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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

MAYA ROBLES-WONG, et al.,

Plaintiffs,

v.

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

Defendants.

**CALIFORNIA TEACHERS
ASSOCIATION,**

Plaintiff-Intervener.

Case No. RG10515768

**DEFENDANTS' JOINT REPLY TO
DEMURRER TO COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF AND COMPLAINT-IN-
INTERVENTION**

Date: December 10, 2010
Time: 9:00 a.m.
Dept: 17
Judge: Hon. Steven A. Brick
Trial Date: Not Set
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INTRODUCTION

Plaintiffs¹ cannot overcome a single irrefutable truth: no court has held that the constitutional provisions invoked by Plaintiffs impose a constitutional duty on the State of California to “sufficiently fund an educational finance system that is intentionally, rationally, and demonstrably aligned with the goals and objectives of the State’s prescribed educational program and the costs of ensuring that all children of all needs have the opportunity to become proficient according to the State’s academic standards” (Robles-Wong Complaint at pp. 55-56.) Neither the plain language, nor the legislative history of Articles IX and XVI, nor the relevant pronouncements of the California Supreme Court, can justify such an expansive construction of California’s duties under these constitutional provisions. The court should sustain Defendants’ demurrer.

ARGUMENT

I. ARTICLE IX OF THE STATE CONSTITUTION DOES NOT CONFER THE SUBSTANTIVE RIGHTS THAT PLAINTIFFS ALLEGE

A. Neither the Text nor the History of the Earlier Education Clauses Demonstrate That There is a Requirement to “Sufficiently Fund” an “Adequate Education”

Plaintiffs contend that an enforceable duty to provide funding for an adequate or meaningful education, as defined by Plaintiffs, may be gleaned from the text and history of the “education clauses” of Article IX, sections 1 and 5. However, the plain language of these constitutional provisions does not mandate that the Legislature’s support for public education must meet the qualitative standards alleged by Plaintiffs. And, even if the court were to consider these education clauses “ambiguous,” justifying consideration of interpretive aids, the history of these provisions provides no support for Plaintiffs’ claims. (*Mutual Life Ins. Co. v. City of Los Angeles* (1990) 50 Cal.3d 402, 407, citing *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735 [stating that in construing constitutional provisions, the court “looks first to the words employed .

¹ The Robles-Wong complaint (RW Compl) and the CTA complaint-in-intervention (CTA Compl) are essentially identical. For ease of reference, the two complaints will be referred to as “complaints,” unless otherwise noted. Also, RW and CTA will be referred jointly as “plaintiffs,” unless otherwise noted.

1 . . . If doubts and ambiguities remain then, and only then, are we warranted in seeking elsewhere
2 for aid.”].)

3 **1. The Framers Agreed That Section 1 was Merely Hortatory and**
4 **Conferred Plenary Authority and Discretion over Education Funding**
5 **to the Legislature**

6 Section 1 of Article IX generally declares the importance of a “diffusion of knowledge” to a
7 democratic society, and calls on the Legislature to “encourage the promotion” of education
8 through “all suitable means.” (Cal. Const., art. IX, § 1.) Delegates to the 1878-1879
9 Constitutional Convention adopted this provision as an hortatory “declaration of principles” that
10 imposed no enforceable mandates on the Legislature with respect to the level of education
11 funding. (See Defs. Motion for Judgement on the Pleadings in CQE at pp. 8:22 – 11:19,
12 incorporated herein by reference.) Proponents and opponents of section 1 alike asserted that the
13 provision lacked legal enforceability. (*Ibid.*) One delegate declared, when offering what he
14 viewed as a more substantive provision as an alternative, that section 1 “imposes no obligation on
15 the State.” (3 Debates & Proceedings, Cal. Const. Convention 1878-1879 (1881) (1879 Debates),
16 p. 1087 [statement of Mr. Laine].) Proponents acknowledged that the provision “simply asserts a
17 principle,” and explained that its unenforceability also made the provision unobjectionable. (*See,*
18 *e.g.*, p. 1090 [statements of Mr. McFarland and Mr. Lampson]; *id.*, at p. 1089 [statement of Mr.
19 Morse: “It certainly does no harm, and there is nothing in the world that a man can say against it,
20 only that it is not essential”].)

21 Plaintiffs make too much of a statement by one delegate (not “several” delegates, as
22 Plaintiffs contend), asserting that section 1 “means something.” (See RW Opp. at 9:21.) The one
23 delegate’s statement referred simply to the plain language of the section imposing a duty on the
24 Legislature to “encourage the promotion” of education “by all suitable means.” However,
25 consistent with the discretionary language used to define the Legislature’s duty, the statements of
26 the delegates to the 1878-1879 Constitutional Convention reflect that they viewed the provision
27 as leaving to legislative discretion how and by what means to promote education. (See 1879
28 Debates, at pp. 1087-1088 [statement of Mr. Cross: viewing section 1 as “leav[ing] to the people
to determine in their legislative body how far they will go” in supporting education] and pp.

1 1089-1090 [statement of Mr. Lampson: asserting that under section 1, "[t]he Legislature will do
2 what they see fit to do."].) As debate over the provision reflects, section 1 is merely hortatory and
3 was not intended to give rise to enforceable rights or duties.

4 **2. The Legislative History of Section 5 Provides No Support for**
5 **Plaintiffs' Assertion That "Sufficiently Funding" an "Adequate**
6 **Education" is Constitutionally Required**

7 The 1879 Debates provide no support for Plaintiffs' contention that section 5 was intended
8 to mandate a qualitative "adequacy" standard for education funding. To the contrary, the framers
9 specifically considered, and rejected, an amendment seen by proponents as a more substantive
10 alternative to sections 1 and 5 that would have called on the Legislature to support a "thorough
11 and efficient system of free schools whereby all children may receive a good common education."
(1879 Debates, at pp. 1087-89.)

12 The proposed, but later rejected, substitute was initially offered by delegate Holmes as an
13 alternative only to section 1. (1879 Debates, at pp. 1087.) Delegate Laine proposed adding to
14 Mr. Holmes's amendment the following additional clause, essentially identical to the first clause
15 of section 5: "by which system one school shall be kept up and supported in each district for at
16 least six months each year" (*Id.*, at p. 1088.)

17 Plaintiffs mischaracterize statements by some delegates as suggesting that the qualitative
18 terms of Mr. Holmes's amendment were already contained in section 5 as proposed by the
19 education committee, and ultimately adopted in substantially similar form. However, one of
20 those statements referred only to the fact that Mr. Holmes's original amendment addressed the
21 key operative requirements of section 5 — e.g., the requirement to provide for a system of free
22 schools — but did not address the proposed requirement of section 5 that schools be maintained
23 "at least six months in every year, beginning in the first year after the school has been
24 established." (*Id.* at pp. 1089 [statement of Mr. Herrington].) Another statement merely
25 commented that the language offered by Mr. Laine to fill in this gap in Mr. Holmes's amendment
26 was merely duplicative of what was already contained in section 5. (*Ibid.* [statement of Mr.
27 Winans].) Neither of these statements implied or suggested that section 5 already included a
28 requirement that the Legislature support a "thorough and efficient" school system or a "good"

1 education. Had delegates preferred to describe the Legislature's duty to support education with
2 such qualitative terms, they could have incorporated such language into sections 1 or 5 as
3 adopted, but did not. Thus, while the framers considered a provision that would have required the
4 Legislature to support a "thorough and efficient" school system providing a "good education,"
5 they declined to adopt it.² The Debates do not support Plaintiffs' contention that the framers
6 viewed section 5 as "guaranteeing a particular quality of education."

7 **B. Article IX Caselaw Does Not Support Plaintiffs' Claim That the California**
8 **Legislature is Constitutionally Mandated to "Adequately Fund" Education**
or "Deliver the Content Standards"

9 **1. No California Case Has Held that Section 1 Confers Substantive**
10 **Rights or Imposes Enforceable Duties**

11 Plaintiffs cannot point to a single California case—because no such case exists—holding
12 that section 1 of Article IX confers substantive rights or imposes enforceable duties on the State.

