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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ALAMEDA
14

15 MAYA ROBLES-WONG, et al.,

16 Plaintiffs,

17 v.
18

19 STATE OF CALIFORNIA; and ARNOLD
20 SCHWARZENEGGER, Governor of the
State of California,

21 Defendants,

22 and
23
24

25 CALIFORNIA TEACHERS
26 ASSOCIATION,

27 Plaintiff-Intervener.
28

Case No. RG10515768

Hearing Reservation No: 1094185

**DEMURRER OF STATE OF
CALIFORNIA AND GOVERNOR
ARNOLD SCHWARZENEGGER TO
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND
COMPLAINT-IN-INTERVENTION;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: September 14, 2010
Time: 3:00 p.m.
Dept: 17
Judge: The Honorable Steven A. Brick
Trial Date: N/A
Action Filed: May 20, 2010

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DEMURRER

Defendants, State of California¹ and Governor Arnold Schwarzenegger, jointly and severally demur to the first, second, third, and fourth causes of action in both the Complaint for Declaratory and Injunctive Relief (Complaint I) and Complaint-in-Intervention (Complaint II) (collectively referred to as the Complaints) in this matter on the following grounds:

Demurrer to the "First Cause of Action"²

1. The First Cause of Action fails to state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e).)

2. The First Cause of Action contains a defect or misjoinder of parties. (Code Civ. Proc., § 430.10, subd. (d).)

3. The Court has no subject matter jurisdiction over the First Cause of Action. (Code Civ. Proc., § 430.10, subd. (a).)

Demurrer to the "Second Cause of Action"

4. The Second Cause of Action fails to state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e).)

5. The Second Cause of Action contains a defect or misjoinder of parties. (Code Civ. Proc., § 430.10, subd. (d).)

6. The Court has no subject matter jurisdiction over the Second Cause of Action. (Code Civ. Proc., § 430.10, subd. (a).)

Demurrer to the "Third Cause of Action"

7. The Third Cause of Action fails to state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e).)

8. The Third Cause of Action contains a defect or misjoinder of parties. (Code Civ. Proc., § 430.10, subd. (d).)

¹ Defendant State of California does not represent any unnamed state agencies, unnamed state officials, or the Legislature.

² Both the complaint and complaint-in-intervention employ the same enumeration of the same causes of action. Accordingly, this demurrer will refer and intend to apply to the enumerated causes of action in the Complaints simultaneously unless otherwise noted.

1 9. The Court has no subject matter jurisdiction over the Third Cause of Action.
2 (Code Civ. Proc., § 430.10, subd. (a).)

3 **Demurrer to the "Fourth Cause of Action"**

4 10. The Fourth Cause of Action fails to state facts sufficient to constitute a cause of
5 action. (Code Civ. Proc., § 430.10, subd. (e).)

6 11. The Fourth Cause of Action contains a defect or misjoinder of parties. (Code
7 Civ. Proc. § 430.10, subd. (d).)

8 12. The Court has no subject matter jurisdiction over the Fourth Cause of Action.
9 (Code Civ. Proc., § 430.10, subd. (a).)

10 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER**

11 **INTRODUCTION**

12 Plaintiffs in these Complaints ask the court to invalidate the entirety of California's
13 "educational finance system" and to order the Legislature to re-design an entirely new scheme for
14 public school financing. However, while plaintiffs purport to assail the State's entire school
15 funding "system," plaintiffs' contentions focus upon a single point: that defendants are allegedly
16 failing to adequately fund public education. Defendants, State of California and Governor
17 Schwarzenegger, are deeply committed to ensuring an adequate education for all California
18 students and are sympathetic to the concerns raised by plaintiffs. However, plaintiffs' claims are
19 simply not appropriate for judicial resolution and are foreclosed by the California Constitution,
20 which itself defines the constitutionally adequate level of State funding for public education.
21 Plaintiffs also fail to bring their claims against the parties responsible for establishing and
22 maintaining the allegedly deficient school finance system. The demurrers to plaintiffs'
23 Complaints should be sustained, and the courts and the State spared from the quagmire of a
24 lengthy and improper legal battle over the constitutional adequacy of the State's present and
25 future systems for funding public education.

26 This demurrer should be sustained without leave to amend because plaintiffs' novel legal
27 claims are not cognizable. Plaintiffs' claims and purported remedy violate the separation of
28 powers doctrine because, under the California Constitution and applicable case law, the

1 California Legislature: (1) has sole constitutional authority to appropriate funds; and (2)
2 maintains plenary power over the public school system. Thus, adjudication of plaintiffs' claims
3 would require the court to invade the recognized plenary authority of the State Legislature to
4 allocate budget appropriations among competing needs, and to address the complex public policy
5 and fiscal issues involved in providing a quality education for all California students. (See,
6 *Grossmont Union High School District v. State Department of Education* (2008) 169 Cal.App.4th
7 869, 880 ["The allegation that the Legislature is not providing enough funding for special
8 education is not a basis for a lawsuit. How much money to collect and how to spend it are
9 matters entrusted to the Legislature, not the judiciary."].)³

10 Further, the clauses of California's Constitution invoked by plaintiffs do not create a
11 judicially enforceable right to increased funding or to a "better designed" public school finance
12 system. Indeed, the level of funding required by California's Constitution has already been
13 established by California voters who amended the Constitution in 1988 through Proposition 98, to
14 establish what would constitute a minimum level of state funding for public education.

15 This demurrer must also be sustained because plaintiffs have sued the wrong parties.
16 Actions to enjoin state laws or the actions of state officials must be brought against those state
17 officers with administrative responsibility over the laws or programs in question. Neither the
18 "State of California" nor the "Governor of the State of California" administer or make
19 appropriations to California's public school financing system. Defendants, therefore, have been
20 improperly named in this litigation.

21 Plaintiffs also fail to allege any basis for standing to present their claims. The Complaint
22 fails to allege that the individually named minors suffered direct injury on account of the
23 generically alleged under-funding of California's schools. The school district and non-profit

24 ³ Although the courts have addressed the obligation to provide equity or parity in state
25 education spending and the allocation of resources under the equal protection clause of the state
26 constitution (see, e.g., *Serrano v. Priest* (1977) 18 Cal.3d 728 (*Serrano II*) [invalidating
27 Legislature's establishment of districts permitting inequitable spending in light of
28 supplementation of state aid through local property taxes]; *Butt v. State of California* (1992) 4
Cal.4th 668 [early closing of school district while others remained open]), no court has held that
the constitution creates a judicially enforceable adequacy standard.

1 corporation plaintiffs also lack standing to object to the sufficiency and distribution of funding for
2 public schools under the California Constitution.

3 Finally, to the extent plaintiffs complain about the failure of the State to fund educational
4 mandates, this Court lacks jurisdiction over these causes of action because plaintiffs have not
5 exhausted their sole and exclusive remedies with the California Commission on State Mandates.
6 Filing a claim with the California Commission on State Mandates is a statutorily required
7 predicate to filing a lawsuit.

8 Accordingly, defendants' demurrers should be sustained without leave to amend.

9 STATEMENT OF FACTS AND OF THE CASE

10 A. Overview of California's Education Finance System

11 In *Butt v. State*, *supra*, 4 Cal. 4th 668, 679, fn. 11, the California Supreme Court described
12 the State's education finance scheme as follows: "The funding scheme for public education is
13 complex [. . .] 'The Legislature has attempted to equalize school district funding . . . by the use of
14 a 'base revenue limit' for each district. Each district is classified by size and type. ([Ed.] Code,
15 [§] 42238.) Based upon this classification scheme, each district has a 'base revenue limit' per
16 unit of average daily attendance. The base revenue limit for any district includes the amount of
17 property tax revenues a district can raise, with other specific local revenues, coupled with an
18 equalization payment by the State, thus bringing each district into a rough equivalency of
19 revenues. (Compare [Cal. Code Regs., tit. 5, §] 15371, et seq.; [Ed.] Code [§] 42238 et seq.) [¶]
20 Because the student population is so diverse, the Legislature had to supplement the base revenue
21 limit with specific augmentations targeted for categories of children with needs that require
22 special attention. These supplements are designated as 'categorical' aid" (*Ibid.*)

23 In addition, *Butt* noted: "In furtherance of the State system of free public education, the
24 Constitution also creates State and county educational offices, including a Superintendent of
25 Public Instruction and a State Board of Education. (Cal. Const., Art. IX, §§ 2-3.3, 7.) It
26 authorizes the formation of local school districts (*id.*, §§ 6 1/2, 14), requires that all public
27 elementary and secondary schools be administered within the Public School System (*id.*, § 6),
28 establishes a State School Fund (Fund) (*id.*, § 4), reserves a minimum portion of State revenues

1 for allocation to the Fund (*id.*, art. XVI, §§ 8, 8.5), guarantees minimum allocations from the
2 Fund for each public school (*id.*, art. IX, § 6), specifies minimum salaries for public school
3 teachers (*ibid.*), authorizes the State Board of Education to approve public school textbooks (*id.*, §
4 7.5), and permits the Legislature to grant local districts such authority over their affairs as does
5 not ‘conflict with the laws and purposes for which school districts are established’ (*id.*, § 14).”⁴
6 (*Butt v. State*, *supra*, 4 Cal.4th at p. 680.)

