

IN THE SUPREME COURT OF MISSOURI

COMMITTEE FOR EDUCATIONAL)
EQUALITY, et al., COALITION TO FUND)
EXCELLENT SCHOOLS, et al., BOARD OF)
EDUCATION OF THE CITY OF ST. LOUIS,)
and the SPECIAL ADMINISTRATIVE BOARD)
OF THE CITY OF ST. LOUIS,)

Plaintiffs and Plaintiff-Intervenors/)
Appellants,)

No. SC89010

v.)

STATE OF MISSOURI, et al.,)

Defendants/Respondents,)

REX SINQUEFIELD, BEVIS SCHOCK and)
MENLO SMITH,)

Defendant-Intervenors/Respondents.)

Appeal from the Cole County Circuit Court
The Honorable Richard Callahan, Judge

APPELLANTS
COALITION TO FUND EXCELLENT SCHOOLS, ET AL.S'
BRIEF PERTAINING TO "TAX ASSESSMENT ISSUES "

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ADOPTION OF BRIEF OF APPELLANTS

COMMITTEE FOR EDUCATIONAL EQUALITY

CFES generally adopts the brief filed by Appellants CEE, except for the equity facts and arguments; however, at the time of taking this brief to print, CFES did not have the final version of the CEE brief to formally complete an adoption and inclusion in this brief. Therefore, CFES respectfully requests permission to supplement this page in an additional filing upon receipt of the final CEE brief.

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JURISDICTIONAL STATEMENT

Appellate jurisdiction is in this Court under Article V, Section 3, of the Missouri Constitution because this case challenges the validity and constitutionality of SB 287's new school funding formula in the manner in which it defines and uses "local effort," one of two key components for the determination of all funding. *See* §163.031.1, RSMo Supp 2005. More specifically, the Coalition to Fund Excellent Schools, et al. (hereafter CFES) challenges the fact that school funding for all future years is based upon the frozen assessed valuation of local property in 2004 when such assessments were based upon improper equivalent sales ratios, did not accurately portray "true value," those assessments did not provide "equalized assessed valuation" and they were inaccurate and unlawful, all in violation of Article X, §§ 3, 4 and 14, Mo. Const. and §§ 138.380, 138.390, 138.445, 138.395 and 163.011.

Cases involving interpretations relating to violations of Article X, § 3 have previously been accepted by the Missouri Supreme Court. *St. Louis County Library District v. Hopkins*, 375 S.W.2d 71 (Mo. 1972). Cases involving uniform assessments and involving property taxes and school districts have similarly been directly accepted by the Missouri Supreme Court for determination. *See State ex rel. Casilly v. Riney*, 576 S.W.2d 325 (Mo. 1979) and *Green v. Lebanon R-III School District*, 13 S.W.3d 278 (Mo. banc 2000).

Appellant CFES has also joined in appeal of the Committee for Educational Equality, et al. since (CEE) which has asserted that this Court has jurisdiction on the

grounds that the state violated the Missouri Constitution, the United States Constitution and the laws and regulations of the state of Missouri and the United States Government through disparities, inadequacies and inequalities of the school funding formula; 2) that the state has enforceable constitutional duties to adequately fund and provide education to Missouri's students in the operation, maintenance and establishment of public schools and facilities that the state is not meeting under the foundation formula; 3) that the state imposed new, increased and expanded requirements on school districts that have been either not funded or not fully funded in violation of the Hancock Amendment to the Missouri Constitution, thereby shifting funding to school districts and taxpayers.

The Missouri Supreme Court has previously accepted cases involving school funding issues and cases involving constitutional questions involving school funding. *See Comm. For Educational Equality v. Missouri*, 967 S.W.2d 62, 64 (Mo. 1998). *See Rolla 31 School District v. State*, 837 S.W.2d 1, (Mo banc 1992). *State ex rel. Sikeston R-IV School District v. Ashcroft*, 828 S.W.2d 372 (Mo. banc 1992).

For these reasons, jurisdiction involving the issues of this case lies with the Supreme Court.

STATEMENT OF FACTS

References

Transcript citations will be to the volume of the Transcript, then page, e.g. 2T-599. Legal File citations will be to the volume of the Legal File and then page, e.g. 1LF-00001. Exhibit references will include the reference to the party and exhibit number, e.g. CFES-1, CEE-22, City-2, State-457, Schock-16. References to the Appendix are by page, A-63.

Introductory Information and Procedural Background

Plaintiff Intervenor, Coalition to Fund Excellent Schools (CFES), is an association made up of school districts that are members acting in a representational capacity in this case and some school district members were named Plaintiff Intervenors.¹ CFES acted in a representational capacity on behalf of all of its Member Districts and the students and

¹ Affton School District, Bayless School District, Branson R-IV, Brentwood School District, Clayton School District, Climax Springs, Jefferson County R-VII, Kirkwood R-VII, Ladue School District, Lindbergh R-VIII, Maplewood-Richmond Heights, Mehlville R-IX, New Madrid R-I, North Kansas City 74, St. Charles Co. R-V (Orchard Farms), Parkway C-2, Pattonville R-III, Perry County 32 School District, Reeds Spring R-IV, Ritenour School District, Rockwood School District, School of the Osage R-II, South Callaway County R-II, St. Charles County R-VI, Valley Park School District, Webster Groves.

included taxpayers and students.²

On May 14, 2004, CFES intervened as a matter of right in the lawsuit filed by CEE. - 2LF-00222-00224. CEE was asserting: that the state violated the Missouri Constitution through disparities, inadequacies and inequalities of the school funding formula; that the state imposed new, increased and expanded requirements without funding in violation of the Hancock Amendment; that the Missouri public school financing system violates the Missouri Constitution, the United States Constitution, and the laws and regulations of the state of Missouri and United States Government. 2LF-00225-00245. CEE sought declaratory and injunctive relief, as well as attorney's fees and litigation expenses. The named Defendants (hereinafter State) included: the State of Missouri, Treasurer of

² Lynn N. Bock is a resident and taxpayer of the State of Missouri, New Madrid County R-1 School District, the father and appointed next friend of Carolyn Bock. Caroline E. Bock was a student under the age of 21 years.

Taxpayers and residents included: Dr. Robert Glenn Fox, D.D.S., Cape Girardeau School District; Robert S. Rothschild, Jr. and Susan H. Rothschild, Clayton School District. Gieger Real Estate, Inc. ("Geiger") is a Missouri corporation in good standing and pays property taxes that are used to directly support the Normandy School District. Armstrong Maison de Ville, LLC ("Armstrong") is an active Missouri Limited Liability Company and pays property taxes that are used to directly support the Ferguson-Florissant and the Hazelwood School Districts.

Missouri, Commissioner of Administration, Commissioner of Education, Attorney General of Missouri, Missouri State Board of Education (State Board), and the Missouri Department of Elementary and Secondary Education (DESE).

CFES adopted most of CEE's allegations and requested similar relief. 14LF-02414-02435. Additionally, CFES alleged that the property tax disparity within the school funding formula exists because of the failure of property tax assessments to be at "true value" in a just, uniform and equitable fashion statewide and that these assessments, though assumed to be equalized, are not equalized across the state of Missouri. CFES further alleged that because the school funding formula calculates "local effort" based upon assessments in 2004-2005 for the life of the formula, these disparities continue and this unfairly and unconstitutionally shifts the tax burden to other property owners in the state and leads to under-valuation of property directly affecting the adequacy and equity of funding in the state of Missouri. CFES sought a declaration that the assessment practices are not uniform and are arbitrary, capricious and have a direct effect on the inadequacy and inequity of funding and to require the state to adopt and maintain a uniform assessment system if such a system is relied upon for public education funding. 14LF-02443-02493.

On May 14, 2004, the St. Louis Board of Education of the City of St. Louis (Intervener City) also intervened as a matter of right raising similar allegations regarding the adequacy of school funding and unconstitutionality of SB287, seeking declaratory and injunctive relief, attorneys' fees and litigation expenses. 2LF-00222; 22LF-03934; 21LF-03857-03882.

The State filed its Answers and raised affirmative defenses regarding the separation of powers doctrine applies and that only 25% state revenue is required to be funded. 14LF-02497-02508; 02509-02519; 02520-02527.

On November 8, 2006, the Court granted intervention to Rex Sinquefield, Beavis Schock and Menlo Smith (collectively referred to as Schock) under Missouri Supreme Court Rule 52.12(a). 20LF-03836. Schock subsequently filed Answers and Affirmative Defenses to CEE, CFES and City. 21LF-03887-03893 Schock adopted the Affirmative Defenses of the State and offered other “affirmative defenses”.

The trial of this case began January 3, 2007 and ended on February 23, 2007, followed by final arguments and a decision. 29LF-05422-06151. See also 1T-34T.

Funding calculation

In order to understand the assessment evidence, it is necessary to have an understanding of the calculation under the foundation formula that uses assessment values within a local school district to arrive at the amount of state funding that will be distributed under the foundation formula. At its most basic level, the calculation to arrive at state funding for a school district is:

Weighted average daily attendance (ADA) [the average number of students taking into account student needs]

x State Adequacy Target [which is the number originally set at \$6117 by the legislature]

x dollar value modifier [which is a number that adjusts for variations in costs across the state]

- Local Effort
=State Funding

The “**Local Effort**” includes:

2004 assessed valuation [this number is frozen]

Divided by 100 x 3.43 [legislatively set performance levy]

- Collector and assessor fees [this number is frozen at 2004 level]

+ Incidental and Teachers’ funds [all taxes within this category are at 2004

levels except for fines]

=Total Local Effort

In addition, there is a phase-in of the new formula funding over seven years.

Therefore, in the first year of the formula it was made up of 15% of the funding under the new formula and 85% of the old formula under SB380 amount. The old formula, SB380, amount is based upon the funding received in the 2005-2006 school year and it therefore contains the same assessment valuations within its funding calculation as the new formula. In other words, the funding under SB380 relied upon local assessments from 2004 in its calculation of state funding. Assessed valuation is embedded within both formulas. See CFES-2 for an illustration of the formula calculation, CFES-3 and 1T-63-

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Assessed Valuation Facts

Assessed real property in Missouri is in three classes—residential makes up approximately 70%; commercial makes up approximately 29% and agricultural property

makes up approximately 3%. 2T-431-432. The State Tax Commission (“STC”) is the entity responsible for overseeing assessment in all 115 counties. Assessment levels for residential and commercial property are supposed to be at about 95% of true value or market value. Agricultural property employs a use valuation. Sixty-percent of the money from property taxes goes to schools. 2T-545.

Agricultural lands have not kept up with valuation for assessment purposes. In October 2005, Dr. Moore of the Department of Agricultural Economics, University of Missouri-Columbia presented a final report to the STC regarding updating assessed valuations for agriculture. CFES-11B. STC Commissioner Davis acknowledged that agricultural lands have not changed in value for assessment purposes since 1995. 2T-431-432.

CFES presented evidence from expert Robert Gloudemans regarding property assessment and his report that commercial property assessments in the 2001 assessment year in St. Louis County were at an average Assessment level of 25%. CFES-48. This is instead of the 32% required by Missouri law. In that same study, Gloudemans conducted an examination of the STC’s appraisal ratio study, finding that the STC appraisals did not represent market value. CFES expert Steven Gardner concurred in the studies that found commercial property in St. Louis County to be about 80% of “true value”; 95% in St. Charles County and 90% in St. Louis City. 2T-434.

In 2003, the STC reported to the Legislative Joint Committee on Tax Policy, CFES-28, that after 2003 regression or variability in statewide assessment had taken place. In other words, assessments were not keeping up with market value. 2T-595-596.

In 2004-2005, the STC believed that St. Louis County and St. Louis City were significantly underassessed with regard to residential property. CFES-29; 2T-589-590. Other counties were also sent compliance letters regarding problems with the level of assessments not being near 95%. CFES-29. The State Tax Commission also advised the following assessors of the following deficiencies in 2004/05(CFES-29):

City of St. Louis	68% of market value
St. Louis County	79% of market value
Carter County	“below statutorily required levels”
Nodaway County	“regression in assessments” “values must be updated to make certain assessments reflect market value”
Mississippi County	“growing concern regarding assessments”
Miller County	“current assessment level of 82%”
Marion County	2004-“Palmyra at 76% and the rural areas at 87%”
Buchanan County	“growing concern regarding regression in assessments”
Shelby County	issued an approved assessment maintenance plan
Bollinger County	issued an approved assessment maintenance plan
Andrew County	issued an approved assessment maintenance plan
Webster County	was also under an assessment maintenance plan. CFES-173, 174,

178, 181.

The STC has the responsibility to oversee county assessments and then to “equalize” those assessments. The equalization process begins when each of the 115 County assessors report the assessments for each of the three subclasses of property and submit this to the County clerk in the aggregate. The Board of Equalization then adds and subtracts certain values and makes a report to the STC of these values. The STC is then supposed to submit these assessed valuations to DESE after “equalizing” them. 2T-566-568. For the key tax year at issue, 2004, the STC did not alter any of the reported values from any of the 115 counties. The STC assumed that the assessor has done his job. 2T-569-570. The STC assumes that if there is intra-county equalization, that intercounty equalization also exists. 2T570-573;CFES-25. Commissioner Davis testified that the STC did not have to look at practice “as between counties” as was required by the constitution and state statutes (Art. X; 14, Mo. Const.,§138.400) as it could be assumed, that if all counties did their jobs, then all counties must be equitable. 2T-574; see generally Davis testimony A50-A62.

The final appraised values as determined by the STC are compared with those assigned by the local assessor. Separately, the STC requires counties to report actual sales and to provide sales reports to the STC. CFES-186B, A48-A49. For many counties, there are not as many sales to report as there are in those four major metropolitan counties that have Certificate of Value (“COV”) laws that require all sales to be reported with sworn affidavits of the sales prices and other data. CFES-12-15, 2T-367. From 1988 through 1995, the STC recommended that the General Assembly adopt COV legislation so that assessing officials would have mandatory sales disclosure. CFES-11.

In fact, in 1995, the STC specifically stated that “the absence of a certificate of value will ultimately facilitate the demise of uniform and equitable assessments in the state.” CFES-11. The State Auditor noted in the May 2005 audit of the State Tax Commission that COV had been recommended to the General Assembly every year since 1980. CFES-16. In these four counties in Missouri that now use COV by ordinance, the sales information is public information. CFES-12-13-14-15, 2T-367.

The STC makes a calculation to determine the level of assessment and quality of assessment. Counties that are not assessing within what the STC determines to be 95% of market value are then placed into a compliance program in order to raise assessment levels to near market value or notified of problems, see e.g. CFES-29.

This system was in use for the 2004 assessments at issue in this litigation according to the “Missouri Property Assessment Program” prepared by the STC for the “Joint Committee on Tax Policy.” CFES-28, page 5. The STC also concluded in this report that its own statistical studies had determined that regression had taken place within the statewide assessment program and that there were maintenance plans to address concerns. CFES-28 page 14.

STC Davis admitted that §138.395, RSMo 2000 calls for the STC to issue “equivalent sales ratios” to school districts and DESE. The STC instead does “appraisal” ratio studies to make its report to DESE. 2T-577-578;CFES-26. In 2004, STC sent DESE what it denotes as the “equivalent sales ratios” (really appraisal ratios) reporting all 115 counties were in “compliance.” This means that the three subclasses of real property (with 12%, 19% and 32% assessment levels) 33.33% level (or 95% of market

value) for assessed valuations. CFES-22; 2T584. This 33.33% was for all jurisdictions except for Pulaski County which was 32.4%. This amount for Pulaski County was later corrected in August and DESE was directed to use the ratio of 33.33% and not the level stated in the July certification. See CFES-22; CFES-26. Thus, the STC's report to DESE for all 115 counties for the 2004 assessment year showed that they were all within 95% of true value for properties of school funding.

The STC did not provide DESE with the background information from another set of ratio studies that showed certain counties were not in compliance (2T607-608; State-708; 17T-4296-4299). There are two sets of books or rules on "compliance" at the STC. 17T-4328-4331; 17T-4346-4350; 17T-4352-4355. Davis testified that the "equivalent sales ratio" that the STC sends to DESE for school funding purposes is "artificial" and "arbitrary" because they equalize all counties to 33.33%. 17T-4357. At the same time as certifying 33.33% ratios to DESE, the STC corresponded with various assessors regarding assessment deficiencies in their county. CFES-29.

Steven Gardner testified in support of a report that he helped prepare for the University of Missouri St. Louis Public Policy Research Center ("PPRC"), which testimony the Court specifically found credible and which report (the "PPRC Report") the Court admitted into evidence. CFES-8; 2T-540; 8A-8B; 34T-8429. The PPRC Report found that accurate assessments are important for school funding when those assessments are used to distribute state funding and to classify schools as poor or rich. The PPRC Report found that, if one assumes two districts are equal in regard to the formula, each district receives the same amount of funding. The reality is that if County A is at 75%

market value while the other County B is at 95% market value, the true wealth of County A is understated as well as its ability to contribute locally to schools. If both counties are adjusted by the STC's equalization process of 33.33%, County A would receive state funding while County B would not. This causes direct harm to both counties. See CFES-8-page 23-34; 2T-445-48. "So it's the basic foundation of the whole purpose for the formula. It's worse really than having inaccuracies in the pupil count." 2T-444-445. Under SB287, the measure of need for each school district is based on the equalized assessments as of 2004 (essentially those produced by the 2003 reassessment). If those numbers are grossly erroneous then some districts receive more than their share and others less than their share. 2T-451-452.

The PPRC Report also concluded that accurate assessments are also important for taxpayers. Taxpayers are harmed by inaccurate assessments of property and by the shift in tax burden from one county to another. 2T-456. Taxpayers pay more or less than their fair share of the tax burden when assessments are inaccurate. 1 T-271-280 and CFES-10.

In the State Auditor's May 2005 audit of the STC, management advisory recommendations concerning the following problems were made: that the use of appraisal ratio studies failed to follow the IAAO standards, that the "[f]ailure to ensure equalized assessments results in inequitable taxation among taxpayers," and that the STC had failed to correct the STC's certification of equivalent sales ratios to DESE since this was pointed out in the 1999 audit. CFES-16, page 13-14.

The PPRC report reviewed the level of assessments by looking at data in the files of twenty seven different counties assessors, as well as data from the STC and comparing

that information with actual sales data from counties in order to obtain an assessment ratio. CFES-8,8A,8B. PPRC generally reviewed and studied the overall assessment levels of the entire state of Missouri compared to market value. Id. CFES-8,8A,8B. The PPRC Report studied a representative sample of actual sales in 27 counties representing 70% of residential property using MLS data of large numbers of sales. CFES-8,8A,8B. The PPRC study as to the 27 counties is an “indicator of conditions.” 1T-239. For the four counties where COV’s were available, PPRC used those sales. 2T-367. Residential property was used because it constitutes sixty eight percent (68%) of property in Missouri and is the easiest type of property to assess. 2T-384. Thus problems point to the reasonable assumption that other forms of real property assessments will show problems. 2T-384-385. Using the STC’s assessed values, the 27 counties in the PPRC study represented 71% of the total locally assessed residential values in the state of Missouri. 2T-385. Thus, since the study covered 71% of the residential property that was 68% of property in Missouri, it covered almost 50% of all property in Missouri.