13 **2. Section 5 Confers Limited Rights Which Do Not Include the Right to**
Sufficient Funding to Deliver the Content Standards

14 Section 5 does confer some substantive rights on California's school children, just not—as
15 Plaintiffs allege—the right to "sufficient funding" to meet the purported costs of ensuring that all
16 students become proficient in the State's academic standards.

17 Instead, Section 5 requires the State to provide "kindergarten, elementary, secondary and
18 technical schools," and "state colleges." (*Wilson v. State Board of Education* (2000) 75
19 Cal.App.4th 1125, 1135 (*Wilson*).) In requiring a "system of common schools," Section 5
20 adopted the "notion of a single state system, under state control." (*Ibid.*) A single state system
21 means that no student can be turned away from a public school because he or she is eligible to
22 attend a non-California school. (*Piper v. Big Pine School District of Inyo County* (1924) 193 Cal.
23 664, 673 (*Piper*).) Further, the word "system" has been interpreted to mean that the entire school
24 system must have a "unity of purpose, as well as an entirety of operation." (*Serrano v. Priest*

25 ² In identifying this history, Defendants do not suggest that addition of the adjectives
26 "thorough and efficient" before school system, or "good" before education, would demonstrate an
27 intent to require the Legislature to fund education at any particular level, or for that matter, to
28 allow for judicial review of the adequacy of the Legislature's support for education. However,
particularly as some out-of-state courts have found substantive and enforceable meaning in these
terms, the framer's rejection of these terms may be considered relevant.

1 (1971) 5 Cal.3d 584, 595 (*Serrano I*.) The educational system “must be uniform in terms of the
2 prescribed course of study and educational progression from grade to grade.” (*Id.* at p. 596; *Levi*
3 *v. O’Connell* (2006) 144 Cal.App.4th 700, 708.) In other words, the State must employ a
4 “regular, standard system of public K-12 education.” (*Levi v. O’Connell, supra*, 144 Cal.App.4th
5 at p. 708.) Additionally, the schools, extracurricular activities, and books must be free of charge.
6 (*Hartzell v. Connell* (1984) 35 Cal.3d 899, 905; *Piper, supra*, 193 Cal. at pp. 668-669.)

7 Significantly, although the *Serrano* cases were exclusively equal protection cases, *Serrano I*
8 severely undermines Plaintiffs’ attempt to assert an “inadequate funding” claim under Section 5.
9 There, the Supreme Court rejected plaintiffs’ Section 5 claim, stating that “section 5 makes no
10 reference to school financing,” and “should not be construed to apply to school financing.”
11 (*Serrano I, supra*, 5 Cal.3d at p. 596; see also, CQE/MJP at 12:6-17.)³

12 Thus, under Section 5, California is required to provide schools that are free, open to all
13 students, and that apply uniform standards of coursework and educational progression across all
14 school districts. However, no California court has interpreted Article IX to require a particular
15 level of funding for California schools (or that funding be “aligned” with academic standards or
16 anything else). Moreover, California courts have consistently held that virtually all other
17 components of the educational system are left to the Legislature. For example, “the curriculum
18 and courses of study are not constitutionally prescribed. Rather, they are *details* left to the
19 Legislature’s discretion. . . [and] [t]he same could be said for such functions as educational focus,
20 teaching methods, schools operations, furnishing of textbooks and the like.” (*Wilson, supra*, 75
21 Cal.App.4th at p. 1135 [emphasis in original].) Further, “[w]hile the current statutory system for
22

23 ³ Plaintiffs assert that article IX, section 6 discussed in *Serrano I* is no longer in the
24 Constitution, and therefore the Court’s holding is inapplicable here. Article IX, section 6, was re-
25 adopted in substantially similar form at article XIII, section 21, in the same ballot initiative that
26 repealed the former provision, where it remains today. (See Proposition 8 (1974); *Serrano v.*
27 *Priest* (1976) 18 Cal.3d 728, 772, fn. 50 [noting that former article IX, section 6 was “now art.
28 XIII, § 21.”] (*Serrano II*.) Nothing in the Supreme Court’s analysis suggests that section 5
“makes no reference to school financing” only because of the existence of the former section 6.
Instead, the Court’s section 6 analysis stands for a broader point that section 5 cannot be
interpreted to conflict with other constitutional provisions setting out school funding requirements
that are both more specific and adopted more recently; a pertinent rationale when considering the
effect of Propositions 98 and 111. See Section III, below.

1 allocating State educational funds strongly encourages a term of at least 175 days [internal
2 citation omitted], that system is not constitutionally based and is subject to change.” (*Butt v. State*
3 *of California* (1992) 4 Cal.4th 668, 686 [hereinafter *Butt*].) Even Plaintiffs acknowledge that
4 California’s academic standards are statutory (not constitutional) creations, but nevertheless
5 implausibly contend that the funding of these statutory enactments is constitutionally required.

6 Viewed another way, the education cases Plaintiffs cite do not confer the substantive rights
7 they seek under Section 5 because the cases either: (1) involved exclusively equal protection
8 causes of action (*Serrano*, *Butt*, *O’Connell*); (2) rejected the Article IX challenge (*Wilson*,
9 *Arcadia*, *Levi*); (3) rejected the challenge under Article XVI (*Hayes*); or (4) conferred limited
10 rights under Article IX which are not in dispute here such as that (a) no one may be excluded
11 from California schools (*Piper*, *Ward*), (b) extracurricular activities must be free (*Hartzell*), and
12 (c) a city treasurer cannot refuse to turn over school fund money because the State Constitution
13 established “one system” of common schools within California (*Kennedy*). In sum, the totality of
14 the jurisprudence construing Article IX of the California Constitution compels only one
15 conclusion: there is no constitutional right under that clause to “adequate” or “sufficient”
16 education funding, nor is there any right that education funding, bestowed by the Legislature, be
17 “aligned” with the alleged costs of meeting other legislatively enacted academic standards.⁴

18 **C. The Majority of Non-California Cases Cited by Plaintiffs Are Inapposite**
19 **Based on the Constitutional Text Alone**

20 Lacking California case law to support their Article IX claims, Plaintiffs argue that the
21 “[m]ajority of [n]on-California [a]uthority [s]uggests [that] Article IX [m]ust [b]e [i]nterpreted to
22 [p]rovide [s]ubstantive [r]ights and [e]nforceable [d]uties.” (RW Opp., at pp. 14:22-15:14.)
23 Plaintiffs cite to twenty-one cases in which the Supreme Courts of other states allegedly found
24 specific substantive educational guarantees of adequate funding in the education articles of their
25

26
27 ⁴ Although there is no constitutional right to a minimum level of education funding under
28 Article IX, pursuant to Propositions 98 and 111, the constitutional minimum level of school
funding is located in Article XVI, section 8(b). See Section III below.

1 state constitutions. (RW Opp., at p. 14, fn. 7).⁵ For several reasons, reliance on these out-of-
2 state cases, however, does not support Plaintiffs' cause.

3 First, fourteen of the twenty-one decisions Plaintiffs cite construed constitutional provisions
4 that contained some type of mandatory qualitative language or explicit guarantee of the right to
5 education not present in California's Article IX provisions.⁶ These include five state constitutions
6 that contain a mandate to provide for a "thorough" system of education – language specifically
7 rejected by the authors of article IX under California's Constitution. (See CQE/MJP at pp. 9-13.)

8 Second, the court should give greater weight to out-of-state cases involving similarly
9 worded education clauses. (See, e.g., *Committee for Educational Equality v. Missouri* (Mo. 2009)
10 294 S.W.2d 477 [no right to adequate funding for education under Missouri education clauses
11 similar to California's art. IX, § 1].) This court should also consider the recent trend away from
12 judicial intrusion into the school financing arena.⁷

13 ⁵ Plaintiffs omit mention of the ten out-of-state cases cited in Defendants' demurrer in
14 which courts found education finance litigation cases non-judiciable.

