IN THE SUPREME COURT OF MISSOURI

No. SC89010

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

Plaintiffs and Plaintiff-Intervenors/Appellants,

v.

STATE OF MISSOURI, et al.,
SCHOCK, SINQUEFIELD & SMITH,

Defendants and Defendant-Intervenors/ Respondents.

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

RESPONDENTS' JOINT BRIEF RESPONDING TO ASSESSMENT CLAIMS

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STATEMENT OF FACTS

Parties

This suit was initiated by the Committee for Educational Equality and certain Missouri school districts, students, parents and taxpayers (collectively referenced herein as "CEE"). Petition at Legal File (hereinafter "L.F") 45-92.

Thereafter, the trial court allowed two other groups to join the litigation as plaintiff intervenors[1]: 1) Coalition to Fund Excellent Schools, an association of 28 school districts,[2] one student and her father,[3] and certain individual and corporate

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[1] The May 12, 2004, Order granting the Motions to Intervene is at L.F. 223-224.

[2] The twenty-eight school district members of CFES are Afton, Bayless, Branson R-IV, Brentwood, Clayton, Climax Springs, Francis Howell R-III, Jefferson County R-VII, Kirkwood R-VII, Ladue, Lindbergh R-VIII, Maplewood-Richmond Heights, Mehlville R-IX, New Madrid R-1, North Kansas City 74, St. Charles Co. R-V, Parkway C-2, Pattonville R-III, Perry County 32, Reeds Spring R-IV, Ritenour, Rockwood, School of the Osage R-II, South Callaway County R-II, St. Charles County R-VI, Valley Park, Washington, and Webster Groves. Exh. A to CFES Third Amended Petition (L.F. 2433-2435).

[3] The student, Carolyn E. Bock, was a student in Grade 12 in the New Madrid R-I School District when CFES' Third Amended Petition was filed, but

taxpayers (collectively referred to herein as "CFES"), L.F. 2415-2417; and 2) the Board of Education of the City of St. Louis, parents, students, and taxpayers (collectively referred to herein as "SLPS"). L.F. 354-375. Hereinafter, all plaintiffs will be collectively referred to herein as "plaintiffs."

The plaintiffs initially challenged the formula for allocation of State aid to public school districts as it existed prior to the enactment of Senate Bill 287 ("SB 287") in 2006. *See* L.F. 1982. They named as defendants the State of Missouri; the State Treasurer; the State Board of Education; the Department of Elementary and Secondary Education ("DESE") and its Commissioner; the Commissioner of Administration; and the Missouri Attorney General (collectively "State Defendants").[4] *See* CEE Petition at L.F. 45-92; CFES Petition at L.F. 222-245; SLPS Petition at L.F. 354-375. On October 19, 2006, defendant intervenors W. Bevis Schock, Rex Sinquefield and Menlo Smith ("defendant intervenors") filed a Motion to Intervene. L.F. 2773-2785. The Court denied the Motion under Rule 52.12(a) but granted the motion under Rule 52.12(b). Defendant intervenors then participated in all aspects of this matter. L.F. 3836. (Hereinafter State defendants and defendant intervenors will collectively be referred to herein as "defendants").

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graduated from high school in 2006. L.F. 2415-2416, ¶3a; Stipulation, at 3, ¶ 10 (L.F. 4678).

[4] All individual State defendants were named in their official capacities.

The State Tax Commission ("Commission") is the legal authority empowered to equalize assessments as between the counties. Mo. Const. Art. X, § 14; § 138.390, RSMo (Cum. Supp. 2008).[5] CFES did not join the Commission as a party to this case. L.F. 5338 (Appendix to Respondents' Joint Brief Responding to Assessment Claims ("Res. Assessment App.") at A-26).

School Funding Legislation at Issue

Effective July 1, 2006, Missouri adopted a new funding formula enacted as SB 287. Thereafter, plaintiffs filed the following amended petitions attacking SB 287: CEE Second Amended Petition, L.F. 2443-2493; CFES Third Amended Petition, L.F. 2414-2437; and SLPS Second Amended Petition, L.F. 2384-2410. On March 1, 2007, the SLPS was granted leave to file a Third Amended Petition by Interlineation. L.F. 4642. That petition is at L.F. 3857-3882.

In simplest terms, the calculation of how much a district is to receive is made by taking a district's weighted average daily student attendance multiplied by the state adequacy target ($6177 for fiscal years 2007 and 2008), minus the amount of money raised by local tax effort.[6] Trial Transcript ("Tr.") at 79-83; SB 287. A

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[5] All references to the Missouri Revised Statutes herein are to RSMo (Cum. Supp. 2008) unless otherwise indicated.

[6]The amount of state funding is further modified by a cost of living component as well as a seven-year phase-in of the new formula. Tr. 79-83; SB287.

school district's local effort is calculated as the equalized assessed valuation of the property of a school district in calendar year 2004 divided by 100 and multiplied by the performance levy, less certain expenses and plus certain other receipts. § 163.011(10)(a). If a school district's tax levy is less than that total, the $3.43 level is still utilized to determine local effort. *See* § 163.011(10), RSMo. *See also* Tr. 83-84. If a school district's levy is greater than $3.43, the district is allowed to keep the surplus revenue received by using a high levy. *Id*. Thus, the formula produces an amount that is due each district regardless of what amount is due to another district. § 163.031, RSMo

The only mechanism for prorating the formula is found in § 163.011(18), which defines the state adequacy target, and provides that it may be adjusted to accommodate available appropriations. § 163.011(18). Section 163.031.4(7)(a), however, provides that the state adequacy target cannot be adjusted downward to accommodate available appropriations until after the 2012-13 school year. § 163.031.4(7)(a), RSMo. Accordingly, the existence of under-assessed property in one school district cannot adversely impact the amount of school funding that another school district will receive until the 2013-14 school year at the earliest. *Id*.

