cap district by district or each of the thousand and 29 districts that could demonstrate that they were act or lacking any full discretion below the cap were the third remedy and the one with the, with the Court has employ in positive with the decision to what has struck down the system would be enjoy the entire system and we gets the legislature to determine what to do from there.

JUDGE: But-- and but on the time frames, I guess it's anybodies notion. How time [inaudible]

MR CRUZ: With, with respect to time frame, the office of the Attorney General certainly urgent the Court to decide what's matter quickly as possible that the fact that Court has set an standard to get an argument in the case that the Court's have the same judgment.

JUDGE: Thank you, but I'm ...



JUDGE: I have one another Chief. How does the-- what is the effect to the opinion of the Governors enjoying the public school legislature? How does that plan the possession?

MR CRUZ: At least right now the states was trying and litigated the record to presents the case to this Court and, and, and so I do not suggest it, in facts they are given to in this Court other than you say that, that the legislature is grappling with this issues right now say this is [inaudible] question is not a looser and that the political branches of certainly [inaudible]. If it so happen that the legislature duties substantial changes, we'll find a plan. I have no doubt that the, the-- what would be appropriate would be for the parties just let supplemental brief at that time assessing the impact of whatever what might happen but the last and until something happens, it's not easy to speculate how that maybe the factor is.

JUDGE: Thank you Mr. Cruz. This process are submitted and the Marshall will now adjourned the Court.

COURT MARSHALL: All right. [inaudible]. The honorable [inaudible] has been [inaudible].

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