The PPRC study established grossly inconsistent levels of assessment of 71% of the residential property. See A-63-CFES-20. None of the county’s studies met the constitutional requirement that values be based on true value or 100% of market value, much less 90% or 95% of market value. 2T-385-390, 392; A-63-CFES-20. In contrast, the results found by the STC found that only four of the twenty seven (4 of 27) counties studies, representing over 71% of all residential property and 50% of all real property in Missouri in 2004, met the State’s goal of 95% of market value. 2T-392. The State had not changed the agricultural land values in Missouri in over a decade by 2004. 2T-431-

432. Commercial property values in 2004 for the three major counties reviewed that represent a great percentage of all such property value in Missouri were well below the 95% level. 2T-431-434.

PPRC then analyzed the STC's methodology and determined that their small samples produced significant sampling error and did not meet IAAO standards. CFES-21; 2T-397-410. The STC did not stratify properties. 2T-410-414. Generally, STC appraisals failed to reflect market value when compared with actual sales. 2T-418-421. The STC adjusts assessment levels to make an "indirect equalization." In other words, if the STC finds that an assessor is at 80%, the STC may adjust the levels to 95% and find the assessment levels to be in compliance. Another assessor may be at 90% and the STC adjusts it to 95%--all according to the "coefficient of dispersion." 2T-418-422; see also A48-A49. The STC refers to this as "uniformity of assessment," when that is factually not the case. And it is then used in the foundation formula. 2T-425-426, CFES-22.

The standards in the industry for assessment are the International Association of Assessing Officers Standards ("IAAO standards"). 1T-210-211; CFES-18. The IAAO standards recognize that while there will not be perfect assessments, that there should not be more than a 10% differential between taxing jurisdictions. The STC appraisal ratio studies do not follow the IAAO standards according to CFES experts Gardner and Gloudemans. 4T-848-849, 863. These experts said that all states except Missouri use sales ratios, not appraisal ratios, for school funding. T-361-362. Instead of studying actual sales of property in a county, the STC uses appraisals for the purpose of reporting equivalent sales ratios under §138.395. 2T-554; 576-578; CFES-28, p.4. These studies

review approximately 35-50 parcels of land (regardless of the size of the county), that are randomly selected which are then appraised by STC staff. 2T-363. The alleged “equivalent sales ratios” issued to school districts and DESE comes from the appraisals and a calculation of the median from the STC’s appraisal ratio study. 2T-576-578.

CFES presented expert testimony that the STC studies are not credible due to the sample size, use of appraisal and adjustments made to make the DESE report result in 33.33%. 4T-848-849. The STC’s substitution of appraisals for sales provides an invalid measure of uniformity and level of assessment that is seriously flawed. 4T-868, 874.

The PPRC study also analyzed whether reassessments are capturing market values across all 115 counties and found patterns to establish that reassessment years preceding an election produced decreases in assessments or minor increases when compared to market indicators and that older properties were assessed at a lower level than newer properties and finally many counties do not consistently conduct a serious reassessment designed to capture full market value leading to wide disparities in assessments. CFES-8, 8,8A,8B; especially Chapter 6 at 31; 2T-438-440; 441-443. Taxpayers are harmed by inaccurate assessments of property and by the shift in tax burden from one county to another. 2T-456.

The PPRC study also concluded that the serious flaws in the assessment data from 2004 guarantees inaccurate allocation of state funding. CFES-8, Chapter 6 at 31.

Inequities are frozen in the formula and the bottom line is that some school districts are portrayed as poorer, some richer, with education money not being distributed properly. 2T-457-458.

CFES also presented testimony from Robert S. Rothschild, Jr. He prepared a report, “Multi-Taxing Jurisdiction study” (The Rothschild Study.) CFES-10. The Rothschild study compared taxes between taxing jurisdiction and counties. For example, he compared Audrain and Montgomery County and found that taxpayers in Audrain bear a higher tax burden because they are assessed at a higher percentage of the true value of their property while taxpayers in Montgomery County are paying less than the full taxes on the same property within the same taxing district. Therefore, taxpayers in one county are subsidizing other taxpayers, which is exactly what Article X, §3 of the Missouri Constitution forbids. 1 T-271-280 and CFES-10.

The PPRC study concluded that the STC certified that assessments levels in 2004 were identical and all at 33%, when they were not. It concluded that the STC indirect equalization process in effect in 2004 did not work. CFES-8,8a,8b, Chapter 8 at 31, 2T-458-459.

Applying the PPRC Report to school districts in the lawsuit using computer simulation programs obtained originally from the Missouri Legislature established an estimate or projection that if assessed valuation were raised to 95% of value, this would increase statewide local effort revenues by \$228 million. CFES-32, 33,34; 3T-624-628. Actual equalized assessed value for North Kansas City School District would have increased assessed value by \$40 million. 3T-637. State funding would decrease by \$205,000 the first year and overall \$1.4 million—but leading to a net increase. 3T-637. Rockwood School District would have increased local funding by \$303 million, which would have decreased state funding for Rockwood by \$1.5 million the first year and \$10 million over

the phase-in, but again a net increase in potential funding. 3T-633-34. Mr. Fedchak testified that this showed the great disparity in assessed valuations and the need for true equalized assessed valuations to be used in the formula. 3T-638,654. Mr. Harrell testified that working to increase local assessments and valuations leads to additional local money, but it does not have any effect on the state formula because the assessments are frozen in time under SB287. 3T-713,720. He further testified that the problem for this district is that the state allocation of funding does not accurately reflect the wealth of a district when property tax assessments are not equal or accurate. 3T-773-774. The assessments embedded in the foundation formula are inaccurate and there are significant problems. 3T-775,781-782.

CFES admitted into evidence the “Final Report of the Joint Interim Committee on Education” (“Joint Interim Committee”) from February 15, 2004. “The Joint Interim Committee report states that there is a “perception of inconsistent property tax assessments across the state” and acknowledges that a school aid formula that depends on property taxes and property values is disadvantaged when it rests on a foundation that many people do not believe is fair and consistent.” This was signed by Senators Shields and Caskey. CFES-19. The 2004 STC Recommendations to the Missouri Legislature again included a request to improve assessment in Missouri including a request for certificate of value, and stated: “Assessment uniformity cannot be achieved on a consistent basis without the benefit of having accessibility to accurate sales data. The absence of certificate of value severely thwarts the attempt by assessors to facility uniform and equitable assessment throughout the state.” CFES-23. Similar statements and

recommendations were made in the annual report to the Missouri Legislature in 2005. CFES-24. Similar statements were made each year (CFES-11): “the absence of a certificate of value will ultimately facilitate the demise of uniform and equitable assessments in the state.” 1995 statement from CFES-11. The State Auditor noted in the May 2005 audit of the State Tax Commission that COV had been recommended to the General Assembly every year since 1980. CFES-16.

Pursuant to Rule 84.04(c), CFES provides the remainder of the Statement of Facts by means of a “Resume of the testimony of each witness relevant to the points presented.”

Testimony of David Glaser 1T- 59-186 on January 3, 2007:

1. David Glaser is the Chief Financial and Legislative Affairs Officer for Rockwood School District and is a licensed CPA. 1T-59. He formerly worked for Price Waterhouse. Rockwood School District has 22,174 students as of September 2006. 1T-62. He also serves as the Chairperson of CFES. CFES-1. He previously owned a real estate firm about 16-17 years ago. 1T-60; CFES-51; 1T-63-65.

2. Glaser thoroughly explained SB287 phase in calculation using Rockwood as the example. CFES-2, 1T-63-65. As to the assessment issue, Glaser summarized the portion of the calculation involving “Local effort” as the 2003-04 assessed valuation from the county assessor times the formula’s performance levy. 1T-81-82. He explained that the assessed valuation number will not change during the formula’s lifetime and is frozen in time. 1T-83. The performance levy is the number set by the state at \$3.43. 1T-83-84. This number is also frozen and the same number is applied to all schools for calculating

the formula. A school district's actual tax levy may be more or less than the statutorily established performance levy. 1T-84. The local effort calculation also takes into account other local taxes. 1T-85. Except for the fines, which can change each year in the calculation, all of the other tax amounts stay the same in the calculation as they originally are calculated. CFES-2 and 1T-86-87.

3. Once the local effort is calculated, it is subtracted from the total funding needed to obtain a "state funding required" number. 1T-87. This is the number that would be full funding of the formula; however, the formula is phased in over 7 years. Therefore, for the first year, funding includes 15% of the new formula amount and 85% of the old school funding formula, Senate Bill 380 ("SB380"), amount. 1T-87-88, 97; CEE-005.

4. Assessment practices are an important piece of the new formula because the determination of "assessed valuation" of property in each county for purposes of the real property tax calculation is used in determining the "local effort" component of that formula. 1T-110-111 and CFES-2-3. In turn, the amount of local effort affects the state dollars that are distributed under the formula. CFES-2-3.

5. After SB380 was enacted, Glaser spoke to the Joint Committee on Tax Policy ("Joint Committee") about analyzing assessment practices, formed pursuant to SB380. The Joint Committee prepared a report and recommendations on what the state should do to review those practices. CFES-4. The Committee and Glaser concluded that assessment practices in Missouri are not being done in a fair manner. STC hired a statistician as a result. 1T- 134. The use of COVs was also recommended. CFES-4.

While the report suggested improvements to the assessment process, it does not help the foundation formula because the assessment figures used in SB380 are frozen at the 2003-04 assessment levels. Even if the assessment problems in Missouri could be fixed pursuant to the Joint Committee's report, it will not fix the problems with state funding under the funding formula under SB287 unless those values were adjusted according to Glaser because the SB380 assessment levels are "frozen." 1T-178.

6. CFES engaged the PPRC to study the real estate assessment issue. 1T-124-127. CFES asked PPRC to perform a research study to determine whether assessments were being uniformly applied, whether they were equalized across the state from county to county and to study assessment levels and the assessment processes generally in the state, specifically with a view toward the 2003-2004 assessment years.

7. CFES relied upon PPRC to do the study. Several counties were studied simultaneously because it took a great deal of time to get information from some county auditors. 1T-153,162-163. Glaser was aware that Steven Gardner, a former legislator, would be primarily working on the research and he also knew of his mail and wire fraud conviction while at the troubled Germania Bank. He testified that this did not affect his hiring decision. 1T-165-168.

Mark Tranel's testimony 1T-186-247 on January 3, 2007:

8. Dr. Mark Tranel, Director of the PPRC, testified as an expert witness for CFES. 1T-186-247; CFES-5; 1T-186-187. PPRC conducts research on public related policy issues for private parties and in doing so, obtains about 80% of its funding from

contract and government grant work and about 20% of its budgeted funding from the University of Missouri, St. Louis. 1T-194. All research is done in accordance with University policies and regulations, which are different than those used for research on human subjects and also regulated by the University. CFES-6; 1T-195-196.

9. Dr. Tranel hired Gardner upon the recommendation of several faculty members. Dr. Tranel had no problems with Gardner's work or in entrusting him to perform the research duties, and he eventually promoted him to be the director of the Public Finance Initiative that is part of the PPRC. Id.

10. The Missouri Growth Association funded a research project to conduct a "sales ratio study" to examine the assessed values of property in the counties of St. Charles, St. Louis County and the City of St. Louis for the 2003/2004 reassessment cycle. CFES-7; 1T-196-197. Dr. Tranel testified that these counties all have COV laws that require owners to file an affidavit which is filed with the recorder of deeds as to the sales price of their properties when they sell their property. CFES-7; 1T-199-201. Dr. Tranel directed the project but Gardner did most of the work on the project. CFES-7; 1T-197. In the Missouri Growth project, PPRC compared sales information from the COV to assessor's property tax assessments. The study concluded that the assessment ratio levels (assessor's listed value versus sales price value) in St. Charles County was 96%, St. Louis County was 80%, and St. Louis City was 79% for the 2003-2004 years. CFES-7 Executive Summary. A "measurable difference" between property tax assessments and sales values. 1T-199-200.

11. When CFES hired PPRC to do an independent property tax sales ratio study in several counties, Dr. Tranel oversaw the contract and the contract performance for PPRC. 1T-205-206. He also reviewed the methodology and sample data to make sure that it was uniform and reviewed the research methodology and documentation to assure that standards of reliability and repeatability would be met. 1T-209-211. Gardner and his staff were primarily responsible for the study and the report. CFES-8 was similar to the Missouri Growth Association project, CFES-7; however, it examined more counties and also counties that did not have certificates of value. Therefore, the team used Multiple Listing Service (MLS) data as well as the COV information and data from assessors' offices. 1T-212. The IAAO standards provided the guidelines for all methods used since they are the only standards widely recognized as authoritative. 1T-210-211.

12. PPRC chose the counties used in the study looking at urban districts and rural districts throughout the 115 counties in the state. Selecting counties at random was impractical since data was only available from some counties. The final sample of PPRC data comprised a representative sample. 1T-209; 235. CFES had no role in selecting the counties, guiding the methodology or influencing the report results. The PPRC study, CFES-8, studied the assessment levels of 27 counties by looking at the assessor's data and data from the STC and comparing that information with actual sales data from each of the 27 counties in order to obtain an assessment ratio. Another part of the PPRC study was to generally review and study the overall assessment levels of the entire state of Missouri by reviewing the STC's data from the STC's "appraisal ratio studies" and

comparing that information for all 115 counties with information regarding changes in assessment levels compared to independent market data. CFES-8.

13. The PPRC study, CFES-8, provides a representative sample of 27 counties and concludes that there is a disparity of assessment results across those counties. While CFES-8 is not a statistical analysis of each of the 115 counties in Missouri, it is a representative sample of how 70% of residential property is valued and assessed in the state by local assessors. The PPRC study as to the 27 counties is an “indicator of conditions.” 1T-239. CFES-8 also examined the assessment levels according to the STC’s studies for all three subclasses of real property for all 115 counties. The report demonstrated that meaningful re-assessments were doubtful. *See* CFES-8, pages 15-22. Dr. Tranel testified that from a statistical analysis, the study pertaining to the 27 counties cannot be extrapolated to the counties that were not studied or referenced in the study. He also specifically stated that the study can be used as “an indicator.” He later explained that the inability to extrapolate to all counties was solely related to assessment levels of county assessors across the state based upon a statistical application of that data. *See* APPENDIX, pages 451-469 of CFES-8.

Robert Rothschild testimony 1T-247-310 on January 3, 2007:

14. Robert S. Rothschild, Jr., owner of Sandy Rothschild and Associates, testified as an expert witness for CFES. CFES-9. Rothschild and his wife are also taxpayer Plaintiffs in the suit. He is also the main shareholder in the Geiger Real Estate, Inc. company and Armstrong Maison DeVille, LLC that are also named Plaintiff Interveners. Rothschild was formerly the Executive Vice President of the Missouri

Growth Association, which was formed in 1985 as a trade association of developers, managers and commercial property owners who are concerned about issues affecting those in residential and commercial property ownership areas and associated tax equity. 1T-254-255. Rothschild has also worked with trade associations such as the Homebuilders Association on issues of tax assessment. 1T-250-253. He was Vice President in charge of Governmental Affairs for the St. Louis HBA from 1976 to 1982 and worked on property tax related issues for the association through the 1984 tax appeal cycle aiding owners of new homes in appeals of their assessments. He is a member of the IAAO. 1T-267.

15. Throughout his career, Rothschild has been a party or provided research in cases that challenged assessment laws, with numerous cases being heard before the Missouri Supreme Court. 1T-254-260. His role has been to accumulate, evaluate and synthesize data to show how properties were not valued, classified or assessed properly in various counties throughout the State. 1T-260-264; CFES-11. In this case, Rothschild also reviewed and evaluated data that he provided and data from the PPRC report to provide a basis for his opinion that the State does not meet its obligations to have state taxes uniformly applied under the Missouri Constitution, Article X, §3 and to have assessments between counties equalized according to the Missouri Constitution, Article X §14. Rothschild prepared the report entitled “Multi-County Taxing Jurisdiction Study” that provides the basis for this conclusion. CFES-10.

16. The Rothschild report studied six different counties and showed a number of examples where property tax districts were shared across district lines. His study

establishes that the IAAO standard is exceeded. This impacts taxes because the IAAO standards recognizes that while there will not be perfect assessments, that there should not be more than a 10% differential between taxing jurisdictions.

17. Rothschild also compared the PPRC assessment level with what the STC concluded. Based upon his review of the PPRC study and information from the state auditor, he made calculations to show the difference in assessment levels and the percentages off those levels. He used those differences to compare them to the goal of Article X; §3, 14 M. Const. that taxes are to be uniform between taxing jurisdictions and counties. For example, his report found that taxpayers in Audrain County bear a higher tax burden than those in Montgomery County because they are being assessed at a higher (and more fair) percentage of the true value of their property while taxpayers in Montgomery County are paying less than the full taxes on the same property in the same taxing district, the Martinsburg Area Fire Protection District. Thus, since school and other types of districts share those same counties, Audrain county taxpayers are subsidizing or paying more than their fair share of the taxes for those districts than are the residents of Montgomery County, which is exactly what the Constitution was set up to forbid. 1T-271-280.

18. Rothschild has followed the State Tax Commission's legislative messages since 1979 or 1980, and noted that the STC has requested from the legislature statutory changes to establish a statewide COV to the recognized and acknowledged problem assessors are confronted with of not having sufficient market knowledge to adequately and accurately determine the true value of properties in their jurisdictions, thus

generating assessments which lack accuracy and uniformity on a statewide basis. 1T-281-282.

19. Rothschild relied on the PPRC study information and had hired the PPRC for the Missouri Growth study, CFES-7.

20. Rothschild is also familiar with Robert Gloudemans, another CFES expert, because Mr. Gloudemans has done studies across the country and helped develop the standards used by the IAAO. He described him as “almost a god” in the assessment and ratio study area because he is so highly respected and because he has written or helped write so many textbooks on the subject matter. 1T-309.

Steven Gardner Testimony 2T-321-541 on January 4, 2007:

21. Steven Gardner is employed by the PPRC. 2T-321. He testified forthrightly about his prosecution for acts arising from his employment as an officer for Germania Bank. He was convicted in Federal Court for mail and wire fraud. When he went to work for Germania, it was a troubled savings and loan association. Gardner spent two years in federal prison because of his conviction related to loan loss reserves. 2T-321-323.