Commission's Methodology for Equalizing Assessments

Equalization is a process by which the appropriate governmental body seeks to ensure that property under its jurisdiction is assessed at the ratio required by law. Tr. 4296 (*citing* International Association of Assessing Officers ("IAAO") definition of "equalization"). The Commission's program for seeking equality among assessments in various counties focuses on the appraisal ratio study,[7] a methodology the IAAO has expressly recognized to be valid. Tr. 888.

The appraisal ratio methodology holds certain advantages over the sales ratio methodology—another recognized equalization methodology, and the one favored by CFES. Tr. 887-888. The appraisal ratio study compares an assessor's value to a market value established through an appraisal study. *See* Tr. 359, 363, 4297-4298, 5832-5833. The sales ratio study compares the assessor's value to available sales price. Tr. 359, 5832-5833. A chief advantage of the appraisal ratio methodology is that the universe of properties from which it draws samples is not limited to recently sold properties, as it is with the sales ratio study. Tr. 4291-4292. This is an advantage because the population of recently sold properties is generally not representative of the population of all properties, (Tr. 4291), and

[7] The Commission received assistance in developing the statistical backdrop for its study from the University of Missouri Department of Mathematics. Tr. 4289-91.

because sales data can be difficult to verify (Tr. 4293-4294). Moreover, in Missouri, where only four counties (St. Louis, St. Charles, Jackson County, and the City of St. Louis) report sales data through certificate of value ordinances, Tr. 548, the Commission's appraisal ratio method, which looks to value comparisons, appraisal studies, and sales studies (Tr. 4296-4297) to determine market value, offers the additional advantage of not relying exclusively on sales data, which are incomplete.

The Chairman of the Commission testified that there is equalized assessment and there was in 2004; that his office takes great pains to look at all relevant data to determine if residential, commercial, and agricultural values are accurate; and that he believes that the figures certified by the Commission and used by the legislature when it drafted SB 287 were accurate**.** Tr. 4286-4291, 4294-4299; 4300-4304; 4363-4370.

The figures used by the legislature consisted of the December 31, 2004, assessed valuation for each county, certified by the Commission in January, 2005; and the December 31, 2004 equivalent sales ratio for each county, certified by the Commission in March 2005. L.F. 5342, 5344 (Res. Assessment App. at A-30, A-32); Tr. 4302-4305; 4363-4370.

CFES' Assessment Studies

CFES' evidence on residential property assessment levels consisted of two publications by the University of Missouri St. Louis Public Policy Research Center: Exhibits CFES 7, "Analysis Comparing Property Tax Assessments to Sale Values in St. Charles County, St. Louis County, and St. Louis City," (the "Three-County Study"); and CFES 8, "Disparity of Assessment Results: Why Missouri's School Funding Formula Doesn't Add Up" (the "PPRC" study). The counties studied in the former study are also in the latter. Tr. 210. The PPRC study, published in 2006, covers only 27 counties (*id*.) and contains results which cannot be extrapolated to the rest of Missouri (Tr. 238-239).

The only evidence from CFES on agricultural values came from a recommendation by the University of Missouri's College of Agriculture. Tr. 648. The Chairman of the Commission testified that, in addition to receiving that recommendation, the Commission had taken testimony from a number of other persons interested in the use value of agricultural land. The Commission then investigated what other neighboring states had done and determined that the evidence did not support increasing agricultural use values. Tr. 4305-4306; 4370-4371.

CFES' evidence on commercial values consisted of CFES Ex. 7, the Three-County Study, and CFES Ex. 48, Dr. Robert Gloudemans' commercial study. The former study covers only three of the state's 115 counties. Tr. 197-198. The Gloudemans' commercial study consisted only of one subclass of property in one county in 2001, which is not the assessment year from which local effort is derived in SB 287. Tr. 822-823.

Judgment

The trial court entered its judgment on October 17, 2007. L.F. 5313-5345 (Res. Assessment App. at A-1 – A-33). As to the assessment claims, the trial court ruled: (1) that the CFES plaintiffs lacked standing to challenge property assessments (L.F. 5337; A-25); (2) that those plaintiffs failed to join a necessary and indispensable party—the State Tax Commission (L.F. 5338; Res. Assessment App. at A-26); (3) that the CFES plaintiffs did not show that, even if there were assessment errors, they would receive additional funds (L.F. 5340-5341; Res. Assessment App. A-28 - A-29) and thus that they lacked injury or protectable interest (L.F. 5341; Res. Assessment App. at 29); and (4) that the "General Assembly acted rationally in basing the SB 287 local effort calculation on the available information it had about property tax assessment levels" (L.F. 5342; Res. Assessment App. at A-30) and on "assessed valuations certified by the Tax Commission" (L.F. 5344; Res. Assessment App. at A-32).

STANDARD OF REVIEW

"When considering the legal issue of the constitutionality of a statute, this question of law is to be reviewed *de novo.* A statute is presumed to be constitutional and will not be invalidated unless it clearly and undoubtedly violates some constitutional provision and palpably affronts fundamental law embodied in the constitution." *Bd. of Educ. of City of St. Louis v. Missouri State Bd. of Educ.,* 271 S.W.3d 1, 7 (Mo. banc 2008) (internal citations and quotations omitted).

