STATE OF INDIANA)
)
COUNTY OF MARION)

IN THE MARION SUPERIOR COURT
CIVIL DIVISION
CAUSE NO. 49D01-0604-PL-016414

PHILIP-ANTHONY BONNER, *et al.*,)
)
Plaintiffs,)
)
v.)
)
MITCHELL E. DANIELS,)
Governor of the State of Indiana, *et al.*,)
)
Defendants.)

FILED
(37) JUL 13 2006
Doris Anne Sadler
CLERK OF THE
MARION CIRCUIT COURT

BRIEF IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

Plaintiffs ask this Court to declare that Indiana's school-funding formula is unconstitutional because the General Assembly does not provide adequate funding for the State's overall educational needs and because the formula results in inequalities in levels of funding and quality of education among school districts throughout the State. *See* Complaint, at ¶¶ 90-98. These claims, however, are not susceptible to adjudication in a court of law. Any remedy, if necessary, would transgress limits on the Court's power as a tribunal for resolving civil disputes. Education funding is the province of the General Assembly, and any attempt by a court to recalibrate how much State revenue is allocated to education, or how that money is divided among school districts, would necessarily be unmoored from any manageable judicial standards and could only second-guess legislative value judgments.

Compounding this problem, Defendants in this case cannot provide any meaningful relief to the Plaintiffs because no Defendant has the power to change unilaterally any aspect of the school-funding formula. Accordingly, the Court should dismiss the case for lack of justiciability.

I. Separation of Powers: The School-Funding Formula is a Quintessential Legislative Policy Fraught with Subjective Value Judgments Concerning Education and Fiscal Policy, and the Constitutional Challenges of this Case Would Require Courts to Second-Guess those Judgments

The Indiana Constitution charges the General Assembly with providing for "a general and uniform system of Common Schools." Ind. Const. art. 8, § 1. The text is clear that "determining the components of a public education is left within the authority of the legislative branch of government." *Nagy v. Evansville-Vanderburgh Sch. Corp.*, 844 N.E.2d 481, 491 (Ind. 2006). Indiana courts have long recognized that the "legislature has plenary power over the subject of the public schools." *See State ex rel. Clark v. Haworth,* 122 Ind. 462, 23 N.E. 946, 948 (1890). The General Assembly has sole discretion in determining what types of schools to provide and how to fund those schools. *See id.*; *see also Bonney v. Ind. Fin. Auth.*, __ N.E.2d __, 2006 WL 1680052, at *7 (Ind. June 20, 2006) ("[T]here is no principled basis for a court to evaluate the decision of the General Assembly to allocate funds to one purpose over another. For that reason appropriation of funds is a central legislative function unusually unsuitable to judicial review as a matter of separation of powers.").

The Constitution commands that the General Assembly provide for a system of "Common Schools," but the Constitution "does not deny the right to the legislature to select the means of building up and encouraging schools." *Robinson v. Schenck,* 102 Ind. 317, 1 N.E. 698, 705 (1885). Separation-of-powers concerns dictate that legislative choices determining the amount of school funding and the formula for distributing such funding be left to the legislative branch. *See* Ind. Const. art. 3, § 1. This Court, like many other State courts that have eschewed adjudication of school-funding challenges, should refrain from crossing into the legislative domain and second-guessing the policy judgments that have led to the current circumstances of educational funding.

1. Many courts from other States have refused to consider school-funding challenges similar to this one precisely because deciding how to allocate funds for education requires legislative judgments that courts are ill equipped to make.

In *Marrero v. Commonwealth*, 739 A.2d 110, 112 (Pa. 1999), the Pennsylvania Supreme Court rejected a challenge to Pennsylvania's school-funding formula, holding the claim to be nonjusticiable. The plaintiffs argued that the legislature violated the Pennsylvania constitution by failing to provide "for the maintenance and support of a thorough and efficient system of public education." *Id.* at 111; Pa. Const. art. 3, § 14. The court rejected the plaintiffs' claim that the legislature failed to provide adequate funding and refused their invitation to restructure the funding formula because any judicially created solution would lack "judicially manageable standards for resolving [the claim]" and would be impossible to decide "without an initial policy determination of a kind clearly for nonjudicial discretion." *Id.* at 112.

Likewise, in *Ex parte James v. Ala. Coal. for Equity, Inc.*, 836 So.2d 813, 818 (Ala. 2002), the Supreme Court of Alabama, after over *11 years* of litigation, determined that it lacked the power to impose an affirmative remedy on the legislature with regard to the adequacy and equality of school funding. The court concluded that "any specific remedy that the judiciary could impose would, in order to be effective, necessarily involve a usurpation of that power entrusted exclusively to the Legislature." *Id.* at 819.