7 **B. Procedural Background of the Case**

8 Plaintiffs filed Complaint I on May 20, 2010. On June 21, 2010, the parties submitted a
9 stipulated request to continue the due date for a responsive pleading to July 20, 2010. The court
10 granted the extension request. On July 16, 2010, CTA was given permission to intervene in this
11 action with Complaint II that contains all the same allegations and causes of action as in
12 Complaint I. Complaint II was filed on the same date.

13 By agreement of the parties and by order of this court, defendants were granted until
14 August 10, 2010, to file their response to the Complaints in this matter. Defendants file this
15 demurrer in response to the Complaints.

16 **STANDARD OF REVIEW**

17 **A. Standard for Demurrer**

18 A demurrer is proper when: (1) “[t]he court has no jurisdiction of the subject of the cause of
19 action alleged in the pleading”; (2) “[t]here is a defect or misjoinder of parties”; or (3) [t]he
20 pleading does not state facts sufficient to constitute a cause of action.” (Cal. Code Civ. Proc., §
21 430.10(a)(d)(e)). A demurrer tests the legal sufficiency of the complaint” (*Hernandez v.*
22 *City of Pomona* (1996) 49 Cal.App.4th 1492, 1497.) The court deems as true all material facts

23
24 ⁴ The Legislature “has assigned much of the governance of the public schools to the local
25 districts (e.g., [Ed. Code] §§ 14000, 35160 et seq., 35160.1), which operate under officials who
26 are locally elected and appointed ([Ed. Code] §§ 35020, 35100 et seq.). The districts are separate
27 political entities for some purposes. (See, *Butt v. State*, 4 Cal.4th at 681.) School districts “are
28 agencies of the state The state is the beneficial owner of all school properties and local
districts hold title as trustee for the state (citation omitted.) School moneys belong to the state
and the apportionment of funds to a school district does not give the district a proprietary interest
in the funds (citing *California Teachers Assn. v. Huff* (1992) 5 Cal.App.4th 1513, 1524.)” (*Hayes*
v. Comm. On State Mandates (1992) 11 Cal.App.4th 1564, fn.5 at p.1578.)

1 properly pled (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591 [*Serrano I*]) and those facts that may be
2 implied or inferred from those expressly alleged. (*Marshall v. Gibson, Dunn & Crutcher* (1995)
3 37 Cal.App.4th 1397, 1403.)

4 However, a court will not assume the truth of contentions, deductions or conclusions of fact
5 or law, and the court may disregard allegations that are contrary to law, or are contrary to a fact of
6 which judicial notice may be taken. (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112,
7 1126.) Thus, “where an allegation is contrary to law or to a fact of which a court may take
8 judicial notice, it is to be treated as a nullity.” (*Fundin v. Chicago Pneumatic Tool Co.* (1984)
9 152 Cal.App.3d 951, 955.) The court “will not close [its] eyes to situations where a complaint
10 contains . . . allegations contrary to facts which are judicially noticed.” (*Del E. Webb Corp. v.*
11 *Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.)

12 Consistent with the fundamental principle of truthful pleading, a complaint otherwise good
13 on its face, can be rendered defective by judicially noticed facts. (*Watson v. Los Altos School*
14 *Dist.* (1957) 149 Cal.App.2d 768, 771-772; see Code Civ. Proc., § 430.30, subd. (a).) Thus, a
15 demurrer may be sustained on the ground that matters properly subject to judicial notice show
16 that the complaint fails to state facts sufficient to constitute a cause of action. (See, *Saltarelli &*
17 *Steponovich v. Douglas* (1995) 40 Cal.App.4th 1, 5.)

18 **B. Declaratory Relief**

19 “Declaratory relief is not available unless there is a real dispute between parties, ‘involving
20 justiciable questions relating to their rights and obligations.’” (*Taxpayers for Improving Public*
21 *Safety v. Schwarzenegger* (2009) 172 Cal.App.4th 749, 768 [citation omitted].) “The
22 fundamental basis of declaratory relief is an actual, present controversy.’ *Id.* An actual
23 controversy is ‘one which admits of definitive and conclusive relief by judgment within the field
24 of judicial administration, as distinguished from an advisory opinion upon a particular or
25 hypothetical state of facts. The judgment must decree, not suggest, what the parties may or may
26 not do.’” (*Ibid.*, quoting *In re Claudia E.* (2008) 163 Cal.App.4th 627, 638.)

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(continued...)

1 §§ 7(a) and (b) and Article IV, § 16];⁶ Complaint I at p. 54:5-13; Complaint II at pp. 37-38:24-4),
2 and the provision for setting apart funding for education (Fourth Cause of Action [Article XVI, §
3 8(a)]; Complaint I at p. 54:15-23; Complaint II at p. 38:5-14.)⁷ What plaintiffs fail to address,
4 however, is that the Constitution itself identifies the minimum level of school funding required in
5 the State of California.

6 Article XVI, § 8, of the State Constitution implements Proposition 98. "Proposition 98
7 provides for the improvement of public education . . . [in that it] establishes a minimum

8 (...continued)

9 [W]e reject [plaintiffs'] contention that the school financing system violates article
10 IX, section 5 of the California Constitution Plaintiffs' argument is that the
11 present financing method produces separate and distinct systems, each offering an
12 educational program which varies with the relative wealth of the district's residents.
13 [W]e have never interpreted the constitutional provision to require equal school
14 spending; we have ruled only that the educational system must be uniform in terms of
15 the prescribed course of study and educational progression from grade to grade. We
16 think it would be erroneous to hold otherwise.

17 It is firmly established by the Constitution and case law that California's system of
18 common schools are created by the Legislature. (See *Reed v. Hollywood Professional Sch.*
19 (1959) 169 Cal.App. 2d Supp. 887, 889 ["The legislature has provided for a system of common
20 schools."].)

21 To the extent plaintiffs contend that section 5 creates a judicially enforceable right to
22 educational opportunities or basic educational necessities, courts have explicitly rejected the
23 argument that those things are constitutionally prescribed by section 5. (*Wilson v. State Bd. of*
24 *Educ.*, 75 Cal.App. 4th at p. 1135; *California Teachers Ass'n v. Board of Trustees* (1978) 82
25 Cal.App.3d 249, 255 [curriculum and courses of study "are not prescribed by the Constitution . . .
26 [and] do not constitute a part of the system"].) In *Wilson*, 75 Cal.App. 4th at p. 1135, the Court
27 held that:

28 The public school system is the system of schools, which the Constitution requires the
Legislature to provide--namely kindergarten, elementary, secondary and technical
schools, as well as state colleges--and the administrative agencies which maintain
them. However, the curriculum and courses of study are not constitutionally
prescribed. Rather, they are details left to the Legislature's discretion. Indeed, they
do not constitute part of the system but are merely a function of it. The same could
be said for such functions as educational focus, teaching methods, school operations,
furnishing of textbooks and the like.

⁶ Article I, § 7(a), provides, in pertinent part, that "[a] person may not be . . . denied equal
protection of the laws" Article I, § 7, subdivision (b), provides in pertinent part that "[a]
citizen or class of citizens may not be granted privileges or immunities not granted on the same
terms to all citizens" Article IV, § 16, subdivision (a), provides that "[a]ll laws of a general
nature have uniform operation."

⁷ Article XVI, § 8(a), provides, in part, that from state revenues there shall first be set
apart the moneys to be applied by the state for the support of the public school system and
institutions of higher education.

1 guaranteed state education funding level for ‘the moneys to be applied by the State for the support
2 of school districts and community college districts’ (Cal. Const., art. XVI, § 8, subd. (b).)”
3 (See, *California Teachers Association v. Hayes* (1992) 5 Cal.App.4th 1513, 1518-1519.)

4 In approving Proposition 98 in 1988, California voters adopted amendments to the State
5 Constitution that were intended, as set forth in the law’s statement of “purpose and intent,” to
6 “enable Californians to once again have one of the best public schools systems in the nation,” and
7 ensure that “our schools spend money where it is most needed.” (Proposition 98, §§ 2(c), (e).) In
8 particular, Proposition 98:

9 [A]mended article XVI, section 8 of the California Constitution to provide a
10 minimum level of funding for schools. (Ballot Pamp., Gen. Elec. (Nov. 8, 1988) p.
11 78.) The measure, supported by the California Teachers Association and the state
12 Parent Teacher Association, set up two tests, later expanded by the passage of
13 Proposition 111 in 1990 to three tests, for determining the mandated minimum
14 funding level for the coming year. [Citation and footnote omitted.] The first formula
15 uses a percentage of General Fund revenues appropriated to schools in fiscal year
16 1986-1987. The second and third formulas use a measure that includes both General
17 Fund revenues and “allocated local proceeds of taxes.” (Cal. Const., art. XVI, § 8,
18 subd. (b).)