15 ⁶ *Tucker v. Lake View Sch. Dist. No. 25* (Ark. 1996) 917 S.W.2d 530 [construing Ark.
16 Const., art. 14, § 1, requiring State to maintain "**suitable and efficient**" school system]; *Lobato v.*
17 *Colorado* (Colo. 2009) 218 P.2d 358 [construing Colo. Const., art. IX, § 2, requiring general
18 assembly to provide for "**thorough**" school system]; *Idaho Schs. for Equal Educ. Opportunity*
19 (Idaho 1998) 976 P.2d 913 [construing Idaho Const., art. IX, § 1, requiring legislature to maintain
20 "**thorough**" school system]; *Montoy v. State* (Kan. 2005) 120 P.3d 306 [construing Kan. Const.
21 art. VI, § 6(b), requiring legislature to "make **suitable provision** for finance of the educational
22 interests of the state"]; *Columbia Falls Elementary Sch. Dist. No. 6 v. State* (Mont. 2005) 109 P.3d
23 257 [construing Mont. Const., art. X, § 1, requiring legislature to provide for a "**basic**" system of
24 elementary and secondary schools]; *Campaign for Fiscal Equity v. State* (N.Y. 2003) 801 N.E.2d
25 326 [construing N.Y. Const., art. XI, § 1 requiring legislature to support school system "wherein
26 all the children of this state **may be educated**"]; *Abbott v. Burke* (N.J. 1990) 575 A.2d 359
27 [construing N.J. Const. of 1947 art. VIII, § 4, para. 1 requiring legislature to provide for
28 "**thorough and efficient**" school system]; *Leandro v. State* (N.C. 1997) 488 S.E.2d 249
[construing, inter alia, N.C. Const., art. I, § 15, stating that: "The people have a **right to the**
privilege of education, and it is the **duty of the State to guard and maintain that right.**"];
DeRolph v. State (Ohio 1997) 677 N.E.2d 733 [construing Ohio Const., art. VI, § 2, requiring
general assembly to provide for "**thorough and efficient**" school system]; *Edgewood Indep. Sch.*
Dist. v. Kirby (Tex. 1989) 777 S.W.2d 391 [construing Tex. Const., art. VII, § 1, requiring
legislature to "**make suitable provision for**" school system]; *Brigham v. State* (Vt. 1997) 692
A.2d 384 [construing Vermont Const., ch. II, § 68, calling for "**competent** number of schools" to
be maintained]; *Seattle Sch. Dist. No. 1 v. State* (1978) 90 Wash.2d 476 [construing Wash. Const.,
art. 9, § 1, establishing "paramount duty of the state to **make ample provision**" for education];
Pauley v. Kelly (W.Va. 1979) 255 S.E.2d 859, 870 [construing W. Va. Const., art. XII, § 1,
requiring legislature to provide for "**thorough and efficient**" school system]; *Campbell County*
Sch. Dist. v. State (Wyo. 1995) 907 P.2d 1238 [construing Wyo. Const., art. 7, § 97-7-001,
requiring legislature to provide for "**complete** and uniform" school system]. [Bold added.]

⁷ See, e.g., *Justiciability and the Role of the Courts in Adequacy Litigation: Preserving the*
(continued...)

1 **D. California’s Legislatively Enacted “Academic Standards” are not**
2 **Constitutional Mandates and do not Confer Constitutional Rights**

3 Plaintiffs’ key contention is that the State is constitutionally required to sufficiently fund
4 education so that California students have the opportunity to meet California’s academic
5 standards. Without citing any California precedent, Plaintiffs aver that “[t]his court may properly
6 use the State’s own standards as evidence of the constitutionally required education program, and
7 the State’s own assessments as a measurement of the State’s success in ensuring that all students
8 have an opportunity to realize the promised educational program.” (RW Opp. at p. 14.)
9 Plaintiffs frame this as “afford[ing] considerable deference to the legislative scheme establishing
10 the contours of the substantive [constitutional] right.” (*Id.* at p. 11.) In essence, Plaintiffs attempt
11 to bootstrap California’s academic content and proficiency standards onto the Constitution by
12 constitutionalizing these legislative enactments.⁸

13 However, Plaintiffs’ attempt to transform statutory enactments into constitutional
14 requirements employs circular logic, distorts the role of the California Constitution, and is not
15 supportable under California law. “Unlike the federal Constitution, which is a grant of power to
16 Congress, the California Constitution is a limitation or restriction on the powers of the
17 Legislature.” (*Shaw v. Chiang* (2009) 175 Cal.App.4th 577, 595 (Cantil-Sakauye, J.); *see also*
18 *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1206
19 [same].) “In other words, ‘we do not look to the Constitution to determine whether the
20 Legislature is authorized to do an act, but only to see if it is prohibited.’” (*Ibid.*) Further, “[i]f
21 there is any doubt as to the Legislature’s power to act in any given case, the doubt should be

22 (...continued)

23 *Constitutional Right to Education*, Robynn K Sturm & Julia A. Simon-Kerr, Yale Law School
24 Student Scholarship Papers (2008) at 4 (“the balance between deference and action by courts in
25 adequacy suits has begun to tip towards deference and away from judicial intervention. In fact,
26 since 2005, courts’ unease with adjudicating these cases has proven difficult to surmount.
27 Plaintiffs’ adequacy claims were dismissed before ever reaching trial in nine of nineteen decisions
28 handed down over the past three years”).

⁸ Moreover, Plaintiffs admit that their attempt to transform statutory enactments into
constitutional standards works as a one way ratchet to enhance (but never diminish) the
constitutional minimum. Plaintiffs assert that “[w]ere the State to dilute content standards to the
point that they would not ensure that all children had an opportunity to participate meaningfully
in the economy and civic life of California, the standards would no longer be an appropriate
constitutional reference point.” (RW Opp. at p. 27, fn. 15.)

1 resolved in favor of the Legislature’s action. Such restrictions and limitations [imposed by the
2 Constitution] are to be construed strictly, and are not to be extended to include matters not
3 covered by the language used.” (*Ibid.*); see also *Wilson, supra*, 75 Cal.App.4th at p. 1134 [“when
4 scrutinizing the constitutionality of a statute, we start with the premise of validity, resolving all
5 doubts in favor of the Legislature’s actions”] (emphasis original).)

6 Given this constitutional framework, it is apparent that Plaintiffs’ effort to convert
7 statutory enactments into constitutional requirements employs circular logic, by contending that:
8 (1) the California Constitution prohibits the legislatively enacted public school finance system
9 because (2) other legislative enactments (California’s content and proficiency standards) act as
10 (3) “evidence of the constitutionally required education program.” (RW Opp. at p. 14.) This
11 logic is circular because legislation cannot be unconstitutional on account of different legislation.

12 Lacking in California case law for support, Plaintiffs instead rely on a footnote in *Lobato*
13 *v. Colorado* (Colo. 2009) 218 P.3d 358, 372, fn. 17, for the notion that “education reform statutes
14 with proficiency targets and content standards . . . may also be used to help evaluate the
15 constitutionality of the legislature’s actions.” (RW Opp. at p. 11, fn. 5.) But *Lobato*—an out-of-
16 state case—is both unpersuasive in its reasoning and distinguishable on its facts.

17 First, *Lobato* sought relief under Colorado’s educational clause providing for “a thorough
18 and uniform system of free public schools throughout the state.” (*Lobato, supra*, 218 P.3d at p.
19 363.) The “thorough and uniform system” guaranteed by the Colorado Constitution differs
20 textually, historically, and in its case law from California’s “system of common schools” clause
21 in Article IX, section 5. Second, Colorado’s voter initiative, “Amendment 23,” explicitly
22 eschewed setting “the minimum increase in [educational] funding.” (*Id.* at p. 375, fn. 22.) The
23 court noted as significant the fact that an earlier version of that constitutional amendment stated
24 that Amendment 23 set “*the* minimum increase in funding,” but that language was modified prior
25 to voter approval to state that Amendment 23 set “*a* minimum increase in funding.” (*Ibid.*
26 [emphasis in original].) In contrast, California’s Propositions 98 and 111 amended the California
27 Constitution to apply objective formulas to guarantee that public education receives “not less than
28 the greater of” the amounts generated under those three formulas. (Article XVI, section 8(b); see

1 Def's Motion for Judgment on the Pleadings at pp. 4-7.) California's ballot initiatives
2 (Propositions 98 and 111) did not contain a similar specification of "a minimum" funding
3 amount. *Lobato* is therefore neither binding nor analogous. In sum, Plaintiffs' attempt to
4 constitutionalize California's content and proficiency standards fails as a matter of law.