In a court-tried case:

> This Court will affirm the judgment unless there is no substantial evidence to support it, it is against the weight of the evidence, it erroneously declares the law, or it erroneously applies the law. If the facts of a case are contested, then this Court defers to the trial court's determinations regarding those facts. If the facts are not contested, then the issue is legal and there is no finding of fact to which to defer.

Id. (citations omitted). *See also State v. Entertainment Ventures I, Inc.,* 44 S.W.3d 383, 385 (Mo. banc 2001) (in a court-tried case, this Court will "accept as true the evidence and reasonable inferences in favor of the prevailing party and disregard the contrary evidence").

ARGUMENT

I. CFES LACKS STANDING TO BRING ITS TAX ASSESSMENT CLAIMS. (RESPONSE TO CFES' POINT I, PART IV (STANDING); POINT I, PART III(C) (EFFECT IF LOCAL EFFORT IS MISCALCULATED))

The trial court correctly ruled that CFES lacks standing to bring tax assessment claims. The assessment claim before the Court is CFES' request for a declaration "that the assessment practices [across the state] are not uniform and are arbitrary, capricious and have a direct effect on the inadequacy and inequity of [school] funding[.]" CFES Brief at 12. For at least the following reasons, no party has standing to bring this claim.[8]

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[8] CFES abandons its request for a separate declaration requiring the state "to design, formulate, adopt and maintain a uniform assessment practice across the state in order to support free public education in Missouri through local tax efforts[.]" L.F. 2430-2431, ¶ H; CFES Brief at 111. And, while CFES states at page 117 of its Brief that it "challenges the fact that the new formula's method for calculating the local effort based on one year's assessment violates Art. X, §§ 3, 4 and 14, Mo. Const. and §§ 138.380, 138.390, 138.395 and 138.400," the trial court, in a ruling not challenged on appeal, denied CFES' post- judgment request to amend its petition to include such a claim. L.F. 5039 (App. at A-52). *See also*

It is well-settled that standing is a jurisdictional requirement antecedent to the right to relief. *Comm. for Educ. Equality v. State of Missouri*, 878 S.W.2d 446, 450 n. 3 (Mo. banc 1994); *State ex rel. Williams v. Marsh*, 626 S.W.2d 223, 227 n.6 (Mo. banc 1982). The party invoking a court's jurisdiction bears the burden of establishing the party's standing. *See Moynihan v. Gunn*, 204 S.W.3d 230, 235 (Mo. App. E.D. 2006) ("[P]arty seeking relief mush show that he is sufficiently affected by the challenged action to justify consideration by the court and that the action violates his particular rights and not those of some third party.").

In the context of a declaratory judgment action, the party seeking relief must have a legally protectable interest. *Ste. Genevieve Sch. Dist. R-II v. Bd. of Aldermen of Ste. Genevieve*, 66 S.W.3d 6, 10 (Mo. banc 2002). This means that, in the absence of a statutorily conferred interest, which CFES does not claim to have, the party seeking relief must be "*directly and adversely affected* by the action in question …." *Id*. (emphasis added). This is because courts decide constitutional questions only when a litigant's individual rights are directly affected by the resolution of the case. *W.R. Grace & Co. v. Hughlett*, 729 S.W. 2d 203, 206 (Mo. banc 1987); *State ex rel. Williams v. Marsh*, 626 S.W.2d at 227; *State ex rel. Reser v. Rush*, 562 S.W.2d 365,

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CFES' motion to amend and defendants' response thereto at L.F. 5018-5038 (App. at A-34 – A-51).

369 (Mo. banc 1978). "[P]ersons who do not pose present, real, live, and personal ... claims of right under the law do not give the Court the honed development of facts and legal argument that are the hallmark of real controversies." *State ex rel. Mathewson v. Bd. of Election Comm'rs of St. Louis County*, 841 S.W.2d 633, 635 (Mo. banc 1992). In the absence of a sufficient personal stake, any decision rendered constitutes an advisory opinion, which Missouri courts lack jurisdiction to issue. *Id.* at 635.

Here, no party has standing to bring CFES' assessment claims. As the trial court properly determined, CFES "use[s] this case as a vehicle to collaterally attack Missouri's mechanism for real property appraisals merely because the Legislature utilized results of that mechanism in SB 287." L.F. 05343, n. 10 (App. at A-31). "The CFES plaintiffs have provided … no authority that such a collateral attack is permissible." *Id.* As discussed below, the case law establishes that the trial court was correct in its ruling. Moreover, as CFES has failed to demonstrate that the allegedly improper assessment levels have negatively impacted on the amount of state funds received by the CFES school districts, CFES lacks the requisite direct interest necessary to challenge the adequacy and equity of the funding formula on this ground. L.F. 5340-42 (App. at A-28 - A-30).

A. CFES could have standing to bring this claim only if its member districts had standing.

CFES describes itself as "an association of . . . certain public school districts within the State of Missouri." L.F. 2415. An organization may sue as a representative for its members only if its members would otherwise have standing to bring suit in their own right. *Missouri State Medical Ass'n v. State*, 256 S.W.3d 85, 87 (Mo. banc 2008). Standing, therefore, of CFES is derivative and exists only to the extent the organization's member school districts are proper plaintiffs.