22. Gardner testified how, in his work now, he takes extraordinary measures to avoid claims of any dishonesty or appearance of impropriety. He affirmatively disclosed his criminal conviction to Dr. Tranel and the University. He includes a provision in each contract, that the University will jointly own the data and that the results will be made public to ensure that no client can dictate or hide results from public scrutiny. For the CFES study, copies of all files and logs of all work were maintained so that the study

could be audited and/or replicated. CFES-8. These files, logs and other work papers were provided to the state. 2T-323-324. The trial court found the testimony credible and admitted the PPRC Report. CFES-8; 2T-540; 8A-8B; 34T-8429

23. Gardner is an expert in the area of sales ratio studies; as well as property tax policy, administration and oversight. He has analyzed and understands assessment record keeping and property value reporting in Missouri. He has reviewed all the relevant IAAO literature and talked with ratio study and property tax experts around the country. 2T-327-328. He has read hundreds of pertinent books and articles. 2T-328. His previous professional background includes an emphasis on real estate lending – residential and commercial. He has taken Ph.D. level courses in statistics, microeconomics and public policy and administration. 2T-329. Previously he was a state representative in Missouri and was the primary sponsor of the legislation that led to the last major legislative overhaul of property assessment in Missouri – begun in 1979 and completed effective January 1, 1985. 2T-335-338. His department at the University shares an IAAO membership, and he reviews the materials provided through that membership. 2T-330-337. PPRC developed the Public Finance Initiative division, directed by Gardner, in order to provide a service to the state regarding tax and spending issues. 2T-343-344. His primary work the past four years has been in the areas of property tax and education finance. CFES-17, CFES-18.

24. CFES-7 was the Missouri Growth Association project. Following the project, he made various presentations to groups about the assessment issues. When SB287 was under discussion, various legislators invited him to speak about the

assessments issues he had found in doing the study, CFES-7. CFES-8 includes an updated version of CFES-7, 2T-333.

25. Subsequent to the passage of SB287, he played a role in the investigations regarding property tax issues by Joint Committee on Tax Policy, CFES 4. He testified on three occasions and provided the Committee with historical perspective. After testifying for the first time, Senator Gibbons asked him to conduct research to identify specific issue and provide examples from other states that could be emulated. Gardner prepared a report for the Committee, which is heavily cited in the interim and final Committee reports. The Joint Committee on Tax Policy adopted many of his suggestions. See CFES-19, "Final Report of the Joint Interim Committee on Education." PPRC, as a unit of the University of Missouri, provides such services as part of its mission to serve state policy makers. 2T-333-337.

26. CFES-8 is the PPRC report completed for CFES. Gardner supervised approximately 10 people in doing this project. 2T-346. Virtually all of the statistical data was done or completed in the last 2-3 months before the report was completed, with the earlier period focused on obtaining data and developing and testing methods and procedures. 2T-346-348. His assignment from CFES was to determine whether assessment levels conform to Missouri's Constitutional requirement that they reflect market value and to determine whether assessments were reasonably consistent from county to county. 2T-350. He was also to review data from the STC to determine whether assessments had been equalized, either directly or indirectly, both of which are within the authority of the STC and are the responsibility of the STC.

27. The PPRC study relied upon the IAAO Standard on Ratio Studies, the only such standard generally recognized as authoritative. Other texts that were employed, such as *Property Appraisal and Assessment Administration* and *Mass Appraisal of Real Property* are recognized and relied on in the assessment and appraisal area as being authoritative. Gardner also reviewed the *Assessors Manual for the State of Missouri* published by the State Tax Commission that describes how the state does its ratio studies. 2T-352-355.

28. A sales ratio study determines: 1) the common level of assessment; and 2) the uniformity of assessment. In order to do this, the sales prices and dates, descriptions of properties and assessments are collected. Sales ratios and other statistics are calculated. Properties or sales that cannot be evaluated are excluded. How all of this is done depends upon developing an understanding of what information is available and in what form – in each county. 2T-358-360. When all the data is ready and appropriately reviewed, sales prices are compared to the assessor’s opinion of value. In an ideal world, the resultant ratio would be 100% and measures of uniformity would should considerably less variance than the standards adopted by the IAAO.

29. Appraisal ratio studies, such as that conducted by the STC of Missouri depend on appraisals rather than sales prices. 2T-363. The disadvantage of appraisal studies is that the opinion of value (the appraisal) is subjective, introducing the possibility of measurement error. Additionally, appraisals are time-consuming and expensive, which generally leads to the use of a very small number of sample properties in the study (as it does in Missouri). This can lead to a lack of representation and to low reliability of

results. 2T-362-363. By comparison, “sales ratio studies” do not suffer either of those complications and they rely on actual sales date for the market value. Sales samples are also not purely random. Any random effect to the sales data can be obviated by using stratification and weighting techniques as recommended by the IAAO and as employed by the PPRC. Id.

30. There is little debate amongst experts, or states that sales studies are preferable. Nevertheless, the STC uses an appraisal ratio study for school funding purposes only. The only other state that relies exclusively on appraisals is California, but California’s property assessments are not based on market value. All other states use sale ratio studies exclusively or as their primary method. 2T-361-362.

31. When doing residential sales ratio studies, MLS data is widely used by many in the industry, and is an appropriate and reliable source of sales data. However, even where mandatory sales disclosure exists, MLS information has some advantages. By definition, sales through a realtor are arms length transactions. When sales prices are entered into the MLS, a licensed broker who was a party to the transaction is submitting the data. The broker has a professional and personal interest in making sure that the data is correct. 2T-364-366.

32. In doing the PPRC study, CFES-8, PPRC looked at about 40,000 COV sales. For the three counties with COV data as of 2003, the PPRC used COV data that had been screened by the counties. 2T-367. Gardner also reviewed the appraisal ratio studies and many other STC records. 2T-368.

33. Four counties in Missouri have COV: St. Louis City, St. Louis County, St. Charles County, and Jackson County. These counties have adopted ordinances that require COVs to be filed whenever real property in the county is sold. CFES-12-13-14-15.

34. Gardner personally visited 15 or 16 of the 27 counties that were referenced in CFES-8. His staff visited most of the remaining counties. Only 3-4 counties were not visited personally by PPRC staff because all the data needed were made available in electronic form and the assessors cooperated in answering any questions. Mr. Gardner found that every county was unique. Some counties have excellent computer hardware and software, while others were behind and lacked equipment and resources. Some kept records in such a way that they comply with state record-keeping regulations and are fully auditable, but others do not. 2T-369-370.

35. One of the provisions of Section 137.073, RSMo, often referred to as the property tax “rollback law”, is that taxing authorities may benefit from the growth due to new construction. Further statutory provisions require that records be maintained to identify these values. Gardner found that most of the counties studied maintained construction sales records for no more than one year – wiping out the old information once a new year begins. The PPRC employed techniques to avoid problems resulting from this lack of records, but a true audit would be impossible. The PPRC report contains an Executive Summary that explains what is intended and accomplished in layman’s terms. CFES-8. While the counties were not randomly selected, there was no reason for them to be. Instead, counties were picked based on whether necessary data

was available. 2T-379-380. The report summarizes the results of the PPRC sales ratio studies of 27 counties, contrasts those results with the STC appraisal ratio study results, explains why the STC results are compromised by faulty study design and execution, analyzes STC results for all 444 studies relating to the 2003-2004 cycle raising suspicion about the results and process, provides analysis contrasting assessors' revaluation results compared to market indicators, identifies patterns of revaluation failure and makes overall conclusions based on the findings. Section 2 provides a detailed report for each of the 27 counties where the PPRC conducted a sales ratio study. Section 3 of CFES-8 provides a detailed procedure manual, written for those who understand the elements of sales ratio studies so that the PPRC methodology and judgments could be reviewed. The CFES-8 Appendix contains supportive materials from the STC; exceptions are clearly identified.

36. The PPRC study focuses on residential property because residential property constitutes the majority of property in the State of Missouri, 68% of the total real property. 2T-384. Additionally, residential property is the easiest type of property to assess. Therefore, problems with residential properties point to the reasonable assumption that other forms of real property will show problems. 2T-385.

37. CFES-20 shows grossly inconsistent levels of assessment throughout the state. None of the counties fully meet the constitutional requirement that values be based on true value or 100% of market value and the vast majority fall far short. For example, if a county is assessed at a level of 80%, this means that the assessor is capturing 80% of true value and conversely that the assessor is missing 20% of the value that ought to be

part of the tax base. The closer a county is to 100% assessment value or 100% of true value, the better the assessor is doing at capturing true value of the property, as required by §137.115 RSMo. 2T-385-390. The PPRC study found that only 4 of the 27 counties studied representing 71% of residential property in Missouri, actually met 95% or greater assessment level, which was the state's criterion for avoiding indirect equalization as of 2004. 2T-392.

38. Chapter 2 of Section 1 of CFES-8 examined the results found by the STC by examining reports of all 115 counties and found a remarkable number of counties assessing at 100%, or complying with the law. In fact, the STC found many counties assessing one or more property groups at greater than market values. 2T-395-397. In Chapter 3 of Section 1 of CFES-8, PPRC reviewed the STC information to determine how the STC obtained such different results. PPRC analyzed the STC's belief that because it draws a random sample, it can assume that its sample is representative of the counties' population of properties and that their study will therefore produce statistically reliable results. However, PPRC found this was not true because small samples, such as those used by the STC produce sampling error, i.e. samples that do not represent the population. If 35 sales are drawn from a tax roll of 350,000 properties (or 10,000), the odds are high that the 35 samples will not be representative of the tax rolls. The STC does not even test whether the sample used is representative, contrary to the IAAO standard. CFES-21. 2T-397-410.

39. In contrast, the PPRC Report used stratification and weighting techniques to assure that their final results were representative of the population of properties and to

improve the precision of results. “Stratification” involves categorizing properties into more homogenous sub-groups. For example, stratification might involve placing all high value single-family homes into one group, lower value homes into another and multi family properties into a third sub-group. One purpose of stratification is that by putting similar properties together the results for each grouping are more precise and differences with other groups can be analyzed. The other very significant purpose of stratification is that disproportionate samples can be corrected by using weighting. For example, if the sales sample contains 10% of the value of its properties that are multi-family, but the county’s multi-family represents 20% of the value of all properties, the multi-family sample can be double weighted so that the final results precisely represent the population. PPRC used stratification throughout CFES-8. The STC did not use stratification, nor could it have due to their small sample sizes of approximately 35-40 properties. 2T-410-414.

40. In addition to the suspect results produced by the STC due to unrepresentative samples, the STC appraisals generally fail to reflect market value. 2T-418. This is called indirect equalization so that even if an assessor in a county is assessing low, an adjustment is made to adjust the assessments. 2T-424. The uniformity of assessments then affects the foundation formula in the equivalent ratio summary used in the formula. 2T-425-426. The PPRC Report and Gardner concluded that all 115 counties in Missouri are reported to have the same 115 assessment levels (33.33%) whether they do or not (2T-425-426; CFES-22) although this is the equalized assessment valuation used in §163.011, RSMo and used for local effort (2T-427-428).

Gardner admitted that CFES-22 uses all sub-classes of property, whereas the PPRC study, CFES-8, only dealt with residential but noted that residential makes up 68-69% of the property in Missouri. The STC has not increased agricultural property since 1995, and it only makes up 3% of the property in Missouri. Gardner and the PPRC Report also noted that commercial property makes up about 29% of all property in Missouri (2T-431-432.) and that studies found commercial property in St. Louis County to be about 80% of true value, 95% in St. Charles County and 90% in St. Louis City. Gardner concluded that the ratio in CFES-22 is flawed with respect to commercial property in at least those three counties. 2T-434.

41. Gardner and the PPRC Report state that accurate property tax assessments are important for school funding because assessment is the measure used to classify schools as “poor or rich.” The PPRC Report uses an example where County A is at 75% market value while the other County B is at 95% market value, and argues that the true wealth of County A is understated as well as its ability to contribute locally to schools. If both counties are adjusted by the STC’s equalization process by “equivalent appraisal ratios” of 33.33%, County A would receive state funding while County B would not. The PPRC Report concludes that this causes direct harm to both counties. *See* CFES-8-page 23-34; 2T-445-48. “So it’s the basic foundation of the whole purpose for the formula. It’s worse really than having inaccuracies in the pupil count.” 2T-444-445. Gardner testifies that under SB287, the measure of need for each school district is based on the equalized assessments as of 2004 (essentially those produced by the 2003 reassessment because 2004 only reflects changes for new construction and improvements). If those

numbers are grossly erroneous then some districts receive more than their share and others less than their share. 2T-451-452. The critical point is that the state had three opportunities to produce reasonably accurate “equalized” assessments as of 2004.

42. The STC indirect equalization process in effect in 2004 did not work according to Gardner and his research. CFES-8, Chapter 6 at 31; 2T-458-459.

43. In Chapter 4 of CFES-8, PPRC analyzed whether reassessments are capturing changes in market values as required by state law in all 115 Missouri counties. In simplified terms, the PPRC concluded that market values had increased approximately 5% per year during the studied periods, so with reassessments every two years, most counties would be expected to show approximately a 10% increase of assessments. 2T-435-436. Despite this reasonable expectation based upon market indications, the PPRC used a much softer test. Measuring whether counties accomplished even a 3% increase or better. 2T-438. After examining the actual changes in assessment levels based on STC records over each of the last 4 assessment cycles for all 115 counties, the PPRC report, CFES-8, raised serious concerns about whether the revaluations required each two years actually occurred in those 115 counties. “A third of Missouri’s counties (38/115) appear to have reassessed only once, or never, in the last eight years. Only 12% of counties appear to have actually reassessed during each cycle prior to 2004. “When market values are rising and assessments are not, only one result can occur, lower assessment levels.” 2T-438-440. PPRC’s analysis identified several patterns. One was that the reassessment year preceding an election produced decreases in assessments, or very minor increases in many counties – whether compared to market indicators or

whether compared to results in the same counties for non-election years. This was based on the analysis of the 115 counties. 2T-441. Another pattern that was nearly universal amongst the 27 counties studies was that older properties were assessed at a lower level than newer properties, sometimes dramatically different. 2T-442-443.

44. Reviewing the analysis of all 115 counties and all property types, combined with the more detailed study of 27 counties led to the reasonable conclusion that many counties do not consistently conduct a serious reassessment designed to capture full market value. Gardner concluded that the PPRC analysis combined with data from the STC strongly supports the proposition that for the state as a whole there are low assessments in most counties in Missouri and that the disparities are wide. CFES-8, Chapter 6 at 31.

45. The PPRC report, CFES-8, concludes in Chapter 5 that inaccurate and inconsistent assessments create problems with the current school funding formula that locks in the effect of poor assessments that were not equalized, despite the requirement in SB287 that equalized assessment values be used. The failure of the counties to produce appropriate values followed by the failure of the STC to equalize either directly or indirectly is compounded by provisions of SB287. First, there is no provision in SB287 for correcting erroneous 2004 values. Secondly, there is no provision for taking into account any changes of circumstances in assessments. Taxpayers are harmed by inaccurate assessments of property because of the shift in tax burden from one county to another. 2T-456.

46. The PPRC report, CFES-8, concludes that using seriously flawed assessment data from 2004 guarantees inaccurate allocation of state funding. CFES-8, Chapter 6 at 31. This means that some school districts are portrayed as poorer than they are and some districts are being portrayed as richer than they are and the bottom line is that education money is not being distributed properly, nor is there any provision for change short of revising the statute. The inequities in assessments are frozen in the formula. 2T-457-458.

Testimony of Bruce Davis 2T-542-610, Missouri State Tax Commissioner,

January 4, 2007:

47. Bruce Davis has been a Commissioner of the State Tax Commission since 1990. 2T-547. He identified CFES-23-24 as “Legislative messages” where the STC has been recommending that the State of Missouri use COVs statewide. About 36-38 states have COV laws statewide. 2T-548. The STC informed the legislature that assessors cannot perform uniform assessments without having accurate sales data. 2T-551. Sixty percent (60%) of the money from property taxes go to schools. 2T-545.

48. The main tool used by assessors that do not have COVs are “sales letters,” i.e. letters from assessors to buyers asking for information about the transaction. The compliance, unlike COVs, is voluntary and letters are not well returned.

49. The STC does “appraisal ratio studies” for purposes of reporting equivalent sales ratios under Section 138.395. 2T-554. Davis agreed that the Constitution gives the STC the authority to equalize assessments as between counties. 2T-559.

50. Commissioner Davis stated that Missouri law requires the STC to issue a report showing the percentages added or deducted in each county, which is “Report of Valuation changes” CFES-25. The 115 county assessors report the assessments of the three subclasses of the property and submit to the clerk the aggregate valuations in the county. The Board of Equalization then adds values and subtracts values and submits its report to the STC. The STC then submits the assessed valuations. 2T-566-568. This is the equalization of assessments between counties under Article X, §14 of the Missouri Constitution. 2T-568-569. The STC basically assumes that the assessor has done his job and that the values are equalized. 2T-569-570.

51. Davis admitted that Section 138.395 calls for the STC to issue “equivalent sales ratios” to school districts and DESE and that it does so based on its appraisal ratio study. 2T-577. The median that is used in the equivalent sales ratio comes from the STC’s appraisal ratio study. .

52. The STC sent a report to DESE, CFES-26. In 2004, all the counties were reported to DESE as being in compliance for equivalent sales ratios or at 33.33% for all 115 counties. 2T-584.

53. According to Commissioner Davis, the STC believed in 2004 that St. Louis City property was under-assessed, it was at 68% of market value. CFES-29. The next year, 2005, the City of St. Louis increased assessments on residential 34% in the aggregate. 2T-587. The other letters to assessors in CFES-29 were also asking assessors to bring up their assessments after the 2003-2004 assessment cycle. 2T-589-590.

Commissioner Davis reported to the Joint Committee Tax Policy, CFES-28, that after

2003 “regression” or variability in statewide assessment had taken place. Overall assessments needed to increase to keep up with market value. 2T-595-596.

54. Commissioner Davis explained that there could be ratio studies for certain counties that would not be in compliance but that the STC would send a letter asking the assessors to assess at market value and hold off on rating them as not in compliance; for that year, while they awaited the compliance, 2T-607-608, The equivalent sales ratio would still be reported to DESE at 33.33%. 2T-574. Commissioner Davis said that once the report with the 115 equivalent sales ratios is made to DESE, the STC has nothing to do with how DESE uses the information. The STC only provides the report showing the 33.33% for every county, they do not provide DESE with the background information. 2T-566-568.

55. Commissioner Davis testified that it was the STC’s policy that if it had evidence that there was *intracounty* equalization in assessment practices, they assumed that there was *intercounty* equalization. 2T-570-573. He testified that the STC assumed that if every assessor was doing his or her jobs properly, then the STC did not have to look at practices “as between the counties” as was required by the constitution and state statutes as it could be assumed. 2T-574. Davis said this is in compliance with Section 138.400.

56. Commissioner Davis testified that agricultural property values for purposes of assessments have not changed in over 10 years. 2T-599-600.

Testimony of Paul Fedchak 1T-622-644 on January 5, 2007:

57. Paul Fedchak is the CFO of Clayton School District, 3T-622, and has been since 1987. His qualifications, background and experience are listed on his resume. CFES-31.