In *City of Pawtucket v. Sundlun*, 662 A.2d 40, 58 (R.I. 1995), the Rhode Island Supreme Court rejected a challenge to the State's school-funding formula based on the separation-of-powers doctrine. In that case, the plaintiffs sought a declaratory judgment that the school-funding formula was unconstitutional and asked the court to direct the defendants to implement a funding scheme that allocated taxes in such a way as "to provide equal educational opportunities

to students" and to "assign educational resources as uniformly as practical." *Id.* at 43. The court held that by asking it to impose "'equity' in funding sufficient to 'achieve learner outcomes,' plaintiffs have asked that the court take on a responsibility explicitly committed to the Legislature." *Id.* at 58.

The *Sundlun* court also explained that the lawsuit, if successful, would leave the court "to enforce policies for which there are no judicially manageable standards," rendering the case nonjusticiable. *See id.* Indeed, the court observed, "the absence of justiciable standards could engage the court in a morass comparable to the decades-long struggle of the Supreme Court of New Jersey that has attempted to define what constitutes 'thorough and efficient' education." *Id.* at 59 (collecting cases from 1973 to 1994 of the New Jersey Supreme Court). The court cautioned that "the volume of litigation and the extent of judicial oversight provide a chilling example of the thickets that can entrap a court that takes on the duties of a Legislature." *Id.*

In *Coal. for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles*, 680 So.2d 400, 406-07 (Fla. 1996), the Florida Supreme Court rejected plaintiffs' claims that the State's school-funding formula did not provide adequate funding and that existing funding was unfairly apportioned. The court held that it was not competent to decide whether "the Legislature's appropriation of funds was adequate in the abstract, divorced from the requirement of uniformity." *Id.* at 406. Deciding such a question would require the court to make legislative value judgments such as the "spending priorities to be assigned to the state's many needs." *Id.* at 407. The court rejected plaintiffs' protests that they were not asking the court "to compel the Legislature to appropriate any specific sum, but merely to declare that the present funding level is constitutionally inadequate" because such a determination would require that the court "evaluate, and either affirm or set aside, future appropriations decisions, unless the Plaintiffs are seeking merely an

advisory opinion from the Court." *Id.* Moreover, the court held that this involved a nonjusticiable political question because there were no "'judicially discoverable and manageable standards'" to determine whether educational funding was adequate. *See id.* at 408 (quoting *Baker v. Carr*, 369 U.S. 186, 209 (1962)).

Similarly, in *Comm. for Educ. Rights v. Edgar*, 672 N.E.2d 1178, 1193 (Ill. 1996), the Illinois Supreme Court rejected a challenge to Illinois' school-funding formula. In that case, the plaintiffs argued that the school-funding formula did "not effectively equalize funding among wealthy and poor districts." *Id.* at 1182. Observing that providing for education was historically a legislative function, the court held that separation-of-powers concerns dictated that the court did not have the power to hear this type of claim. *See id.* at 1191. Rejecting plaintiffs' claim that the funding formula did not result in a "high quality" education, the court observed that "the constitution provides no principled basis for a judicial definition of high quality." *Id.* Moreover, education is not "a subject within the judiciary's field of expertise, such that a judicial role in giving content to the education guarantee might be warranted." *Id.* Instead, "the question of education quality is inherently one of policy involving philosophical and practical considerations that call for the exercise of legislative and administrative discretion." *Id.*

2. State courts that have ventured into the school-funding arena have found themselves mandating legislative reforms and then supervising the legislature for decades. For example, from 1984 until 2005, the Texas courts were embroiled in cases regarding the constitutionality of the State's system of education financing. *See, e.g.*, *Neeley v. W. Orange-Cove Consol. Indep. Sch. Dist.*, 176 S.W.3d 746 (Tex. 2005); *W. Orange-Cove Consol. Indep. Sch. Dist. v. Alanis*, 107 S.W.3d 558 (Tex. 2003); *Edgewood Indep. Sch. Dist. v. Meno*, 917 S.W.2d 717 (Tex. 1995) [*Edgewood IV*]; *Carrollton-Farmers Branch Indep. Sch. Dist. v.*

Edgewood Indep. Sch. Dist., 826 S.W.2d 489 (Tex. 1992) [*Edgewood III*]; *Edgewood Indep. Sch. Dist. v. Kirby*, 804 S.W.2d 491 (Tex. 1991) [*Edgewood II*]; *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391 (Tex. 1989) [*Edgewood I*]. This long history includes a constant series of legislative enactments, judicial review, legislative enactments in response, and more judicial review.

In *Edgewood I*, the Texas Supreme Court held that the system of education financing was unconstitutional and stayed an injunction stopping the flow of school funds until May 1, 1990, but did not "instruct the legislature as to the specifics of the legislation it should enact." *See Edgewood I*, 777 S.W.2d at 399. In response, the legislature enacted a new funding formula in June 1990. *See* 1990 Tex. Gen. Laws 1.