B. CFES school districts lack standing to bring these claims.

School districts and other political subdivisions—i.e., the members of CFES—lack standing to challenge property tax assessments absent express statutory authorization. *O'Flaherty v. State Tax Commission of Missouri,* 680 S.W.2d 153 (Mo. banc 1984); *State ex rel. St. Francois County Sch. Dist. R-III v. Lalumondier*, 518 S.W.2d 638, 641 (Mo. 1975); *City of Richmond Heights v. Bd. of Equalization of St. Louis County*, 586 S.W.2d 338, 343 (Mo. banc 1979). *See also, Bartlett v. Ross*, 891 S.W.2d 114, 116 (Mo. banc 1995) (absent statutory authorization, school district lacked standing to challenge distribution of unclaimed property tax refunds).

A plain reading of CFES' Third Amended Petition establishes that it is merely challenging the face of the challenge CFES raises in this Court, namely that Missouri's "assessment practices are not uniform and are arbitrary, capricious and have a direct effect on the inadequacy and inequity of [school] funding[,]" the core issues are local taxing practices and the Commission's allegedly improper 2004 certification of assessment levels. CFES Brief at 12; *see also* L.F. 2430, ¶ G. CFES has not provided the Court with any express statutory authorization that would permit any of its member districts to secure judicial review of these claims.

The decision in *State ex rel. Sch. Dist. of the City of Independence v. Jones*, 653 S.W.2d 178 (Mo. banc 1983), relied on by CFES, is distinguishable. The Court in *Jones* did not call into question the general rule that school districts and other political subdivisions require express statutory authority in order to have standing to challenge property tax assessments. Rather, the Court carefully distinguished *Lalumondier*, noting that the *Jones* plaintiffs did not seek judicial review of the Commission's 1981 certification of property assessment levels, *Jones*, 653 S.W.2d at 184, and did not "challenge the assessment or taxing practices in any county or dispute the interpretation of any tax statute," *id.* at 188. Instead, the plaintiffs in *Jones* sought only a determination of the future obligations of the Commission and DESE under two school funding statutes. *Id*. at 188-89.

Whereas the *Jones* plaintiffs sought only a determination that the State Tax Commission and DESE misinterpreted the school funding formula prescribed by the General Assembly, CFES seeks a declaration that the General Assembly's school funding formula is unconstitutional because the legislature allegedly relies on inaccurate and unequal 2004 assessment levels in computing the local effort component of the funding formula. *See* L.F. 2427. Because school districts require express statutory authority to challenge property tax assessments and because no such authority is present here, the CFES member districts lack standing to level their constitutional challenge.

C. No party may assert CFES' assessment claims.

In addition to raising the assessment claims on behalf of the CFES organization and school districts, CFES raises these claims on behalf of a student and her father, and certain individual and corporate taxpayers named in its petition. Not only do the CFES organization and school districts lack standing to assert the assessment claims, no other named party, individual or corporate, has standing to assert this claim.

The student, Carolyn E. Bock, was enrolled in the New Madrid R-I School District when the lawsuit was filed but graduated from high school in 2006. L.F. 2415-2416, ¶ 3a; Stipulation at 3, ¶10 (L.F. 4678). "Even a case justiciable at its inception may be mooted by an intervening event which alters the position of the parties in such a way that any judgment rendered merely becomes a hypothetical question." *Care & Treatment of Schottel v. State*, 121 S.W.3d 337, 340 (Mo. App. W.D. 2003). Therefore, Carolyn Bock's claims, and those of Lynn N. Bock, brought in the capacity of Carolyn's father, are moot.[9]

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[9] While CFES states at page 113 of its Brief that "[c]learly, parents and

Next, as the individual and corporate taxpayers are not complaining about their own property tax assessments, but rather about the property assessments of others, they too lack standing to assert CFES' tax assessment claim. The rule, simply put, is that one taxpayer may not use the courts to obtain judicial review of another taxpayer's assessments. *See, e.g., Lalumondier*, 518 S.W.2d at 642-43 (noting cases from other jurisdictions which hold that a property owner may not litigate in an attempt to obtain higher assessments on property owned by others); *W.R. Grace & Company*, 729 S.W.2d at 206-07 (taxpayer lacked standing to raise constitutional challenges to statutes affording tax exemptions to other classes of taxpayers where such statutes merely excused the tax obligations of others); *Hertz Corp. v. State Tax Commission*, 528 S.W.2d 952, 954 (Mo. banc 1975) (city was not an "aggrieved party" entitled to petition for review of taxes assessed against its tenants, rather than against the city itself).

And that is exactly what CFES is attempting to do. CFES' claim that inadequate educational funding is the result of *under-assessment* of property by certain county assessors (and the alleged failure of the Missouri State Tax

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students have standing[,]" CFES does not identify any CFES parent or student plaintiffs other than the Bocks, whose claims are now moot. Moreover, for the reasons set forth in this brief, even if there were other student or parent plaintiffs, they would not have standing to bring CFES' tax assessment claims.

Commission to correct these allegedly low assessments), L.F. at 2427, ¶ 21, necessarily depends upon a finding that other taxpayers were under assessed. Because CFES taxpayers cannot bring such a claim, their assessment claims fail as a matter of law.