58. Fedchak examined the PPRC study results, CFES-8, and had made some calculations as to the potential effects the conclusions reached by the PPRC study would have on local effort under the funding formula. In making the calculations, Fedchak used computer simulations from Otto Fajen. CFES-30. 3T- 626, 639.

59. If assessed valuation reflected assessment at 95% of value, this would increase statewide local effort revenues by \$228 million. CFES-32. This means an additional \$228 million in state dollars would be available as state funding to distribute to school districts across the state. 3T-627-268. In reaching this conclusion, Fedchak used the best sources of information that were available. He took the data from the PPRC study and applied the results. CFES-32. In doing the calculation, Fedchak used the State Tax Commission's 11-A's data. He assumed capturing assessment levels at 95% of true value. 3T-624-628.

60. CFES-33 explains the procedure Fedchak used for determining assessed valuation change impact on schools. CFES-34 summarizes the results of information analyzed. Fedchak relied on the PPRC study and applied the ratio of each of the 27 counties in study to those school districts within those counties as to residential property to bring those counties up to a 95% assessed valuation. For counties not in the study, Fedchak for purposes of illustration applied the median of the PPRC study and, again,

brought up each county to a 95% assessed valuation level. The level of 95% was used because it would comply with STC requirements. 3T-624-632.

61. By using this method, Fedchak concluded that there was an inequitable distribution of foundation formula monies to school districts across the state. If there was equalized assessed value for North Kansas City, the assessed value would have increased by \$40 million. 3T-637. State funding would decrease by \$205,000 the first year and overall \$1.4 million – again leading to an overall net increase in funding. 3T-637.

Fedchak also coordinated with Paul Harrell and David Glaser to determine and illustrate the effects on the funding for Rockwood and North Kansas City if assessment levels were at 95%. 3T-632. The conclusion was that if assessment levels were at 95% for Rockwood School District, they would have increased local funding by \$303 million, which would have decreased state funding for Rockwood by \$1.5 million the first year and \$10 million over a 7-year period. Overall, this is a net increase. 3T-633-34.

62. Fedchak concluded that the funding formula needed to have true equalized assessed valuations across the state. 3T-638. There is a great disparity. He also concluded that assessed valuation needs to be fixed and there is a need for true equalized assessed value across the state. 3T-654. Fedchak believes that the property tax issue should have been resolved before SB287 was passed. He stated in cross-examination that the legislature has ignored the concerns that the property tax assessment system is flawed. 3T-656. Projection models are generally based on reasonable assumptions that can be relied upon as a school CFO. 3T-648, 661.

Testimony of Otto Fajen 3T-665-667 on January 5, 2007:

63. Otto Fajen is currently the Legislative Director of Missouri National Education Association. 3T-665. He did graduate work in computer simulations. 3T-670. He formerly worked for Senate Research in performing the same role of analysis of school funding that current employee Paul Wagner provides. 3T-667-669.

64. Fajen provided a computer program to Glaser and Fedchak. CFES-30, 3T-672. He obtained the information and the program during the course of SB287 from Senate employee Paul Wagner who ran computer simulations on SB287 for the legislature. 3T-672. Various simulation information was obtained during the course of SB287 going through the legislature because as a Legislative Director for MNEA, he wanted to be able to influence policy debate and assess the accuracy of the analysis. 3T-667-669.

65. The computer program provided to CFES was originally received in May 2005 at the end of session. 3T-669-670. Fajen made a few minor revisions to analyze the impact on Proposition C funding on the formula and to correct a technical error. From his review of the program, Fajen is confident the computer calculations comported with the requirements of SB287. 3T-668-669. CFES-30 is a copy of the program Fajen provided on to CFES.

Testimony of Paul Harrell 3T-667-732 on January 5, 2007:

66. Paul Harrell is employed by North Kansas City School District as the Chief Financial Officer. He is also a C.P.A. CFES-39. North Kansas City has 82 square miles and is the largest school district in Clay County by population while there are other

school districts in Clay. Harrell made a calculation of the SB287 funding specifically for North Kansas City School District projecting for the next several years which is the same type of information that he would produce for his school board. CFES-40; 3T-679-682.

67. In explaining CFES-40, the local effort component has school districts use the 2004-05 assessed valuations that in the formula are frozen in time. 3T-688.

68. The amount of state funding required nets North Kansas City School District \$42,715,291; however, this amount is phased in over 7 years. CFES-40, 3T-690.

69. North Kansas City School District is located in Clay and Platte County with 99.9% of the assessed valuation of the district in Clay. 3T-691.

70. Using the PPRC study, CFES-8, Harrell worked with Fedchak to determine how his district would be impacted if the assessed valuation changed. CFES-541. He modified the assessment ratio for Clay County for residential assessment valuation as presented to the school in 2004. Under the PPRC study, Clay County is assessing at 91% and Platte County is assessing at 70%. 3T-692-694. On cross-examination, Harrell testified that he has been lobbying the tax commissioner in Platte to address the issue of assessment. If residential property was assessed properly in his school district, at 95%, it would affect funding. Harrell only used residential property in his example. 3T-696. Out of a grand total of assessed value of 1.8 billion, only 1.5 million came from agricultural property. CFES-41-42. Therefore, Harrell chose not to change those assessed valuations. 3T-696. The SB287 payment would decrease if the assessed valuations were at the 95% level CFES-42, however, the local effort would increase. Paul Harrell opined based upon the assumptions in CFES-36, that the performance levy could have been

lowered from the statutory \$3.43 and this would have helped all schools because there is a direct correlation between changing your assessed value, the amount of money that is funded under SB287 and by changing the performance levy downward from \$3.43 would increase the district's total reserve. CFES-41-42. This is illustrated by CFES-42 for North Kansas City Schools where decreasing the performance levy to \$3.13 increases the funding to the school of approximately \$4.3 million.

71. On cross-examination, Harrell testified that the legislature knew of the criticisms of assessment practices and the different valuation of assessments. 3T-722.

72. Harrell agreed that while he is working with the Assessor to increase valuations and that will yield additional local money, it will not have any effect on the formula overall because the assessment values are frozen in time under SB287. 3T-713, 720.

Testimony of David Glaser 3T-732-810 on January 5, 2007:

73. Glaser worked with Fedchak and Harrell on CFES-43 to make a calculation to illustrate how SB287 would have changed assuming the results from the PPRC study. 3T-894. About 90% of Rockwood School District is located in St Louis County and from the PPRC study, St. Louis County is assessing at about 80% of the market value. CFES-43. David Glaser found that if assessed valuations were at 95% for the residential property and if agricultural property were assessed at the higher rate, then it would result in an increased local funding and a decrease in state funding.

74. Glaser also provided his opinion that the Legislature could have revised the performance levy that was statutorily set at \$3.43 downward. Using \$3.13 as an example, the effect of this on Rockwood School District is in CFES-44. 3T-730-735.

75. Glaser opined that SB287 could not be fixed on the assessment value issue since a huge portion of SB287 is based on the 2004 assessed values and those values are wrong. 3T-746-747. Therefore, either the 2004 values need to be corrected so that at least 95% of the value is assessed or SB287 is significantly flawed and is unconstitutional. The problem is that the state allocation of funding does not reflect the wealth of a district when assessments are not equal or accurate. 3T-773-774.

76. If assessments are embedded in the formula they should be accurate. 3T-775. If assessed values were fixed, the distribution of state money will be made properly. Glaser explained that the PPRC study indicates that there are significant problems with assessments that point out that the school funding formula is flawed. It would be fair to use the study to point out the flaw and to demonstrate the finances, but a more in-depth study would be necessary to determine exactly how to change funding. 3T-781-782. The effect of those problems on the funding formula can be illustrated by what Fedchak, Harrell and Glaser provided.

Testimony of Robert Gloudemans 4T-817-918 on January 9, 2007:

77. Robert Gloudemans testified for CFES as an expert witness regarding ratio studies and assessment practices. CFES-47. He has performed at least 100 studies and worked with entities similar to our State Tax Commission. He wrote or has been a prime developer of the IAAO standards and is on the IAAO standards operational studies

committee including the recent committee undertaking updates to the IAAO standard. CFES-18. He has worked in numerous states on ratio studies, valuation models, state oversight, and for state tax commissions throughout the United States. 4T-820.

78. In 2004, Gloudemans conducted a sales ratio study regarding commercial assessments in St. Louis County as of the 2003/4-reassessment cycle. CFES-48 found the level of assessment for commercial property at 25% instead of the 32% required by Missouri law. In that same study, Gloudemans conducted an examination of the STC's appraisal ratio study was examined and the report found that the STC appraisals did not represent market value.

79. Gloudemans reviewed the PPRC study as it was developed and after it was completed. He reviewed the data and methodology, report drafts and the final report – before it was submitted. Furthermore, he selected several counties to examine on his own after the report was completed. CFES-8. He was very impressed by Steven Gardner's in-depth understanding of ratio studies and the technical issues involved. He felt it was one of the most comprehensive studies he had seen and that it not only complied with the IAAO standards, but exceeded those standards. He also reviewed the STC's assessor's manual, which describes the methodology for the STC appraisal ratio study. 4T-828-830.

80. Gloudemans' opinion is that MLS data is an excellent source of data and its use is appropriate for sales ratio studies and is widely used. 4T-832-833.

81. Assessments can be evaluated by comparing to sales prices or by comparison to independent appraisals, but using sales studies is preferred. It is also the dominant approach amongst oversight agencies. Missouri is the only state the uses

appraisals as its exclusive measure of market value amongst the 49 states whose property assessments are based on market value. 4T-833.

82. The PPRC study, CFES-8, was reliable. Gloudemans tested it by determining that he could obtain the same numbers as the PPRC study using the raw data. CFES-15 and 4. 4T-837-838.

83. Based on the PPRC study, Gloudemans concluded that the level of assessments in Missouri for residential property are consistently low. Residential property in Missouri generally is not appraised at market value. Gloudemans also concluded that the level of assessments varies greatly between counties. 4T-839.

84. He testified for Missouri to have results that show that the level of assessment is 100%, or if converted to an equivalent ratio, 33.33% it means there is no relationship to the level of actual assessment and market value in Missouri. 4T-863-864.

85. Gloudemans reviewed the information that the STC uses to report to DESE including CFES-22, 26, 29 and 28. 4T-844-845. He testified that the STC studies are not credible due to the sample size, use of appraisals and adjustments made to make the DESE report result in 33.33%. 4T-848-849. The STC uses a random sample of approximately 35 residential properties and 35 commercial properties in St. Louis to conduct appraisals. The fact that they are random makes them desirable. However, such a small sample does not guarantee the sample is representative. Substituting appraisals for sales price like the STC does gives a misleading and invalid measure of uniformity and the level of assessment. 4T-863.

86. The PPRC study, CFES-8, removed “outliers. Outliers are observations in the statistics that vary considerably from other numbers. While it is preferable to submit outliers to extra scrutiny, this is rarely practical in large studies. The appropriate removal of outliers is not only allowed by the IAAO standards, it is recommended as a means for improving the statistical precision of the study. Gloudemans found that the PPRC study went to extraordinary lengths to meet and exceed the IAAO standards as well as those of the Missouri STC. 4T-865.

87. Gloudemans found the Mann-Whitney test reliable to show that the appraisal studies are inaccurate. The Mann-Whitney test compares an assessment study based on sales with one based on appraisals. 4T-867. If both sales and appraisals are proxies for market value, then the Mann-Whitney test would come out the same. In this case, appraisals do not represent market value. The Mann-Whitney test demonstrates that appraisals cannot be taken as valid. This is the test recommended by the IAAO standard. 4T-870-871.

88. Since the STC methodology is flawed by using appraisal studies “only by accident are you going to report a correct result in any county.” 4T-874.

89. The information contained in CFES-26 reports the results of the STC appraisal ratio studies for 115 counties and all three subclasses of real property. These are the reported numbers that resulted in no indirect equalization for 2004 for any county. There is a disconnect between what is reported in CFES-26 compared to CFES-29 in that the State Tax Commission is telling counties that they have serious problems with under-

assessments in CFFS-29 yet in CFES-26 the STC reports to DESE the perfection of assessment levels. 4T-879-880.

90. In Missouri, 68.3% of the state's assessed valuation is residential property. The ratio study portion of PPRC study, CFES-8, examined 27 counties that represented 71% of the total assessed value of the state. 4T-900-901.

CEE WITNESSES WHOSE TESTIMONY RELATES TO ASSESSMENT:

CEE witness Superintendent Chris Gaines January 18, 2007:

91. Superintendent Chris Gaines, Crawford School District, testified that his school district is in three counties—Washington, Franklin and Crawford. In terms of his district's local effort, Washington represents 10-15%, Crawford over 80%, Franklin about 1% assessed value, with about 70% residential in all. According to the PPRC report, CFES-8, Washington County is at 58% of assessed valuation for residential property and Crawford is at 72% of assessed valuation for residential property; however, Gaines had not done any calculations as to the effect. 10T-2249-2252.

CEE expert witness Dr. Richard Salmon testified on January 23, 2007:

92. Dr. Richard Salmon, is a CEE expert performed an analysis of expenditures on a per pupil basis and analyzed equity. See CEE-335-336. Dr. Salmon testified that the failure to equalize assessments rewards districts that under-assess. See CEE-336 at 6-7. Dr. Salmon testified that Missouri capacity varies among districts in Missouri. When the foundation formula deducts the local money, what the state is doing is capturing local

money and claiming it as state money for purposes of a foundation formula. CEE-336 at 10. Missouri's system of funding is one of the most disparate in the nation.

STATE'S WITNESSES:

State Testimony from Assessor Shawn Ordway 17T-4224-4285 testimony on

January 31, 2007:

93. Shawn Ordway is the Cole County Assessor and is also a certified residential real estate appraiser. He is a member of the IAAO and also a member of the Missouri Real Estate Appraisers. State-720; 17T-4225.

94. Cole County uses sales data from MLS and validates sales. 17T-4228.

95. Ordway reviewed the Cole County section of the PPRC report and found errors in the data. 17T-4229.

96. Ordway examined and checked the sales with the Cole County sale file and found instances where sales did not match. He also searched the MLS data to locate the sale and found 34 out of 36 sales and 35 out of 36 sales dates to be incorrect. 17T-4230-32. State-721.

97. He reviewed State-721, which showed 564 sales and found 4 certified assessed values that were incorrect, 2 sales listed as single family when they were vacant lots and classified incorrectly. 17T-4233.

98. The assessor's office uses a validity code to mark invalid sales. Overall, he found problems with 15.6% of the data making the results for Cole County not reliable. State-722; 17T-4234-4360. On cross-examination, Ordway testified that the PPRC

would not have Cole County's notes of the parcel cards, the MLS information and comments or any sales letters from buyers and sellers that were consulted.

99. Ordway's opinion is that MLS sales are inflated or premium because in going through a realtor, it is not uncommon that people will spend money to maximize the sale. 17T-4238-39.

100. Ordway criticized sales from the MLS data when looked at geographically for Cole County, State-723, revealed 564 sales out of 25,431 residential properties that exist for the county. The property outside the city limits was underrepresented in his opinion, and he felt the PPRC report excluded too many properties. 17T-4240-4241.

101. Overall, Ordway disagreed that valid results could be obtained for Cole County because of the number of errors in the sales price and he did not believe it followed the IAAO. 17T-4243.

102. He reviewed State-724 and concluded that there were substantial errors in the entries in the table with 22 /23 entries incorrect. 17T-4246.

103. Ordway strongly disagreed with "sales chasing," where sale properties are treated differently than properties that don't sell, had occurred in Cole County. 17T-4249-50.

104. Ordway disagreed with the trending analysis because of the use of April 2003 instead of the same date of assessment—the trending was dated after the data value. 17T-4251.

105. On cross-examination, Ordway testified that in 2003, when a transfer occurred in the recorder's offices, Cole County would send out a letter and try to gather

sales information. The letter being used at that time would ask for sales price and general property information. 17T-4256-57. Ordway later admitted in further cross-examination that while the staff works hard to verify the data from a sales letter, that the letters are hard to verify and that there is no perfect data. 17T-4269-70.

106. When asked by the Judge the effect of the errors in looking at State-721 and what difference that made in the overall ratio study, Ordway testified that the reason he showed the difference in the sales prices was to show that these are not small errors. He also was able to verify that the PPRC data files were incorrect. 17T-4274-4275.

State testimony of Randy Holman 26T-6581-6600; 27T-6648-6692
on February 15 and 16, 2007:

107. Randy Holman is the Assessor of Jefferson County and the President of the Missouri State Assessor's Association. 26T-6581.

108. He reviewed the PPRC report for Jefferson County and found errors in the data when compared with the assessor's rolls. 26T-6582.

109. Holman prepared State-588 showing that there were 212 records that were not valid parcel numbers and therefore, inaccurate data in his opinion. 26T-6583.

110. Holman testified that State-589 shows the parcels in the study compared to the assessed value in the report and illustrates how that varied in the PPRC report. 26T-6583-84.

111. State-590 represents 9 records that the PPRC used that were actually manufactured homes and personal property. 26T-6585-86.

112. State-591-592 recognize that trending was used, and he believed that PPRC used trending improperly because it trended downward instead of upward. Therefore, the trending was improper because it was supposed to be applied upward in 2002 and then trended back to January 1. He believed that trending would affect the ratio. 26T-6586-6588.

113. State-593 criticized the PPRC report on the way it stratified multifamily properties with significant dollar differences in the way Holman's assessment roles have these properties and the way PPRC reported. 26T-6590-93.

114. State-594 looks at sales data and ratios and Holman's office matched the properties and did not find the values reported by the PPRC. 26T-6595.

115. On State-595, Holman examined 310 properties and concluded that the sales used in the PPRC report were not used appropriately to determine trending. He found invalid parcel numbers and no assessment record to use. 109 did not match buyer and seller and some involved a bank sale. Therefore, Holman concluded that there were many errors in the PPRC data. 26T-6596-98.

State testimony of Dr. J. Wade Davis 23T-5815-5879 on February 8, 2007:

116. Dr. Justin Wade Davis currently teaches statistics at the University of Missouri, Columbia. He has a BA in math and economics and a Ph.D. in Statistics and has also taught briefly at Baylor. State-596; 23T-5816.

117. In preparation for his testimony, Dr. Davis reviewed the 1999 IAAO standards, authoritative books including *Property Appraisal Assessment* and *Mass Appraisal of Real Property* that were written or edited by Gloudemans, a number of

papers written by Gloudemans in particular and he also consulted with Dr. Madsen. 23T-5817-5818. On cross-examination, Dr. Davis agreed that he had never been an expert witness before, he had never done mass appraisals before, and he read a lot of Gloudemans' books and was only familiar with how to do a mass appraisal from reading books. 23T-5360-61. Further, Dr. Davis also had no realty experience, 23T-5864, and did not agree with the IAAO standards.

118. The fundamental problem with the PPRC study according to Dr. Davis is that PPRC did not sample from all the properties of interest, they only obtained samples from the sold properties. He believed that this was a problem because there is a relatively small subset of properties and there are generalizations made from the recently sold population. This led into a deeper concern that the sample was not random. 23T-5819-5822.