5 **II. PROPOSITION 98 FORECLOSES PLAINTIFFS' INTERPRETATION OF ARTICLE IX AS**
6 **IMPOSING A SEPARATE (AND HIGHER) MINIMUM SCHOOL FUNDING**
7 **REQUIREMENT**

8 As discussed above, Plaintiffs' assertions fail because: (1) Article IX does not confer the
9 substantive rights they assert; and (2) their funding claims are predicated on an improper attempt
10 to constitutionalize legislative enactments. However, even if these other provisions somehow
11 required a particular level of funding, that level cannot be higher than the constitutional minimum
12 level of funding established by Propositions 98 and 111.

13 Plaintiffs cannot avoid the insurmountable obstacle posed by Proposition 98 to their
14 adequate funding claims. Plaintiffs claim that interpreting Proposition 98 as the only
15 constitutional school funding mandate would repeal or revise the education clauses of article IX,
16 and because the ballot measure did not identify any intent to repeal or revise those clauses, it
17 cannot be construed to override the qualitative funding requirements they believe may be "read
18 into" these earlier education clauses. Plaintiffs' argument fails on a variety of grounds.

19 Among other flaws, Plaintiffs' interpretation conflicts with the plain intent behind
20 Proposition 98 to "establish" a constitutional requirement, where none before existed, and to fund
21 education at levels its authors and the voters believed sufficient so that Californians could "once
22 again have one of the best public school systems in the nation." (Ballot Pamp., Gen. Elec. (Nov.
23 8, 1988) [1988 Ballot Pamp.] attached at Intervener's Request for Judicial Notice (RJN),
24 Ex. C].)⁹ Defendants' position does not impliedly repeal or revise the other education clauses,
25 because nothing in the text of those provisions conflicts with the education funding provisions
26 added by Propositions 98 and 111. In any event, as noted in the demurrer, if the court were
27 inclined to read minimum funding requirements into Article IX, under elementary principles of

28 ⁹ A searchable pdf copy of the 1988 ballot pamphlet also is available at:
<http://library.uchastings.edu/library/california-research/ca-ballot-pamphlets.html>

1 constitutional construction, the specific education funding provisions more recently added to the
2 Constitution by Propositions 98 and 111 must be given effect over any earlier education funding
3 provisions in Article IX. Plaintiffs do not even attempt to distinguish the California Supreme
4 Court's decision *Strauss* or other cases cited by Defendants on this point. Plaintiffs' assertion
5 that Propositions 98 and 111 "read critical rights and duties" out of Article IX does not withstand
6 scrutiny.

7 **A. Propositions 98 and 111 Were Passed Because There Was No**
8 **Constitutionally Mandated Minimum Level of Funding for Public Schools**

9 A review of the language, legislative analysis, and summary of Proposition 98 indisputably
10 demonstrates that it was placed on the ballot for the express purpose of establishing a
11 constitutional minimum level of school funding where none previously existed.¹⁰ The Legislative
12 Analyst's non-partisan analysis of Proposition 98 stated that the measure: "*Establishes a*
13 *minimum level of funding for public schools and community colleges,*" and similarly that:
14 "[s]tarting in 1988-89, this measure requires the state to provide a minimum level of funding for
15 public schools and community colleges." (1988 Ballot Pamp., at p. 78.) The Official Summary
16 likewise stated that Proposition 98: "Amends [the] State Constitution by *establishing* a minimum
17 level of state funding for school and community college districts." (1988 Ballot Pamp.,
18 Summary, p. 78 [emphasis added].) This straightforward language cannot be squared with
19 Plaintiffs' contention that Proposition 98 only carved out a *separate* (and lower) minimum
20 funding level from pre-existing, undefined, and indeterminate funding requirements imposed by
21 the other education clauses, and that those requirements survived Proposition 98 because voters
22 expressed no intent to repeal them. As the ballot materials make clear, Proposition 98
23 "established," starting in 1988-89, a constitutional minimum school funding obligation where
24 none existed before.

25 Moreover, the "excess funds" provisions adopted under Proposition 98 conclusively
26 demonstrate that voters could not have believed that additional school funding was nevertheless

27 ¹⁰ The text of Propositions 98 and 111 is discussed in Defendants' demurrer and Motion
28 for Judgment on the Pleadings and therefore are not repeated here.

1 required by the earlier education clauses. Under these “excess funds” provisions, in Article XVI,
2 section 8.5, half of excess state revenues must be earmarked for instructional improvement and
3 accountability of public schools. (See Cal. Const., art. XVI, § 8.5(a) and (d).) However, if
4 certain statistics indicate that adequate funds already are being provided to schools, the excess
5 funds *need not be spent on education*. (*Id.*, § 8.5(a)(1); Ballot Pamp. at p. 78.) Specifically, with
6 respect to K-12 education, the funds need not be spent if the “Director of Finance and the
7 Superintendent of Public Instruction mutually determine that current annual expenditures per
8 student equal or exceed the average annual expenditure per student of the 10 states with the
9 highest annual expenditures per student for elementary and high schools, and that average class
10 size equals or is less than the average class size of the 10 states with the lowest class size for
11 elementary and high schools.” (*Ibid.*)

12 In other words, through Proposition 98, voters adopted into the Constitution an additional
13 standard for determining whether any excess state funds need be appropriated to education
14 beyond amounts already allocated for that year under the applicable Proposition 98 funding test.
15 These excess revenue provisions also cannot be squared with the existence of an allegedly
16 separate, pre-existing school funding requirement under the earlier education provisions.

17 Indeed, it is absurd to suggest that proponents of Proposition 98 or voters believed that the
18 earlier education clauses *already* imposed a separate obligation upon the Legislature to provide a
19 higher minimum level of education funding. Had that been the case, Proposition 98 would have
20 been unnecessary at best, and would have *lowered* the constitutional minimum level of school
21 funding at worst. Moreover, CTA and other education advocates would have sought enforcement
22 under the earlier education clauses as a way to counteract declining state education funding,
23 rather than seek passage of Proposition 98. As intervener CTA’s then-President stated in its
24 ballot argument supporting the measure: “Proposition 98 takes school financing out of politics by
25 *ensuring* a minimum funding level for schools.” (1988 Ballot Pamp., p. 80 [emphasis added].)

26 **B. Plaintiffs’ Argument that Propositions 98 and 111 Must Have Impliedly**
27 **Repealed the Earlier Education Clauses is Wrong**
28

1 It is telling that none of the Plaintiffs—Robles-Wong, CTA, or CQE—attempt to
2 distinguish *Strauss v. Horton* (2009) 46 Cal.4th 364, a recent California Supreme Court case
3 directly on point. As the Supreme Court stated in *Strauss*, “where constitutional provisions can
4 reasonably be construed so as to avoid a conflict, such an interpretation should be adopted.” (*Id.*
5 at p. 407; see also *Serrano I, supra*, 5 Cal.3d at p. 596 [same].) As a means of avoiding conflict,
6 “a recent, specific provision is deemed to carve out an exception to and thereby limit an older,
7 general provision.” (*Strauss*, 46 Cal.4th at p. 408; *Serrano I*, 5 Cal.3d at p. 596.) Under these
8 principles, the more recent, specific constitutional minimum school funding mandates adopted
9 under Propositions 98 and 111 must be deemed to control, or to carve out an exception to, any
10 education funding requirements that might be gleaned from the broad language of the earlier
11 education clauses. There is no other plausible way to harmonize Propositions 98 and 111 with the
12 earlier education clauses. The notion that these propositions must have “impliedly repealed” the
13 older education clauses is a red herring, because it presumes that Propositions 98 and 111 and the
14 earlier education clauses are fundamentally incompatible, which (for all the reasons already
15 mentioned) is not the case.