CFES' tax assessment claim fails for yet another reason: it is based on speculation and unsupported by the evidence. CFES sets forth evidence at pages 24 and 25 of its brief by which it purports to establish that by "equalizing assessment" for the 2004 time frame to 95% of value, statewide effort revenues would increase by $228 million.[10] This figure comes from the PPRC study that

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[10]The $228 million figure assumes that the state is not capturing 95 % of market value for residential real estate across the state given a $3.43 performance levy Tr. 623; 651. Additionally, this $ 228 million does not take into account potential Hancock rollbacks. Tr. 783. Similarly, CFES argues on page 83 of its Brief that it put on "evidence" showing how, if the local effort amount had been properly calculated, its school districts would have received vastly different amounts of funds. However, CFES cites this Court to no such facts in the record. To the extent that CFES could direct this Court to any facts, based on the standard of review, deference should be given to the trial court's ruling on this matter. Moreover, even if CFES could establish their entitlement to $228 million, there is no evidence in the record to support its argument that such money would provide

CFES introduced into evidence. CFES Ex. 8. The PPRC study, while found by the trial court to be credible, covered only 27 counties and contained results that even CFES' own witnesses admitted could not be extrapolated to the rest of Missouri. Tr. 238-239. On top of this, the Commission put on evidence questioning whether the results of the PPRC study could even be extrapolated to the individual counties in the study. Tr. 5819-5823. Even assuming that one could fairly extrapolate from the PPRC study, there was no evidence that had additional local money been generated when the legislature considered SB 287, the money would have resulted in a net increase in funding by the legislature. L.F. 5341 (Res. Assessment App. at A-29).

To its credit, CFES concedes this point when it states that the increase in local revenue would merely "increase potential funding." CFES Brief at 25 (citation omitted). *See also* CFES Brief at 116 (conceding that CFES relied on "estimates" and projection models "*generally* based on reasonable assumptions") (emphasis added). That is because the formula does not move dollars from one district to another, as the CFES argument implies.

The school funding formula enacted by the General Assembly produces an amount of money that is due each district. L.F. 5340 (Res. Assessment App. at A-

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Missouri students with an adequate education. *See* Respondents' Joint Brief on Constitutional Issues.

28); § 163.031, RSMo. It does not provide that if some districts were due less money, there would be additional funds to distribute to other school districts, nor does it include a mechanism to distribute any additional funds. L.F. 5340-5341 (Res. Assessment App. at A-28 - A-29). The notion that the legislature would have increased funding to CFES districts had it known of the alleged under-assessments elsewhere has no support in the record. L.F. 5341 (Res. Assessment App. at A-29). The formula is designed so that the amount of state aid to be distributed to public schools is the sum of the amounts due to the 524 separate school districts. *Id*. The only mechanism for prorating the formula is found in § 163.011(18), which defines the state adequacy target, and provides that it may be adjusted to accommodate available appropriations. *Id.* However, § 163.031.4(7)(a) provides that the state adequacy target cannot be adjusted downward to accommodate available appropriations until after the 2012-13 school year. *Id.*

The speculative possibility of losing a measure of state funding in the 2013-14 school year due to property assessment levels utilized by the formula does not qualify as an imminent unlawful deprivation of state funds. *Id.* CFES' lack of injury or protectable interest is fatal to their claim.[11]

[11] Thus, it does not matter, that CFES has "to present all its evidence as to this retrospective period of time," CFES Brief at 115. The time period is not what prevents CFES from showing a direct interest. CFES cannot show a direct interest

In an effort to avoid the problem of not having a sufficiently protectable interest in its claim, CFES asserts that "[s]tanding 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." CFES Brief at 114 (*citing State ex rel. Nixon v. American Tobacco Co.,* 34 S.W.3d 122, 133 (Mo. banc 2000)). The flaw with CFES' argument is the fact that allegedly improper assessment practices, not expenditures, lie at the heart of its claim. As the trial court succinctly noted, CFES

> use[s] this case as a vehicle to collaterally attack Missouri's mechanism for real property appraisals merely because the Legislature utilized results of that mechanism in SB 287. The CFES plaintiffs have provided the Court with no authority that such a collateral attack is permissible.

L.F. 4343.

CFES simply cannot extract from its complaints about assessment equalization the personal stake necessary to invoke standing to challenge the SB 287 formula. *State ex rel. Mathewson*, 841 S.W.2d at 635.

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because in the SB 287 formula more school funding for one district does not mean less for another district.

II. THE CIRCUIT COURT LACKED SUBJECT MATTER JURISDICTION BECAUSE CFES FAILED TO JOIN A NECESSARY AND INDISPENSABLE PARTY—THE STATE TAX COMMISSION. (RESPONSE TO CFES' POINT I, PART IV (NECESSARY AND INDISPENSABLE PARTY))

In addition to the above jurisdictional deficiencies, the circuit court lacked subject matter jurisdiction because CFES failed to join a necessary and indispensable party—the State Tax Commission. The Commission is the legal authority empowered to equalize assessments as between counties. Mo. Const. Art. X, § 14; §§ 138.380-138-435, RSMo. CFES acknowledges this in ¶ 15 of its petition, where it complains that the Commission has failed to ensure that assessments are "just, uniform, fair and based upon that property's 'true value.'" L.F. 2420, ¶ 12. The subject of CFES' complaint—equalization—is a core duty of the Commission. The Commission is a necessary party under Rule 52.04(a) because in its absence complete relief cannot be accorded among those already parties.

Because, as discussed above, CFES lacks standing to sue the Commission, the Commission could not be joined as a party. The Commission is, thus, an indispensable party: a necessary party that cannot feasibly be joined. Mo. S. Ct. R. 52.04(b); *Edmunds v. Sigma Chapter of Alpha Kappa*, 87 S.W.3d 21, 27 (Mo. App. 2002).