119. Dr. Davis opined that the science of statistics is based upon probability and you need to have random samples in order to draw statistics. He referred to the sample as a convenience sample from readily available data. 23T-5822-23.

120. Dr. Davis criticized the PPRC report in its treatment of outliers and trimming outliers. To his knowledge the STC doesn't trim and that it is inappropriate to screen out bad data. He criticized the PPRC study, CFES 8, for trimming and implied that trimming would make a county look as though an assessment level was lower than it was before trimming. 23T-5826-28;5830. On cross-examination, Dr. Davis agreed that he did not figure out the median, but used the means in his analysis of the trims. He

stated that if you calculate by the means, the overall difference in the trimming of the data is about 2%. He agreed that means are more affected than medians. 23T-5852-54.

121. Dr. Davis stated that comparing a random sample with a non-random sample was a violation of the mathematics of the Mann-Whitney test. 23T-3833. He said that comparing the STC random sample with the PPRC study, CFES-8, which was nonrandom, that you were comparing two different types of populations, so you would expect to have two different results. 23T-3935-37.

122. Dr. Davis did not examine all the data for all the counties in the study. He did not try to replicate their study. 23T-5838.

123. Dr. Davis pointed out significant errors in the data in St. Louis City, and CFES stipulated that there were errors in that chapter. Dr. Davis said that the error in the data could be a cut and paste error. He did not run the numbers with the correct data to see how it would come out. 23T-5838-44.

124. Dr. Davis was concerned about what he understood the Cole County Assessor found. He did not independently verify the Cole County Assessor and just relied on the information that he was provided. 23T-3844.

125. On cross-examination, Dr. Davis agreed that appraisals could be biased and not as reliable.

Testimony of Commissioner Davis 17T-4286-4370 on January 31, 2007

for the State's case:

126. Davis testified that the STC developed a methodology for assessment practices. 17T-4287-4288. This statistical methodology was developed by Dr. Richard

Madsen so that the data at the STC could be reviewed. 17T-4288. Dr. Madsen made his report, State-706, and the STC used his report as the guideline for determining sample size and measuring the levels and quality of assessment. 17T-4289, 4290. The STC has used this statistical methodology since 1986 where they sample the assessment rolls in each county and develop statistics from that sampling. 17T-4289, 4290.

127. Davis believed that the methodology produced valid results. 17T-4290. The chief advantage of an appraisal ratio study is that it emulates the population by sampling from all properties. 17T-4291. It is the job of the STC to determine assessment levels for all properties. 17T-4291. Davis did not believe that the population of recently sold properties was necessarily representative although it could be. 17T-4291.

128. Davis acknowledged that the STC methodology was not perfect. 17T-4292. He agreed that having market data on sales and construction costs would benefit the state and that is why the STC has asked for certificates of value. 17T-4292. He also admitted that MLS data was desirable, although he opined that you had to validate that data first under his reading of IAAO standard 6.3. 17T-4292. With regard to State-707, the STC was admonished by the Jefferson County Board of Realtors for using some MLS data because it is unreliable. 17T-4294.

129. Davis reviewed CFES-25 (Forms 11 and 11A) in the State's case and testified that the process reflected in that exhibit takes place over a short time and that it is uncommon to make changes during that time frame but that he believed that the STC accepts the reporting and that the duty to fully equalize is accomplished. Equalization is an ongoing process. 17T-4292-4296. The STC does a two-year biennial assessment

plan, value comparisons, sales studies, appraisal studies, sends out compliance orders and determine the total assessed valuation for each county on an annual basis. State-708, 17T-4296-4299.

130. Davis reviewed CFES-22 (county sales ratios certification to DESE) in the State's case that showed each county certified at 33.33% and disagreed that the State was not doing its job properly. 17T-4301 and 17T-4302-4303.

131. In the State's case, Davis said that agricultural productivity rates were flat. 17T-4304. The STC held hearings in December 2005 and Dr. Kevin Moore at the University suggested a raise in values; however, the STC heard testimony from others and information that it should not be raised. State-710 and 17T-4304-4306.

132. The STC is mandated by statute to collect information on other states. State-711 contains information from Iowa that shows productivity is flat. 17T-4306-4307. On cross-examination, Bruce Davis admitted that the productive values have changes. He then explained that there are changes but not much change from 1999-2005.

133. Davis examined the PPRC report, CFES-8, and in the State's case testified that the number of parcels listed in the City of St. Louis were not correct for 2003. 17T-4309.

134. Davis compared the CFES-8 Appendix Table B on pages 455-59 for all counties with State-713 and found it to be largely the same information. 17T-4311. State-713 was prepared at his direction. 17T-4311. State-713 shows whether assessors are capturing market value and that there have been increases in assessed valuation for residential property. 17T-4313.

135. Davis reviewed CFES-26 and admitted that portions of CFES-26 look at 2003-04 ratios and that the far column ratio is what is used in a district's calculation for the purposes of DESE. 17T-4315. DESE uses three out of four best years. 17T-4315-4317. This is strictly statutory under Section 163.011, RSMo. The STC provides the history and what DESE does with it is not in the STC's purview. 17T-4315-4317. On cross-examination, Davis said the assessed values contained in State-704 are the "true values" for 2004. 17T-4319.

136. Davis admitted that the effect of the STC report to DESE that shows that 33.33% is for purposes of the funding formula, that all counties were in compliance and were frozen. 17T-4319-4330. He also admitted that with Pulaski County in 2003, where they are noted at the bottom that there was a second study that was incomplete that they were put at 33.33% in 2003 even though not in compliance.

137. Davis acknowledged the various "compliance letters" were sent to assessors in 2004 order to address the next reassessment cycle based on sales reviewed in the 2004 year.

138. The STC doesn't use equivalent sales ratios for any purpose other than reporting to DESE. 17T-4325-4327. Even though there are 23 compliance orders outstanding in 2005 that indicate that these 23 counties are not within acceptable market values based on "sales ratio studies," these are different rules for the 33.33% rule used for being "in compliance with the "appraisal ratio study." 17T-4328. He admitted that there is a different standard in measuring this compliance for these compliance orders based on sales ratio studies than for the equivalent sales ratios that are sent to DESE. Some

districts could not be in compliance for a compliance order and yet be put at 33.33% for the purposes of the report to DESE. There are two sets of rules. 17T-4328-4331.

139. State-708 is the annual report to the Commissioner of Education, so DESE receives the equivalent sales ratios in one report and then the aggregate assessed valuations for all 115 counties in the annual report. School districts must then obtain school district information from their County Assessor or the Auditor's Office. 17T-4330-4331.

140. The STC process is an appraisal ratio study through appraisals done by appraisers which is reviewed by other staff. 17T-4333. There is an opportunity for the assessor to review the study and share information. 17T-4334. Once the final study is completed, there is a calculation of the coefficient of dispersion that measures the horizontal equity to see how much there is a variance from the median. There is also a confidence interval around the median. For each property there is an adjustment to meet the 33.33% compliance with DESE purposes. 17T-4335-4340. The STC does "an appraisal ratio study to determine the level of assessments and the quality of assessments." 17T-4342.

141. There are two sets of rules at the STC for assessment practices. There is one set of STC rules for calculating the equivalent sales ratio for DESE that utilizes an appraisal ratio study and approximately 35 properties. There is another set of rules based on sales ratio studies that is based on anywhere from dozens to hundreds or thousands of properties in the counties (including the four counties that send COV results.) This set of

rules is used to send out compliance letters and orders to ensure that the assessors keep assessments up to market value. 17T-4346-4350; 17T-4352-4355.

142. Davis testified that the equivalent sales ratio assessment level “artificial arbitrary assessment level” because they are equalizing to 33.33%. 17T-4357.

143. Davis said that he would not rely on the PPRC study because the assessors are now working on the 2007 reassessment cycle. He did compare some of the numbers that the STC “had with sales and they weren’t generally different.” 17T-4367-68.

Jennifer Tidwell—State-739:

144. The State introduced into evidence the deposition of Jennifer P. Tidwell, a commissioner with the STC who directs the activities of the STC in all areas through original assessment, technical assistants, appraisal staff and legal staff. She is also a certified residential appraiser. State-739 at 3, lines 11-20.

145. Tidwell concurred with the recommendations to the legislature contained in the legislative messages that are part of the STC annual report to the legislature. State-739 at 6, lines 3-9.

146. She agreed that COV would be an excellent tool and resource for assessors to have throughout the state of Missouri and that the purpose of what the assessors do is try to reach true value of property or market value. State-739 at 6, lines 12-25.

147. She did not rely upon the MLS when she acted as an appraiser because the data was only as good as the real estate broker prepared it, but she later stated that she would sometimes talk to the broker or go to the broker’s office to review the sale in order

to obtain comparables. She also stated that she would talk to the seller or buyer for verification. State-739 at 9 lines 21-through page 10 line 12.

148. The STC's appraisers follow uniform standards of appraisal practices. State-739 at 11 lines 9-13. In 2003-04, there were 19 or 20 appraisers who do appraisal studies, State-739 at 12 lines 19-25. Then there are approximately eight technical assistants, who go to assessor's offices and get information from the assessor on the sales study and the technical staff compiles it into a report. State-739 at 12 lines 7-8 and lines 19-25; at 13 lines 1-23.

Other State witnesses on Assessment issues:

149. Dr. Wood, the State's expert, testified on cross examination that though he did not know how property assessments are done in Missouri that if an assessment is not done uniformly, that inconsistencies have to be resolved or the formula calculation will be weakened. 25T-6321-22.

150. Senator Shields testified that one of the findings of the Joint Interim Committee was that there was a perception of inaccurate property taxes. He was aware the STC annual reports where the STC asked for COVs. He was also aware of that the General Assembly has had proposals for COVs previously before it. 23T-5763-69.

CFES Rebuttal Testimony of James Jones 33T-8205-8233 on February 22, 2007:

151. Assessor James Jones from Webster was subpoenaed to testify on behalf of CFES, CFES-172, 33T-8205-06.

152. Jones conducts a sales ratio report based on sales data from his customers by mailing out letters to determine ownership of property. The Field Director from the State Tax Commission comes out and inspects. 33T-8207-08.

153. Jones believes that Webster County is at 95% in some areas and not in other areas; however, in the 2003 reassessment cycle, there were values below 95%. Assessor James Jones entered into an agreement with the State Tax Commission such that he is no longer using year 2000 studies and now is using the actual sales data to compare to the appraisal data. Basically, the STC told him that his assessments were too low and that he had to bring his numbers up. CFES-172-173-174, 178. CFES-181 is the type of compliance order that he signs every year.

CFES Rebuttal Testimony of Robert Epperson 33T-8278-8312

on February 22, 2007:

154. Robert Epperson was subpoenaed to testify from the State Tax Commission and to bring with him the sales ratio studies for all 115 counties. CFES-165, 186. CFES-186A were internal reports of the STC on the sales ratio studies. 33T-8282. The Trial Court received the sales ratio studies that Mr. Epperson brought and the reports, CFES-186 and 186A were received into evidence only to the extent that they related to the 27 counties in the PPRC study, CFES-8. 33T-8282-8285. An offer of proof made and rejected on the other counties.

155. Epperson oversees the appraisals done by the STC staff in counties and compares those appraisals to the assessors' assessed values on the same properties. He

also then does a sales ratio performance by county comparing the sales prices to the county's assessed values. These are two separate studies for two separate purposes.

156. As to the sales ratio studies, a county is supposed to prepare quarterly sales studies; 33T-8285, however, some counties might send in three-year periods of sales. 33T-8286. For example, in CFES-186, one county might send in detailed sales data with an appraisal for each sale for a period, but another county might only send summary information with a sales ratio and not the sales data. 33T-8287-8288.

157. The appraisal dates in the sales ratio studies refer to the date of the assessor's value. 33T-82, 89. There is a computer program that has "trending" numbers and 60-70 counties in the state use this program to bring the values listed from the sales date up or back to the date for tax purposes – January 1st of the assessment year. 33T-8289.

158. COD stands for the Coefficient of Dispersion where the higher the number, the more dispersion in sampling. If the COD's run high, you have disparity in sampling. 33T-8291 and 33T-8293. The STC produced 85 out of 115 sales ratio studies for the time period subpoenaed, so the STC did not have studies in their files for all counties. 33T-8295. CFES 189.

159. CFES-189 sorts by median sales ratio. At the bottom of CFES-189, Washington County and Audrain County both came out with a perfect 1.0 with Washington having 104 sales in one year and 80 in another. 33T-8297-8299. [CFES-187-189 are demonstrative exhibits which accumulate the data from the all counties and show those that correlate to some of the 27 counties in the PPRC study.]

160. Epperson would have reviewed data from the sales studies from the City or County. 33T-8307. Compliance letters can be issued either as a result of sales ratios from a county – the area Mr. Epperson is in charge of for the STC. 33T-8308.

CFES Rebuttal Testimony of Steven Gardner 34T- 8347-8428 February 23, 2007

Gardner rebuttal of Dr. Davis' criticism of the PPRC study, CFES-8:

161. Gardner acknowledged that the City of St. Louis chapter of the PPRC study had used the wrong population figures due to a cut and paste error. The PPRC corrected this mistake and reran the study as reflected in CFES-195 with all changes highlighted. The final conclusion remained unchanged, that the City's level of assessment for 2003 was 72%. 34T-8348-8349.

162. Subsequent to the identification of this error, the PPRC reviewed the other 26 counties to see if there were similar errors and found none. 34T-8349. PPRC prepared a replacement chapter for St. Louis City, highlighting every change. CFES-8B. CFES-199 demonstrates how problems can be caused if you do not trim in a sales ratio study. An extreme outlier can have a huge and misleading impact on the measures. CFES-199 illustrates how outliers can affect distributions of ratios. Gardner testified that since the goal of good assessment is to produce values close to market value and close to each other, good assessments will show up as a steep bell curve. Not trimming uncharacteristic ratios skew the results adversely as shown by CFES-199. 34T-8379-8380. In further regard to Dr. Davis' trimming concerns, Gardner prepared CFES-200 to show the minimal effect on the median before and after trims. 34T-8382-83. Gardner

pointed out that the exhibit used by Dr. Davis regarding changes in the mean was inappropriate for sales ratio studies since the mean is disproportionately affected by a very small number of severe outliers. Gardner also pointed out that the PPRC could have simplified its work by using the medians and avoiding trimming altogether. While this would have had little affect on the final results, it is not the best way. The IAAO standards recognize the reasons for identifying and trimming outliers and specifically suggests avoiding the use of the mean when outliers are present. 34T-8383.

163. CFES-201 rebuts the question Dr. Davis raised about whether PPRC properly evaluated the STC's appraisal ratio studies and whether they represent market value. 34T-8389-91.

164. Gardner testified that the IAAO standards identify three criteria that must be met to produce a valid result. The first is that sold and unsold properties must not be assessed differently. This was not an issue for the STC studies. It was a potential issue for the PPRC studies. The report for each county stated the results of testing for this potential problem and the means of avoiding the problem in the two instances where adjustments were needed. The second is that the sample must be proportionate to the population or there be a method of correction. The PPRC methodology which included stratification and weighting as recommended by the IAAO standard assured proportionality. The study reports results whether the STC samples met the test. The final issue is that the values used to test the appraiser's value must represent market values. It is widely accepted that sales in the open market place between unrelated parties are a proper reflection of market value – this is what the PPRC used. On the other hand, appraisals are subjective and of

varying degrees of quality. The IAAO recommends the use of the Mann-Whitney test to determine whether appraisals reflect market values. The STC uses no test. 34T-8386-8391. Gardner testifies that the criticism of this test by Dr. Davis is essentially an argument between theoretical statisticians and applied statisticians, with the IAAO in support of the Mann-Whitney test. However, the PPRC did not rely solely on the Mann-Whitney test. Rather, each county's results were tested using two different tests, with two different sets of data. Finally, Gardner testified that in most cases no test was needed because in most instances the STC results and PPRC results were not remotely comparable. If the PPRC results represent market value, then the STC results do not. From State exhibits, Dr. Madsen identified the weighted mean as the appropriate measure of central tendency for the purpose of judging the need for indirect equalization for school funding purposes. This recommendation complies with the IAAO standard. For a few years the STC used the weighted mean before switching to the median. This change does not comply with the recommendations of Dr. Madsen or the IAAO and has resulted in criticism by the State Auditor in audits of the STC. 34T-8386-91.

Gardner's rebuttal of Assessor Holman:

165. As a result of Assessor Holman's testimony, Steven Gardner reviewed the information and concluded that of the over 700 alleged errors; he found only 7 or 8 to be somewhat valid, none of which would have any material affect on results, Holman's office made erroneous assumptions that led them astray. 34T-9351-8365. Compare State-588,589,590 with CFES-196,197. Any differences were insignificant. 34T-8358.

166. Comparing State-591,592, regarding time trending backwards, CFES-143 (page 228 of CFES-8) demonstrates that the regression line and regression coefficients are negative as used in the PPRC analysis. Furthermore, Steven Gardner provided CFES-143T-o provide further statistical support that the trend was negative and statistically significant. In sum, the PPRC found no errors in its study. CFES-143.

167. State-595 alleged errors; however, there was no data to support the allegation.

168. State-593 is a comparison of the population in stratification compared to the numbers developed by Jefferson County by Assessor Holman. 34T-8367. This is a difference between the way in which the CFES-8 stratified and the way in which the assessor stratified. In response, Gardner prepared CFES-144, which is a parcel audit that is prepared in every study that was done and illustrates how they used 8013 parcels in the study. In rebuttal, Steven Gardner stood by his numbers and the PPRC study. 34T-8363-64.

169. CFES-145 relates to multi-family properties. Condos were considered multi-family, whereas Holman reported them in single family. So long as the research treated the properties consistently, Gardner said it did not matter. 34T-8364-8365.

Gardner's rebuttal of Assessor Ordway:

170. Gardner explained on rebuttal that State-721 contains several criticisms regarding the listing of multifamily properties and Assessor Ordway was right that the sales prices and dates were universally incorrect. 34T-8366. As a result, PPRC had investigated and found it had received corrupted data from MLS, which it could not have

known until the review by Assessor Ordway. 34T-8367-8368. All the data matching was computerized, so PPRC took the information from Assessor Ordway and used that data to revise the study as it applies to the multifamily properties. 34T-8368. In revising the study with the correct information, PPRC found changes in the multi-family results, but these produced no change in the overall conclusion regarding the level of assessment in the county – a change of ½ of 1%. 34T-8374.

171. Gardner testified in rebuttal that revisions had been made to the Cole County section of CFES-8 and he presented it as CFES-8-A. Again, there was not a significant difference in the result of the chapter.

Gardner’s rebuttal of Commissioner Davis’ testimony:

172. In rebuttal to Commissioner Davis’ testimony, Gardner stated that properties in the state cannot have the exact same value for over two years. 34T-8392-8393.

173. Appendix A, CFES-8, included all 115 counties and these were addressed on the issue of market value—not as to ratio studies.