16 Thus, under the holdings of *Strauss* and *Serrano I*, even if Proposition 98’s funding scheme
17 could be interpreted as impacting the right to education under the earlier education clauses,
18 Proposition 98 must be considered the governing provision regarding the level of education
19 funding mandated by the Constitution.¹¹

20 C. Missouri Provides the Most Analogous Out-of-State Authority

21 Should the court look to out-of state authority, Missouri offers the most analogous case.
22 First, as noted in Defendants’ demurrer, Missouri’s Constitution has the closest parallel to

23 ¹¹ CTA contends that “under the logic of [defendants’] argument, the State does not have
24 any obligation to actually educate its children” so long as it directs [article XVI’s, 8(b)’s]
25 “minimum” funding to their schools. But this misses the point. Defendants nowhere deny the
26 Legislature’s duties under the education clauses to provide for a public education system and to
27 encourage educational development. The Legislature has taken innumerable measures, including
28 requiring the development of rigorous statewide academic content standards and related
assessment testing, in furtherance of those duties. However, Proposition 98 does define the extent
of the Legislature’s constitutional obligation with respect to the overall amount of yearly state
funding for education.

1 California's Article IX, section 1. Second, the Missouri Supreme Court's decision in *Committee*
2 *for Educational Equality v. State, supra*, 294 S.W.3d 477, determined that article IX, section 3(b)
3 of the Missouri Constitution, which guarantees that 25 percent of state revenue will be set aside
4 for education, sets the only constitutional mandate with respect to the level of education funding.
5 (*Id.* at pp. 488-489.) The court noted that reading that state's general and aspirational education
6 clause as "a free-standing obligation to provide certain school funding" would conflict with
7 section 3(b). (*Id.* at p. 489.) On the other hand, "Section 3(b) does not limit the legislature's
8 power in [the education clause] to establish and maintain free public schools." (*Ibid.*)
9 Harmonizing the provisions, the court concluded that section 3(b), rather than the education
10 clause, "provides the constitutional parameters for funding Missouri's public schools. . . .
11 Where the legislature has provided the 25 percent of state revenue required by section 3(b), it has
12 not failed in its duty under [the education clause] to provide a free education." (*Ibid.*)

13 In sum, California's earlier education clauses cannot be construed to require a higher level
14 of school funding separate from the constitutional minimum school funding requirements
15 established by voters under Proposition 98 and 111. Plaintiffs here do not contend that the
16 Legislature has failed to comply with Proposition 98 or 111.¹² Thus, Plaintiffs cannot state a
17 cognizable claim for a failure to meet the education funding requirements of the Constitution.

18 **III. THE SEPARATION OF POWERS DOCTRINE BARS THE RELIEF SOUGHT BY** 19 **PLAINTIFFS**

20 Defendants assert that Plaintiffs' Complaints violate the separation of powers doctrine in
21 two distinct ways. First, Plaintiffs improperly seek "sufficient funding" for California schools.
22 Second, they seek improper injunctive relief. Each of these arguments is addressed in turn below.

23 **A. Plaintiffs Improperly Seek "Sufficient Funding" for California Schools**

24 Plaintiffs' Opposition endeavors to re-write their Complaint to avoid a clash with the
25 separation of powers doctrine. Plaintiffs contend that they "ask this Court to do no more than

26 ¹² CTA maintains that it does not concede that the State is complying with Proposition 98.
27 (Intervener's Opp. p. 23:13-14.) However, while Interveners and other plaintiffs complain about
28 certain aspects of the Legislature's implementation of Proposition 98, neither the Robles-Wong
nor the CQE plaintiffs assert a cause of action based on any failure to comply with the
constitutional minimum funding requirements established under Proposition 98.

1 review the State's school finance system" to "determine whether the State is living up to its
2 constitutional obligations." (RW Opp. at p. 1.) Moreover, Plaintiffs deny that their Complaint
3 seeks to allocate more money to California schools or the re-design of California's public school
4 system. (*Id.* at p. 23, fn. 11 ["Plaintiffs seek no similar [to *Butt*] diversion or appropriation of
5 funds in their complaint"].) However, the plain language of the Complaint belies such assertions.

6 In the section of Plaintiffs' Complaint titled, "On-Going Constitutional Violations Require
7 Judicial Action" (Complaint at pp. 50-53), Plaintiffs assert: (1) "[c]hronic underfunding is a
8 primary cause of numerous programmatic and operational deficiencies"; (2) "the State has failed
9 to provide *funding in an amount* or through distribution mechanisms that allow districts to
10 provide the required academic program"; and (3) "[s]tate *funding must support* a system of
11 common schools that provides all students an opportunity to . . . reach proficiency in the State's
12 academic standards." (Emphasis added.) Plaintiffs' First Cause of Action further alleges that the
13 State has failed its "constitutional duty" to "*sufficiently fund*" California's education finance
14 system. (*Id.* at p. 53 [emphasis added].) Plaintiffs' Fourth Cause of Action similarly avers that
15 the State has failed to "*provide the amount of funding necessary* to support the State's prescribed
16 education program." (*Id.* at p. 54 [emphasis added].) The declaratory relief sought by Plaintiffs
17 contends that California has not "*sufficiently fund[ed]*" California's education finance system.
18 (*Id.* at p. 55 [emphasis added].) And as discussed above, Plaintiffs seek a permanent injunction
19 "[c]ompelling the Defendants to design, enact, *fund*, and implement a system of public school
20 finance" which aligns funding with California's "prescribed educational program" and academic
21 standards. (*Id.* at p. 56 [emphasis added].)

22 Despite all of the above, Plaintiffs claim that any assertion that they seek the appropriation
23 of more money for California schools is "wrong." (RW Opp. at p. 1.) However, as written,
24 Plaintiffs' Complaint—in demanding that California "sufficiently fund" public education—
25 crosses the line from merely seeking a determination of constitutionality to seeking the greater
26 allocation of sufficient funds.¹³ Simply put, where Plaintiffs' Complaint seeks relief that touches

27 ¹³ The Robles-Wong Opposition utterly fails to rebut—and thereby implicitly concedes—the
28 holding in *Grossmont Union High School District v. State Department of Education* (2009) 169
(continued...)

1 upon the “amount” or “distribution methods” or “alignment” of education funding, the separation
2 of powers doctrine prevents the court from granting that relief.¹⁴

3 **B. Plaintiffs Seek Improper Injunctive Relief**

4 Plaintiffs also mistakenly rely on *Serrano* to support the injunctive relief they seek.
5 Plaintiffs argue that the requested injunctive relief is proper because “the Supreme Court already
6 approved such an injunction in *Serrano II*.” (RW Opp. at p. 23.) However, upon close
7 examination, the injunctive relief sought by Plaintiffs goes much further than the relief upheld by
8 the California Supreme Court in *Serrano*.

9 First, the *Serrano* trial court “set a period of six years from the date of entry of judgment”
10 for the Legislature to take action, and “further held and ordered that the existing system should
11 continue to operate until such compliance has been achieved.” (*Serrano II*, 18 Cal.3d at p. 749.)
12 By contrast, Plaintiffs seek an immediate injunction “[d]irecting Defendants to cease from
13 continuing to operate the existing system of public school finance or any other system of public
14 school finance that does not meet the requirements of the Constitution.” (Robles-Wong
15 Complaint at p. 57). Such an injunction far exceeds the realm of permissible relief under *Serrano*
16 *II* and subsequent cases. (See, e.g., *O’Connell v. Superior Court*, *supra*, 141 Cal.App.4th at pp.
17 1475-1476 [finding trial court’s preliminary injunction too broad and in “sharp contrast” to the
18 relief allowed in *Serrano II* and *Butt* because “the trial court imposed its own remedy” by
19 enjoining the enforcement of the statute imposing the CAHSEE diploma requirement].)