No matter concerning the level of statewide property assessment can be properly adjudicated in the absence of the Commission – the body to which the area has been lawfully delegated. But, no CFES plaintiff has sued or can sue the Commission. Thus, the circuit court lacked jurisdiction over the assessment claims and its dismissal of these claims should be affirmed.

III. CFES' ASSESSMENT CLAIM FAILS BECAUSE CFES DID NOT PROVE THAT ASSESSMENT LEVELS ARE IMPROPER, OR THAT THE ASSESSMENT LEVELS—EVEN IF THEY WERE IMPROPER—NEGATIVELY IMPACT THE AMOUNT OF STATE FUNDS RECEIVED BY CFES' SCHOOL DISTRICT MEMBERS UNDER SB 287. (RESPONSE TO CFES' POINT I, PARTS II AND III)

If the Court were to consider CFES' assessment claim on the merits, the claim would fail because CFES did not prove that assessment levels are improper; nor even that improper assessment levels have a negative impact on the amount of state funds received by the CFES' school district members under SB 287.

A. CFES' arguments disregard the standard of review.

As an initial matter, CFES' argument utterly disregards the standard of review for this appeal. The appropriate standard, as set forth at the beginning of this brief, requires the Court to "accept as true the evidence and reasonable inferences in favor of the prevailing party and disregard the contrary evidence." *State v. Entertainment Ventures I, Inc.*, 44 S.W.3d at 385. Further, if the facts of a case are contested, this Court "defers to the trial court's determinations regarding those facts." *Bd. of Educ. of City of St. Louis*, 271 S.W.3d at 7. CFES does not follow this standard, and much of the "evidence" contained in its brief should be disregarded.[12]

The principle facts relevant to the trial court's judgment are set forth below.

B. Presumption of constitutionality

The well-settled principle that legislation is entitled to a strong presumption of constitutionality is set forth in Respondents' Joint Brief Regarding Constitutional Claims at p.p. 26-30 and incorporated herein by this reference. These principles must govern the Court's consideration of CFES' constitutional challenge to SB 287. As

[12] For example, CFES' argument that there were "two sets of books," CFES Brief at 90, at the Commission is not borne out by the record. Indeed, the Chairman of the Commission flatly rejected this suggestion at trial. Tr. 4366. Similarly, CFES is not entitled to the inferences it attempts to draw from the record in support of its assertion that the legislature was aware that the 2003-2004 assessments were flawed. CFES Brief at 108-110. Senator Shields testified merely as to a *perception* of inconsistent property assessment practices. Tr. 5708, 5763.

CFES cannot show that SB 287 "clearly and undoubtedly contravenes the constitution" and "plainly and palpably affronts fundamental law embodied in the constitution," *Etling v. Westport Heating & Cooling Services, Inc.*, 92 S.W.3d 771, 773 (Mo. banc 2003), the Court should affirm the circuit court's judgment.

C. CFES' evidence is insufficient as a matter of law.

CFES' evidence is insufficient as a matter of law to support the claim that assessment levels across the state are inaccurate and, in some instances (presumably not their own) understated. Moreover, the trial court found that the legislature had before it the "December 31, 2004, assessed *valuation for each county, certified by the Commission* in January 2005, and the December 31, 2004 *equivalent sales ratio* for each county, *certified by the Commission* in March 2005." L.F. 5342 (Res. Assessment App. at A-30) (emphasis added). The Court must "defer[] to the trial court's determinations regarding those facts." *Bd. of Educ. of City of St. Louis*, 271 S.W.3d at 7.

CFES' trial evidence on residential property assessment levels consisted of two publications by the University of Missouri St. Louis Public Policy Research Center: CFES 7, the Three-County Study; and CFES Ex. 8, the "PPRC" study. The counties studied in the former study are also in the latter. Tr. 219. The PPRC study, published in 2006, covers only 27 counties (Tr. 210) and contains results which cannot be extrapolated to the rest of Missouri (Tr. 238-239, 645).

The only evidence from CFES on agricultural values came from a recommendation by the University of Missouri's College of Agriculture. CFES Ex. 11B (the "Moore Report"). The method for determining agricultural use values is a matter reserved to the Commission, even if the Commission may receive information from the University. Indeed, courts have recognized that the Commission is entitled to deference in determining methods of valuation. *C&D Investment Co. v. Bestor*, 624 S.W.2d 835, 838 (Mo. banc 1981). *See also, Hermel, Inc. v. State Tax Commission*, 564 S.W.2d 888, 896 (Mo. banc 1978) (*citing Xerox Corporation v. State Tax Commission*, 529 S.W.2d 413 (Mo. banc 1975) ("It is not within the purview of [the] court . . . to determine the method of valuation to be adopted by the Commission.")). The Chairman of the Commission testified that the Commission had taken testimony from a number of other persons interested in the use value of agricultural land that such values had not increased. The Commission then investigated what neighboring states had done and determined that the evidence did not support increasing agricultural use values. Tr. 4305-4306; 4370-4371.

CFES' evidence on commercial values consisted of CFES Ex. 7, the Three-County Study, and CFES Ex. 48, Dr. Robert Gloudemans' commercial study. The former study covers only three of the state's 115 counties. Tr. 197-98. The Gloudemans' commercial study consisted only of one subclass of property in one county in 2001, which is not the assessment year from which local effort is derived in SB 287. Tr. 822-23.