The plaintiffs challenged the new formula, and the case again landed in the Texas Supreme Court, which held that the legislature had still failed to comply with its constitutional obligations. *See Edgewood II*, 804 S.W.2d at 498. Recognizing that imposing an affirmative remedy on the legislature would create separation-of-powers problems, the court again reiterated that "[w]e do not prescribe the means which the Legislature must employ in fulfilling its duty" and extended the injunction deadline until April 1, 1991. *See Edgewood II*, 804 S.W.2d at 498-99. In response, the legislature *again* enacted changes to the school-funding formula in 1991. *See* 1991 Tex. Gen. Laws 1475.

In *Edgewood III*, the new formula was challenged under several provisions of the Texas constitution, including Article 8, section 1e; Article 7, section 3; and Article 3, sections 56 and 64a. *See Edgewood III*, 826 S.W.2d at 493. This case again worked its way to the Texas Supreme Court, which held that the new system levied an ad valorem tax without election in violation of the constitution and again stayed the injunction until the 1993-94 school year. *See*

id. at 523. On the third try, the dissent observed that "we do not serve the school children of our state well by . . . telling the legislature to 'try, try again,' without guidance" and suggested some standards as to what would be an efficient system of education finance. *See id.* at 526 (Doggett, J., dissenting). Recognizing the lack of manageable standards and direction for the legislature, the dissent observed that "Senate Bill 351 is condemned for utilizing the very method of taxation which the majority contemplated in *Edgewood II*" and that the majority effectively told the legislature "choose any method you desire excepting that which we last urged upon you." *Id.* at 575 (Doggett, J., dissenting). The legislature again attempted to respond to the court's mandate and passed more reforms to the education-financing scheme in 1993. *See* 1993 Tex. Gen. Laws 1479.

The reforms were again challenged, and the case again worked its way to the Texas Supreme Court, which finally upheld the school-funding formula as meeting all constitutional requirements. *See Edgewood IV*, 917 S.W.2d at 750. Although this was the last in the line of *Edgewood* cases, challenges to educational funding have continued to be heard by the Texas judiciary, including cases that have revisited the same issues seen in the prior *Edgewood* cases. *See, e.g.*, *Neeley v. W. Orange-Cove Consol. Indep. Sch. Dist.*, 176 S.W.3d 746, 794 (Tex. 2005) (holding that the State's financing system amounted to an unconstitutional ad valorem tax).

The difficulty encountered by the Texas courts is not unique. New Jersey has been embroiled in a similar struggle over the details of its education-funding formula. *See Sundlun*, 662 A.2d at 59 (collecting New Jersey cases involving education funding from 1973 to 1994). "[T]he New Jersey Supreme Court has struggled in its self-appointed role as overseer of education for more than twenty-one years, consuming significant funds, fees, time, effort, and court attention." *Id.*

In the first three cases, the New Jersey Supreme Court found the system to be unconstitutional and ordered the legislature to enact reforms no later than December 31, 1974, but the legislature was unable to pass appropriate reform. *See Robinson v. Cahill*, 351 A.2d 713, 718 (N.J. 1975). As a result, in 1975, the court put itself in the precarious position of ordering a redistribution of legislative appropriations and enjoining the State Treasurer, the State Commissioner on Education, and other State officers from distributing funds according to the existing statute. *See id.* at 724. In 1976, the court held that the reform legislation passed in 1975 was constitutional, assuming that the legislature would fulfill its duty to fund fully the appropriations. *See Robinson v. Cahill*, 355 A.2d 129, 139 (N.J. 1976). However, the legislature failed to appropriate the necessary money, and the court enjoined every State officer from expending any funds in support of the public-school system until the legislature acted to fund the reforms. *See Robinson v. Cahill*, 358 A.2d 457, 459 (N.J. 1976).

The court finally declared that the entire system was fully funded and constitutional in 1976. *See Robinson v. Cahill*, 360 A.2d 400, 400 (N.J. 1976). However, the entire battle was reignited in the mid 1980s when the education-financing system was again challenged. *See, e.g.*, *Abbott v. Burke*, 495 A.2d 376, 393 (N.J. 1985) (holding that plaintiffs challenging constitutionality of education-financing system must exhaust all administrative remedies first); *Abbott v. Burke*, 575 A.2d 359, 384 (N.J. 1990) (holding that the education-financing system was unconstitutional as applied to poorer school districts).

Other courts that have waded into the education-policy debate have done so only because the State constitution mandated that they do so. For example, in Massachusetts, the State constitution puts the duty to provide for a public-school system on "legislatures and magistrates," which was interpreted to include the judicial branch. *See McDuffy v. Sec'y of the Executive*

Office of Educ., 615 N.E.2d 516, 524 (Mass. 1993). Likewise, in Arkansas, the State constitution puts the duty to provide for education on "the State," which the Supreme Court found distinguished it from other States' constitutions where the duty was placed only on the legislature. *See Lake View Sch. Dist. No. 25 of Phillips County v. Huckabee*, 91 S.W.3d 472, 484 (Ark. 2002).