19 (*County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1289-1290.)

20 Through Proposition 98, the voters of the State of California established a scheme under the
21 State Constitution for determining the minimum level of funding required to support public
22 education. Adherence to this funding scheme – as appears to be conceded by plaintiffs in their
23 complaints – fulfills defendants’ duties under the State Constitution with respect to funding
24 education. (Complaints [4th Cause of Action challenges only art. XVI, § 8(a)].) It is important to
25 note that there is no allegation that defendants have violated the provisions of Proposition 98 as
26 set forth in article XVI, section 8(b) – 8(h). (See Complaint I at pp. 31-33, ¶¶ 97-105; Complaint
27 II at pp. 21-21, ¶¶ 84-90.)

28 And, while plaintiffs generally complain about funding levels for education, the present
action does not seek to enjoin any particular action of the California Legislature. Indeed, the
California Legislature is not even a named party even though the constitutional provisions relied
on by plaintiffs provide plenary jurisdiction and authority to the Legislature over education policy
and budget appropriations for education.

1 To the extent plaintiffs suggest a conflict between Proposition 98 and other more general
2 rights under the Constitution, as noted above, the specific provisions under the Constitution must
3 govern. In *Strauss v. Horton* (2009) 46 Cal.4th 364, 407, the California Supreme Court recently
4 held that, ““when constitutional provisions can reasonably be construed so as to avoid conflict,
5 such a construction should be adopted. As a means of avoiding conflict, a recent, specific
6 provision is deemed to carve out an exception to and thereby limit an older, general provision.””
7 (*Ibid.*, quoting *Bowens v. Superior Court (People)* (1999) 1 Cal.4th 36, 45] [italics in original].)

8 In *Strauss*, the Court upheld a constitutional provision that effectively limited the right of
9 same-sex couples to marry as adopted by California voters by initiative in 2008 under Proposition
10 8. (*Strauss*, 46 Cal.4th at p. 457.) Opponents of Proposition 8 argued that the measure violated
11 their rights of privacy, due process, and equal protection under the State Constitution, and
12 therefore constituted an impermissible revision of the State Constitution by initiative. The Court
13 rejected these arguments, holding that, “we properly must view the adoption of Proposition 8 as
14 carving out an exception to the preexisting scope of the privacy and due process clauses of the
15 California Constitution.” (*Id.*, 46 Cal.4th at p. 408.) The *Strauss* decision rejected the argument
16 that Proposition 8 was invalid because it purported to limit “fundamental” or “inalienable” rights.
17 (*Id.*, 46 Cal.4th at pp. 465-468.)

18 The *Strauss* decision confirms that California voters may, through constitutional
19 amendment, define State constitutional rights. Thus, even if Proposition 98’s funding scheme
20 conflicts with the constitutional clauses invoked by plaintiffs – which defendants do not concede
21 – the funding scheme under Proposition 98 must be given effect, along with the other alleged
22 inter-related constitutional spending limits on state and local government, and school districts
23 under Proposition 13 and Proposition 4 (Gann). (Cal. Const art. XIII.B and art. XVI, § 8(e); see,
24 also, *Hayes v Comm. on State Mandates*, 11 Cal.App.4th at 1578-1581, for a recap of the various
25 constitutional amendments in response to *Serrano*, including Propositions 13, 4, 98 and 111.)

26 Thus, the Complaints fail to allege facts sufficient to support any of their causes of action
27 challenging the constitutional adequacy of the level of education funding that has resulted from
28 the present, constitutionally based, educational funding system.

1 **II. THE COMPLAINTS ARE NONJUSTICIABLE BECAUSE THEY VIOLATE THE**
2 **SEPARATION OF POWERS DOCTRINE**

3 Adjudication of plaintiffs' complaints would violate the separation of powers doctrine
4 because the Complaints ask this court to: (1) order the appropriation of more money for
5 California's schools; and (2) order the re-design and implementation of an entirely new education
6 finance system. Under the California Constitution and applicable case law, the California
7 Legislature: (1) has sole constitutional authority to appropriate funds; and (2) maintains plenary
8 power over the public school system. Accordingly, the Complaints present a nonjusticiable
9 political question, and this demurrer should be sustained for failing to state facts sufficient to
10 constitute a cause of action. As the United States Supreme Court has held, the "nonjusticiability
11 of a political question is primarily a function of the separation of powers." (*Baker v. Carr* (1962)
12 369 U.S. 186, 210.)

13 The separation of powers doctrine should also inform the court's analysis should it reach
14 the merits of the complaints. Even if a challenge to the education finance system is justiciable,
15 the judgments of the Legislature should only be overturned when they are irrational. Separation
16 of powers concerns also foreclose judicial imposition of the remedies sought by plaintiffs.
17 Analyzing California case law and the litigation in other state courts, each of these issues are
18 addressed below.

19 **A. The Separation of Powers Doctrine in California**

20 In California, the separation of powers doctrine is embodied in the Article III, section 3, of
21 the Constitution, that provides:

22 The powers of state government are legislative, executive, and judicial. Persons
23 charged with the exercise of one power may not exercise either of the others except as
24 permitted by this Constitution.

25 This constitutional principle has been further defined by the courts. The California
26 Supreme Court has explained that "[p]rinciples of comity and separation of powers place
27 significant restraints on courts' authority to order or ratify acts normally committed to the
28 discretion of other branches or officials." (*Butt v. State of California*, 4 Cal. 4th at p. 695.) "In
29 particular, the separation of powers doctrine (Cal. Const., art. III, § 3) obliges the judiciary to

1 respect the separate constitutional roles of the Executive and the Legislature.” (*Ibid*; see also,
2 *Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 445 [“The courts may not order
3 the Legislature or its members to enact or not to enact, or the Governor to sign or not to sign,
4 specific legislation.”].)

5 Moreover, “[i]t has long been clear that these separation-of-powers principles limit judicial
6 authority over appropriations.” (*County of San Diego v. State* (2008) 164 Cal. App. 4th 580, 594;
7 *Mandel v. Myers* (1981) 29 Cal.3d 531, 539 [“The separation of powers doctrine has generally
8 been viewed as prohibiting a court from directly ordering the Legislature to enact a specific
9 appropriation.”]; *Long Beach Unified Sch. Dist. v. State of California* (1990) 225 Cal.App.3d 155,
10 180 [“A court cannot compel the Legislature either to appropriate funds or to pay funds not yet
11 appropriated”].)

12 In the context of education financing, the Court of Appeal has confirmed the fundamental
13 principle that only the Legislature can determine education funding. In *Grossmont Union High*
14 *School District v. State Department of Education*, 169 Cal.App.4th 869, 886, the Court of Appeal
15 held that “[t]he allegation that the Legislature is not providing enough funding for special
16 education is not a basis for a lawsuit. How much money to collect and how to spend it are
17 matters entrusted to the Legislature, not the judiciary.” (*Ibid.*)

18 Beyond appropriations, it is also well-established that designing and implementing
19 California’s education policy is the prerogative of the Legislature or by initiative, the People.
20 California’s Constitution provides that “[t]he Legislature shall provide for a system of common
21 schools by which a free school shall be kept up and supported in each district at least six months
22 in every year, after the first year in which a school has been established.” (Article IX, § 5
23 (emphasis added).) There is “no doubt that our Constitution vests the Legislature with sweeping
24 and comprehensive powers in relation to our public schools including broad discretion to
25 determine the types of programs and services which further the purposes of education.” (*Wilson*
26 *v. State Board of Education, supra*, 75 Cal. App. 4th at pp. 1134-35 (internal citations omitted).)
27 The “Legislature’s power over our public school system is plenary, subject only to constitutional
28 restraints.” (*Ibid.*) In this case, plaintiffs ask the court to violate these fundamental precepts by

1 overriding both the Legislature and the People to compel the allocation of money to California
2 schools and to order the re-design of California's entire education finance system. But this, the
3 court cannot do.

4 Accordingly, the court should sustain this demurrer on the additional ground of the
5 separation of powers doctrine. Beyond the fact that allocating scarce public monies and
6 implementing an entirely new system of public school finance exceeds the institutional capacity
7 of the judiciary, there is also a "lack of satisfactory criteria for a judicial determination of"
8 whether California's school financing system is "intentionally, rationally, and demonstrably
9 aligned" with California's educational goals. (*Baker v. Carr*, 369 U.S. at p. 210.)

10 This court should also avoid what the Nebraska and Rhode Island Supreme Courts have
11 dubbed the "swamp," and "morass" of constitutional challenges to public school funding systems.
12 (See *Nebraska Coalition for Educational Equity and Adequacy (Coalition) v. Heinemen* (2007) .
13 273 Neb. 531, 557 ["[t]he landscape is littered with courts that have been bogged down in the
14 legal quicksand of continuous litigation and challenges to their states' school funding systems.
15 Unlike those courts, we refuse to wade into that Stygian swamp."]; *City of Pawtucket v. Sundlun*
16 (1995) 662 A.2d 40, 58-59 [The "absence of justiciable standards could engage the court in a
17 morass comparable to the decades-long struggle of the Supreme Court of New Jersey that has
18 attempted to define what constitutes the 'thorough and efficient' education specified in that state's
19 constitution," a case that "provides a chilling example of the thickets that can entrap a court that
20 takes on the duties of a Legislature."].)

