
**IN THE
SUPREME COURT OF ARKANSAS**

**LAKE VIEW SCHOOL DISTRICT
NO. 25 of Phillips County, *et al.***

APPELLANTS

v.

NO. 01-836

**MIKE HUCKABEE, Governor of the
State of Arkansas, *et al.***

APPELLEES

**On Appeal From The Chancery Court
Of Pulaski County, Arkansas
Second Division**

**The Honorable Collins Kilgore
Chancery Judge**

***AMICUS CURIAE* BRIEF
OF
THE ARKANSAS STATE CHAMBER OF COMMERCE, INC.
AND
THE ASSOCIATED INDUSTRIES OF ARKANSAS, INC.**

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II.

Statement Of *Amici's* Interest

Educated and employed Arkansans are the foundation of our State's social, political, and economic future. Every person in Arkansas, natural and corporate, should be concerned about the quality of Arkansas's public schools. The members of the State's business community are interested in that vital question, and thus they are interested in this appeal.

The Arkansas State Chamber of Commerce is a nonprofit corporation organized to promote commerce and advance the prosperity of Arkansas and its citizens. Approximately twelve hundred businesses are members of the State Chamber. The Associated Industries of Arkansas is a similar nonprofit corporation organized to encourage manufacturing, processing, and other industries. Approximately one hundred and eighty companies are members of AIA; every AIA member is also a State Chamber member. The member businesses of the State Chamber and AIA employ more than three hundred and thirty thousand Arkansas citizens.

For many years, the State Chamber and AIA have been committed to educational excellence. Their members have long believed that education is the foundation of a stable, productive, economically strong, and healthy society. The State Chamber and AIA know -- from first-hand experience -- that our State's educational system must deliver educated, prepared, and trainable workers to meet the competitive challenges of the global economy.

As corporate citizens, the State Chamber and AIA stand for a prosperous Arkansas. Our State, and its businesses, prosper when our citizens are educated and employed in good jobs. The quality of those jobs is a function of the quality of that

education: secretaries do not take shorthand anymore; they e-mail documents over the Internet; mechanics use computers as often as wrenches; and factory workers now depend more on their mastery of technology than on their muscles. The members of the State Chamber and AIA are interested in this case because they believe that the quality of Arkansas's public schools will, in large measure, determine the future prosperity and opportunities of our State and its citizens.

III.

Statement Of The Case

"The history of this case is long and tortured . . ." Lake View Sch. Dist. No. 25 v. Huckabee, 340 Ark. 481, 484, 10 S.W.3d 892 (2000)(Lake View II). This Court knows that important history well, having described it in detail and lived part of it. Lake View II, 340 Ark. at 484-93; Tucker v. Lake View Sch. Dist. No. 25, 323 Ark. 693, 694-97, 917 S.W.2d 530 (1996)(Lake View I). Since 1992, the parties, the Chancery Court of Pulaski County, this Court, the General Assembly, and the people of Arkansas have struggled to address the constitutional problems in our system of funding public education. Here are the landmarks relevant to the issues in this appeal.

In 1994, the Pulaski County Chancery Court held that Arkansas's system of funding public education created unconstitutional disparities in expenditures and opportunities for students. The Chancery Court (then-Judge Imber presiding) stayed its decision for two years. That delay did two things. It deprived the Chancery Court's order of finality, making it unappealable on the merits. Lake View I, 323 Ark. at 695-97. The delay also allowed State government, and citizens, time to respond to the Chancery Court's judgment.

The General Assembly and Governor responded with statutory changes. Among other things, Act 917 of 1995 changed the school funding system and required the State Board of Education to define what constitutes an adequate education. Lake View II, 340 Ark. at 485. Act 1108 of 1997 established new goals for student performance. A.C.A. § 6-15-1001, *et seq.* Act 1172 of 1997 created the Arkansas Comprehensive Testing and Assessment Program for measuring students' academic achievement. A.C.A. § 6-15-401, *et seq.* And Act 1307 of 1997 revised the funding formula. A.C.A. § 6-20-301, *et seq.*

Citizens responded by adopting Amendment 74 to the Arkansas Constitution. That Amendment provided a base millage rate of twenty-five mills for all school districts, allowed some funding variations among the districts, and allowed districts to levy additional taxes above the base millage rate for maintenance and operation.