20 Second, the *Serrano* trial court’s relief (affirmed by the Supreme Court) “was not to be
21 construed to require the adoption of any particular system of school finance, but only to require

22 (...continued)

23 Cal.App.4th 869, 881-882 (holding that “[t]he allegation that the Legislature is not providing
24 enough funding for special education is not a basis for a lawsuit. How much money to collect and
how to spend it are matters entrusted to the Legislature, not the judiciary.”) The core demand of
this litigation is that the State is similarly “not providing enough funding” for education.

25 ¹⁴ The full panoply of cases supporting this are discussed in Defendants’ Demurrer, but see
26 generally *Mandel v. Myers* (1981) 29 Cal.3d 531, 539 [“The separation of powers doctrine has
27 generally been viewed as prohibiting a court from directly ordering the Legislature to enact a
28 specific appropriation”]; *Long Beach Unified Sch. Dist. v. State of California* (1990) 225
Cal.App.3d 155, 180 [“A court cannot compel the Legislature either to appropriate funds or to
pay funds not yet appropriated”].)

1 that the plan adopted comport to the requirements of the state equal protection provisions.”
2 (*Serrano II*, 18 Cal.3d at pp. 749-750.) Plaintiffs’ ardent denials notwithstanding, their injunctive
3 relief *does* invoke a particular finance system: it requires the State to “design, enact, fund, and
4 implement a system of public school finance” which “aligns” funding with California’s
5 “prescribed educational program” and academic standards. (Robles-Wong Complaint at p. 57)
6 Plaintiffs further demand an educational finance system which ensures that students meet specific
7 standards such as: (1) “develop[ing] the skills and capacities necessary to achieve economic and
8 social success in our competitive society”; (2) “participat[ing] meaningfully in political and
9 community life”; and (3) becom[ing] informed citizens and productive members of society.” (*Id.*
10 at p. 56.) Far from merely asking this court “to determine whether the State is living up to its
11 constitutional obligations” (RW Opp. at p. 1), Plaintiffs seek the judicial imposition of an
12 education finance system which is “sufficiently funded” to meet legislative (not constitutional)
13 enactments and aspirational goals invented by Plaintiffs. In short, *Serrano* and its progeny cannot
14 buttress either Plaintiffs’ sufficient funding claims or the injunctive relief Plaintiffs seek.

15 IV. PLAINTIFFS FAIL TO STATE AN EQUAL PROTECTION CLAIM

16 A. Serrano Explicitly Rejected Plaintiffs’ Argument that the Equal Protection 17 Clause Guarantees A Particular Level of Funding

18 Plaintiffs’ third cause of action fails because California’s equal protection clause has never
19 been held to guarantee any right to adequate or “suitable” funding to ensure that all California
20 students will “become proficient in the State’s academic standards” and “achieve economic and
21 social success.” (CTA Compl., p.39 [¶¶ 1f, 2b; RW Compl., p.56 [¶¶ 1f, 2a].¹⁵ In fact, the
22 California Supreme Court explicitly rejected this notion when it affirmed the *Serrano I* trial
23 court’s judgment, and quoted the trial court, at length, with approval:

24 The equal-protection-of-the-laws provisions of the California Constitution mandate
25 nothing less than that all such persons shall be treated alike. *If such uniformity of*
26 *treatment were to result in all children being provided a low-quality educational*
program, or even a clearly inadequate educational program, the California
Constitution would be satisfied. This court does not read the *Serrano* opinion

27 ¹⁵ Plaintiffs are correct that animus is not required for an equal protection claim in this
28 case.

1 [Serrano I] as requiring that there is any constitutional mandate for the State to
2 provide funds for each child in the State at some magic level to produce either an
3 adequate-quality educational program or a high-quality educational program. It is
4 only a disparity in treatment between equals which runs afoul of the California
5 constitutional mandate of equal protection of the laws. *As our opinion in Serrano II*
6 *makes clear, this is a correct characterization.*¹⁶

7 (*Serrano v. Priest* (1977) 20 Cal. 3d 25, 36, fn 6, (*Serrano III*), quoting its fn. 28 in *Serrano II*,
8 *supra*, 18 Cal.3d at p. 754, fn. 28 [emphasis added].) Moreover, “the Constitution will guarantee
9 equality of educational opportunity, but no minimum level” because that is a “political decision.”
10 (*Serrano III, supra*, 20 Cal.3d at p. 40, fn. 12.)

11 **B. Plaintiffs Have Not Sufficiently Pled an Equal Protection Violation**
12 **Because They Have Not Alleged That Students of One District are Denied**
13 **a “Basically Equivalent” Education to Students of Other Districts**

14 As discussed previously, the Supreme Court has held that:

15 Whatever the requirement of the free school guarantee, the equal protection clause
16 precludes the State from maintaining its common school system in a manner that denies the
17 students of one district an education basically equivalent to that provided elsewhere
18 throughout the State.

19 (*Butt, supra*, 4 Cal.4th at p. 685.)

20 The Supreme Court further stated that “[a] finding of constitutional disparity depends on
21 individual facts.” There is no constitutional violation unless “the actual quality of the district
22 programs as a whole falls fundamentally below prevailing statewide standards” as shown by
23 specific material facts of “extreme and unprecedented disparity in educational services and
24 progress” of the individual student-plaintiffs in a District compared to “that provided elsewhere.”
25 (*Id.* at pp. 686-687.)

26 Here, the Complaints fail to allege any relevant, specific material facts regarding the
27 amount of substantial funding disparities in any of the plaintiff-students’ school districts or in the
28 plaintiff districts as compared to similarly situated students in other school districts in California
as was alleged and proved in *Serrano I* and *Butt*. (*Serrano I, supra*, 5 Cal.3d at p. 590, fn.1, pp.
594-595, 618; see Defs. Demurrer at p. 28.) Plaintiffs’ Complaints are devoid of any relevant

¹⁶ The California Supreme Court does not appear to contemplate that an “adequate-quality” education is required by Article IX or any other constitutional clause.

1 specific material facts establishing any “real and appreciable” impact to the basic educational
2 equality of any of the student-plaintiffs. There are no relevant, specific material facts that any of
3 the student-plaintiffs have suffered any “extreme and unprecedented” disparity in education
4 services or progress as compared to other similarly situated students in other school districts in
5 California as required in *Butt* and *Serrano*. There are no relevant specific material facts showing
6 that any of the student-plaintiffs who are low-income or English learners have not passed exit
7 exams or failed to meet proficiency standards because of the State’s alleged inadequate funding.
8 There are also no factual allegations that any of the plaintiff districts or the student-plaintiffs’
9 districts will be closing schools, or cutting programs, or limiting curricula such that students
10 would lack required subject matter courses, and thus not be promoted from grade to grade.

11 Plaintiffs’ general contentions that not all California students are meeting the State’s
12 “prescribed” proficiency requirements or that the State’s student performance rate or teacher/staff
13 ratio are below the national average are simply insufficient to establish an equal protection
14 violation. Their allegations do not show any “real and appreciable impact” on any of the student-
15 plaintiff’s right to equal educational opportunities resulting from the State’s allegedly inadequate
16 funding of California’s public school system. Accordingly, the Complaints fail to state a claim
17 for equal protection as a matter of law.

18 **V. THE “STATE OF CALIFORNIA” AND THE GOVERNOR ARE NOT PROPER PARTIES**

19 *Serrano II* — a case in which neither “the State or California” nor the Governor were
20 parties — unequivocally provides that “it is the general and long-established rule that in actions
21 for declaratory and injunctive relief challenging the constitutionality of state statutes, state
22 officers with statewide administrative functions under the challenged statute are the proper parties
23 defendant.” (*Serrano II*, *supra*, 18 Cal.3d at p. 752; see also *Wolfe v. City of Fremont* (2006) 144
24 Cal. App. 4th 533, 551 [quoting *Serrano II*]; *San Francisco NAACP v. San Francisco Unified*
25 *School District* (N.D. Cal. 1979) 484 F.Supp. 657, 665 [holding that state administrative officers
26 are the proper parties to sue and that “in such cases [challenging the constitutionality of a state
27 statute] the Legislature and the Governor are neither necessary nor proper parties because under
28

1 the doctrine of separation of powers courts may not order the Legislature or its members to enact
2 or not enact, or the Governor to sign or not to sign, specific legislation.”].)