CFES' evidence on assessment levels was, thus, very limited. Out of 115 Missouri counties, CFES offered evidence regarding residential assessment levels for only 27, commercial assessment levels for well less than a third of those 27, and a single recommendation from the University of Missouri's College of Agriculture on agricultural assessment levels. Moreover, as the trial court pointed out, the focus of that evidence was on but one component of a county's assessed valuation—residential property values. L.F. 5344 (Res. Assessment App. at A-32). As such, CFES utterly failed to show that statewide assessment levels are inaccurate.

D. The Commission's equalization methodology

While CFES may not like the process, the equalization methodology used by the Commission—the appraisal ratio study—is recognized by the IAAO to be a valid methodology for equalizing property assessment levels. Tr. 889. CFES' own witness acknowledged as much. *Id*.

Indeed, the record before the trial court demonstrated that the appraisal ratio methodology holds certain advantages over the sales ratio study—favored by CFES. Tr. 362. Chief among these is that the pool of properties from which the study samples is not limited to recently sold properties, as with the sales ratio study. Tr. 4291-4292. The trial court heard testimony that samples drawn from recently sold properties are generally not representative of the population of all properties. Tr. 4292-4293. And, sales data can be difficult to verify. Tr. 4294-4295. That is in particularly true in Missouri, where only four jurisdictions (St. Louis, St. Charles, and Jackson Counties, and St. Louis City) report sales data through certificates of value. *See* Tr. 367. The Commission's appraisal ratio method, which looks to value comparisons, appraisal studies, and sales studies (Tr. 4297-4298), offers the advantage of not relying exclusively on incomplete sales data.

The Chairman of the Commission testified that his office takes great pains, including numerous studies and value comparisons, to look at all relevant data to determine if residential, commercial, and agricultural values are accurate; and that he believes that the figures certified by the Commission and used by the legislature when it drafted SB 287 were accurate**.** Tr. 4286-4314; 4363-4370.

"It is not within the purview of this court [or CFES] to determine the method of valuation to be adopted by the commission." *Hermel, Inc. v. State Tax Commission,* 564 S.W.2d at 896. While CFES may disagree with the Commission's selected methodology for equalizing assessments, CFES has failed to demonstrate that the Commission's methodology is improper, and certainly has not shown that it is unconstitutional.

E. No negative impact on the amount of state funds received by the CFES districts

Finally, as discussed above in the standing section, CFES did not prove that assessment levels—even if, arguendo, they are improper—negatively impact the amount of state funds received by the CFES district plaintiffs under SB 287. As a result, CFES has not demonstrated any injury from or direct interest in the assessment challenge it seeks to bring.[13]

IV. THE GENERAL ASSEMBLY ACTED RATIONALLY WHEN IT DESIGNED THE "LOCAL EFFORT" COMPONENT OF THE SB 287 FORMULA. (RESPONSE TO CFES' POINT I, PART V; ADDITIONAL RESPONSE TO POINT I, PARTS II AND III)

Plaintiffs allege that assessment practices are arbitrary and capricious and result in a disparate treatment of taxpayers and an unconstitutional foundation formula. *See* L.F. 2427, ¶ 21. If CFES had standing and the Court reached the merits of that claim, it would fail. Assessment practices impact one aspect of the foundation formula—the

[13] CFES sets forth various calculations in Point I, part III, of its brief. To the extent CFES is attempting to establish that any alleged improper assessment has a negative impact on it, CFES has failed to do so. As discussed in this brief, SB 287 is designed so that funding to one district does not effect funding to another.

local effort component. And, the General Assembly acted rationally in designing that portion of the formula.

CFES claims that SB 287 is irrational because of problems identified in the PPRA study. CFES Brief at 19. But the General Assembly enacted SB 287 in 2005, and the PPRC study, upon which CFES relies, was not published until November 2006. Tr. 210. Thus, the PPRC Study's figures on property assessment levels in the 27 counties it covers were not even available to the General Assembly as it considered the new school funding formula. It would be absurd to hold unconstitutional a law that the Missouri General Assembly passed in 2005 because it did not adequately consider a study published in 2006.

As the trial court found, the General Assembly did not act arbitrarily and capriciously in basing the SB 287 local effort calculation on the latest and most accurate information it did have about property tax assessment levels in the State. L.F. 5344 (Res. Assessment App. at A-32). That information, as set forth above, consisted of the December 31, 2004 assessed valuation for each county, certified by the Commission in January 2005, and the December 31, 2004 equivalent sales ratio for each county, certified by the Commission in March 2005. TR 4286-4314, 4363-4370, L.F. 5342 (Res. Assessment App. at A-30).[14]

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[14]While CFES claims in its brief that it presented evidence from which "DESE, the legislature and the trial court *could* conclude that the appraisal ratios

CFES attempts to suggest that the funding formula is constitutionally defective because, under statutes governing the old formula, the Commission certified every county in 2005. CFES Brief 90-91. But, as the Chairman of the Commission explained without reservation, the equivalent sales ratio is a weighting of all three subclasses of property. Tr. 591, 4369-4370. It is calculated by a statutorily derived formula, using data the Commission obtained from its appraisal ratio study. Tr. 545; 4369-4370. CFES points to no Missouri law directing the Commission to perform a sales ratio *study* for the purpose of equalizing property assessments.