In response to these changes in the law, the Chancery Court dismissed this case. In the last appeal, this Court reversed that judgment and remanded for a trial. Lake View II, 340 Ark. at 493-95. The question for trial was whether the 1995 and 1997 legislation, and Amendment 74, corrected the unconstitutional disparities in student expenditures and opportunities that the Chancery Court found in its 1994 Order. Lake View II, 340 Ark. at 495. During the pendency of the last appeal, the General Assembly adopted Act 999 of 1999, which refined and renamed this statutory scheme as the Arkansas Comprehensive Testing, Assessment, and Accountability Program.

On remand, the case proceeded to trial. The Chancellor held that the Lake View plaintiffs' complaints challenged both the equity and the adequacy of Arkansas's school funding system. **Addendum ("A") 4**. The parties tried and argued both issues to the Chancellor during twenty-three days of trial. More than thirty-five witnesses testified and the

Chancery Court received more than one hundred and eighty exhibits. The resulting trial record exceeds twenty thousand pages.

In due course, the Chancery Court filed a comprehensive final order. Judge Kilgore made more than 120 findings of fact. **A 8-41**. He considered the relevant State constitutional provisions, the new statutes, this Court's seminal decision in DuPree v. Alma Sch. Dist. No. 30, 279 Ark. 340, 651 S.W.2d 90 (Ark. 1983), other cases, and the Chancery Court's 1994 Orders. **A 41-47**. The Chancellor concluded that Arkansas's current school funding system remains inequitable and inadequate under our State Constitution. **A 47-53**.

Both sides have appealed, raising a host of issues in their respective notices. The long and tortured history of this case has brought it back to this Court for what everyone hopes will be a final decision on the merits.

IV.

Summary Of The Argument

As *amici curiae*, the State Chamber and AIA urge this Court to affirm the Chancellor's careful and comprehensive final order.

Arkansas's Constitution obligates the State to provide a general, suitable, and efficient system of free public schools. Why? Because "[i]ntelligence and virtue [are] the safeguards of liberty and the bulwark of a free and good government" Ark. Const., art. 14, § 1. As this Court put it almost two decades ago, "[e]ducation becomes the essential prerequisite that allows our citizens to be able to appreciate, claim and effectively realize

their established rights." DuPree, 279 Ark. at 346. Local control of school districts cannot change the State's constitutional duty. Local control is a means for providing students a good education, not an end. "Ultimately, the responsibility for maintaining a general, suitable and efficient school system falls upon the [S]tate." DuPree, 279 Ark. at 349.

Measured by Arkansas's constitutional obligation to its school children, the Chancery Court's judgment was correct: after the post-1994-Order changes in the law, our State's system for funding public schools remains inadequate and inequitable. The funding system is inadequate because our students perform poorly, our teachers are underpaid, our school facilities are subpar, and critical programs are underfunded or not funded at all. The funding system is inequitable because "the fortuitous circumstance of residence" still determines children's educational opportunities. DuPree, 279 Ark. at 345. This Court should not allow these constitutional defects to go uncorrected.

The State Chamber and AIA firmly believe, however, that our State's education problem is as much about a lack of real accountability as it is about funding. Arkansans must hold each other, and every participant from the State down to teachers, accountable for a system of public education that works. Unless that system produces educated individuals adequately prepared for employment and higher education, then it is not constitutionally efficient. Arkansans must demand improved student performance; we must demand more accountability from schools and teachers; and we must make sure that we're spending our limited resources wisely. When our State has come together on these critical reforms, then all Arkansans will have to pay for them. The State Chamber and AIA welcome this reform effort. They believe that an efficient and suitable public school system for our children will be the wisest investment that our State ever makes.

This case is the legal moment that calls upon this Court to help our State solve one of its gravest problems. Mindful of its proper institutional role, this Court should not try to answer the complex and fluid policy questions in this case. Difficulties lie that way. DuPree, 279 Ark. at 349-50. But as this Court knows, "this case cries for finality and resolution." Lake View II, 340 Ark. at 494. The Chancery Court's decision gave Arkansans a map showing the way toward a constitutionally adequate and equitable system of funding public education. When the Legislative and Executive branches hear this Court's judgment -- that the Chancery Court's map was correct on the law -- then a resolution of Arkansas's education problems will finally be within striking distance. But to do their jobs well, the other branches of State Government need good directions from this Court through the constitutional thicket of school funding.

V.