174. Gardner also responded to the testimony of Commissioner Davis on how the appraisal ratio studies and sales information could be different from the reports to DESE that all counties were equalized in their assessments by going back to the STC’s sales ratio studies and comparing the outcomes of the sales ratio studies to see that those often differ from the outcome of the appraisal ratio studies. The ratio computed is often lower for the same period. 34T-8411-8413.

175. All other states use a sales ratio study, not appraisal ratio study. 34T-8413.

POINT RELIED ON

The trial court erred in denying CFES' request for a declaration that the "local effort" portion of the funding formula be declared unconstitutional when it found that the General Assembly acted rationally in using only the 2004 property tax assessments in the calculation that went into the amount used for "local effort" in SB287, specifically § 163.011 (10) (a) and (b) RSMo Supp. 2005, for the reasons that this "local effort" definition is based upon improper "equivalent sales ratios," does not accurately portray "true value" of real property and does not provide "equalized assessed valuation" of property, all of which are used to adjust the local effort deduction amount. Because the 2004 assessment levels are "frozen" for all future funding years, this error affected continual funding and resulted in disparate treatment of taxpayers. This is in violation of Article X §§3, 4 and 14, Mo. Const. and §§ 138.380, 138.390, 138.445 and 138.395, and 163.011 as it resulted in a flawed calculation that directly affected CFES and other school districts in that some districts received more than their share and others less than their share when the assessed valuations are not equalized across the state, which affect was and still is guaranteed to provide inaccurate allocation of state funding in the future unless the local effort formula is based on a definition that is not flawed.

State ex rel. Sch. Dist. of City of Independence v. Jones, 653 S.W.2d 178 (Mo. banc 1983)

State ex rel. Nixon v. Kinder, 89 S.W.3d 454 (Mo. banc 2002)

State ex rel. Sikeston R-IV School District v. Ashcroft, 828 S.W.2d 372 (Mo. banc 1992)

Weinschenk v. State of Missouri, 203 S.W.3d 201 (Mo. banc 2006)

Mo. Const. Art. X, § 14

§ 138.395, RSMo 2000 (Repealed)

§ 163.011, RSMo Supp 2005, also referred to as: SB 287

§ 163.011(8), RSMo 2000

ARGUMENT

POINT I

The trial court erred in denying CFES' request for a declaration that the "local effort" portion of the funding formula be declared unconstitutional when it found that the General Assembly acted rationally in using only the 2004 property tax assessments in the calculation that went into the amount used for "local effort" in SB287, specifically § 163.011 (10) (a) and (b) RSMo Supp. 2005, for the reasons that this "local effort" definition is based upon improper "equivalent sales ratios," did not accurately portray "true value" of real property and did not provide "equalized assessed valuation" of property, all of which are used to adjust the local effort deduction amount. Because the 2004 assessment levels are "frozen" for all future funding years, this error affected continual funding and resulted in disparate treatment of taxpayers. This is in violation of Article X §§3, 4 and 14, Mo. Const. and §§ 138.380, 138.390, 138.445 and 138.395, and 163.011 as it resulted in a flawed calculation that directly affected CFES and other school districts in that some districts received more than their share and others less than their share when the assessed valuations are not equalized across the state, which affect was and still is guaranteed to provide inaccurate allocation of state funding in the future unless the local effort formula is based on a definition that is not flawed.

Standard of Review

In reviewing a court-tried case, *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976), is the appropriate standard. This Court will affirm the judgment unless there is no substantial evidence to support it, it is against the weight of the evidence, or it erroneously declares or applies the law. The standard of review for constitutional challenges is *de novo*. *City of Arnold v. Tourkakis*, 249 S.W.3d 202, 204 (Mo. banc 2008). A statute is presumed constitutional unless it clearly contravenes a constitutional provision. *Id.* Likewise, this court reviews the trial court's interpretation of the Missouri constitution *de novo*. *Id.* This Court has *de novo* review on other questions of law, including the meaning of statutes. *Delta Air Lines, Inc. v. Director of Revenue*, 908 S.W.2d 353, 354 (Mo. banc 1995).

I. Summary of Argument

The trial court found (A-32) that “[i]n short, local effort was based on a school district’s 2004 equalized assessed valuation.” However, the trial court’s ultimate conclusion (A-32) that “[p]roperty assessment is not an exact science and SB287 is structured to give counties the benefit of the doubt” and that “the utilization of assessed valuations certified by the Tax Commission was not arbitrary or capricious” is not supported by the facts or the law. Simply put, CFES challenges the inaccurate information and the incorrect methodology by which that “equalized assessed valuation” component of the “local effort” deduction from the funding formula found in §163.031.1 was calculated and asserts that these problems were “frozen” into the 2003-2004 assessment cycle by SR287 and made irreparable for future years. CFES showed

uncontroverted evidence that SB287's use of these frozen assessment figures violates Missouri statutes and constitutional provisions in place before its enactment because the resulting miscalculations of the assessed valuations from the 2003-2004 property assessment cycle: (1) was in direct conflict with constitutional and statutory provisions; (2) was erroneous, arbitrary and unreasonable; and (3) led directly to improperly computed school districts' distributions of state and local funds for those years.

The miscalculation of "local effort" was determined using terms such as "equalized assessed valuations," "true value" and "equivalent sales ratios," which were specifically defined in the statutes and Missouri Constitution but those definitions and methods of calculations were ignored in both the preparation and administration of SB287. (See Art. X, §§ 3, 2, 14, Mo. Const.; §138.380, 138.390, 138.395, 138.400, 138.445, 163.011(8), RSMo 2000, 163.011(11))The CFES and other school districts and taxpayers have been significantly affected ever since. Contrary to the trial court's ruling, CFES put on evidence showing how, if the local effort amount had been properly calculated, its school districts and taxpayers would have received vastly different amounts of funds since SB287 took effect as it has affected the manner in which school districts receive both state and local school funding.

To simplify this arguably complex argument, CFES offers what it asserts is a poignant analogy to what would happen if there was an error "frozen" in another critical component of the funding formula – the average daily attendance – as it is extremely simple to understand. First, CFES sets out the formula again in a simplified format:

Weighted average daily attendance (ADA)
x State Adequacy Target [number originally set at \$6117 by the legislature]
x Dollar Value Modifier [number adjusts for variations in costs across state]
- Local Effort
= State Funding for School District

The “Local Effort” is 2004 “assessed valuation” [this number is frozen]
Divided by 100
x 3.43 [legislatively set ‘Performance Levy’]
- Collector and assessor fees [number is frozen at 2004 level]
+ Incidental and Teachers’ funds [all taxes at 2004 levels except for fines]
=total Local Effort

See § 163.031.1, RSMo.

The trial court specifically noted that both assessed valuation and the Average Daily Attendance (“ADA”) count were key factors for determining the amount of school funding.³ CFES asserts that if the Department of Elementary and Secondary Education (“DESE”) had been supplied with a wholly inaccurate ADA count in the funding formula

³ The trial court said (A-27) “In its simplest terms, the calculation of how much money a district is to receive is made by taking a district’s weighted average daily student attendance multiplied by the state adequacy target (\$6,117 for fiscal years 2007 and 2008) minus the amount of money raised by the local tax effort.”

and it was shown to be incorrect based on uncontroverted evidence, even if that evidence had only been available for fifty percent (50%) of the school districts in Missouri, there would be a hue and cry to change this and not let the formula continue to pay out hundreds of millions of dollars in such an erroneous and unfair fashion. This would be especially true if: (1) the count was based on an incorrect interpretation of the statutory methodology for making that count and (2) the erroneous ADA count was “frozen” for all future years and allegedly could not be altered despite evidence that it was wholly incorrect. CFES simply asks this Court to substitute erroneous assessments/sales ratios being used in the 2003-2004 assessment cycle for an erroneous ADA count, as it is a second major factor that affects school funding.

In the instant case, the first error on which the evidence at trial was clear and *uncontroverted* was that, instead of basing the “equalized assessed valuations” that are the core of the “local effort” aspect of the funding formula” on “equivalent sales ratios,” as specifically required by § 138.395 and 163.011(8), DESE used “equivalent appraisal ratios.” Although the statutes clearly dictate that DESE apply sales ratios, they applied appraisal ratios. This was done notwithstanding the fact that nowhere in any statute or other authority is the term “equivalent appraisal ratios” used or authorized. This error was not only unauthorized but it adversely affects the assessed valuation figures that go into the formula because, in determining the “equalized assessed valuation” part of local effort pursuant to the statute in effect before 2004 and at the time SB287 became effective (§ 163.011(8), RSMo 2000), the “assessed valuation” of all school district property was multiplied by its “true value as adjusted by” the department of elementary

and secondary education to an equivalent sales ratio” that was supposed to be at or within 95% of a 33.33% ratio. (Emphasis added.) In other words, all assessed property was assumed to be assessed at 95% of its market or true value when it was not if a true “equivalent sales ratio” had been utilized from the STC’s “other set of books” that it used for statewide reassessment purposes. .

The appropriate “sales ratios” that *were* in existence in many cases did not even approach the 33.33% compliance level. CFES-26; CFES-186A; CFES-186B.⁴ This is not surprising, because the record was again uncontroverted that the STC essentially kept “two sets of books” and the second set that did not go to DESE showed the sales ratios and assessed valuations that were *not* in compliance with true value much less equalized. However, these were not used for school funding purposes. Since the sales ratios and proper assessed valuation records were not used in the formula, the funding formula was fundamentally flawed.

CFES adduced evidence that the STC records in fact contained proper “equivalent sales ratios” prior to the enactment of SB287 and the STC performed the task of accumulating these but the State utilized improper appraisal ratios instead even though it is the only state amongst the fifty states that does so. 2T-361-362; 34T-8413; CFES-8.

⁴ CFES-186B is a demonstrative exhibit in the Appendix prepared for this Court that shows the counties from CFES-186 and 186A that were amongst the 27 counties that the trial court limited CFES to present evidence upon related to “sales ratios.” The data is taken directly from CFES-186 and 186A for the Court’s ease of reference.

Moreover, the appraisal ratios were based on an inordinately small sample size, were manipulated such that appraisal ratios that were not anywhere near compliance were arbitrarily “brought in compliance.” This is again tantamount to DESE using a completely wrong method for counting the ADA when there was a specific statutory method set forth for making that count. In essence, the trial court found that it was not irrational or unreasonable to disregard statutory methods.

Second, the alleged “equalized assessed valuations” were not in any way verified by the STC or the State as accurate for school funding purposes (as opposed to other purposes), but were simply the valuations reported by the various counties on “Form 11s.” 17T-4330-43331; 4298; CFES-25. CFES produced evidence that these unverified, inaccurate “assessed valuation” figures were then applied against the equally flawed “equivalent appraisal ratios” prior to the enactment of SB287 which compounded the problem. CFES presented data pertaining to the assessed values for almost 50% of all property in the state in 2004. As noted earlier, the trial court found the PPRC Report to be a credible study from the University of Missouri St. Louis Public Policy Research Center (PPRC-study) as well as expert testimony from the key IAAO experts that over 71% of residential property in Missouri was under-assessed in 2004 and that this property made up over 68% of all Missouri property.⁵ This was combined with evidence to

⁵ There was a red herring argument by Defendants as to whether evidence as to only 50% of counties was “statistically significant” and that CFES had to adduce evidence on every county in Missouri. However, CFES wanted to show that it was “more likely than not”

indicate that commercial property was under-assessed as well. CFES also presented uncontroverted evidence from STC records prior to SB287's May 2005 effective date that the City and County of St. Louis were under-assessed 16% and 34% respectively in the key 2004 assessment year.⁶

The evidence presented by CFES was consistent with the information on the sales ratios in that it showed that, with respect to that property in Missouri, the "assessed valuation" numbers that are still frozen into the formula today at the time of the 2004 assessments was assessed far below the assessed values available to DESE upon which SB287 was based. CFES also adduced evidence of public pronouncements to and by the legislature that made it clear the legislature knew that the 2004 year assessment levels were not as reported for purposes of the 2004 funding formula. Again, it would be as if the legislature and DESE knew that independent bodies reported the wrong ADA count

that its proof sufficiently verified that the local effort calculation was not accurate, the same as if it was trying to prove that the ADA count was not accurate. Proof that it was not accurate for 50% of the property in Missouri, when that was all that was reviewed, but the findings were consistent across all property in that large, random sample was deemed sufficient by the experts, supporting testimony was deemed credible by the court and the report was admitted into evidence.

⁶ The "proof has been in the pudding" in that the assessments around the state have been proven by the past few reassessment cycles to have been completely erroneous (not at market value) consistent with the proof adduced by CFES.

but the State ignored it, even though it was going to be frozen for all years. Nonetheless, the trial court found that it was not irrational or unreasonable to do so.

Finally, the uncontroverted evidence showed that the assessments were not “equalized ... as between counties” as required the Missouri Constitution (Art. X, §14, Mo. Const.) and by statute (§ 138.390) prior to 2004, but that the standard was only to equalize ‘within counties,’ a wholly unlawful standard. And if these counties did not have assessments that were at “true value,” by definition, they certainly were not “equalized ... as between counties.” CFES also presented evidence that many taxpayers were in school districts that shared taxing jurisdictions and, the taxpayers of a county that properly assesses at true value such as St. Charles County “subsidize” the taxpayers of the four or five surrounding counties, because those county assessors do not all tax at the same level of true value. Although the trial court decision criticized CFES for not showing actual pecuniary damage on this issue, CFES adduced evidence, in fact, did present evidence, as to how the school districts and individual taxpayers would suffer pecuniary damage by first by showing the disparate treatment based upon the improper assessment levels and then by projecting what “would happen” if SB287 had been based on the proper ratios and assessment levels. Under these circumstances of trying to correct such an erroneous legislative act, the evidence that CFES presented was harm to taxpayers based upon such disparate treatment and harm to the school districts where the proper calculation would have resulted in changes at either the local or state level of funding.

II. “Two Sets of Books”

The primary problem with the 2004 formula calculation in this case is that the STC keeps the proverbial “two sets of books.” The problem is STC simply did not correlate or see the need to correlate the two sets of books for purposes of the ratios and proper assessment levels utilized for school funding purposes. One set was used for school funding and one set is used to ensure that all counties were in compliance with proper assessment levels for reassessment purposes; however, the two were vastly different in 2004. The set of ratios used for funding and that went into the 2004 assessments were 100% perfect based on the “appraisal ratios”, even though the governing statutes (§§138.395 and 163.011(8),2000)⁷ used the term “equivalent sales ratio.” Obviously, since sales ratios are used for verifying that counties are in compliance with their assessment practices and § 138.395 and 163.011(8) required the use of “equivalent sales ratios,” CFES contends that it was wholly irrational for DESE to utilize an “appraisal ratio” that had no basis in the statute and was contrary to the “second set of books” that had “the accurate figures” on equalized assessed valuation” within them in 2004 (through today).

Remarkably, the first set of ratios – appraisal ratios – showed that all 115 counties in Missouri in 2004 were at a 33.33% (or assessing at 95% market value), even though

⁷ These old statutes used for the 2003-2004 assessment cycle and 8B287 formula calculation are difficult to find in the current volumes of the Revised Statutes, so CFES has set them out in its appendix at A-47 and A64-65, respectively.

the evidence showed that many had to have significant “help” to get there. These ratios are then used as an adjustment by DESE against each school district’s “equalized assessed valuation” in each of those counties and districts pursuant to 163.011(8). CFES-22; 17T-4328-29. No other state in the union used “appraisal ratios’ for school funding 34T-8413. At the same time, the other set of ratios – sales ratios – showed that many counties in Missouri were under-assessed and some even over-assessed. This same data was available prior to the enactment of SB287 to give DESE, i.e. accurate “equivalent sales ratios” as required by statute based on accurate assessed valuation data from the counties. CFES-186A; *see also* CFES-8, Chapter 6 at 31 and 2T-458-459. The data would have shown that there were numerous counties that had ratios that were nowhere near the compliance level. CFES-186; CFES-186B. The data was consistent with the PPRC studies on 50% of the property in Missouri at that same time. CFES-8. It was also perfectly consistent with the “compliance letters” that the STC was sending out to numerous counties, prior to SB287, that property around the state was under-assessed based on its sales ratio studies. CFES-29.

The trial court asked STC Commissioner Davis why this anomaly existed:

9 THE COURT: And the only thing I'm not
10 clear on is, there's a different set of rules for
11 the 33.3. This would assume that everybody is
12 within 90 percent, right?

13 THE WITNESS: Yes, that's correct. Or
14 percent actually is what they --

15 MR. OWEN: There's two different numbers
16 for DESE, your Honor. When he says 90 percent,

17 we're talking about a different set of statutes --

18 THE WITNESS: Different standard, yeah.

19 MR. OWEN: Different set of purposes.

20 THE COURT: You're saying the rules for
21 measuring this are just a little bit different so
22 some districts aren't in compliance with one test
23 but can still be in compliance for this purpose?

24 THE WITNESS: That is correct.

25 MR. OWEN: That's where I'm going, your
1 Honor. And -- that's exactly where I'm going.

2 BY MR. OWEN:

3 Q For purposes of this -- the equivalent
4 sales ratio, I've just handed you the statute which
5 is 138.395. And that -- and this is the statute
6 that again refers as your duty in that the State Tax
7 Commission shall -- you'll notify each school
8 district of their equivalent sales ratio. And right
9 now that's the one that for purposes of the years
10 that we're talking about, 2003-2004, everybody got
11 told they're at 33.3, right?

12 A Yes. I'm assuming that's what DESE did.

(Emphasis added.) 17T-4328-29.

A major problem with this “appraisal ratio” set of books was that many of the ratios, just like the sales ratios, actually were also nowhere near 33.33% before they were “modified” to reach 33.33% for purposes of school funding. The “compliance” numbers in these ratios were for each of the three subclasses of property (residential, commercial and agricultural), so the number for residential property was 19%, commercial 32% and agricultural was 12%, and pursuant to § 163.011(8), 2000, compliance was met at 95% of that number (18.1, 28.8 and 10.8).⁸ Again, the testimony on this point was alarming:

21 Q So the final ratio is 18.1. [residential property] Do you know

22 why it was increased from 16.97 to 18.1?

23 A Yeah. As I previously said, that the

24 confidence interval -- the 95 percent confidence

25 interval around the median would intersect the

1 Percent of true value at 18.1. So for

2 school foundation formulas, an 18.1 would be

3 utilized. **But we would not change this in our other**

4 study.

⁸ Since agricultural property was less than 3% of property value in Missouri, CFES did not put on a great deal of evidence on this property other than the fact that its value had not changed in over a decade.

(Emphasis added.) (17T-4338-4339.) The bold words show that the “appraisal ratios” had to be modified to reach the compliance level but the witness clarified that this never would have happened with “our other study,” which was the “ratio study.”