21 Moving beyond California law, education finance litigation in other states provides
22 additional persuasive authority for dismissing this lawsuit as a nonjusticiable political question.

23 **B. Separation of Powers and Public School Funding Litigation in Other States**

24 The separation of powers doctrine has played a prominent role in public school funding
25 litigation nationwide. Many state supreme courts have affirmed the dismissal of lawsuits
26 challenging the adequacy of school funding as nonjusticiable political questions. And even state
27 courts that permitted school financing litigation to proceed have upheld the constitutionality of
28

1 their states' education financing system because of the substantial deference extended to the
2 legislatures under the separation of powers doctrine.

3 1. Public School Financing as a Nonjusticiable Political Question

4 a. Missouri

5 In *Committee for Educational Equality v. Missouri* (Mo. 2009) 294 S.W. 3d 477, 490, the
6 Missouri Supreme Court, sitting *en banc*, held that Missouri's Constitution did not require school
7 funding "adequacy" or per pupil expenditure equality, thereby affirming Missouri's school
8 funding system.⁸ Plaintiffs asserted that "Missouri's school funding formula results in a public
9 education system that is unconstitutionally disparate and inadequate." (*Id.* at p. 481.) Plaintiffs'
10 adequacy assertion was based on Article IX, section 1(a), of the Missouri Constitution – the
11 operative clause which is identical to California's Article IX, section 1 – that reads:

12 A general diffusion of knowledge and intelligence being essential to the rights and
13 liberties of the people, the general assembly shall establish and maintain free public
14 schools for the gratuitous instruction of all persons in this state within ages not in
excess of [21] years as prescribed by law.

15 (*Id.* at p. 488.)

16 The Missouri Supreme Court held that section 1(a)'s language reflected a "community
17 aspiration" that did not "describe a free-standing right to an 'adequate' education," nor did it
18 require an "equalizing mandate." (*Id.* at p. 490.) The language provided "no specific directive or
19 standard for how the State must accomplish a 'diffusion of knowledge.'" (*Id.* at p. 488.)
20 Moreover, the court emphasized that the "judiciary cannot invade the legislative branch's
21 province to fund schools beyond the requirements of section 3(b)" [a separate Missouri
22 constitutional requirement to set apart no less than 25% of state revenue for education]. (*Id.* at p.

23 ⁸ A number of state courts – without explicitly addressing the separation of powers
24 doctrine – have similarly held that their constitutional education clauses do not provide a
25 judicially enforceable quality standard. (See, e.g., *Bonner v. Daniels* (Ind. 2009) 907 N.E.2d 516,
26 517 [holding that the education clause in the Indiana Constitution "does not mandate any
27 judicially enforceable standard of quality, and to the extent that an individual student has a right,
28 entitlement, or privilege to pursue public education, this derives from the enactments of the
General Assembly, not from the Indiana Constitution."]; *Charlet v. Legislature of the State of
Louisiana* (La. 1st Cir. 1998) 713 So.2d 1199, 1207 [holding that the Louisiana Constitution
"does not require that the educational funding provided by the state be 'adequate' or 'sufficient'
or that it achieve some measurable result for each pupil or each school district."].)

1 489.) “The aspiration for a ‘general diffusion of knowledge and intelligence’ concerns policy
2 decisions, and these political choices are left to the discretion of the other branches of
3 government.” (*Ibid.*)

4 **b. Nebraska**

5 In *Coalition, supra*, 273 Neb. at p. 534, the Nebraska Supreme Court held that plaintiffs’
6 assertions that Nebraska failed to provide sufficient funds for an “adequate” and “quality”
7 education “posed a nonjusticiable political question.” Plaintiffs averred that Nebraska’s
8 educational funding system violated two provisions of the Nebraska Constitution: (1) the
9 “religious freedom clause,” that required the legislature to “pass suitable laws . . . to encourage
10 schools and the means of instruction; and (2) the “free instruction clause,” that required the
11 legislature to “provide for the free instruction in the common schools of this state of all persons
12 between the ages of five and twenty-one years.” (*Id.* at p. 535.)

13 Examining the constitutional history of the free instruction provision, the Nebraska
14 Supreme Court concluded that the framers intentionally omitted any language that “would have
15 placed restrictions or qualitative standards on the Legislature’s duties regarding education.” (*Id.*
16 at p. 552.) Further, the religious freedom clause did not add qualitative standards to the
17 legislature’s duty to provide free instruction. (*Ibid.*) The court held that “[a]ny judicial standard
18 effectively imposing constitutional requirements for education would be subjective and
19 unreviewable policymaking by this court” and that “the relationship between school funding and
20 educational quality requires a policy determination that is clearly for the legislative branch.” (*Id.*
21 at p. 553.)

22 **c. Oklahoma**

23 In *Oklahoma Educational Association v. Oklahoma* (Okla. 2007) 158 P.3d 1058, 1065, the
24 Supreme Court of Oklahoma held that an action, seeking a declaratory judgment that state
25 funding of public schools was inadequate, presented “a nonjusticiable political question.” (*Ibid.*)
26 Plaintiffs contended that Oklahoma school children had a constitutional right to “receive a basic,
27 adequate education” and that they were deprived of that right. (*Id.* at p. 1062.)
28

1 However, the Oklahoma Supreme Court found that the Oklahoma Constitution “charges the
2 Legislature with the duty of establishing a public school system,” and that the matter of
3 discharging this duty “is a question that rests solely with the Legislature.” (*Id.* at pp. 1065-1066.)
4 Further, fiscal policy and appropriating funds “is exclusively within the legislature’s power.” (*Id.*
5 at p. 1066.) Therefore, the court found that “plaintiffs are attempting to circumvent the legislative
6 process by having this Court interfere with and control the legislature’s domain of fiscal-policy
7 decisions and of setting educational policy by imposing mandates on the Legislature and by
8 continuing to monitor and oversee the Legislature. To do as plaintiffs ask would require this
9 Court to invade the Legislature’s power to determine policy. This we are constitutionally
10 prohibited from doing.” (*Ibid.*)

11 **d. Alabama**

12 In *Ex Parte James* (Ala. 2002) 836 So.2d 813, 819, the Alabama Supreme Court – after
13 Alabama courts handed down four education financing decisions spanning nearly a decade –
14 dismissed all pending education funding cases because it “now recognize[d] that any specific
15 remedy that the judiciary could impose would, in order to be effective, necessarily involve a[n]
16 usurpation of that power entrusted exclusively to the Legislature.” (*Ibid.*) After years of
17 litigation involving remedial plans requiring the legislature to formulate a constitutional
18 educational system, the Alabama Supreme Court “complete[d] our judicially prudent retreat from
19 this province of the legislative branch” and dismissed all pending cases challenging the
20 constitutionality of the state’s funding of public education as nonjusticiable. (*Ibid.*)

21 **e. Illinois**

22 In *Lewis v. Spagnolo* (1999) 186 Ill.2d 198, 206, 210, the Illinois Supreme Court held that
23 plaintiffs “may not state a claim based upon violation of the education article of the Illinois
24 Constitution” because “questions relating to the quality of education are solely for the legislative
25 branch to answer.” (*Ibid.*) Plaintiffs averred that Illinois’ Constitution granted them the right to a
26 “minimally adequate education,” which they alleged were denied. (*Id.* at p. 205.) The Illinois
27 Constitution provides that “[a] fundamental goal of the People of the State is the educational
28 development of all persons to the limits of their capacities. The State shall provide for an

1 efficient system of high quality public educational institutions and services The State has
2 primary responsibility for financing the system of public education.” (*Ibid.*) Among other
3 claims, plaintiffs asserted that the education system did not provide “high quality” education as
4 the constitution required. (*Ibid.*)

5 The court rejected the plaintiffs’ claims, holding that “questions relating to the quality of
6 education are solely for the legislative branch to answer.” (*Id.* at p. 206, quoting *Committee for*
7 *Educational Rights v. Edgar* (1996) 174 Ill.2d 1, 24.) The court explained that “what constitutes
8 a ‘high quality’ education cannot be ascertained by any judicially discoverable or manageable
9 standards and that the constitution provides no principled basis for a judicial definition of ‘high
10 quality.’” (*Id.* at p. 207, quoting *Committee*, 174 Ill.2d at pp. 28-30.) The court expressed
11 concern that judicial determination of educational quality would “largely deprive members of the
12 general public of a voice in a matter which is close to the hearts of all individuals in Illinois” and
13 therefore “[s]olutions to problems of educational quality should emerge from a spirited dialogue
14 between the people of the state and their elected representatives.” (*Ibid.*) Requiring the
15 “judiciary to ascertain from the constitution alone the content of an ‘adequate’ education” was
16 improper because “these determinations are for the legislature, not the courts, to decide.” (*Id.* at
17 p. 209.) Thus, the Illinois Supreme Court affirmed the lower court’s dismissal with prejudice.