Although these two courts were forced to intervene by virtue of their interpretations of their respective State constitutions, they both have faced long battles fraught with an inability to provide clear standards for the legislature and a morass of other problems. In Massachusetts, the education-funding formula was first challenged in 1978. *See McDuffy*, 615 N.E.2d at 518. However, soon after the complaint was filed, the legislature enacted reforms to the funding scheme. *See* Mass. Gen. Laws ch. 70. The case then lay dormant for five years until the parties started discovery in 1983. *See McDuffy*, 615 N.E.2d at 518. In 1985, the legislature again enacted school-funding reforms, *see* Mass. Gen. Laws ch. 70A, and the case was again stalled. In 1990, the case was reinstated, and the case landed in the Supreme Judicial Court of Massachusetts in 1993, almost 15 years after its original filing. *See McDuffy*, 615 N.E.2d at 518. However, even though the court found that it was constitutionally required to take the case, it found itself needing to limit its own power in this area, stating "[i]t appears the plaintiffs seek to have us declare the entire financing scheme unconstitutional. We shall decline the invitation to engage in such a blunderbuss approach." *Id.* at 519.

Similarly, in Arkansas, litigation over school financing has been ongoing for at least ten years, including multiple attempts by the legislature to comply with the various courts' mandates. *See Lake View Sch. Dist.*, 91 S.W.3d at 477-78. Though the original complaint was filed in 1992, a related case was recently decided by the Arkansas Supreme Court in 2005. *See*

Lake View Sch. Dist. No. 25 of Phillips County v. Huckabee, __ S.W.3d __, 2005 WL 3436660 (Ark. Dec. 15, 2005). As recently as 2004, the court appointed special masters to report to the court on such matters as "[t]he measures taken by the General Assembly to assure that funding education is *the* priority matter in the budgetary process." *Lake View Sch. Dist. No. 25 of Phillips County v. Huckabee*, 144 S.W.3d 741, 742 (Ark. 2004). Thus, the court is in the precarious position (even if constitutionally required in Arkansas) of supervising every action taken by the legislature with respect to education financing and mandating that the legislature make this the top "priority" of the State—a quintessential legislative value judgment. Moreover, even the Arkansas Supreme Court recognized some limits on its ability to order legislative reform, acknowledging that ordering "the State to take specific steps to render school funding constitutional" is not the proper function of the courts and "falls more within the bailiwick of the General Assembly and the Department of Education." *See Lake View Sch. Dist.*, 91 S.W.3d at 507.

Because courts are institutionally unequipped to make the value judgments necessary to implement school-funding policy, the courts that have entered the school-funding arena have not been able to give any meaningful guidance to the legislature on how to rectify the perceived deficiencies. Instead, those courts have become legislative supervisors and simply second-guessed determinations made by the representative, elected body, which goes beyond ordinary judicial review and presents a profound separation-of-powers problem. Because courts cannot redress objections to education-funding policy without overstepping their bounds and usurping the role of the legislature, they should refrain from entering the arena in the first instance.

3. Indiana courts have repeatedly expressed their reluctance to intervene in policy disputes where the constitutional provision at issue presents no judicially manageable standards.

For example, in *McIntosh v. Melroe Co.*, 729 N.E.2d 972, 977 (Ind. 2000), the Indiana Supreme Court held that Article 1, section 12 (Due Course of Law) does not prevent the General Assembly from abolishing common-law remedies. The Court observed that "if we are to find some remedies chiseled in constitutional stone, we wander into the area of 'scarce and open-ended' guideposts for identifying which remedies are of constitutional dimension and which are not." *Id.*

Likewise, in *Doe v. O'Connor*, 790 N.E.2d 985, 991 (Ind. 2000), the Indiana Supreme Court expressed reluctance to divine any substantive rights from the text of Article 1, section 1 of the Indiana Constitution. The Court noted that other States have construed constitutional provisions similar to Article 1, section 1 "not to provide a sole basis for challenging legislation since the language is not so complete as to provide courts with a standard that could be routinely and uniformly applied." *Id.*; *see also Morrison v. Sadler*, 821 N.E.2d 15, 31-32 (Ind. Ct. App. 2005) (relying on *Doe* and holding that Article 1, section 1 is likely not capable of judicial enforcement because it provides no judicially manageable standards).