Argument

A. The State's Constitutional Obligations

Arkansas's Constitution obligates the State to provide adequate educational opportunities to every child in Arkansas. That was the Chancery Court's conclusion. As this Court's *de novo* review will confirm, measured by the Constitution and precedent, the Chancery Court's conclusion is unassailable.

. The Constitutions

Education has been a constitutional matter since Arkansas became a state. Our first Constitution recognized the principles animating this case: the importance of an

educated citizenry, the need to diffuse educational opportunities throughout our State, and the General Assembly's duty to provide for public education.

Knowledge and learning generally diffused through a community being essential to the preservation of a free government, and diffusing the opportunities and advantages of education through the various parts of the State being highly conducive to this end, it shall be the duty of the General Assembly to provide by law for the improvement of such lands as are, or hereafter may be, granted by the United States to this State for the use of schools, and to apply any funds which may be raised from such lands, or from any other source, to the accomplishment of the object for which they are, or may be, intended.

Ark. Const. of 1836, art. VII, reprinted in A.C.A. Constitutions at p. 497.

With one telling exception, every Arkansas Constitution has contained a similar provision or provisions. Ark. Const. of 1864, art. VIII, § 1; Ark. Const. of 1868, art. IX, §§ 1-9; Ark. Const. of 1874, art. 14, § 1-3. The exception is the Arkansas Constitution of 1861, which the State adopted after secession. That Constitution stands silent on the importance of a free public education for all citizens and the State's duty to provide it. Ark. Const. of 1861, art. VII, § 1.

As amended, Article 14 of our still-controlling 1874 Constitution contains the current education provisions. The opening section confers constitutional status on public education and obligates the State to provide general, suitable, and efficient public schools.

Intelligence and virtue being the safeguards of liberty and the bulwark of a free and good government, the State shall ever maintain a general, suitable and efficient system of free public schools and shall adopt all suitable means to secure to the people the advantages and opportunities of education. Ark. Const. art. 14, § 1. The State's obligation is clear: it "shall ever maintain a general, suitable, and efficient system of free public schools" *Ibid.* How far must the State go to fulfill its obligation? As far as necessary: Arkansas "shall adopt all suitable means to secure to the people the advantages and opportunities of education." *Ibid.*

The education article's second and third sections cover important details. The second section dedicates school funds and property solely to educational purposes. Ark. Const. art. 14, § 2. The third section is about money, establishing how the State will pay for its general and efficient system of public schools. In the wake of the Chancery Court's 1994 Order holding the extant school funding system unconstitutional, the people of Arkansas adopted Amendment 74. That Amendment rewrote section three of our Constitution's education article.

Section three now states: "The General Assembly shall provide for the support of common schools by general law. In order to provide quality education, it is the goal of this state to provide a fair system for the distribution of funds. It is recognized that, in providing such a system, some funding variations may be necessary." Ark. Const. art. 14, § 3(a). The provision goes on to state that "the primary reason" for allowing funding variations is to allow school districts "to raise additional funds to enhance" the district's educational system. *Ibid.* Compliance with other provisions of the Arkansas Constitutional court orders also justifies funding variations. *Ibid.* As amended, section 3 also established a state-wide rate of twenty-five mills, and created the mechanisms bringing all districts in line with that rate, for changing that uniform rate, and for districts to secure additional property tax revenues. Ark. Const. art. 14, §§ 3(b)-(d).

The final section of the education article confirms that the State drives this train. Section 4 gives the General Assembly plenary authority over which public officers supervise the public schools and execute the laws regulating those schools. Ark. Const. art. 14, § 4.

Our Constitution contains several other provisions that help define the State's

obligations in providing a public education system. Echoing the Declaration of Independence, the second provision of our State Declaration of Rights recognizes that all persons are created equally free and independent, endowed with inalienable rights, and that governments are instituted to secure those rights. Ark. Const. art. 2, § 2. Our Constitution declares all persons equal before the law and makes that principle "inviolable." Ark. Const. art. 2, § 3. The Constitution also declares that the "General Assembly shall not grant to any citizen or class of citizens privileges or immunities which upon the same times shall not belong to all citizens." Ark. Const. art. 2, § 18. Read together, these provisions state the powerful equal-protection principle animating much of the school-funding litigation.

• **The DuPree Case**

Our Constitution speaks plainly about the importance of public education and the State's obligation to provide all citizens with equal educational opportunities. This Court confirmed both principles almost two decades ago in DuPree v. Alma Sch. Dist. No. 30. Without deciding whether the right to a public education was fundamental, this Court concluded that "the right to equal educational opportunity is basic to our society Education becomes the essential prerequisite that allows our citizens to be able to appreciate, claim and effectively realize their established rights." 279 Ark. at 346.