"Local effort" was defined in § 163.011(10) of the SB 287 formula 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," less certain

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themselves were flawed," (CFES Brief at 107), and that it *adduced evidence* "that the legislature was aware of the fact that there was a problem with the 2003-2004 assessments …," the issue here is whether the trial court's findings in favor of Defendants are supported by substantial evidence. Mo. S. Ct. R. 73.01(c); *State v. Entertainment Ventures I, Inc.*, 44 S.W.3d at 385. In making this determination, the Court accepts the evidence and inferences favorable to the prevailing party and disregards all contrary evidence. *Entertainment Ventures*, 44 S.W.3d at 385. Thus, it is irrelevant what the trial court *could* have found.

expenses and plus certain other receipts. L.F. 5342-5343 (Res. Assessment App. at A-30 - A-31). Two older statutes governed the "equalized assessed valuation" of a school district.[15] L.F. 5343.

The first step is set out in section 138.395. That statute provides that the Commission was to annually certify an "equivalent sales ratio" for each county to the department of elementary and secondary education and that:

> On and after January 1, 1997, in certifying such ratios to the department of elementary and secondary education, the commission shall certify all ratios higher than thirty-one and two-thirds percent at thirty-three and one-third percent.

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[15]As set forth above, and as the trial court found (L.F. 5343 n.10; A-31), CFES plaintiffs have not brought suit challenging these or any other statutes by which real property is appraised in the State of Missouri. Rather they use this case as a vehicle to collaterally attack Missouri's mechanism for real property appraisals merely because the legislature utilized results of that mechanism in SB 287. Indeed, in a decision from which CFES does not appeal, the trial court denied CFES' post-judgment attempt to amend its Third Amended Petition in Intervention to cure this or any other defect, except to the extent that "all references to the years '2004-2005' are amended by interlineations to read '2003-2004' in regard to the local effort issue." L.F. 5039 ("App. at A-52).

L.F. 5343 (Res. Assessment App. at A-31). If the Commission found that a county's equivalent sales ratio was less than 31 2/3 %, it was to "recomput[e] such computation to ensure accuracy," in other words, to perform its ratio study again. *Id*.

The "equalized assessed valuation of the property of a school district" was then determined according to § 163.011(8) by:

> multiplying the assessed valuation of the real property subclasses specified in section 136.115, RSMo, times the percent of true value as adjusted by the department of elementary and secondary education to an equivalent sales ratio of thirty-three and one-third percent and dividing by either the percent of true value as determined by the state tax commission on or before March fifteenth preceding the fiscal year in which the valuation will be effective as adjusted by the department of elementary and secondary education to an equivalent sales ratio of thirty-three and one-third percent of the average percent of true value for the highest three of the last four years as determined and certified by the state tax commission, whichever is greater.

L.F. 5344 (Res. Assessment App. at A-32).

Thus, local effort was based on a school district's 2004 equalized assessed valuation. § 163.011(10). If a district's ratio of assessed value to true value was at least 95% (thirty-one and one-third percent), the general assembly said it was to be reported as 100%. If it fell below that level, the Commission was to "recompute" the ratio, or do another study. If it still fell below that level, the General Assembly said the true value for the highest three of the last four years should be considered. L.F. 5344 (Res. Assessment App. at A-32).

"The General Assembly's utilization of assessed valuations certified by the Tax Commission was not arbitrary and capricious and does not result in an unconstitutional funding formula." L.F. 5344 (Res. Assessment App. at A-32). Rather, it reflects a rational concern that the funding for school districts does not get reduced if their county's assessment levels fell short one year or if there was uncertainty as to the true level of assessment. This approach is particularly appropriate where, as in the SB 287 formula, more school funding for one district does not mean less for another district.

CFES' assertion at page 117 of its brief that the Court may avoid its constitutional challenge to the State's assessment practices by "simply declaring that DESE is used [sic] the incorrect 'ratios' when it used the 'appraisal ratios' under § 138.395 and § 163.011(8)" ignores the fact that CFES seeks no such declaration in its Third Amended Petition in Intervention. *See* L.F. 2429-31. CFES is attempting to amend its petition for a fourth time, now in this Court.[16] And, there are other

[16]This is CFES' second attempt to amend its Third Amended Petition after judgment in this case. *See* note 15, *supra*.

problems with this new claim, too. It is another attempt to collaterally attack the Commission's tax assessment methodologies—something CFES does not have standing to do. Further, as the Commission is not a party to this action, the Court lacks jurisdiction to consider this new claim in any event. *See supra* p.p. 21-22. Moreover, the declaration CFES seeks is nonsensical. DESE cannot simply leave out the ratios; without them, "local effort" cannot be calculated and the SB 287 formula does not work.

The trial court properly determined that to the extent that CFES was challenging the legislature's reliance on the 2004 assessments and using them in the funding formula, the question was whether is was rational for the legislature to do so. L.F. 5342 (Res. Assessment App. at A-30). As the trial court found, the legislature acted rationally in basing the SB 287 local effort calculation on the most timely and accurate available information it had about property tax assessment levels in the State at that time.[17] LF 5342.

[17]CFES suggests that strict scrutiny should have been applied by the trial court. CFES Brief at 119. For the reasons set forth in Respondents' Joint Brief Regarding Constitutional Claims, the right to education is not a fundamental right and, thus, strict scrutiny is inapplicable.

CONCLUSION

For the foregoing reasons, this Court should affirm the judgment of the trial court.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the limitations contained in Rule 84.06(b). The foregoing document contains 7,281 words of proportionally spaced text as determined by the automated word count feature of the Microsoft Word 2003 word processing system and has 14 point print size.

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