Similarly, in *Logansport State Hosp. v. W.S.*, 655 N.E.2d 588, 589 (Ind. Ct. App. 1995), the Indiana Court of Appeals held that the trial court's order violated the separation-of-powers doctrine when it ordered a State mental-health facility to hire additional staff. The court noted that Article 9, section 1 of the Indiana Constitution charges the General Assembly with providing treatment for the insane and that "this duty was non-delegable." *See id.* Moreover, the Court of Appeals observed that "[w]hen the trial court sought to increase [the facility's] staffing, it was essentially appropriating state funds and deciding how they should be spent. That right and responsibility is for the General Assembly alone." *Id.* at 589-90.

Although these cases do not address education funding, they provide good examples of cases where our courts have recognized their institutional limitations. While courts are quite capable of exercising their powers of judicial review, they should be reluctant to tread on the decisions of a co-equal branch of government when the Constitution has provided no meaningful guideposts or standards for review. Without meaningful standards for review, courts cannot tread into the legislative domain without engaging in legislative policymaking and, thereby, usurping the legislature's powers.

The education-funding cases provide a shining example of the institutional limitations of courts. Courts have been reluctant to step into the arena because there are no rules to follow once they enter. *See Coal. for Adequacy & Fairness in Sch. Funding, Inc.*, 680 So.2d at 406-07 (holding that the court was not competent to decide whether "the Legislature's appropriation of funds was adequate in the abstract" because there were no judicially manageable standards). Courts have also refused to enter the arena because even if they were able to determine that there has been a constitutional violation, any remedy imposed by the courts would impermissibly invade the duties of the legislature. *See Ex parte James*, 836 So.2d at 817 (holding that the court lacked the power to impose an affirmative remedy on the General Assembly with regard to the adequacy and equality of school funding because a judicially announced remedy "would necessarily represent an exercise of the power" that belonged to the legislature). Thus, the courts have determined that these types of questions are not judicially cognizable and are best left to the political process.

4. Not only do separation-of-powers concerns dictate that education-financing decisions should be made by the legislature, but keeping this debate in the legislature allows Indiana citizens to be actively involved in determining policy that intimately affects them on a

daily basis. If courts prescribe changes to the educational-funding formula, these changes could never be undone by anyone other than the courts. "Members of the general public . . . would be obliged to listen in respectful silence." *See Comm. for Educ. Rights v. Edgar*, 672 N.E.2d 1178, 1191 (Ill. 1996) (holding that "judicial determination would largely deprive the members of the general public of a voice in a matter which is close to the hearts of all individuals in Illinois"). There are currently many formal and informal channels through which Hoosiers can provide their input on the education system, but putting the education system into the hands of the courts nullifies any of this important debate. "[A]n open and robust public debate is the lifeblood of the political process in our system of representative democracy." *Id.*; *see also Haworth*, 23 N.E. at 948 (holding that it is within legislature's prerogative to try different methods and that "for mistakes or abuses it is answerable to the people, but not to the courts").

Moreover, Article 3, section 1 of the Indiana Constitution, which mandates separation of government functions, "is the keystone of our form of government." *Book v. State Office Bldg. Comm'n*, 238 Ind. 120, 149 N.E.2d 273, 293 (1958). This "'separation is not merely a matter of convenience or of governmental mechanism. Its object is basic and vital, * * * namely, to preclude a commingling of these essentially different powers of government in the same hands.'" *Id.* (quoting *O'Donoghue v. United States*, 289 U.S. 516, 530 (1933)). The Constitution thus requires "'*that the acts of each* [branch of government] *shall never be controlled by, or subjected, directly or indirectly, to, the coercive influence of either of the other departments*.'" *Id.* at 294 (quoting *O'Donoghue*, 289 U.S. at 530) (emphasis original). Thus, "[i]t cannot be possible that the courts can interfere with the legislative power, and adjudge that the legislature shall not adopt this method or that method." *Haworth*, 23 N.E. at 948.

For these reasons, the claims brought in this case are not justiciable by Indiana courts, and this case must be dismissed for lack of jurisdiction.

II. Lack of Redressability: Plaintiffs' Claims Must be Dismissed Because the Defendants Cannot Provide any Meaningful Relief

Plaintiffs assert a claim under the Declaratory Judgment Act, which gives courts jurisdiction to determine the rights or status of a person affected by a statute. *See* Ind. Code § 34-14-1-2. However, this does not grant to the courts unlimited authority to determine abstract questions. Instead, "[i]n order to obtain declaratory relief, the person bringing the action must have a substantial present interest in the relief sought." *See Hibler v. Conseco, Inc.*, 744 N.E.2d 1012, 1023 (Ind. Ct. App. 2001). In order for a court to have jurisdiction pursuant to the Declaratory Judgment Act, there must be a "justiciable controversy or question, which is clearly defined and affects the legal right, the legal status, or the legal relationship of parties having adverse interests." *Id.*

Justiciability encompasses a host of issues, including standing, mootness, ripeness, traceability, and redressability. All of these concepts are directed at ensuring that courts hear only cases that are clearly and crisply presented so that the courts can provide an adequate remedy. Particularly with respect to redressability, "federal limits on justiciability are instructive." *Id.* As in federal court, limits on State-court justiciability are "a key component of Indiana's constitutional scheme of separation of powers." *Schulz v. State*, 731 N.E.2d 1041, 1044 (Ind. Ct. App. 2000). Accordingly, even though Indiana courts in some circumstances countenance public standing (*i.e.*, standing without direct injury), *see State ex rel. Cittadine v. Ind. Dept. of Transp.*, 790 N.E.2d 978, 983 (Ind. 2003), redressability, or the ability to effectuate change through the defendants that would end the allegedly unlawful conduct, remains a critical limitation on judicial power in Indiana courts.