3 Plaintiffs fail to rebut this line of cases or to cite a single case supporting their argument
4 that the Governor and the State of California are appropriate defendants in this litigation
5 challenging the constitutionality of state statutes pertaining to the education finance system.¹⁷
6 Instead, Plaintiffs create a straw man argument that “[t]he State appears to argue that because no
7 one official is responsible for the totality of the State’s education funding scheme, that scheme
8 cannot be subject to constitutional challenge. This argument must be rejected.” (RW Opp. at p.
9 27.) Plaintiffs misconstrue Defendants’ assertions.

10 To the contrary, Defendants merely contend that — according to *Serrano II* — the
11 Governor and the State of California have been improperly joined as defendants in this case
12 because Plaintiffs seek “declaratory and injunctive relief challenging the constitutionality of state
13 statutes.” (*Serrano II, supra*, 18 Cal.3d at p. 752.) Plaintiffs must first sue the appropriate
14 parties—in this case, the state officers who administer the public school finance system—if
15 Plaintiffs hope to obtain the declaratory and injunctive relief they seek. Because they fail to name
16 the appropriate parties, this demurrer should be sustained for misjoinder of parties.

17 VI. THE PLAINTIFF –ASSOCIATIONS, ACSA, CSBA, CTA, AND THE CALIFORNIA 18 STATE PTA, LACK STANDING

19 Broadly speaking, the Robles-Wong plaintiffs filed this action as parents on behalf of their
20 children’s equal protection and other constitutional interests in the financing of their public school
21 educations. Plaintiff-interveners filed their complaint asserting the same constitutional violations.
22 The Complaints, however, fail to establish standing of the CTA interveners, or the associations,

23 ¹⁷ The Robles-Wong Plaintiffs’ summarily conclude that “*Butt v. State of California*
24 demonstrates that it is typical to name the State as a defendant in education cases.” (Opp. at 28.)
25 However, the mere fact that the State of California was a named defendant in *Butt* does not mean
26 that it was an appropriate defendant. It only means that the defendants in that case failed to
27 demur on the ground that the State of California was improperly joined as a party. CTA (Opp. at
28 30) cites *Tinsley v. Palo Alto Unified School Dist.* (1979) 91 Cal. App.3d 871, 879 fn. 1, for the
proposition that “joinder of the state and the state board of education . . . is sufficient” to
challenge alleged deficiencies regarding the maintenance of school districts. (Citing *Serrano II*,
18 Cal.3d at pp. 750-53.) Aside from the distinguishable (and critical) fact that the State Board of
Education is not a defendant in this litigation, *Tinsley* apparently mis-cites *Serrano II*; as
discussed above, the “State of California” was not a named party in any *Serrano* case.

1 or their members, as real parties in interest. Therefore, plaintiff-interveners and associations
2 should be dismissed from this action.

3 **A. Standing to Sue for a Constitutional Violation Requires Actual Harm**

4 Plaintiff-interveners and associations would have standing to sue if they or someone they
5 represent have either “suffered or are threatened with an injury of sufficient magnitude to
6 reasonably assure the relevant facts and issues will be adequately presented.” (*City of Irvine v.*
7 *Irvine Citizens Against Overdevelopment* (1994) 25 Cal.App.4th 868, 874; Code Civ. Proc., §
8 367; *Blumhorst v. Jewish Family Services of Los Angeles* (2005) 126 Cal.App.4th 993, 1003-
9 1004 [male plaintiff lacked standing to sue for injunctive relief against domestic violence shelters
10 that accepted only women because he failed to allege seeking, and being denied, admission to
11 such shelters.]) But plaintiff-interveners and associations have not alleged any actual harm to
12 themselves from the alleged constitutional violations. (See Defs. Demurrer at pp. 25-27.)

13 **B. Neither the Associations Nor Their Members Have Sustained Actual Harm**

14 The status as an association bringing suit on behalf of its members does not excuse the
15 standing requirement. Such standing is predicated upon showing the members would have
16 standing to sue in their own right. (*Associated Builders and Contractors, Inc. v. San Francisco*
17 *Airports Com.* (1999) 21 Cal.4th 352, 361.) Thus, an association must allege that its members
18 have sustained injury from the alleged constitutional violation. (*Residents of Beverly Glen, Inc. v.*
19 *City of Los Angeles* (1973) 34 Cal.App.3d 117, 129.) Such representative suits on behalf of the
20 real parties in interest are permitted “where justified by considerations of necessity, convenience
21 and justice.” (*Salton City Area Prop. Owners Ass’n v M. Penn Phillips Co.* (1977) 75 Cal.App.3d
22 184, 191.) Plaintiff-interveners and associations have not met this requirement.

23 The associations describe themselves as associations promoting the “welfare” of children
24 and seeking “appropriate” and “sufficient” school funding. (See, e.g., RW Compl. at ¶¶ 48 50.)
25 However, these mission statements do not sufficiently allege that the associations have actually
26 suffered any injury from the alleged constitutional violations. Because an association’s mere
27 interest in the outcome of this action fails to establish the predicate injury from the alleged
28 constitutional claims, particularly an equal protection violation, the associations lack standing.

1 The Robles-Wong complaint already lists over 60 plaintiff-students allegedly harmed,
2 directly, by these same constitutional violations. The associations rely on the same harm
3 experienced by the Robles-Wong plaintiff-students to establish standing for their members. Yet,
4 such duplication undermines the court's usual considerations of "necessity, convenience and
5 justice" for permitting a representative suit. (*Salton City Area Prop. Owners Assn., supra*, 75
6 Cal.App.3d at p. 191.) This apparent dove-tailing of, specifically, the California State PTA
7 members and Robles-Wong plaintiffs, warrants dismissal of the California State PTA.

8 Similarly, the CTA does not satisfy the standing requirement by alleging, in conclusory
9 fashion, that its members have been "directly harmed by the State's failure to fulfill its
10 constitutional obligation to support its public schools." (CTA Complaint-in-Intervention, ¶ 38.)
11 The remainder of the complaint-in-intervention provides no information about the alleged harm
12 sustained by CTA members. Indeed, while the CTA alleges a distinct membership of teachers,
13 librarians, and other school personnel, it asserts the same deprivation expressed by the Robles-
14 Wong plaintiff-students: the loss of the *students'* alleged right to an education funded to accord
15 with content standards. (*Id.* at ¶ 152.) The same is true for the remaining associations, the ASBA
16 and the CSBA. Because echoing the Robles-Wong plaintiffs' harm is insufficient to establish
17 CTA's or any other intervener's standing, CTA, ASBA, and CSBA should also be dismissed
18 from this action.

19 **VII. PLAINTIFF INTERVENER CTA LACKS STANDING TO SUE UNDER CODE OF CIVIL**
20 **PROCEDURE § 526A**

21 Although CTA alleges taxpayer standing under Code of Civil Procedure section 526a in its
22 complaint-in-intervention, CTA fails to defend that allegation in response to Defendants'
23 demurrer challenging standing. The complaint-in-intervention alleges, in part, that "CTA and its
24 members have been liable to pay, and within one year before the commencement of this action
25 have paid, taxes within the State of California." (CTA Complaint-in-Intervention, ¶ 38.)
26 However, because judicially-noticeable facts belie this allegation of taxpayer status, the demurrer
27 for lack of standing, necessary to state a cause of action under 526, should be sustained.

28 **A. Taxpayer Standing Under Section 526a is the Proper Subject of a**
Demurrer

1 A plaintiff's lack of standing to sue, whether apparent on the face of the complaint or from
2 judicially noticed matters, constitutes a failure to state a claim. (*County of Fresno v. Shelton*
3 (1998) 66 Cal.App.4th 996, 1009.) Because CTA has asserted taxpayer standing in its complaint-
4 in-intervention, CTA must meet the statutory criteria for taxpayer standing, that it be "assessed
5 for and liable to pay" a tax to the public entity or has paid such a tax "within the past year."
6 (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2010) ¶
7 2:70, pp. 2-24, citing Code Civ. Proc., § 526a; *Wirin v. Horrall* (1948) 85 Cal.App.2d 497.)