And the Constitution obligates the State to provide that equal educational opportunity. "Ultimately, the responsibility for maintaining a general, suitable and efficient school system falls upon the state." DuPree, 279 Ark. at 349. Local control of schools cannot justify an unconstitutional system of public education. "Whether the state acts

directly or imposes the role upon the local government, the end product must be what the constitution commands." *Ibid.* If local authorities will not, or cannot, correct problems in the public school system, then "the state itself must meet its continuing obligation." DuPree, 279 Ark. at 349 (internal quotation omitted).

In summary, our Constitution obligates the State -- not local districts -- to provide a general, suitable, and efficient system of public schools. The State's obligation arises because education opens the door to meaningful citizenship and productive life. Our public school system must do an adequate job of educating children; if not, the system is neither suitable nor efficient. The State's obligation, moreover, is general: the educational opportunities of Arkansas's children must be diffused across the State, and may not be controlled by the happenstance of where children live.

Those are the State's constitutional duties. And this mammoth record establishes that Arkansas has failed to fulfill those duties in its current system of funding public education.

B. The Inadequate Funding System

The Chancery Court held that Arkansas's system of funding public schools is inadequate. The record and controlling legal principles support that conclusion. The State Chamber and AIA, as *amici curiae*, therefore urge this Court to affirm the Chancellor's conclusion of inadequate funding.

• Defining Adequacy

Our Constitution prescribes that the State shall provide a general, suitable, and efficient system of public schools. Ark. Const. art. 14, § 1. This Court has never defined those terms. In its 1994 Order, the Chancery Court looked to the Kentucky Supreme

Court's decision in Rose v. Council for Better Educ., Inc., 790 S.W.2d 186 (Ky. 1989), for guidance. After this Court remanded this case for trial, the Chancery Court reaffirmed its adoption of "the Rose factors as the requirements for an adequate education in Arkansas." **A 20**; see also, **A 3-4**. Those factors, while not exclusive, commend themselves as part of Arkansas's definition of a constitutionally efficient and suitable school system.

In Rose, the Kentucky trial court defined an efficient state school system as one that required "substantial uniformity, substantial equality of financial resources[,] and substantial equal educational opportunity for all students." 790 S.W.2d at 191-92. That Court also stated that an efficient school system must be adequate, uniform, and unitary. *Ibid*. The consensus of all the experts testifying in Rose was that an efficient system should have several elements: the system is the sole responsibility of the General Assembly; the tax effort should be evenly spread; the system must provide the necessary resources throughout the state -- they must be uniform; the system must provide an adequate education; and the system must be properly managed. Rose, 790 S.W.2d at 211.

The Kentucky Supreme Court held that "an efficient system of education must have as its goal to provide each and every child with at least the seven following capacities:"

- sufficient oral and written communication to enable students to function in a complex and rapidly changing civilization;
- sufficient knowledge of economic, social, and political systems to enable the student to make informed choices;
- sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation;
- sufficient self-knowledge and knowledge of his or her mental and physical wellness;
- sufficient grounding in the arts to enable each student to appreciate his

or her cultural and historical heritage;

- sufficient training or preparation for advanced training in either a cademic or vocational fields so as to enable each child to choose and pursue life work intelligently; and
- sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states in academics or in the job market.

Rose, 790 S.W.2d at 212. These seven capacities, the Kentucky Supreme Court concluded, are the "*minimum* goals in providing an adequate education." *Id.* at N. 22 (emphasis original).

The Rose factors have stood the test of time. They remain the law in Kentucky, whose educational system has enjoyed a renaissance during the last decade. See, e.g., Roger S. Pankratz & Joseph M. Petosko, eds., All Children Can Learn: Lessons From The Kentucky Reform Experience (Jossey-Bass 2000). Moreover, when confronted with constitutional texts obligating the state to provide an efficient and adequate educational system, with some exceptions, many other states have followed Kentucky's lead. Compare, e.g., McDuffy v. Secretary of Executive Office of Educ., 615 N.E.2d 516, 554 (Mass. 1993) (adopting the Rose factors), Claremont Sch. Dist. v. Governor, 703 A.2d 1353, 1359 (N.H. 1997) (same), Opinion of the Justices, 624 So. 2d 107, 166 (Ala. 1993) (adopting factors similar to the Rose factors), *with* Committee for Educ. Rights v. Edgar, 672 N.E.2d 1178, 1188-93 (Ill. 1996)(declining to define an adequate education), Coalition for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles, 680 So. 2d 400, 404-05 (Fla. 1996)(same).