In order to show that they present redressable claims, Plaintiffs must demonstrate that the unlawful conduct complained of is "fairly traceable to the defendant[]" and is "likely to be redressed by the requested relief." *See Alexander v. PSB Lending Corp.*, 800 N.E.2d 984, 989 (Ind. Ct. App. 2003). In other words, redressability requires that the plaintiff demonstrate that the "defendant is the proper party from whom to seek redress." *Id.* at 990. Redressability also requires that it be "likely," rather than purely speculative, that the plaintiff's injury will be redressed by a favorable decision against the defendant. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992).

Redressability is especially relevant in cases in which plaintiffs are relying on public standing in order to advance their claims. Public standing is an exception to the general requirement that a plaintiff have an interest in the outcome of the case different from that of the general public. *See Higgins v. Hale*, 476 N.E.2d 95, 101 (Ind. 1985). Public-standing doctrine allows individuals to compel a government official to fulfill his public duty. *See Cittadine*, 790 N.E.2d at 980; *see also Hamilton v. State ex rel. Bates*, 3 Ind. 452 (1852) (holding that plaintiff had standing to bring suit because the suit was to compel a public official to perform a duty of his public office). Public standing is therefore only appropriate when the official being sued can provide some sort of relief by fulfilling a public duty that firmly rests with that official. If there is no connection between the actions or duties of the public official and the alleged injury, a plaintiff's claims are not redressable, and reliance on public-standing doctrine must fail.

Plaintiffs here request a declaratory judgment that Indiana's system of education financing violates the Education Clause, the Due Course of Law Clause, and the Equal Privileges and Immunities Clause of the Indiana Constitution. *See* Complaint, at ¶ 98. Plaintiffs appear to rely on public standing because they allege no private, direct injury. However, Plaintiffs have

failed to allege that the named Defendants can, through exercise of their public duties, provide any meaningful relief, and for good reason: none can.

1. In their complaint, Plaintiffs allege that the Education Clause imposes a duty "*on the State of Indiana*, through its General Assembly *and the Defendants*" to create a general and uniform system of common schools. *See* Complaint, at ¶ 89 (emphasis added). However, the Education Clause states "it shall be the duty of the *General Assembly* to . . . provide, by law, for a general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all." Ind. Const. art. 8, § 1 (emphasis added). This duty belongs not to the State, the Governor, the State Superintendent, or any agency or board created by the General Assembly; the ultimate duty explicitly rests with the General Assembly. Thus, as a purely formal matter, Plaintiffs' Education Clause claim must fail against these Defendants. *See Nagy v. Evansville-Vanderburgh Sch. Corp.*, 844 N.E.2d 481, 491 (Ind. 2006) ("The duty rests on the legislature to adopt the best school system that can be framed; but they, and not the courts, are to judge what is the best system.") (internal citation omitted); *see also Fort Wayne Cmty. Sch. v. State*, 240 Ind. 57, 159 N.E.2d 708, 709 (1959).

2. Beyond such formalism, and with respect to all theories of unconstitutionality alleged in the Complaint, Plaintiffs complain about the mechanics of the school-funding formula and the distribution of funds to different schools throughout the State. *See* Complaint, at ¶¶ 27-57. And although it is not entirely clear what remedy the Plaintiffs seek, what is clear is that neither the Governor nor the State Superintendent has any power to change the school-funding formula. What is more, neither the Governor nor the State Superintendent has any control over the mechanism for distribution of the funds allocated pursuant to the school-funding formula.