The testimony as to why these values for the appraisal ratios were greatly modified in many counties was confusing at best and when asked if there were standards to permit these seemingly arbitrary increases, the only response was that the IAAO standards permitted the STC “to determine the quality of assessment.” 17T-4340. However, a search of the IAAO standards revealed no authority for the adjustments and two CFES experts testified that these ratios were not adjusted properly.⁹ CFES-18. The State Auditor’s Report, CFES-23, p.14, had also criticized the use of these appraisal ratio studies instead of market sales values prior to the May 2005, effective date of SB287 and noted that changes had not been implemented. Appraisal ratios were also criticized heavily by CFES expert witnesses as they rely on a very small sample size.¹⁰

⁹ STC Commissioner Davis also testified that “the IAAO definition was the process by which the appropriate governmental body attempts to ensure that property under its jurisdiction is assessed at the ratios required by law.” (17T-4296)

For example, State-712 showed that the City of St. Louis had 124,548 properties. The appraisal ratio studied only 35 to 40 properties for each county. The sales ratio study was based on the four major counties in Missouri that have “certificate of value” laws and which make up over 50% of the property value in the state are based on thousands of

The trial court's decision is contrary to the testimony that it elicited from the witnesses. That testimony showed that these "appraisal ratios" had an unreasonable and irrational basis because the trial court specifically asked the witness why the numbers reported to DESE had such high variability prior to being "modified." The witness responded:

9 But for this purpose -- for this purpose,
10 they come in and qualify for that. All that's being
11 utilized here is a median, which you could have a
12 high variability. The same does not measure how --
13 variability. We measure horizontal variability. We
14 measure vertical variability. That shows the
15 quality of an assessment program.

16 THE COURT: But that's within a county?

17 THE WITNESS: Yes.

18 THE COURT: But so they may be all over
19 the place, but if their total's good enough, then as
20 a county, they're paying their, quote, equal share?

21 THE WITNESS: Yeah. Actually, it's the
22 median. I mean, you could have tremendous

actual sales showing "true value." (CFES-8 p.451; CFES-12-13-14-15; CFES-186; T1-112-113.)

23 variability. You could have numbers way out here,
24 numbers way down here, but your median lies right
25 here. You place that into the formula, they would
1 be qualified for that.

2 It's just like the example I gave in
3 Reynolds. **Is that a good assessment program? No.**
4 **No. Because we have some variables. We have**
5 **disparate treatment of taxpayers** when we have a high
6 variability.

7 THE COURT: I understand that, it's got
8 some issues. But let me ask you this. If I'm over
9 in -- if I'm living in Worth County and I'm
10 wondering -- I don't know what the neighboring
11 county is, but I'm wondering about somebody down
12 south, Dent County, I don't really care -- as long
13 as Dent County is coming up with their proper
14 amount, in some ways I don't really care how they're
15 doing it as long as they come up with the total
16 amount they're supposed to come up with?

17 THE WITNESS: True.

(Emphasis added.) 17T-4326-4327.

Amazingly, the person in charge of certifying the 2004 funding ratios to DESE (§ 138.395) that have been frozen in it since testified that “[w]e have disparate treatment of taxpayers” and “Is that a good assessment program? No.” When the witness referred to “this purpose”, he meant “school funding” as opposed to sales ratios that were used to keep counties in compliance with tax reassessment where tax rates and property values continue to be dramatically adjusted every two years, as they were in the 2003-2004 cycle. This certainly supports CFES’ assertion that the use of these appraisal ratios was irrational and indeed led to disparate and unconstitutional treatment of the plaintiff taxpayers.

Also, the trial court’s discussion with the witness wherein they both assumed that as long as the assessors in each county were assessing the taxpayers within their own county appropriately, somehow resulted in “equalization,” is contrary to the statutes and the Constitution. Specifically, § 138.390 requires that the STC “equalize the valuation” of each class of property “among the respective counties”); and Article X, § 14, Mo. Const., requires the STC “equalize assessments as between counties.” *See also* CFES-10.

III. The “Local Effort” Component of SB287 and the Effect of Inaccurate Assessed Valuation

The law and facts above set forth how the calculation of “equalized assessed valuation” in the 2004 formula was miscalculated based on inaccurate ratios, assessed valuations and the equalization components of that statutory term in § 163.011(10),

RSMo. Supp 2005.¹¹ Now CFES will demonstrate how this miscalculation directly affects the “local effort” calculation and how it impacts its schools.

A. Local Effort Calculation

“Local effort” in the new formula for each school district is calculated as the 2003-04 “equalized assessed valuation” from the county assessor divided by one hundred and multiplied times the formula’s new performance levy, which has been set statutorily at \$3.43. § 163.011(10), RSMo Supp. 2005. Both the performance levy and the equalized assessed valuation figures are frozen and all schools’ formula calculations use those numbers for all years going forward. The local effort amount requires a deduction of the fees to collect it and adds to that the incidental and teachers fund revenues that are also frozen at 2004-05 levels, except for the fines which may change each year.

As set forth above, two older statutes, §§ 138.395 and 163.011(8), RSMo 2005, govern the local effort calculation. Section 138.395 then required the STC to certify to certify to DESE all “equivalent sales ratios” that were higher than 33.33% at 33.33%, which basically meant that a 95% ratio would be satisfactory. Section 163.011(10)(a), RSMo 2005 also requires the STC annually certify the “equivalent sales ratio” as it is used and “adopted” by school districts and by DESE “for determining the “equalized assessed valuation” of every school district’s property in the state and every school

¹¹ Again, §163.011(10), RSMo. Supp 2005 is in CFES’ Appendix A-66-69, as has been amended since that time, and may be difficult to find in that version.

district's "equalized operating levy ... for distributions of school foundation formula funds."

Further, with respect to the meaning of the term "equalized assessed valuation," § 138.390 set out the method by which the STC shall "equalize the valuation" of each class of property "among the respective counties" of the state in Missouri. In short, between the June twentieth and the second Monday in July, it receives abstracts of all the taxable property in the counties and the abstracts of the sales of real estate and then add or deducts from the valuation of each class of the property of each county which it believes to be valued below its real value in money such percent as will increase the same in each case to its "true value." *See also* Article X, § 14 ("The general assembly shall establish a commission, to be appointed by the governor by and with the advice and consent of the senate, to equalize assessments as between counties"); § 138.400. 1 (STC transmit to all county clerks "the value of the real and tangible personal property of his county as equalized by said commission").

B. Other Calculations (Average Daily Attendance, etc.)

The funding formula also requires the calculation of the ADA. It is calculated using the regular year and summer school and adding into the total ADA any weightings above the thresholds for Free and Reduced, Special Education and LEP, and after summer school is subtracted out, then the weighted ADA is obtained for the formula. The weighted ADA is multiplied times the state adequacy target of \$6,117 and again times any "dollar value modifier" to provide an adjusted amount of the formula. At the time of SB287, the state adequacy target was \$6,117 based upon the "performance

districts.” This target was recalculated by DESE in 2007-2008 with new performance districts leading to a new target in “year three” of the formula. Then, the local effort is subtracted from the modified total for the district to obtain the state funding required. This would be the amount of state aid once the formula is fully implemented in 2013. Currently, there is a phase-in calculation whereby 85% of the state funding for 2005-2006 is used (under SB380) and 15% of the new formula state funding required is used (under SB287). Adding together the figure representing the 85% from the old formula (SB380) to the 15% of the new formula (SB287) provides the estimated formula total. Of course, as the phase-in occurs, these percentages change. If a school district is “held harmless,” that is, if a school district would have received more money under the old formula than the new formula, there is another formula calculation that modifies the state funding further. If the school district is on the formula, then the estimated state formula payment less the Classroom trust fund per pupil yields the balance of state aid that will be paid to a district. There are additional calculations for small schools. There are further calculations relating to funds into which state aid must be placed.

C. Effect if Local Effort Miscalculated

Thus, the local effort counts “one for one” against the total funding needed to obtain the state funding required for each district. Local effort through local taxes is basically a proxy for state funding. The determinations of “local effort,” along with the ADA calculation, are the primary calculations that affect a school district’s funding level. Because the formula is being phased in over 7 years beginning with 85% of the SB380 formula and 15% of SB287 formula, and then decreasing reliance on the SB380 funding

over the 7 year phase-in, it is also necessary for this Court to consider any problems with SB380 funding that also affect the formula. By including a portion of SB380 funding, any failures to assess accurately any inequities in the equalization required under the law are further magnified in the formula calculation, at least for the 7 years after SB287. This is because SB287 also freezes into place the funding that existed during the final year of SB380 funding or the 2005-2006 year. Therefore, if there is an error in the assessed valuation for 2003-2004, not only does it affect the new formula amount under SB287 as to “local effort,” it also affects the phase-in portion of the old formula amount calculated under SB380 because SB380 calculation also used assessed valuation in its determination of funding under the formula.

Very simply stated, SB380 in essence penalized schools for local wealth by providing less state aid as local wealth increased. Local wealth or assessed valuation operated as a deduction from “district entitlement” (along with other deductions for other local taxes such as Railroad and Utility, Proposition C, etc.) to arrive at the “Basic Formula” and ultimately the “District Apportionment” or state aid. *See generally, CEE-782 for all school districts’ formula calculations for the 2005-2006 school years (page5).* Therefore, under SB380, districts received less state aid as their local assessed valuation grew. The 2005-2006 calculation under SB380, CEE-782, used the 2003-2004 years for the average assessed valuation as a deduction. Therefore, if there is a problem with the assessed valuation for 2003-2004, the distribution of state funding under SB380 was also affected by those inaccurate assessments. Similarly, the failure to equalize assessments across the state would necessarily affect how state funding was distributed. During the 7

year phase-in of SB287, a percentage of SB380 or 2005-2006 state funding is used. *See, e.g.* CFES-2. Because SB287 uses a percentage of state funding from the old SB380 formula, for the first seven years of the formula during the phase-in, the assessed valuation issues affect SB287 both in the “local effort” component and in the phase-in component, thereby compounding the effect of any inaccurate assessments. If there was an error in the determination of the factors that went into the 2003-2004 “local effort” determination, that error is frozen into the formula for the calculation of “local effort” and the SB380 phase in portion, or if it violates the Constitution and statutory framework in place prior to its enactment, those errors will be frozen as well for all future years.

D. The Frozen 2004 Assessment is Flawed

(1) “Local Effort” must have “Equalized Assessed Valuations”

Section 163.011(10)(a), RSMO 2005’s definition of “local effort” for purposes of § 163.031 and the new SB287 again provides that “... [f]or the fiscal year 2007 calculation, "local effort" shall be computed as the equalized assessed valuation of the property of a school district in calendar year 2004 divided by one hundred and multiplied by the performance levy....” Subparagraph (b) of § 163.011(10) provides that this same calculation shall be used, plus or minus certain fines, “[i]n every year subsequent to fiscal year 2007.” (Emphasis added.)

The key component in this definition is the term “equalized assessed valuation,” as it is used in the definition and in the other statutes and constitutional provisions cited above and by DESE when it computes each district’s funding. The “equalized assessed valuation” is not an amount computed by DESE but is contained in reports from the STC

and county clerks insofar as it relates to the individual school districts (that often cross multiple county lines). The key reports for SB287 are the reports in 2003 and 2004. The basis for the calculation of the “equalized assessed valuation” with respect to the formula is the “equivalent sales ratio” as the governing statutes state that it is used and “adopted” by school districts and by DESE “for determining the “equalized assessed valuation” of every school district’s property in the state and every school district’s “equalized operating levy ... for distributions of school foundation formula funds.” *See* § 138.395.

The other aspect of the STC’s reporting to DESE is pursuant to § 138.445.1 and 2, which provide:

1. The state tax commission of Missouri shall annually certify to the director of revenue and to the commissioner of education a copy of its most recent annual report containing the total valuation of all taxable properties in the state according to the county or counties for which the same is assessed.

2. The annual report of the state tax commission and any amendments or modifications thereto **duly certified to** the director of revenue and to the commissioner of education shall constitute the official record of the state of Missouri for purposes of section 142.345, RSMo, and section 163.011, RSMo.

(Emphasis added.) The evidence at trial was clear that the report referred to above was the STC’s Annual Report which contained the annual valuations of all property in the 115 counties, by subclass, as reported in what the STC refers to as “Form 11A’s.” (*See e.g.* CFES-25.) In the same manner that § 138.395 utilize “equivalent sales ratios” in reports to DESE for purposes of “equalized assessed valuations,” the reports required under

§ 138.445 are also for the purpose of “equalized assessed valuation,” (Subsection 2 of § 138.445 refers to the STC’s report to DESE “for purposes of ... section 163.011” for that explicit purpose.) It is clear that in SB287, the legislature has inextricably tied “equivalent sales ratios,” annual county valuations and “equalized assessed valuations” together for purposes of school funding.

The concept of “equalized assessed valuations” is not simply one found in § 138.395. Rather, it is mandated by the Constitution and other statutes. The Constitution specifically provides and sets up a commission, appointed by the governor with senate confirmation “to equalize assessments as between counties.” Art. X, § 14, Mo. Const. (Emphasis added.) The STC is also authorized under that constitutional mandate “to correct any assessment which is shown to be unlawful, unfair, arbitrary or capricious.” Section 138.390 also provides that, “[b]etween the dates of June twentieth and the second Monday in July, 1946, and between the same dates each year thereafter,” the STC “shall equalize the valuation of real and tangible personal property among the several counties in the state.” (Emphasis added.)¹²

The Court in *State ex rel. City of Independence Sch. Dist. v. Jones*, 653 S.W.2d 178, 189 (Mo. banc 1983), found that “[b]ecause locally-determined levels of valuation of real and tangible personal property vary from county to county, use in the formula of

¹² The STC’s policy wrongly interprets this provision to mean that if it had evidence that there is *intracounty* equalization in assessment practices, the STC assumes that there is *intercounty* equalization. (2T-572-573).

‘equalized’ assessed valuations assures a somewhat uniform measurement of school district wealth.” 653 S.W.2d at 182. (Emphasis added.) The law in effect before, during and after SB287 required and still requires that the purpose of the foundation formula is to ensure equalized assessed valuations and a method by which the monies distributed pursuant to the formula under the definition of “local wealth” ensure that there is uniformity and equalization as between counties and the districts receiving the funds. The trial court’s ruling wholly ignored these principles.

(2) “Equivalent Sales Ratios”

The statutes in effect before SB287 required that the assessments used in the formula must be based upon the calculation of an “equivalent sales ratio” as defined in § 138.395. There was not an “equivalent sales ratio” used in the report to DESE pursuant to §138.395, but an “equivalent appraisal ratio.” The STC and DESE simply should not have used the appraisal ratio study reports when the binding plain language of statute directly on point (§ 138.395) clearly required a “sales ratio” report. When a statute is plain and the language conveys only one meaning, it should be followed. *City of Wellston v. SBC Communications, Inc.*, 203 S.W.3d 189, 192 (Mo. banc 2003) (“This Court must enforce statutes as written, not as they might have been written.”), *citing Kearney Special Rd. Dist. v. County of Clay*, 863 S.W.2d 841, 842 (Mo. banc 1993).

The only credible evidence was that the assessments utilized in the 2003-2004 assessments used in SB287 and “frozen” for all future years were based on “appraisal ratios,” not “sales ratios,” in violation of §138.395. STC Commissioner Davis admitted that the equivalent sales ratio reports were based on appraisal ratio studies. CFES experts

Gloudemans and Gardner testified that the appraisal ratios could not be substituted for a valid sales ratio report and that the STC report also had an inadequate number of properties upon which to base a legitimate study under IAAO standards. The appraisal ratio study had many other problems outlined above which means that the STC did not achieve the equalized assessed valuations among the counties in the 2003-2004 year as reported in 2004, the key year for SB287.

This violation has caused clear damage to the school districts, in that school districts in counties in which underassessment took place are currently receiving and will continue to receive less local effort than those school districts should receive. Conversely, the school districts in counties that are significantly under-assessed are also receiving more state aid and will continue to receive more state aid than school districts in counties that are closer to true value. The taxpayers involved in the suit are also harmed, particularly in counties that assess closer to true value in that their tax dollars that are general revenue go to fund school districts in counties where local effort is not at the level it should be. Similarly, the taxpayers involved in the suit are harmed by the failure to achieve equalization of taxes from county to county and the false reporting of equalization. Moreover, taxpayers suffer harm in those taxing jurisdictions that are closer to true value when there are taxpayers not paying their fair share in counties that are under-assessing. Therefore this failure to equalize assessed valuation and false reporting of perfect compliance is in direct violation of the law and the constitution.

The sales data adduced by CFES (CFES-186, 186A) was available to DESE but simply not certified to DESE pursuant to §138.395 and §163.011(8) would have shown

that most counties were not within the 95% level of compliance. This, along with the other published reports, was a basis upon which DESE, the legislature and the trial court could conclude that the appraisal ratios themselves were flawed. The PPRC report (CFES-8), the STC compliance letters to the various counties (CFES-29) and other supporting evidence of CFES's experts verified that the equalized assessed valuation information was also incorrect.

This error is compounded because SB287 has "frozen" the 2004 assessment results from both (1) the "equivalent *appraisal* ratios" that were erroneously accepted as in perfect compliance and (2) the STC's Annual Report of the 115 county aggregate assessed valuations, which were also neither accurate nor truly equalized. SB287 therefore harms the school districts and taxpayers, conflicts with existing statutes and violates the Constitution.

In the *Jones* case, the plaintiff school district were required to present evidence to prove that the STC and DESE were not using separate personal and real property equivalent sales ratios. The same principle applies to CFES's evidence regarding the fact that there were not accurate assessed valuations at true value for all 115 counties in 2003-2004 and there were not proper "sales ratios" used in assessments for the 2003-2004 assessment years. If the assessed valuations being used in the formula are not "true value" as required by Art. X, § 4(b) and § 137.115, then the formula is fatally flawed. If there is a failure to equalize, then there is a lack of uniform measurement of school district wealth similar to the *Jones* case. *Id.* at 182. The same logic applies to Art. X,

§ 14, Mo. Const. and § 138.395, which required the appropriate equivalent sales ratios in order to reach equalized assessed valuations.

(3) Legislature was Aware that 2003-2004 Assessments were Flawed

The General Assembly is “presumed to know the existing law when enacting or amending a statute.” *Miller v. Miller*, 210 S.W.3d 439, 444 (Mo. App. W.D. 2007). CFES adduced additional, credible evidence that the legislature was aware of the fact that there was a problem with the 2003-2004 assessments and assessments in general because of lack of compliance with the requirement that there be “equalized assessed valuations” as required by Art. X, § 14 and § 138.390. The STC’s Annual Legislative message for 2004 (and many previous years), the State Auditor’s report on the STC, Senator Shields’ testimony and the Joint Interim Committee on Education (CFES-23, 16 and 19) all showed that the legislature had advance knowledge that “uniformity cannot be achieved on a consistent basis,” that there was a “perception of inconsistent property assessment practices across the state” and the “equivalent sales ratio” was not a proper “sales ratio.” Senator Caskey testified that the legislature was under constraints not to add any money to the formula. 34T-8424.