On remand in this case, the Chancery Court reaffirmed its adoption of the Rose factors as the requirements for an adequate education in Arkansas and went several steps further. The Court noted that, while no universally accepted definition of an adequate education existed, all the suggested definitions were in harmony. **A 20.** And in addition to the Rose factors, the Chancery Court relied on what has been called the three-legged stool of educational adequacy.

There are three elements for an adequate education system. First, the State must clearly specify what its expectations of student achievement are. Second, there must be an effective accountability system that holds the schools accountable for results. Third, the State must provide adequate funding to allow a program to be developed that will produce the expected outcomes.

A 21.

Based on the entire record, Judge Kilgore concluded that in Arkansas the stool of educational adequacy is one leg short. Our State has curriculum frameworks that specify student expectations. It has an accountability system. Arkansas, however, has not provided the third leg, adequate funding, that holds the system upright. **A 21, 35, 52-54.**

· Arkansas's Educational Inadequacies

Choose your yardstick -- students' performance, teachers' salaries, per pupil spending, or critical programs. Whatever the measure, Arkansas's system of funding public education is neither efficient nor suitable. One leg of our stool is still missing.

- Poor Student Performance

The Arkansas Comprehensive Testing, Assessment, and Accountability Program is one of the State's laudable post-1994 Order reforms. **A 25-28**; A.C.A. § 6-15-401, *et seq.* As its name implies, testing student performance is an important part of this program. As the Chancery Court found, the first few years of those tests have revealed the insufficiency of our public education system. "[T]his State has a remarkably serious problem with student performance." **A 35**. Our students' deficiencies, moreover, reveal the constitutional problems in the funding system. "At these levels, students will not be able to compete successfully with their peers from other states let alone other nations. They will not be able to lead productive lives." **A 35-36**. Arkansas's students are thus caught in a system that is neither efficient nor adequate.

Consider some of those test results. In the 1999-2000 school year, only 44% of Arkansas fourth graders were proficient in reading and only 34% of them were proficient in mathematics. **A 25, 35**. The snapshot of Arkansas eighth graders' math skills in 2000 was even more bleak: only 16% of students statewide were proficient or better in math. **A 35**. It is no wonder that about half of Arkansas's students who go to college must take remedial courses in mathematics or English. **A 36**.

While numbers never tell the whole story, these are chilling. What Arkansan would be satisfied if her car or truck worked only half the time? What company could stay in business if four out of five of its widgets did not work? To ask these questions is to answer them. Students' performance, of course, is the fruit of many things both inside and outside the school house. The depth and breath of Arkansas's problem, however, demonstrates that the funding "system has not provided [our] students enough

resources to meet the [State's educational] goals." **A 35.**

- **Low Teachers' Salaries**

Teachers are the engines of education. We all know that truth from personal experience. Who among us does not bear the mark of their school teachers? As Judge Kilgore found, "[t]he single most important factor necessary to insure that the State's system of education meets the Rose factors is the availability of well educated, well motivated, and well compensated teachers." **A 41.** Yet Arkansas has consistently underpaid its teachers.

The statistics have a familiar sound. Among all the states, Arkansas's teachers' salaries generally rank between 45th and 50th. **A 25, 40.** Arkansas spends about 20% less on our teachers than the national average. **A 39.** There are approximately 12,000 certified teachers in Arkansas who, for one reason or another, are not teaching. **A 40.** Arkansas is dead last, among surrounding states, in starting teachers' salaries. **A 39.** Eastern Arkansas districts must live with the fact that teacher salaries are approximately \$6,000.00 a year higher in Memphis; in Texarkana, which side of the state line a new teacher is on makes a \$4,000.00 difference in his salary; and the minimum salary in the lowest paying Oklahoma district exceeds what Northwest Arkansas districts can pay teachers. **A 39-40.**

All these figures add up to "a dire situation." **A 52.** Though the State Board of Education is working on "a comprehensive strategy to attract, motivate, and retain high caliber teachers[,] . . . [t]hat strategy demands increases in salaries." **A 40-41.**