8 The courts have consistently enforced the second criteria for standing under Section 526a
9 that the taxpayer-plaintiff must establish actual payment or liability for the challenged taxes
10 imposed by the defendant public entity. (*Blair v. Pitchess, supra*, 5 Cal.3d at p. 265, fn. 2
11 [plaintiffs' county residency and county tax payments provided standing to sue county sheriff];
12 *Cornelius v. Los Angeles County Metro. Transp. Authority* (1996) 49 Cal.App.4th 1761, 1777-
13 1779 [plaintiff lacked standing to sue local transit authority for equal protection violation because
14 he did not pay county property taxes and his payment of sales taxes on purchases was
15 insufficient]; *Santa Barbara County Coalition Against Automobile Subsidies v. Santa Barbara*
16 *County Assn. of Governments* (2008) 167 Cal.App.4th 1229, 1236 [non-profit's payment of
17 county sales tax as retailer of T-shirts provides standing to challenge county ballot measure].)

18 Simply put, "one who is not a taxpayer has no standing to maintain such an action, whether
19 or not he or she is a resident." (59 Cal.Jur.3d Taxpayers' Action § 3, citing *Orcutt v. Pasadena*
20 *Land & Water Co.* (1908) 152 Cal. 599, 601-602.)

21 **B. CTA's Allegations Do Not, When Viewed with Judicially-Noticeable Facts,**
22 **Establish Taxpayer Standing**

23 In light of judicially noticeable facts, CTA fails to properly allege itself as a taxpayer
24 qualified to bring a Section 526a complaint. The complaint-in-intervention alleges "CTA and its
25 members have been liable to pay, and within one year before the commencement of this action
26 have paid, taxes within the State of California." (Complaint-in-Intervention, ¶ 38.) However, the
27 State Franchise Tax Board's records show CTA has tax-exempt status. (Ex. A, Franchise Tax
28 Board Excerpted Exempt List; Req. J. Not.) These judicially noticeable facts suggest that CTA is

1 tax-exempt and thus estopped from alleging otherwise. (*Prilliman v. United Air Lines, Inc.*
2 (1997) 53 Cal.App.4th 935, 958.) Because these judicially noticeable facts belie CTA's alleged
3 taxpayer status, CTA should be dismissed from this action for failure to state a claim or, upon a
4 proffer of evidence, be permitted to amend to properly allege their taxpayer status.

5 **VIII. UNTIL A "SUBVENTION CLAIM" FOR ALLEGEDLY "INADEQUATELY FUNDED STATE**
6 **EDUCATION MANDATES" HAS BEEN FILED AND DETERMINED BY THE COMMISSION**
7 **ON STATE MANDATES, PLAINTIFFS' CLAIMS FOR DECLARATORY AND INJUNCTIVE**
8 **RELIEF ARE BARRED**

9 The California Constitution requires Plaintiffs and Intervener to file a subvention claim
10 under section 6 of Article III B for any alleged unfunded state mandates. Plaintiffs' claims that
11 state mandates are not being properly funded, forms the factual basis of their claims for relief.
12 (See Defendants' Demurrer, Argument § V at pp. 28-32.) As Defendants have already
13 demonstrated, the gravamen of both complaints is the State's alleged failure to adequately fund
14 certain "prescribed education programs" and other state education mandates that the Legislature
15 has enacted since the passage of Proposition 98 (e.g., content standards and exit exam
16 requirements). (See Complaint allegations identified in Defendants' Demurrer at pp. 31-32; and
17 in RW Opp. I.B. at pp. 5-6 and CTA Opp. at pp. 7-8.)

18 Plaintiffs argue that their complaints do not seek subvention relief for reimbursement of
19 mandated costs under Article III because they involve constitutional questions. But these same
20 contentions were made and rejected by the California Supreme Court in *Kinlaw v. State* (1991) 54
21 Cal.3d 326, 330 and by the Court of Appeal in *Grossmont, supra*, 169 Cal.App.4th at pp. 881-
22 882. In *Kinlaw*, the plaintiffs filed a class action against the State, Health Services Department
23 Director, and the County for declaratory and injunctive relief for constitutional violations after the
24 Legislature passed AB 799, which reduced Medi-Cal benefits for medically indigent adults.
25 (*Ibid.*) The Supreme Court looked behind the claims to find that the true gravamen of the
26 complaint arose out of alleged unfunded mandate for health care services. The Court affirmed the
27 trial's summary judgment and dismissed the complaint for failure to exhaust its sole and
28 exclusive remedy with the Commission:

Whether viewed as an action seeking restoration of Medi-Cal benefits, one to compel
state reimbursement of county costs, or one for declaratory relief, therefore, the action

1 required a determination that the enactment of AB 799 created a state mandate with
2 the contemplation of section 6 . . . before the state has any obligation to reimburse the
county . . . or to reinstate benefits.

3 (*Kinlaw, supra*, at pp. 330-331; see also *Grossmont, supra*, 169 Cal.App.4th at pp. 881-882
4 [although complaint pled three causes of action, including one for declaratory relief that the State
5 violated funding laws, including Propositions 98 and 111, breach of third party contract, and
6 denial of equal protection on behalf of general education students, the court found the true
7 gravamen of all the claims was inadequate funding of special and general education mandates and
8 sustained the demurrer for failure to exhaust remedies with the Commission].)

9 Additionally, CTA argues that they cannot file a subvention claim under Article III, which
10 is limited to claims by a local agency or school district and, therefore, exhaustion of remedies
11 with the Commission is inadequate. These same contentions were made by the taxpayers and
12 medically indigent plaintiffs in *Kinlaw* and also rejected by the Supreme Court. (*Kinlaw, supra*,
13 54 Cal. 3d at pp. 335-336, citing Gov. Code, § 17553.) However, the Supreme Court noted that
14 plaintiffs had an adequate remedy under Article III because “any interested party” can appear
15 before the Commission on a test claim once it has been filed. (*Id.* at p. 335.)

16 As in *Kinlaw* and *Grossmont*, this court should find that the true gravamen of the
17 complaints arise out of and are based on the State’s alleged failure to adequately fund various
18 statutory education mandates imposed on school districts over the past 20 years. (*Id.*; see, e.g.,
19 RW Compl., 81, 97-107, 116, 117, 119, 136-141, 171; CTA Compl. at p. 36 [¶¶ 1c, 1d, 2.a.i
20 [Prayer seeks court order for defendants to fund the actual costs of these new and higher levels of
21 the State’s “prescribed education program.”].)

22 Yet there is no duty for the Legislature to fund any state mandate until and unless there has
23 been a determination that an unfunded state mandate exists. The Commission, made up of the
24 Controller, Treasurer, Department of Finance, Office of Planning and Research Director, a public
25 member with public finance experience, among others, has the collective expertise and
26 responsibility, to determine in the first instance the existence and the actual statewide cost of any
27 alleged unfunded education mandates, and to report to the Legislature what budget appropriations
28 are necessary to fund said mandates. (Gov. Code, § 17525; *Kinlaw, supra*, 54 Cal.3d at pp.322-

1 333 summarizing the exclusive statutory scheme, including the Legislature's appropriation role.)
2 Consequently, Plaintiffs' claims for declaratory and injunctive relief, to address an inadequately
3 funded state education mandate, should be barred for failure to allege or exhaust their remedies.

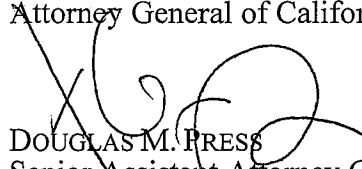
4 **CONCLUSION**

5 In light of the foregoing, Defendants respectfully request that their demurrer be sustained
6 without leave to amend as to the entirety of Plaintiffs' complaint and complaint-in-intervention.

7 Dated: November 16, 2010

Respectfully Submitted,

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