Plaintiffs apparently have sued the Governor because they claim he is charged generally with enforcing the Indiana Constitution as well as statutes that provide financing for public education. *See* Complaint, at ¶ 3. However, Plaintiffs fail to allege what exactly the Governor has failed to do. Suing the Governor because he administers and enforces statutes in some general and unspecified way is insufficient to demonstrate redressability because a judgment against him would have no effect on how education is funded in Indiana. *See 1st Westco Corp. v. Sch. Dist. of Philadelphia*, 6 F.3d 108, 113-14 (3d Cir. 1993) ("General authority to enforce the laws of the state is not sufficient to make government officials the proper parties to litigation challenging the law."). The Governor does not have the unilateral power to change the current system of education funding and, therefore, cannot provide any of the relief requested by the Plaintiffs. *See Libertarian Party of Ind. v. Marion County Bd. of Voter Registration*, 778 F. Supp. 1458, 1461 (S.D. Ind. 1991) (holding that the Indiana State Election Board could not redress the alleged injuries, either through discipline or removal of county board members and that only the county board could provide the requested relief); *see also Rubin v. City of Santa Monica*, 308 F.3d 1008, 1019 (9th Cir. 2002) (holding that the Secretary of State was not a proper party because the city was not required to follow his directions when running its municipal elections).

3. Plaintiffs also have sued the Governor and the Superintendent of Public Instruction in their capacities as Co-Chairs of the Education Roundtable. However, the Education Roundtable is merely an advisory body charged with conducting studies and making recommendations to the State Board of Education and to the Governor regarding education policy. *See* Ind. Code § 20-19-4-1 *et seq*. The Education Roundtable has no authority or power to allocate funds for schools. And if all the Plaintiffs seek is a declaration or injunction requiring

the Education Roundtable to make a recommendation reflecting the Plaintiffs' education-funding preferences, this is not the sort of remedy that affords any meaningful relief. Even if such a recommendation were to follow, there is no basis for assuming that the General Assembly would enact it into law. *See Allen v. Wright*, 468 U.S. 737, 752 (1984) (holding that when the links between the alleged unconstitutional conduct and the asserted injury are attenuated, plaintiffs lack standing). Thus, a judgment against the Governor and Superintendent in their capacities as Co-Chairs of the Education Roundtable also would not afford Plaintiffs any meaningful relief.

4. Plaintiffs have also sued Suellen Reed in her capacity as Indiana State Superintendent of Public Instruction. Plaintiffs allege that Reed is responsible for the Department of Education, that she implements policies established by the Indiana State Board of Education, and that she is responsible for supervising the financing of elementary and secondary public education. *See* Complaint, at ¶ 4. Indiana law provides that the Superintendent of Public Instruction is responsible for distributing surplus agricultural commodities and administering the school-lunch program. *See* Ind. Code §§ 20-19-1-2; 20-19-1-3; 20-19-2-2. However, there is no statute providing that the Superintendent is responsible for the creation or administration of the school-funding system. Even in her role as Chair of the State Board of Education, the Superintendent is only one member of the eleven-member State Board and accordingly has no unilateral power to enact or change school-funding policy. *See* Ind. Code § 20-19-2-2.

As with the Governor, no declaration or injunction against the Superintendent can change the amount of funds expended on public education in Indiana or the formula by which those funds are distributed to public schools. Accordingly, the Plaintiffs' claims against the Superintendent are not justiciable.

5. Finally, Plaintiffs have also sued the Indiana State Board of Education itself, alleging that it is responsible, among other things, for establishing the educational goals of the State and making recommendations to the Governor and to the General Assembly concerning the educational needs of the State, including financial needs.[1] *See* Complaint, at ¶ 5.

However, Plaintiffs cannot bring a declaratory-judgment action against the State. *See Sendak v. Allen*, 164 Ind. App. 589, 330 N.E.2d 333 (1975) (holding that a declaratory judgment may not be sought against the State, but may be sought against State officers); *see also State v. Larue's Inc.*, 239 Ind. 56, 154 N.E.2d 708, 712 (1958) (holding that the Declaratory Judgment Act does not make the State subject to suit, but that a suit may be brought against State officers or agents). The State Board of Education is a State agency and as such is not subject to suit under the Declaratory Judgment Act. *See State Bd. of Accounts v. Ind. Univ. Found.*, 647 N.E.2d 342, 351 (Ind. Ct. App. 1995) (holding that when a statutorily created entity is fulfilling its statutorily mandated duties, it is acting as the State in its sovereign capacity).

Even apart from the Plaintiffs' inability to sue the Board itself, as with the Education Roundtable, the Board's mere ability to make school-funding-policy recommendations cannot make it a proper defendant in an action that challenges the constitutionality of the current school-funding formula. Recommendations are not law, and (as with any constitutional challenge) a change in the law (or at least the implementation of the law) is what Plaintiffs need to be successful in their lawsuit. *See Hewitt v. Helms*, 482 U.S. 755, 461 (1987) ("At the end of the rainbow lies not a judgment, but some action (or cessation of action) by the defendant . . . The

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[1] Plaintiffs also allege that the State Board of Education helps to set curricular standards for the State, but this seems to be unrelated to Plaintiffs' claims regarding school funding. *See* Complaint, at ¶ 5.

real value of the judicial pronouncement . . . is in the settling of some dispute *which affects the behavior of the defendant towards the plaintiff.*") (emphasis original).