18 f. Pennsylvania

19 In *Marrero v. Commonwealth of Pennsylvania* (1999) 559 Pa. 14, 20, the Supreme Court of
20 Pennsylvania held that school district funding was a nonjusticiable political question and
21 dismissed the lawsuit. In *Marrero*, plaintiffs claimed that the state legislature failed “to provide
22 funding for the Philadelphia School District in violation of Article III, section 14 of the
23 constitution, which obligates the General Assembly to ‘provide for the maintenance and support
24 of a thorough and efficient system of public education.’” (*Id.* at p. 15.)

25 The Pennsylvania high court found that the education clause did “not [sic] confer an
26 individual right upon each student to a particular level or quality of education, but, instead, [sic]
27 impose[d] a constitutional duty upon the legislature to provide for the maintenance of a thorough
28 and efficient system of public schools throughout the Commonwealth.” (*Id.* at p. 17.) The

1 Pennsylvania Supreme Court affirmed the lower court's finding that the education clause in
2 Pennsylvania's Constitution was met by the state enacting "a number of statutes relating to the
3 operation and funding of the public school system in both the Commonwealth and, in particular,
4 in the City of Philadelphia." (*Id.* at p. 20.) In terms of adequacy, the court was "unable to
5 judicially define what constitutes an 'adequate' education or what funds are adequate to support
6 such a program. These are matters which are exclusively within the purview of the General
7 Assembly's powers, and they are not subject to intervention by the judicial branch of our
8 government." (*Ibid.*) Thus, the matter was dismissed as a nonjusticiable political question.

9 **g. Florida**

10 In *Coalition for Adequacy and Fairness in School Funding, Inc. v. Chiles* (Fla. 1996) 680
11 So.2d 400, 408, the Florida Supreme Court held that separation of powers and political question
12 considerations precluded a finding that Florida failed to provide an adequate education to its
13 children under Florida's Constitution. The education clause of Florida's Constitution stated that
14 "[a]dequate provision shall be made by law for a uniform system of free public schools and for
15 the establishment, maintenance, and operation of institutions of higher learning and other public
16 education programs that the needs of the people may require." (*Id.* at p. 405.)

17 The Florida Supreme Court found that Florida's Constitution expressly assigned the power
18 to appropriate state funds to the legislature, and therefore, "judicial intrusion" was not justified.
19 (*Id.* at pp. 407-08.) The court further held that plaintiffs failed to demonstrate "an appropriate
20 standard for 'adequacy' that would not present a substantial risk of judicial intrusion into the
21 powers and responsibilities assigned to the legislature, both generally (in determining
22 appropriations) and specifically (in providing by law for an adequate and uniform system of
23 education)." (*Id.* at p. 408.) The remedies plaintiffs sought would "require the Court to pass
24 upon those legislative value judgments which translate into appropriations decisions," which
25 constituted a violation of the separation of powers doctrine. (*Id.* at pp. 406-07.)

26 **h. Rhode Island**

27 In *City of Pawtucket v. Sundlun* (R.I. 1995) 662 A.2d 40, 55, the Rhode Island Supreme
28 Court held that the education clause of the Rhode Island Constitution conferred no right or

1 guarantee of receiving an equal, adequate, and meaningful education. Plaintiffs sought a
2 declaratory judgment that Rhode Island's method of funding public education was
3 unconstitutional under the education and equal protection clauses of the state constitution. (*Id.* at
4 pp. 42-43.) The education clause of the Rhode Island Constitution reads:

5 The diffusion of knowledge, as well as of virtue among the people, being essential to
6 the preservation of their rights and liberties, it shall be the duty of the general
7 assembly to promote public schools . . . , and to adopt all means which it may deem
8 necessary and proper to secure to the people the advantages and opportunities of
9 education and public library services.

10 (*Id.* at pp. 49-50.)

11 The court held that this clause "confers no such [fundamental] right, nor does it guarantee
12 an 'equal, adequate, and meaningful education.'" (*Id.* at p. 55.) To the contrary, the education
13 clause explicitly leaves "all such [educational] determinations to the General Assembly's broad
14 discretion" under its "plenary" powers. (*Id.* at p. 56.)

15 The court further expressed strong separation of powers concerns. It characterized
16 plaintiffs as urging "us to interfere with the plenary constitutional power of the General Assembly
17 in education" and asking "the judicial branch to enforce policies for which there are no judicially
18 manageable standards." (*Id.* at p. 58.) The "proper forum for this deliberation is the General
19 Assembly, not the courtroom." (*Ibid.*) Further, the "absence of justiciable standards could
20 engage the court in a morass comparable to the decades-long struggle of the Supreme Court of
21 New Jersey that has attempted to define what constitutes the 'thorough and efficient' education
22 specified in that state's constitution," a case that "provides a chilling example of the thickets that
23 can entrap a court that takes on the duties of a Legislature." (*Id.* at p. 59.)⁹

24 ⁹ Plaintiffs' Complaints also aver that added financing will result in improved educational
25 outcomes for students and better performing schools. However, this core premise is faulty.
26 Indeed, even the Stanford study that plaintiffs cite in the Complaints (Complaint I at p. 48 [¶
27 161]; Complaint II at p. 32 [¶ 140]) states that "[a]s discussed much more fully below, we do not
28 yet have a good way of determining the exact dollars a district would need to achieve a given
outcome for its students." (See, Loeb, Byrk, and Hanushek, "Getting Down to Facts: School
Finance and Governance in California" ("Getting Down to Facts") (Stanford University 2007) at
p. 43, found at <http://irepp.stanford.edu/projects/cafinance.html>). More importantly, one of the
key conclusions of the study is that:

(continued...)

1 Therefore, many state supreme courts have affirmed the dismissal of public school funding
2 litigation in the first instance as nonjusticiable political questions, or expressed strong separation
3 of powers concerns when interpreting their state constitution's education clauses. This court
4 should similarly dismiss this lawsuit as a nonjusticiable political question. However, even if this
5 court determines that the amount of funding and the design of an education finance system is
6 justiciable under the California Constitution – a finding the defendants strongly oppose –
7 California's constitutionally designated public school financing should be considered under a
8 very deferential rationality standard. Other state courts such as New York and Massachusetts (see
9 below) have relied upon the separation of powers doctrine when according the legislature
10 substantial deference in devising constitutionally permissible public school finance systems.

11 **2. The Separation of Powers Doctrine Requires Judicial Deference to**
12 **the Legislature's Education Policy Choices**

13
14 (...continued)

15 It is clear, for example that solely directing more money into the current system will
16 not dramatically improve student achievement and will meet neither expectations nor
needs.

17 ("Getting Down to Facts" at p. 4.)

18 More money in the current system without significant [education] reforms is unlikely
19 to result in students meeting challenging state standards. As Imzaeki [2007/GDFT]
shows, the relationship between dollars and student achievement in California is so
uncertain that it cannot be used to gauge the potential effect of recourse on student
outcome.

20 ("Getting Down to Facts" at p. 47.)

21 The Study also states that: "For a number of reasons, however, determining whether the dollars
22 provided by the state are adequate is not an easy task If we do not know how to achieve a
23 given level of student performance, we cannot estimate the cost of such a goal." ("Getting Down
to Facts" at p. 44.)

24 To this end, if educational experts and current studies fail to identify all the variable
25 factors needed to improve student achievement, what standards will this court rely on to
26 determine whether the state's current education financing system is unconstitutionally
inadequate? What standard is to be applied to determine whether a student or school's failure to
meet proficiency or content standards result from inadequate funding or the result of a lack of
other non-monetary reforms?

27 It is because of the complexity of issues presented, that so many other state courts, as
28 noted *infra*, have dismissed these types of lawsuits as involving complex public policy questions
that are not traditionally within the expertise or constitutional purview of a court.

1 Even state courts which have found that their state constitution's education clause confers a
2 justiciable right have cited separation of powers concerns in upholding the constitutionality of
3 their states' education finance systems.

4 **a. New York**

5 For example, in *Campaign for Fiscal Equity, Inc. v. New York* (2006) 8 N.Y.3d 14, 19-20,
6 the Court of Appeals of New York held that the Governor and Senate's estimated cost for
7 providing a "sound basic education" to New York City's public schoolchildren was a reasonable
8 estimate, entitled to judicial deference. (*Ibid.*) This was the third appeal by plaintiffs challenging
9 the state's funding of New York City's public schools. (*Ibid.*) The Court of Appeals previously
10 held that the state constitution required the state to provide a "sound basic education" for all
11 children in New York, and found constitutionally inadequate funding in certain respects. (*Id.* at
12 pp. 20-21.) On remand, the Supreme Court (the lower court) rejected the state's estimated cost
13 for providing a sound basic education to New York City schools. (*Id.* at p. 25.)