The Chancery Court rightly drew a line between poor teachers salaries and the

constitutional sufficiency of Arkansas's funding of public education. "Teacher's salaries in this State[.]" Judge Kilgore held, "are wholly inadequate under the Rose standards to attract and maintain qualified teachers to provide our students with the education Article 14, § 1 of our Constitution requires" **A 52.** While noting the State's post-1994- Order reforms, the Court concluded that the critical requirements of the Arkansas Comprehensive Testing, Assessment, and Accountability Program "cannot be met without high quality personnel, but there is no money available to hire them." *Ibid.* We must demand proficient teachers. To get them and keep them, "[n]o deficiency in our education system is in more urgent need of attention than teachers' salaries." *Ibid.*

- **Underfunded Early-Intervention Programs**

We know intuitively that the early years of school are the most important. At trial, several facts about Arkansas's school children during those early years were common ground. First, a substantial number of our children enter kindergarten and first grade significantly behind their peers. Second, by third grade these children will have a hard time performing at their grade level. Third, if a student cannot perform at grade level by the third grade, especially in reading, he is unlikely ever to do so. **A 52.** "Students who need remediation are less likely to graduate from high school, go to college, become part of a skilled work force and are more likely to become engaged in criminal activity, enter the criminal justice system, and go to jail and prison where the State's annual cost to maintain the individual far exceeds the cost to remediate the student and make him an economic and cultural asset to the State." **A 37.**

Early-intervention and remediation programs for pre-schoolers through fourth

graders are the obvious and correct response to these undisputed facts. **A 28, 52.** Smart Start is the part of Arkansas's Comprehensive Testing, Assessment, and Accountability Program aimed at these students during these critical years. Smart Start, however, provides no funds directly to districts. **A 28.** Arkansas law requires remediation to overcome academic deficiencies. A.C.A. § 6-15-419. But unless students needing remediation qualify for some particular program (such as special education), school districts do not have sufficient funds to accomplish remediation in any grade, much less during the critical early grades. **A 28.** Early-intervention remediation in Arkansas is thus stalled because of inadequate funding. **A 28-29, 38.**

Arkansas must spend its limited education resources wisely. One way to do so, everyone agrees, is by funding remediation programs for kindergarten and elementary school children. "The only possible conclusion is that in order to provide our children with an adequate education as required by the Constitution and ACTAAP, the State must forthwith provide programs for those children of pre-school age that will allow them to compete academically with their peers. The urgency of this need equals that of the deficiency in teacher salaries." **A 52.**

* * *

Recall the three-legged stool. An efficient and suitable system of funding public education has three legs: standards for student performance; accountability of teachers and administrators for helping students reach those standards; and funding for the resources necessary to help students get there. The chairman of the State Board of Education, and several members of that Board, do not believe that Arkansas has

adequately funded the system. **A 22.** One recent reform mandated a State study to determine what it would cost to fund the system adequately. 1995 Ark. Acts 917. Despite that statutory obligation, Arkansas has never done that study. **A 22.**

Arkansas must therefore continue reforming its public education system, making administrators and teachers more accountable for student performance and making sure we spend every dollar wisely. When we accomplish those goals, then Arkansas's citizens - including the members of the State Chamber and AIA -- must pay for the general, suitable, and efficient system of public education that our Constitution requires.

C. The Inequitable Funding System

The Chancery Court also held that Arkansas's system of funding public schools was inequitable. The record and controlling legal principles support that conclusion. The State Chamber and AIA therefore urge this Court to affirm it.

• Defining Equity

This Court's decision in DuPree, as the Chancellor held, provides the governing legal standard on equity. Our Constitution obligates the State to provide equal educational opportunities to Arkansas's school children regardless of where they live. "The trial court found the educational opportunity of the children in this state should not be controlled by the fortuitous circumstance of residence, and we concur in that view. Such a system only promotes greater opportunities for the advantaged while diminishing the opportunities for the disadvantaged." DuPree, 279 Ark. at 345. The State's obligation flows from the Constitution's education and equal-protection clauses. 279 Ark. at 345-46. And at the end

of the day, the State's obligation is fixed: the State cannot say "local control" and discharge its constitutional duty. 279 Ark. at 346, 349.