At the same time that the STC sent the erroneous “equivalent appraisal ratio” reports to DESE for 2003-2004 showing that all counties were allegedly in compliance for 2003-2004 and reported that assessed valuations in all counties were equalized, the STC sent compliance letters to St. Louis City, St. Louis County and other counties comprising at least eight counties and a significant percentage of the property values in the state which stated exactly the opposite. *See* CFES-29. The valuations in these

counties according to the STC were far below 95% and consistent with the PPRC's second report, CFES-8,8A,8B, (at or below 79%). Moreover, Commissioner Davis testified that these counties raised those values the next assessment cycle of 2005 (17T-4347-4350), but that the STC does not take action to rectify the cycle when the values that were studied were low, which in this case were the key years in question (2003-2004) the years included in SB287.

The ultimate problem with SB287 is borne out in the testimony of Commissioner Davis in response to questioning from the court that 23 of the 115 counties were sent "compliance orders" for not having their assessed valuations within 90% of the STC's level in the last cycle. V17-4328. The Commissioner testified that the STC is taking action for purposes of equalized assessment within the counties based on the "sales ratio" studies. However, these new actions by the STC and local assessors to "fix the assessments in Missouri" or new studies that will make the STC utilize "equivalent sales ratios" are meaningless for purposes of SB287, because the 2004 levels have been frozen. This is notwithstanding the holding in the *Jones* case that "'equalized' assessed valuations assures a somewhat uniform measurement of school district wealth." 653 S.W.2d at 182. This "uniform measurement of school district wealth" is impossible under SB287 even though all of the laws set forth in Chapter 137, 138, 139 and in the Missouri Constitution we re set up to ensure exactly such a result.

New assessments taking place cannot be "equalized" any more for purposes of SB287. Increases, decreases or any actions brought about by reassessments after 2004 taking place statewide have no affect whatsoever for purposes of state funding. The

evidence overwhelmingly did not support the presumption that assessments were properly equalized for 2003-2004.

(4) Other Evidence of a lack of Equalized Assessed Valuation

CFES presented evidence in support of their argument that the assessed valuations in the 2003-2004 valuations were not at “true value”¹³ in 2003-2004 or “equalized.” CFES presented evidence from several PPRC studies (CFES-7,8,8A,8B) which confirmed the STC sales ratio section studies that the assessments submitted to DESE were not accurate reflections of market value in a representative number of counties in the state prior to the key 2004 assessment year. The PPRC’s second report (CFES-8, 8A,8B) showed that 23 of 27 counties tested had property assessed under the 95% “compliance level” from throughout the state. These counties represented over 71% of residential real property and almost 50% of all property in Missouri. As to these same counties, the STC had previously informed DESE that they were all in compliance for SB287 purposes. CFES also presented the STC’s own compliance letters to the eight counties mentioned above for the 2003-2004 period were consistent with the PPRC Report and contradicted what the STC certified to DESE. CFES-29.

The PPRC’s reports, the STC’s evidence of its 2004 compliance letters, the STC’s sales ratio reports for the counties that were in common with the 27 counties with the PPRC report, as well as Rothschild’s Multi-County Taxing Jurisdictional Study (CFES

¹³ Under Art. X, §4(b) and § 137.115.1, real property is to be assessed at its “true value” on an annual basis.

#10), are compelling evidence before this Court to conclude that the individual county valuation assessments submitted to DESE were also not “equalized ... as between counties” as required the Missouri Constitution (Art. X, §14, Mo. Const.) and by statute (§ 138.390) prior to 2004 -- despite the STC’s reports to DESE showing the opposite. Because of this, the taxes levied pursuant to these improper assessment practices are in violation of Art. X, § 3 and § 138.380 (requiring “uniform taxes”). The PPRC studies, *inter alia*, also showed that there was not annual reassessment in each and every county as required by law (§ 137.115.1), which also made the 2004 reassessment year unlawful. *See* CFES 8 at 21-27 and Appendix.

IV. Trial Court’s Rulings on Standing and Necessary Party

The trial court found that CFES lacked standing and failed to add a necessary party on the first of what the trial court decision (A-24) referred to as “two distinct claims” by CFES. The court summarized that first claim as an assertion that “tax assessments across the state are arbitrary and capricious because many counties are ‘under assessed’” and that CFES sought an injunction to establish “a new system for equalizing assessment practices across the state.” *Id.* However, the Court failed to mention that at trial, in opening statement and in its post-trial briefs, CFES abandoned that claim and concentrated solely on its second claim, which the court summarily characterized as follows: “a declaration that the funding formula of SB 270 is unconstitutional because the legislature relies on inaccurate and unequal 2004 assessment levels in computing the local effort component of the funding formula.” *Id.*

The trial court did not rule that CFES lacked standing or failed to add a necessary party with respect to this second claim, which is the only claim asserted in this Court. In fact, it fully addressed that claim and its merits, albeit finding against CFES and holding that it had “not demonstrated an imminent unlawful deprivation of funds.” A-29. A finding of a failure to adduce sufficient evidence of damages, however, is not the same as a lack of standing to assert the same. Indeed, in *State ex rel City of Independence v. Jones*, 653 S.W.2d 178, 190 (Mo. banc 1983), resolved this issue in favor CFES. *See also St. Genevieve School District v. Bd. Of Alderman of City of St. Genevieve*, 66 S.W.3d 6, 10 (Mo. App. W.D. 2002) (“reduced to its essence, standing roughly means that the parties seeking relief must have some personal interest at stake in the dispute, even if that interest is attenuated, slight or remote....The district also has standing because the city’s actions, if improper, would unlawfully deprive the district of tax revenue.”)

Also, Rule 52.10 permits an association to bring an action provided that the representative parties fairly and adequately protect the interests of the association and its members. The rule has been described as a virtual representation where it could be impracticable for parties to appear. *See Executive Board of the Missouri Baptist Convention v. Carnahan*, 170 S.W.3d 437 (Mo. App. W.D. 2005). (The Missouri Baptist Convention, as an unincorporated religious association, had standing and there was sufficient information for the Court to determine that the association fairly and adequately represented the members under Rule 52.10.) *Id.* at 453. *See also Missouri*

Nat. Educ. Ass'n v. Missouri State Bd. of Educ., 34 SW3d 266, 275 (Mo. App. W.D. 2000).

School districts named in the litigation and those school districts from which the Court heard district specific evidence as “focus districts” also have standing to bring a declaratory judgment action in this case. These school districts are directly affected by the question at issue and therefore, have an interest in the dispute and an outcome in the litigation. *See Ste. Genevieve School District R-II v. Board of Alderman of City of Ste. Genevieve*, 66 S.W.3d 6, 10 (Mo banc 2002). (Taxpayer and school district were held to have standing to bring a declaratory judgment action over the interest in appointing members to a TIF commission). A school district whose funds may be affected has standing to seek a declaratory judgment. *State ex rel. Independence Sch. Dist. v. Jones*, 653 S.W.2d 178, 189 (Mo. banc 1983). School districts have standing to assert claims under Article IX, Section 1(a). *See* footnote 2 of concurring opinion of Robertson, J., concurred in by Limbaugh, J., in *Committee for Educational Equality v. State*, 878 S.W.2d 446, 458 (Mo. banc 1994).

Parents and students under the age of 21 years have the legally protectable interest of a free public education under the Missouri Constitution, Article IX, Section 1(a), as well as rights under Article I, Section 2. Clearly, parents and students have standing. *See, Concerned Parents v. Caruthersville 18 School District*, 548 S.W.2d 554, 557-58 (Mo. banc 1997).

Taxpayers and parent taxpayers who are Plaintiff Intervenors similarly have standing to bring a declaratory judgment action both in their status as taxpayers who

support public schools in Missouri and as taxpayers of a school district where the amount of state funds and local effort is at issue. These taxpayers have a constitutional right that equalized assessments are used as a basis to distribute state monies (taxpayer monies) to schools. Standing to challenge expenditure of public funds through taxation and the allowance of citizens to have government conform to the law and the Missouri Constitution when spending money are clearly situations where Missouri courts have previously allowed taxpayer standing. *State ex rel. Nixon v. American Tobacco Co.*, 34 S.W.3d 122, 133 (Mo. banc 2000). “In the context of an action for declaratory judgment, Missouri courts require that the plaintiff have a legally protectable interest at stake in the outcome of the litigation.” *Ste. Genevieve Sch. Dist.*, 66 S.W.3d at 10 (citing *Battlefield Fire Prot. Dist. v. City of Springfield*, 941 S.W.2d 491, 492 (Mo. Banc 1997)).

In this case, a challenge to the manner and mechanism of SB287’s use and inclusion of past assessments and past equivalent sales ratios and whether that violates other statutes and the Missouri Constitution clearly satisfies the standing issue. If any of the base numbers relied upon in that calculation is flawed, all future funding formula calculations will similarly be flawed.

With respect to the trial court’s finding that CFES had “not demonstrated an imminent unlawful deprivation of funds,” this is also without merit. This Court must initially first comprehend the fact that CFES was forced to challenge legislation that went into effect in May 2005 that was, by necessity, “looking back” to the 2003-2004 assessment cycle. This is because the legislature adopted a formula that adopted and used assessments based on property values and “equalized sales ratios” from 2004 and

“froze” them into the formula for all future years. Thus, Plaintiff CFES had to present all of its evidence as to this retrospective period of time and then present evidence based on what would have been different *if* the formula had had not suffered from the constitutional infirmities, i.e. had it been based on correct sales ratios and equalized assessed values in 2003-2004 as required by law.¹⁴ As set out in the Statement of Facts, CFES set forth such evidence of specific damages that school districts suffered by reason of the local effort aspect of the formula not being calculated properly. CFES school district witness Fedchak, Harrell and Glaser testified as to the amount of both state and local funding that each of their districts have lost because SB287 did not use the correct equalized assessed valuation figures when computing their districts’ funding. 3T-624-632; CFES-32, 33. In making the calculations, Fedchak used computer simulations from Otto Fajen, who in turn received the simulation from the person in the Senate in charge of the formula when its computer program was developed. CFES-30. 3T- 626, 639. They testified that this is the same evidence upon which they base their own budget and expenditures as it is by necessity a projection of what revenues will come in from various sources. It is not at all uncommon to “adjust” a number in a year’s budget and

¹⁴ For that same reason, the STC was not a necessary party to CFES “second claim” under Rule 52.04 as it could not “recreate” any assessments, ratios or equalizations for the 2003-2004 years; all it could do was provide evidence on the “local effort” aspect of the formula.

extrapolate the resulting effect to their district. This is all that their testimony and exhibits did in this case.

If there was equalized assessed value for North Kansas City, the assessed value would have increased by \$40 million. 3T-637. The testimony was that Rockwood School District would have increased local funding by \$303 million but was one district that would have had decreased state funding. 3T-632. By definition, these were estimates, as it assumed the formula had correct figures, but Fedchak and the others testified that as a CFO it was his job to prepare these types of estimates for funding purposes. *Id.* Fedchak concluded, as school CFO, that projection models are generally based on reasonable assumptions. 3T-648, 661. Likewise, Harrell, a CPA, prepared a calculation of the SB287 damages estimates based on the proper funding specifically for North Kansas City School District. He testified that those projections for the next several years are based on the same type of information that he regularly produces for his school board. CFES-40; CFES-541; 3T-679-682

The trial court's ruling that this was "speculative" again simply fails to comprehend that the only way to adduce damages in this case was to "recompute" the formula and show how the funding would have changed to school districts. This is especially true since the formula that passed in May 2005 retroactively relied upon the 2003-2004 level of assessments. This is no different than a suit over an improper formula on commissions amongst several salesmen going back several years and asking them to be recomputed—except in this instance, the recomputations involve 115 counties and hundreds of school districts.

V. The “rational basis” test is not the proper standard to apply in a declaratory judgment action as to whether the local effort aspect of the funding formula law violates the constitution and related state statutes

CFES believe that it is primarily a matter of statutory construction for this Court to determine if the new formula on the local effort calculation conflicts with constitutional provisions and a pre-existing statutory scheme intertwined with and built upon constitutional guarantees and does not even require a finding that the entire formula is unconstitutional. CFES challenges the fact that the new formula’s method for calculating the local effort based on one year’s assessments violates Art. X, §§ 3, 4 and 14, Mo. Const. and §§ 138.380, 138.390, 138.395 and 138.400 and this Court could simply declare that DESE is used the incorrect “ratios” when it used the “appraisal ratios” under § 138.395 and § 163.011(8) when it determined the assessed valuations that are frozen in SB287. This would have the advantage avoiding the constitutional issues wherever possible, which is axiomatic.

Courts have repeatedly held that a newly enacted statute cannot violate the Constitution, and there is no requirement to apply a rational basis test in finding a violation. *See, e.g. State ex rel. Kinder v. Farmer*, 89 S.W.3d 447, 452-453 (Mo. banc 2002) (“But, if all or part of a statute does conflict with a constitutional provision or provisions, this Court must hold the conflicting portions invalid.”); *State ex inf. Nixon v. Kinder*, 89 S.W.3d 454, 459 (Mo. banc 2002). In the *Kinder* case, as is possible here, the Court found that “the final sentence of section 531.010 purports to give a circuit judge of one county authority to issue a *quo warranto* against a circuit judge of an adjoining

county, it is in conflict with article V, section 4(1) and is void as an unconstitutional delegation to adjoining circuit courts of powers reserved to this Court and the court of appeals.” Id at 459-460.

Also, in *State ex rel. Upchurch v. Blunt*, 810 S.W.2d 515, 516 (Mo. banc 1991), the Court struck part of statute which limited submission to Secretary of State of sample initiative petition to place a proposed amendment to the Constitution on the ballot for a general election to one year prior to the final date for filing. The Court did not rely on the rational basis but simply stated:

This Court is required to give due regard to the primary objectives of the constitutional provision under scrutiny, as viewed in harmony with all related provisions. *State ex inf. of Martin v. City of Independence*, 518 S.W.2d 63, 66 (Mo.1974). If a statute conflicts with a constitutional provision or provisions, this Court must hold that the statute is invalid. *Rekart v. Kirkpatrick*, 639 S.W.2d 606, 608 (Mo. banc 1982).

In the instant case, SB287’s use of the frozen, inaccurate assessments not only violates those Constitutional provisions and statutes that require “equalized assessed valuation” at “true value” adjusted by “equivalent sales ratios.” In fact, by freezing the assessment levels for purposes of all school funding local effort at the 2004 assessment level that was improperly calculated, this aspect of SB287 violates the entire statutory scheme of assessment as it relates to school funding in place prior to and after that bill. This scheme involves a complex interplay of statutes and constitutional provisions carefully woven together to require that “equivalent sales ratios” are the basis of the

DESE calculations of “equalized assessed valuations” and that assessments are made at “true value.” This is to ensure that there is a uniform measure of school district wealth. *State ex rel City of Independence v. Jones*, 653 S.W.2d 178, 182 (Mo. banc 1983).

If, however, the Court chooses to utilize a Constitutional analysis, the question then arises as to whether it must use strict scrutiny because the right to education is a fundamental right. This case does not fit into the typical equal protection or due process challenge. There, the test is where a statute that neither operates to the disadvantage of a suspect class nor impinges on a fundamental right, it will withstand constitutional challenge if the classification bears some rational relationship to a legitimate state purpose. *Kohring v. Snodgrass*, 999 S.W.2d 228, 231-32 (Mo. banc 1999)

In *Weinschenk v. State*, 203 S.W.3d 201, 211 (Mo. banc 2006), this Court held that the right to vote is fundamental and struck down statute requiring photo identification. On the issue of what is required with respect to a challenge to a statute that involves a fundamental right, the Court said:

In order to survive strict scrutiny, a limitation on a fundamental right must serve compelling state interests and must be narrowly tailored to meet those interests.

Komosa v. Komosa, 939 S.W.2d 479, 482 (Mo.App. E.D.1997) (‘Any state restriction which significantly interferes with the exercise of a fundamental right is subject to strict scrutiny and cannot be upheld unless it is supported by sufficiently important state interests and is closely tailored to effectuate only those interests.’).

CFES asserts that this standard, as applied to the facts of the present case, makes it clear that the erroneous calculation inherent in the definition of local effort in SB287 cannot

survive strict scrutiny. There was no reason to use the incorrect “equivalent *appraisal* ratios” that adjusted already incorrect assessed valuations amounts that were not equalized whatsoever. DESE, the State and the legislature cannot say that this decision was “supported by sufficiently important state interests and is closely tailored to effectuate only those interests.”

VI. CONCLUSION

The definition of “local effort” in SB287, specifically § 163.011(10)(a) and (b), RSMo Supp 2005, which “freezes” the assessments in 2004 as the base year in the formula for all future years for purposes of school funding formula, should be stricken as being in violation of Art. X, §§ 3, 4 and 14, Mo. Const. and §§ 138.380, 138.390, 138.395, 138.400 and 163.011. The formula’s reliance on the 2003-2004 assessment cycle, both in relationship to SB287 and in the SB380 numbers used in the phase in period, relied on an improper equivalent sales ratio resulting in incorrect and unlawful equalized assessed valuations being used in the figures submitted to DESE for the 2004 calculation, which errors cannot be compounded for all future years.

There is a remaining question of whether these provisions that are in violation can be severed and the remaining provisions of SB287 stand. “While there is a presumption that ‘[t]he provisions of every statute are severable’ (§1.140, RSMo 2000), if any provision of a statute is found unconstitutional, the remaining provisions cannot stand if they are ‘so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed the legislature would have enacted the valid provisions without the void one.’ *Id.* In other words, ‘[t]he test of the right to uphold a

law, some portions of which may be invalid, is whether or not in so doing, after separating that which is invalid, a law in all respects complete and susceptible of constitutional enforcement is left, *which the Legislature would have enacted if it had known that the excinded portions were invalid.*' *State ex rel. Audrain County v. Hackmann*, 275 Mo. 534, 205 S.W. 12, 14 (banc 1918) (emphasis added)." *Weinschenk* 203 S.W.3d at 204. The Missouri General Assembly could potentially reformulate the "local effort" definition section of SB287 to correct §§ 163.031.1 and 163.011 so that the current and future funding mechanism for billions of dollars of school aid is no longer distributed in an unfair manner to Missouri taxpayers and school districts. Further, the Missouri General Assembly could choose to consider the evidence on the issues of assessment levels, equivalent sales ratios and the conflicts disclosed between the existing statutory scheme and the Missouri Constitution when re-crafting this section of SB287.

For all of these reasons, CFES respectfully requests this Court to find that SB287 as it pertains to local assessment is unconstitutional and in conflict with other state law.

Respectfully submitted,

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**CERTIFICATE OF SERVICE AND
COMPLIANCE WITH RULE 84.06 (b) & (c)**

The undersigned hereby certifies that on this ____ day of January, 2009, two true and accurate copies of the foregoing Brief, and one CD-ROM containing the foregoing Brief, were mailed, postage prepaid, to:

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The undersigned further certified that the labeled CD-ROM, simultaneously filed with hard copies of the Brief, has been scanned for viruses and is virus-free.

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