14 The Court of Appeals disagreed, holding that the role of the courts was simply "to
15 determine whether the State's proposed calculation of that cost [of a sound basic education] is
16 rational." (*Id.* at p. 27.) This deferential standard was grounded in separation of powers
17 considerations. The judiciary "has a duty 'to defer to the Legislature in matters of policymaking,
18 particularly in a matter so vital as education financing We have neither the authority, nor the
19 ability, nor the will, to micromanage education financing.'" (*Id.* at p. 28 [internal citations
20 omitted].) "Deference to the Legislature is especially necessary where it is the State's budget
21 plan that is being questioned." (*Ibid.*) The court found that the state's calculation for providing a
22 sound basic education was neither "unreasonable" nor "irrational," and declared that amount to be
23 the constitutionally required funding for New York City's schools. (*Id.* at pp. 29-31.)

24 **b. Massachusetts**

25 Similarly, in *Hancock v. Commissioner of Education* (2005) 443 Mass. 428, 434, the
26 Massachusetts Supreme Court concluded that Massachusetts was meeting the constitutional
27 requirements of that state's education clause. Plaintiffs alleged that Massachusetts was failing its
28 constitutional obligation to educate children in the poorest communities. (*Id.* at p. 432.) The

1 superior court judge agreed that significant failings existed in certain school districts and
2 determined that the Department of Education lacked sufficient resources to address those failings.
3 The court recommended that the department determine the “actual cost” of funding a
4 constitutionally adequate level of education. (*Ibid.*)

5 The Massachusetts Supreme Court reversed, holding that the state was not violating the
6 state’s education clause. (*Id.* at p. 454.) Two key facts emerge from the court’s detailed analysis
7 and ultimate holding. First, the court extended substantial deference to the legislature. It noted
8 that plaintiffs “have not shown that defendants are acting in an arbitrary, nonresponsive, or
9 irrational way to meet the constitutional mandate.” (*Id.* at p. 435.) Second, the court emphasized
10 separation of powers issues in holding that the education system was constitutional. The court
11 noted that “the education clause leaves the details of education policymaking to the Governor and
12 the Legislature” and stressed that “[b]ecause decisions about where scarce public money will do
13 the most good are laden with value judgments, those decisions are best left to our elected
14 representatives.” (*Id.* at pp. 454, 458-59.) In particular, the court found that ordering a cost study
15 was “rife with policy choices that are properly the Legislature’s domain” which would entail
16 “judicial directives concerning appropriations.” (*Id.* at p. 460.) Accordingly, the court
17 determined that Massachusetts was not violating its constitutional obligations. (*Id.* at p. 454.)

18 In sum, defendants respectfully submit that this court should decline to wade into the
19 “Stygian swamp” of determining appropriate levels of public school financing. Policy decisions
20 concerning the level of funding and the optimal design of the public school financing system
21 reside exclusively with the Legislature.¹⁰ Plaintiffs’ allegations do not state facts sufficient to

22 ¹⁰ During his tenure, the Governor has made funding education his first priority. He
23 continues to sponsor education reforms to ensure a quality education for all California students.
24 He has sought federal funds to supplement efforts to improve school-wide accountability to
25 ensure students will achieve and be successful. Even as California’s economic recession
26 continues into this new budget year, the Governor proposes General Fund expenditures of
27 approximately \$35.1 billion (42%) for K-12 education plus \$11.7 billion (14%) for higher
28 education for a total of \$46.9 billion (56%) of the total proposed General Fund expenditures of
\$83.4 billion for the proposed 2010-11 budget. Among the competing needs for various
government services, funding for education receives the largest percentage of the General Fund
pie. (Governor’s Proposed Budget May Revisions of 2010-2011 at pp. 3-5, 11, 14 marked as
Exh. A in Defendants Request for Judicial Notice.) The Governor’s proposed revised 2010-11
budget maintains his commitment to avoid additional cuts to K-14 education despite a \$19.1
(continued...)

1 constitute a cause of action, and therefore, the court should sustain this demurrer without leave to
2 amend.

3 **III. THE COMPLAINTS FAIL TO NAME THE PROPER PARTIES**

4 This demurrer should also be sustained because there “is a defect or misjoinder of parties.”
5 (Cal. Code Civ. Proc., § 430.10(d).) It is well established that, “in actions for declaratory and
6 injunctive relief challenging the constitutionality of state statutes, state officers with statewide
7 administrative functions under the challenged statute are the proper parties defendant.” (See,
8 *Serrano II*, 18 Cal.3d at p. 752.) In the present action, there are no “state officers” named in the
9 complaint as defendants other than the Governor of California. Because “appropriate
10 administrative officers [or administrative agencies]” are not joined – in particular the California
11 Legislature – the demurrer must be sustained on this ground as well.

12 **A. The “State of California” is an Improper Defendant**

13 The State of California is not a proper party to this litigation. Plaintiffs’ claims are based
14 on the alleged unconstitutionality of the State’s current education finance system as a whole. In
15 this regard, plaintiffs broadly contend that the State “is the legal and political entity required by
16 the California Constitution to maintain and oversee the system of public education in California.”
17 (Complaint I at pp. 18-19:25-2 [¶ 51]; Complaint II at p 11:12-18 [¶39].) Yet, as noted above, in
18 actions for declaratory and injunctive relief challenging the constitutionality of state statutes, state
19 officers with statewide administrative functions under the challenged statute are the proper
20 defendants. (*Serrano II*, 18 Cal.3d at p. 752.) Plaintiffs, therefore, are not entitled to relief from
21 the “State of California.”

22 The California Supreme Court has confirmed that, in claims for writ or injunctive relief, the
23 “State” – as distinct from a specific agency or officer – is not a proper party defendant as to which
24 relief may be granted. (*State v. Superior Court* (1974) 12 Cal.3d 237, 255.) In *State v. Superior*
25 *Court*, developers sued the State, the California Coastal Zone Conservation Commission, and two

26 _____
27 (...continued)
28 billion deficit. (*Id.* at p. 36.) However, the Governor can only propose a budget. It is the
Legislature that must make the appropriation decisions and enact the budget.

1 Commission employees, seeking a writ of mandate, and declaratory and injunctive relief, based
2 on the denial of a permit and the alleged unconstitutionality of the California Coastal Zone
3 Conservation Act. (*Id.* at pp. 243-244.) The Court sustained the State's demurrer because the
4 plaintiffs made no allegations establishing any right to relief against the State "as distinguished
5 from the Commission acting as its agent." (*Id.* at p. 255.) Because the "State" can only act
6 through its agencies and officers, it is not a proper party defendant from which relief may be
7 obtained here.

8 It also appears that plaintiffs named the "State" because they want the court to compel the
9 "State" to create a new public school finance system. (Complaint I at pp. 56-57; Complaint II at
10 pp. 39-40.) However, the "State" does not pass legislation; the Legislature does.¹¹ The "State of
11 California" is an improper party.

12 **B. The Governor is An Improper Defendant**

13 Similarly, Governor Schwarzenegger does not exercise administrative functions pertaining
14 to education-related legislation or implementation of California's public school finance system.
15 In fact, the Supreme Court expressly held that the Governor would not be a proper defendant in a
16 similar constitutional challenge to California's prior public school finance system. (*Serrano II*,
17 18 Cal.3d at p. 751.)

18 Moreover, as discussed above, courts may not order the Governor to sign or veto
19 legislation, because this would violate the separation of powers doctrine. (See, *Serrano II*, 18
20 Cal.3d at 751 ["courts may not order the . . . Governor to sign or not to sign, specific
21 legislation."]; *Jenkins v. Knight* (1956) 46 Cal.2d 220, 223, 226 [courts will not interfere with
22 discretionary acts of the Governor, such as signing or vetoing bills, which are inherently
23 executive or political in nature]; *California State Employees Assn. v. State* (1973) 32 Cal.App.3d
24

25
26 ¹¹ As discussed in defendants' concurrently filed Motion to Strike, plaintiffs' request for
27 injunctive relief impermissibly encroaches upon the duties of the Legislature. It is a "well-
28 established principle, rooted in the doctrine of separation of powers (Cal. Const., art III, § 3), that
the courts may not order the Legislature or its members to enact or not to enact . . . specific
legislation." (*Serrano II*, 18 Cal.3d at p. 751; Defendants' Motion to Strike.)

1 103, 107-110 [same].) Accordingly, the Governor is not a proper defendant here and should be
2 dismissed.

3 IV. THE ALLEGATIONS IN THE COMPLAINTS FAIL TO SUPPORT STANDING

4 “Because standing goes to the existence of a cause of action, lack of standing may be raised
5 by demurrer or at any time in the proceeding, including at trial or in an appeal.” (*Buckland v.*
6 *Threshold Enterprises, Ltd.* (2007) 155 Cal.App.4th 798, 813.)