Finally, DuPree makes plain what educational opportunities are not constitutionally equitable. "For some districts to supply the barest necessities and others to have programs generously endowed does not meet the requirements of the constitution. Bare and minimal sufficiency does not translate into equal educational opportunity." 279 Ark. at 347. Nor would equal funding across all districts meet the Constitution's mandate because that kind of equality would not eliminate the current resource gap between poor and wealthy districts. 279 Ark. at 347; 279 Ark. at 352 (Hickman, J., concurring). Instead, the Constitution requires a state funding system that has a "rational bearing on the educational needs of the districts[,] and creates substantially similar educational opportunities for all our State's children whatever district they happen to live in. DuPree, 279 Ark. at 346.

- **Arkansas's Educational Inequities**

The disparity in educational opportunities across districts illuminates the inequities in the State's funding system.

Consider curriculum. In the Fort Smith District, students can study everything from electronics to German to machine technology. The Holly Grove District, however, offers no such advanced courses or programs. **A 16, 17**. Because of no money, the Lee County schools went two years without a band program. Lake View has a band, but no band uniforms. In Fort Smith, however, students can play in the band, or the orchestra, or sing in an advanced chorus. **A 15-17**.

Consider facilities and equipment. In Rogers, the rapidly growing student

population keeps the district in debt for new buildings and diverts money from educating children to service that debt. **A 19.** Throughout the districts in the Delta, moreover, computers and science laboratories are nonexistent, outdated, or broken. **A 15-17.** In those same districts, the school buildings are falling apart: a child in Eastern Arkansas is supposed to learn in buildings with little or no heating or air conditioning, leaking roofs, missing or moldy ceiling tiles, and damaged windows. **A 18.**

Consider, finally, teachers' salaries. They vary greatly across the State's districts. The Lake View high school science teacher has forty-one years teaching experience and two master's degrees. That teacher makes \$31,500.00 a year. A teacher in Fort Smith with similar credentials makes \$12,000.00 a year more than the Lake View teacher. **A 40.** "While some disparity is acceptable in teachers' salaries, differences that exist are so great that they work to destabilize the education system by driving qualified teachers away from districts where they are most needed. Schools and school districts with more disadvantaged students need more qualified teachers per student. However, the schools with the higher number of disadvantaged students are typically the schools which have the lower teacher salaries." **A 40.**

The disparity in teachers' salaries across Arkansas violates our Constitution's guarantees of equal protection. **A 50.** That "disparity is the result of local school district discretion and bears no rational relation to the State's interest in providing a general, suitable and efficient education for our children." *Ibid.* Those salary disparities, moreover, cause serious harm. They "destabilize local districts that cannot or will not pay competitive salaries and are unable to hire and retain quality teachers." **A 50.**

As the Chancellor held, "[b]ecause wealthy school districts [in Arkansas] are able to provide more educational resources than poor districts[,] all students in Arkansas do not have an equal opportunity to learn." **A 15**. That state of affairs is unconstitutional. DuPree, *supra*. We must correct whatever mismanagement exists in local districts; but that problem does not change the State's ultimate constitutional obligation to provide educational opportunities. **A 14-15**; DuPree, 279 Ark. at 349. While Amendment 74 and the statutory changes have moved the State toward eliminating the inequities in its funding system, the record shows that significant "disparities in pupil expenditures and pupil opportunities[]" remain. Lake View II, 340 Ark. at 494. This Court should therefore affirm the Chancery Court's decision requiring the State to continue reforming its funding system and correcting these unconstitutional disparities.

D. Our State's Opportunity

For more than a century, our Constitution has recognized the importance of an educated citizenry and promised all our children a free, general, suitable, and efficient public education. That promise, however, has been empty. "Too many of our children are leaving school for a life of deprivation, burdening our culture with the corrosive effects of citizens who lack the education to contribute not only to their community's welfare but who will be unable to live their own lives except, in many cases, on the outermost fringes of human existence." **A 54**. This case has given our State the opportunity to keep our Constitution's promise. The Chancery Court's decision offers our State a needed map toward a constitutional system of funding public education. Because that map keeps faith

with our Constitution, the precedents, and the record, this Court should affirm the Chancellor's decision. That affirmance, in turn, will provide our State the opportunity to strengthen the efficiency and accountability of our public education system.

Equity, Adequacy, And Accountability

On the equity issue, geography must not determine a child's educational opportunities. Instead, those opportunities must be diffused across our State; in the Constitution's word, they must be "general." Ark. Const. art. 14, § 1. Our State will keep our Constitution's promise when it insures substantially similar educational opportunities -- in curriculum, facilities and equipment, and teacher's salaries -- for all school children no matter where they live. The answer is not educational uniformity dictated by someone in Little Rock. Our Constitution nonetheless obligates the State to minimize "disparities in pupil expenditures and pupil opportunities." Lake View II, 340 Ark. at 494.