It is true, however, that the Board also has the power to promulgate administrative rules concerning "[t]he distribution of funds and revenues appropriated for the support of schools in the state." Ind. Code § 20-19-2-8. But Plaintiffs do not challenge these regulations. *See* Complaint, at ¶ 1. Rather, Plaintiffs challenge the current total amount of public-school funding and the current method for distributing State educational funds among public schools. It is the General Assembly, not the Board, that has decided the amount of money to appropriate for public schools, and it is the General Assembly, not the Board, that has prescribed the formula for distributing that money among public schools. *See* Ind. Code §§ 21-3-1.7-6.6, *recodified at* 20-43-4-7 (calculations of Average Daily Membership); 21-3-1.7-6.7, *recodified at* 20-43-5-3 *et seq.* (calculations of target revenue per Average Daily Membership); 21-3-1.7-3.1, *recodified at* 20-43-3-4 (prior-year revenue calculations and reduction); 21-3-1.7-5, *recodified at* 20-43-3-5 (calculating tuition support levy); 21-3-1.7-6.8, *recodified at* 20-45-3-4, 20-45-3-5, 20-45-3-6 (calculation of target general fund property tax rate); 21-3-1.7-9.8, *recodified at* 20-43-10-1, 20-43-10-2 (calculation and use of honors diploma award); 21-3-2.1-7, *recodified at* 20-43-7-6 (calculation of grant school corporation is entitled to receive for special education programs); 20-32-8-6 (requirements for the distribution formula for the remediation grant program, including a statement that "the amount distributed to school corporations under the program may not exceed the appropriation by *the general assembly* for the remediation grant program") (emphasis added).

The General Assembly's legislated school-funding rules range from the broadest concepts to the most minute details. For example, in Indiana Code section 21-3-1.7-8.2, *recodified at* 20-43-6-3 *et seq.*, the General Assembly provides the basic formula for calculating

"the state distribution for a calendar year for tuition support for basic programs for each school corporation." The statute further provides that "if the state tuition support determined for a school corporation under this section is negative, the school corporation is not entitled to any state tuition support." *See id.* The General Assembly has placed additional limits on the amount of tuition support in Indiana Code section 21-3-1.7-9, *recodified at* 20-43-6-1, 20-43-2-3, 20-43-2-4. While providing this overarching structure for school funding, the General Assembly has also provided the minute details, such as how fractions in revenue amounts should be rounded. *See* Ind. Code § 21-3-1.7-7, *recodified at* 20-43-3-1.

As with the Governor, the Superintendent, and the Education Policy Roundtable, the Board has no unilateral power to alter this comprehensive formula. All it can do is distribute the money as appropriated by the General Assembly. *See* Ind. Code § 20-19-2-8.

* * *

In sum, if the Plaintiffs are seeking a modification of the school-funding formula, the current Defendants are without power to provide that remedy. And if they are seeking only a declaration or injunction that the Defendants make particular types of recommendations to each other or to the General Assembly, there is no basis for assuming that such a declaration or injunction would remedy any predicate constitutional insufficiencies or inequities when it comes to public-school funding in Indiana. Accordingly, such relief would be symbolic at best, and Indiana courts do not render decisions simply to engage in symbolic disagreement with elected public officials. *See Brewington v. Lowe*, 1 Ind. 21 (1848) (holding that plaintiffs had a "mistaken apprehension of the proper functions of the judiciary" and that "Courts will not go out of their proper sphere to determine the constitutionality . . . of a law" because that would be "interfering with the legislative power which is separate and distinct"); *see also Blinzinger v.*

Americana Healthcare Corp., 505 N.E.2d 449, 454-55 (Ind. Ct. App. 1987) (holding that courts cannot "allow invocation of the judicial process concerning matters upon which a court could not grant full relief" because it "would be a perversion of the purposes for which [courts] were instituted, and an assumption of functions that do not belong to them.") (internal quotations omitted).

For these reasons, and because the Plaintiffs may not pursue a declaratory judgment against the State Board of Education, this case must be dismissed.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Court grant their Motion to Dismiss.

Respectfully submitted,

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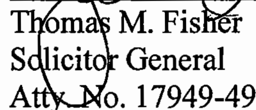
By: 

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I do hereby certify that on the 13th day of July 2006, I caused a copy of the foregoing to be served by First-Class United States Mail, postage prepaid, on the following counsel of record:

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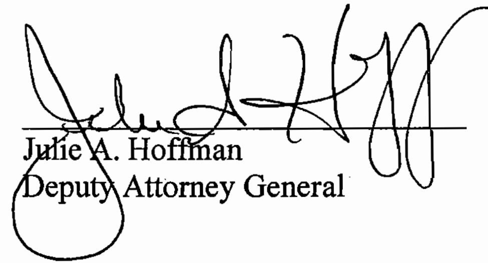

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