7 A declaratory relief action requires an “actual controversy relating to the legal rights and
8 duties of the respective parties.” (Code Civ. Proc., § 1060.) Courts will decline to resolve
9 lawsuits that do not present a justiciable controversy, and justiciability “involves the intertwined
10 criteria of ripeness and standing.” (*California Water & Telephone Co. v. County of Los Angeles*
11 (1967) 253 Cal.App.2d 16, 22.)

12 As a general principle, standing to invoke the judicial process requires an actual
13 justiciable controversy as to which the complainant has a real interest in the ultimate
14 adjudication because he or she has either suffered or is about to suffer an injury of
15 sufficient magnitude reasonably to assure that all of the relevant facts and issues will
16 be adequately presented to the adjudicator. To have standing, a party must be
17 beneficially interested in the controversy; that is, he or she must have ‘some special
18 interest to be served or some particular right to be preserved or protected over and
19 above the interest held in common with the public at large.’ The party must be able to
20 demonstrate that he or she has some such beneficial interest that is concrete and
21 actual, and not conjectural or hypothetical.

22 (*Holmes v. California Nat. Guard* (2001) 90 Cal.App.4th 297, 314-315.) Here, as more fully
23 discussed below, the allegations of the complaint fail to confer standing on the individually
24 named plaintiffs as well as the associational plaintiffs.

25 A. The Individually Named Student/Plaintiffs Lack Standing; There are No 26 Allegations Regarding Direct Injury

27 Plaintiffs in these actions include sixty two minors, appearing through their guardians *ad*
28 *litem*, who are described as students attending grades at various school districts. (See, Complaint
I at pp. 9-14, [¶¶ 14-38]; Complaint II at pp. 1-6, [¶¶ 1-25] .) Except for being listed as parties in
the complaint, there are no further allegations regarding any specifically named Student/Plaintiffs.

For example, Complaint I alleges that “California . . . has the largest proportion of English-
learner students in the nation by a wide margin, with English learners comprising 24 % of the

1 student population.” (Complaint I at p. 26:7-8 [¶ 78].) The complaint adds that “[c]hronic
2 under-funding leaves many schools and districts without the educational resources necessary to
3 ensure that students, especially those struggling with poverty or learning the English language,
4 have an opportunity to master the standards set by the State.” (*Ibid.*)

5 The complaint also alleges that “[s]upport services, enrichment and extracurricular
6 activities are an integral, fundamental part of the education program.” (Complaint I at p. 38:13-
7 14 [¶ 123].) The complaint adds that “[i]n recent years, unstable and insufficient funding has
8 forced districts to reduce the already inadequate number of academic and mental health
9 counselors. As a consequence students do not have the necessary access to academic advice and
10 counseling, basic mental health services, and other services to reduce barriers to success and keep
11 students in school.” (Complaint I at pp. 38-39:26-2 [¶ 125].)

12 However, none of the individually named Student/Plaintiffs are alleged to be English-
13 learners much less that any of them are directly harmed by “chronic under-funding.” The
14 Complaints also fail to allege that any of the Student/Plaintiffs used the academic services
15 described or that any of them were directly affected by the alleged reduction of academic
16 services. There are no allegations in the Complaints that any of the Student/Plaintiffs have failed
17 to meet proficiency requirements or content standards or failed any high school exit exam as a
18 result of the State’s alleged inadequate funding of California’s school system. There are no
19 allegations that Student/Plaintiffs are being deprived of equal educational opportunities as
20 compared to any other students in other school districts.

21 The Student/Plaintiffs’ standing cannot be established solely on allegations that they are
22 subject to the allegedly unconstitutional statutory scheme. Instead, plaintiffs must identify some
23 direct, personal injury resulting from the allegedly deficient system:

24 At a minimum, standing means a party must “show that he [or she] personally has
25 suffered some actual or threatened injury as a result of the putatively illegal conduct
26 of the defendant[.]” “[I]t is well-settled law that the courts will not give their
27 consideration to questions as to the constitutionality of a statute unless such
28 consideration is necessary to the determination of a real and vital controversy
between the litigants in the particular case before it. It is incumbent upon a party to
an action or proceeding who assails a law invoked in the course thereof to show that
the provisions of the statute thus assailed are applicable to him and that he is
injuriously affected thereby.

1 (In re Tania S. (1992) 5 Cal.App.4th 728, 736-737.)

2 The Court's analysis in *Tania S.* demonstrates that a party does not have standing to raise
3 hypothetical constitutional infirmities of a statute or – as stated in the Complaints, an educational
4 financing scheme – when the statute, as applied to the party, does not occasion any injury to the
5 party. The claims raised by the individually named Student/Plaintiffs thus fail to state any cause
6 of action, and the demurrer should be sustained accordingly.

7 **B. The Claims of the California State PTA, ACSA, CSBA, CTA and School**
8 **Districts Lack Justiciability and Standing to Complain about the**
9 **Distribution of Education Resources**

10 The Complaints list the California State PTA, ACSA, and the CSBA as party plaintiffs.
11 (See, Complaint I at pp. 17-18 [¶¶ 48-50]; Complaint II at pp. 8-10 [¶¶ 35-37]) and adds the
12 California Teachers Association (CTA) (Complaint II at p. 10 [¶ 38].) The interests of these
13 associations are, as alleged in part, purportedly aligned with the students and the various school
14 districts. Their purpose is “support sufficient funding to meet the educational needs of K-12
15 students” and to advance the policies of the school districts. (See, e.g., Complaint I at p. 18 [¶
16 50].) However, where the complaints fail to support standing or justiciability on behalf of the
17 students and school districts, these associations likewise lack standing in this matter. School
18 districts, associations, and their members have no standing, as third parties, to assert equal
19 protection claims of the Student/Plaintiffs. Only the person who has been injured has standing to
20 sue to vindicate his or her constitutional rights to equal protection. (See, *Elk Grove Unified*
21 *School Dist. v. Newdow* (2004) 542 U.S. 1, 12 [citations omitted].) In this case, because the
22 Student/Plaintiffs are minors, only the custodial parent or legal guardian may bring an action for
23 the minor child’s claim to equal protection.

24 The Complaints also identify various school districts as plaintiffs. (See, Complaint I at pp.
25 14-17 [¶¶ 39-47]; Complaint II at pp. 6-8 [¶¶ 26-34].) Complaint I alleges that the current finance
26 system “prevents districts from providing the required education program” and that, for example,
27 state funding fails to support student “intervention programs.” (Complaint I at pp. 33-34; 37-38
28 [¶¶ 118-122].) The school districts, however, lack standing to object to the amount education

1 funding that is allocated to their individual school districts. (See, *Hayes v. Commission on State*
2 *Mandates*, 11 Cal.App.4th 1564, fn. 5 at p. 1578 [“School moneys belong to the state and the
3 apportionment of funds to a school district does not give the district a proprietary interest in the
4 funds.”].) Thus, the associations and individually named school districts lack standing to assert
5 any of the claims in the Complaints.

6 **V. THE COMPLAINTS FAIL TO STATE AN EQUAL PROTECTION CLAIM**

7 Plaintiffs suggest that they are being denied equal protection by the operation of the State’s
8 education finance system. However, the Complaints fail to identify any disparities relating to the
9 allocation of education resources between students or between school districts. Rather, the claim
10 is that the State’s allocation of education resources is not adequate to pay school districts for the
11 actual costs “of providing the programs and services required by the State,” that the State’s
12 overall education funding is “insufficient to provide all students with the programs and services
13 necessary to meet academic proficiency goals, to maintain teacher-student ratios and class size,”
14 or that the State provides “insufficient funds to pay for categorical programs” or to meet costs of
15 “federal programs and services that districts are legally required to implement.” (See, e.g.,
16 Complaint I at ¶¶ 106, 107, 108, 116-117, 133-135, 136, 137-139.) These allegations do not
17 establish an equal protection claim.

18 Here, there no allegations that any of the Student/Plaintiffs have suffered or are about suffer
19 any “real and appreciable impact” in the form of any “extreme and unprecedented disparity in
20 education services or progress.” (*Butt*, 4 Cal.4th at pp. 686-687.)

21 As the California Supreme Court held in *Butt*, “the principles of equal protection have
22 never required the State to remedy all ills or eliminate all variances in services.” (*Id.* at p. 686.)
23 Equal protection only precludes the State from maintaining its common school system in a
24 manner that denies students in one district an education basically “equivalent” to that in other
25 districts in the State based on funding inadequacies. (*Id.* at pp. 686-687.)