On the adequacy issue, Arkansans must keep our eyes on the three-legged stool: standards, accountability, and funding. **A 21**. When all three legs of the stool are solid, then our system of public schools will be suitable and efficient, and will provide the constitutionally required advantages and opportunities. Ark. Const. art. 14, § 1. H. L. Menken quipped that, when someone says an issue is not about the money, it is about the money. The adequacy issue is about funding -- but it is also about principles more important than the money.

The adequacy of public education is first and foremost about a system that educates all our children effectively and efficiently. Remember the three-legged stool. As the Chancery Court held, student performance and school accountability are the first two

legs of an efficient and adequate school system. We must demand that our students perform at the highest level possible. We must hold our State, our Department of Education, our school districts, and our teachers accountable for our students' performance. If Arkansans do not make these first things first on their list of needed reforms, then our stool of educational adequacy will remain broken.

More funding alone is not the answer. Money will not educate our children. Money will not make our school administrators and teachers more accountable. Instead, Arkansans must come together and resolve that we will reform our public education system. We must demand that our system deliver better educated students, from more accountable schools, before increased funding can make any difference.

With those principles in mind, then we can talk about the funding. As the Chancery Court concluded, the State has not put enough money in our public education system to meet its constitutional obligations. The State Chamber and AIA agree: Arkansans must pay our teachers more; we must spend more on early-intervention programs to get our youngest students back on track before they are left behind; and we must spend more on facilities, equipment, and curriculum in school districts with the greatest needs.

All these reforms will cost money. Should we find ways to spend our current education dollars more wisely? Absolutely. Should we weigh the pros and cons of consolidating school districts as part of that effort? Absolutely. Should we solve the accountability problem before we address the money problem? Absolutely. Should Arkansans, at the end of the day, also be prepared to pay more for a system that provides all our children with a constitutionally adequate education? Absolutely.

The members of the State Chamber of Commerce and Associated Industries of

Arkansas stand ready, as good corporate citizens, to help pay their fair share of the cost of an efficient and effective public school system. We do not have that system in Arkansas today. But when our public education system requires all students to perform at their best, and holds the State, administrators, and teachers accountable for students' performance, then paying for those efficient and effective public schools will be money well invested.

· The Opportunity

The Chancery Court's decision has created a moment of opportunity for Arkansas. The other branches of State government have recognized that opportunity. In response to the Chancery Court's decision, the General Assembly created the Blue Ribbon Commission on Public Education. 2001 Ark. Acts 1398. Noting the "severe and pressing needs" of our State's elementary and secondary education system, the Legislature created the Commission to make a thorough and immediate review of that system. 2001 Ark. Acts 1398, § 8. The thirty-one member group has been at its work for almost a year. The Commission must consider the State's constitutional obligations, assess current education reform efforts, and recommend legislation to the next General Assembly. 2001 Ark. Acts 1398, § 2.

The Executive branch is moving forward too. Governor Huckabee has outlined what he has called "The Next Step" in education reform in Arkansas. See <www.state.ar.us/governor>. The premise of the Governor's outline is the need for the State to continue reforming our elementary and secondary education system. And the essential ingredient of accountability -- for schools and for students -- runs through the Governor's outline. Rightly so. To solve our education problems, Arkansans must first insure systemic accountability

for improving student performance, and then we will be justified in addressing the funding issues.

Here is Arkansas's opportunity: with guidance from this Court, in 2003 the General Assembly and Governor can finally keep our Constitution's promise of a free, general, suitable, and efficient system of public education.

VI.

Conclusion

The Chancery Court feared that this constitutional problem might be "a Gordian knot; a problem not to be solved." **A 54.** No. Just as Alexander the Great cut through the knot that no one could untie, our State is poised to cut through our problems in public education. The State Chamber and AIA urge this Court to affirm the Chancery Court's decision that Arkansas's system of funding its public schools is inadequate and inequitable. This Court's decision will clear the way for the General Assembly, the Governor, and the people of Arkansas to finish cutting through this Gordian knot.

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VII.

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VIII.

Addendum

- The Chancery Court's Final Order,
filed 25 May 2001..... Addendum 1