26 Here, the Complaints allege that the State’s inadequate education funding affects all
27 students in all California school districts. There is no allegation in the Complaints that
28 inequitable funding among school districts exists. These allegations are insufficient for an equal

1 protection claim because all California students and all school districts are affected similarly by
2 the State's education budget decisions. (*Butt*, 4 Cal. 4th at pp. 686-687; see, e.g. *Serrano I*, 5
3 Cal.3d 584 [court struck down the district property-tax funding scheme because it created
4 "substantial" funding disparities among different school districts throughout the state].) Plaintiffs
5 appear to claim that allegedly inadequate school funding has a disparate impact on certain groups.
6 However, to allege such a claim, plaintiffs must allege that defendants were motivated by
7 discriminatory animus:

8 The Equal Protection Clause of our state constitution forbids the state from denying a
9 person equal protection of the law. (Cal. Const., art. I, § 7, subd. (a).) The clause
10 prohibits the state from granting a citizen, or class of citizens, "privileges or
11 immunities not granted on the same terms to all citizens." (Cal. Const., art. I, § 7,
12 subd. (b).) "Most laws which run afoul of the equal protection Clause discriminate
13 explicitly between groups of people, but the Clause also might apply to laws which,
14 though evenhanded on their face, in operation have a disproportionate impact on
15 certain groups." (*Kim v. Workers' Comp. Appeals Bd.* (1999) 73 Cal.App.4th 1357,
16 1361.) "But neither explicit discrimination nor discrimination by 'disparate impact'
17 is unconstitutional unless motivated at least in part by purpose or intent to harm a
18 protected group." (*Id.* at pp. 1361-1362.)

19 (*Sanchez v. State* (2009) 179 Cal.App.4th 467, 487.)

20 Plaintiffs do not – and cannot – allege that defendants were motivated by an intent to harm
21 any protected group of students. Nor have they asserted that education is unequally allocated to
22 different school districts. Accordingly, defendants' demurrers to plaintiffs' equal protection
23 claims should be sustained.

24 **VI. TO THE EXTENT THE COMPLAINTS CLAIM THAT STATE EDUCATION MANDATES**
25 **ARE NOT BEING PROPERLY FUNDED, IT FAILS TO STATE A CLAIM FOR RELIEF; THE**
26 **COMPLAINTS FAIL TO ALLEGE EXHAUSTION OF REMEDIES**

27 While plaintiffs complain that defendants have failed to provide sufficient funding to
28 support educational requirements imposed on school districts, they fail to allege that they have
filed a claim and exhausted their sole and exclusive remedies with the California Commission on
State Mandates. It is well-established that the filing of such claims is a pre-requisite to any
lawsuit alleging a failure to fund a new or higher level of any state mandated program. (See,
Gov. Code, §§ 17500 et. seq.; Cal. Const. art. XIII B, § 6; *Kinlaw v. The State of California*
(1991) 54 Cal.3d 326.)

1 In 1984, the Legislature established the Commission on State Mandates (Gov. Code, §§
2 17512, 17525) to provide the “sole and exclusive” administrative procedure to hear and determine
3 all issues related to “subvention” claims under article XIII B, section 6, of the California
4 Constitution. (Gov. Code, §§ 17500 et seq.; see also §§ 17550, 17552.) The “constitutional rule
5 of subvention” under article XIII B, section 6, requires the State to provide funds to pay for costs
6 of any “new programs,” or for “higher levels of services of existing programs” imposed by the
7 State on local agencies, including school districts. (Gov. Code, §§ 17550, 17551, 17552; 17557,
8 17560; *Kinlaw*, 54 Cal.3d at pp. 331-333; *Hayes v. Commission on State Mandates* (1992) 11
9 Cal.App.4th 1564, 1577, 1580, citing *County of Los Angeles v. State of California* (1987) 43
10 Cal.3d 46, 56.)

11 The express legislative purpose in establishing the Commission, with its “sole and
12 exclusive” administrative procedure and jurisdiction (Gov. Code, §§ 17500, 17550, 17552), was
13 to provide one exclusive administrative forum to hear all state mandate funding claims, to
14 decrease the unnecessary and growing court congestion resulting from these complex state
15 mandate funding claims, to provide for consistency in decision-making of complex legal issues
16 by a quasi-judicial body with public finance expertise to determine whether a challenged law
17 established a new mandate or an increased level of an existing mandate, and to determine the
18 actual cost of such mandates to the protesting entity and similarly affected entities on a statewide
19 basis. (Gov. Code, §§ 17500, 17525, 17553, 17555, 17556, 17557.2; *Kinlaw*, 54 Cal.3d at pp.
20 331, 333; *Grossmont*, 169 Cal. App. 4th at p. 885.)

21 Under the Commission’s sole and exclusive administrative procedures, local agencies and
22 school districts are required to file claims for state-mandated costs for new or higher level of
23 services with the Commission. (Gov. Code, §§ 17551, 17560; *Kinlaw*, 54 Cal.3d at pp. 333-334.)
24 The first claim filed that alleges a State mandate has been created by a State law or State agency
25 order is called a “test claim,” which is subject to a public hearing with evidence from the
26 claimant, the Department of Finance, and the affected agency. (Gov. Code, § 17521.) The
27 Commission determines if the claim involves a “new or higher level” of an existing State
28 mandate that requires payment and the “parameters and guidelines” for reimbursement, and

1 calculates the actual costs for the claimant local or school district entity as well as the state-wide
2 costs to other such entities of the unfunded or inadequately funded State mandate. The
3 Commission's decision is required to be reported to the Legislature with notifications to the
4 appropriate Senate and Assembly policy and fiscal committees, Department of Finance and
5 Controller, among others. (Gov. Code, §§ 17555, 17557, 17558, 17600.)

6 Filing a claim with the Commission on State Mandates under its "sole and exclusive"
7 administrative procedures is a legal pre-requisite to the filing of any action for declaratory or
8 injunctive monetary relief for claims of unfunded or inadequately funded mandates imposed by
9 the Legislature on local agencies, including school districts. (Gov. Code, §§ 17612, 17552; see
10 also Gov. Code, §§ 17551, 17560, 17559.) Moreover, the court may look beyond plaintiffs' own
11 characterization of their claims to find that their claims are "unfunded mandate" claims. (*Kinlaw*,
12 54 Cal.3d at p. 333 [affirming trial court's summary judgment against plaintiff taxpayer welfare
13 recipients' and plaintiff County's declaratory and injunctive action against the State to compel
14 restoration of funds cut by the Legislature for a county health care program on grounds that the
15 gravamen of the action was reimbursement of an unfunded state mandate which was barred by the
16 County's failure to file a claim with the State Mandates Commission]; see also, *Grossmont*, 169
17 Cal.App.4th at pp. 881-882 [affirming dismissal based on failure to exhaust plaintiff's "sole and
18 exclusive" administrative remedies with the Commission on State Mandates based on finding that
19 the gravamen of school district's action was state's alleged inadequate funding of increasing costs
20 of general and special education mandates and budget "shortfalls" of millions of dollars under
21 Proposition 98 and 111 education funding].)

22 It is clear that plaintiffs' key assertion is the Legislature's alleged failure to adequately
23 fund various new or higher levels of state mandated education services and "prescribed
24 educational" programs imposed on school districts the over the past several decades. (See, e.g.,
25 Complaint I, ¶¶ 3, 5, 7, 9, 136; Prayer for Relief) Complaint I, for example, alleges that,
26 beginning in 1995, the Legislature "fundamentally changed" and developed new statewide
27 "academic content standards and proficiency requirements" (Complaint I, ¶¶ 62, 100, 106, 107
28 114, 117); required schools to conduct grade level testing of students' proficiency and mandated

1 student exit exams based on theses new content standards (Complaint I, ¶¶ 63, 64); imposed
2 additional school accountability requirements such as school wide assessments of student
3 progress under new state and the federal laws, such as No Child Left Behind Act (NCLB); and
4 that in January 2010, the Legislature adopted “mandated interventions” for persistently lowest
5 achieving schools. (Complaint I, ¶¶ 64, 65, 66, 69, 136, 141.)

6 The complaints also allege that, although “the State is legally required to pay school
7 districts for the costs of any state-mandated programs or services, it has nonetheless refused to do
8 so.” (Complaint I at p. 43; Complaint II at p. 28.) Complaint I adds that, since 2002, the State
9 underfunded mandated education programs by \$3.6 billion or approximately \$400 million
10 annually to school districts. (Complaint I, ¶¶ 141; 169-171.) Plaintiffs finally aver that there is
11 inadequate funding under Proposition 98 to meet all the “significant programmatic changes that
12 have taken place since Proposition 98 was adopted.” (See, e.g., Complaint I at ¶¶ 100; 106.)

13 It is clear that these Complaints seek the court’s intervention to obtain additional funding to
14 redress the Legislature’s alleged inadequate Proposition 98 funding of various new or higher
15 levels of education mandates. Accordingly, the present action must be dismissed for failure to
16 allege or exhaust available remedies before the Commission on State Mandates.

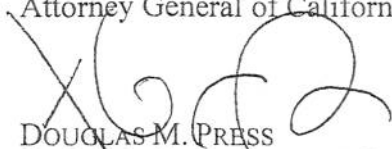
17 CONCLUSION

18 In light of the forgoing, defendants respectfully request that their demurrer to the
19 complaints and the requests for declaratory and injunctive relief in this matter be sustained in its
20 entirety and without leave to amend.
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Respectfully Submitted,

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