

STATE OF NEW YORK  
SUPREME COURT COUNTY OF ALBANY

NEW YORK STATE UNITED TEACHERS by its President  
RICHARD C. IANNUZZI, NAOMI AVERY, SETH COHEN,  
TIMOTHY MICHAEL EHLERS, KATHLEEN TOBIN FLUSSER,  
MICHAEL LILLIS, ROBERT PEARL as a Parent, Individually and  
on behalf of his children KYLEIGH PEARL, MICAELA PEARL,  
AVA PEARL and NOLAN PEARL, BRIAN PICKFORD,  
HILARY STRONG as a Parent, Individually and on behalf  
of her child KEVIN STRONG,

SUMMONS

Plaintiffs,

Index No.: \_\_\_\_\_

-against-

Plaintiffs designate Albany  
County as the place of trial.

The STATE OF NEW YORK, ANDREW M. CUOMO  
as Governor of the State of New York, THOMAS P.  
DiNAPOLI as Comptroller of the State of New York,  
and JOHN B. KING, JR., as Commissioner of the  
New York State Education Department.

The basis of venue is  
is defendants' principal  
places of business.

Defendants.

To the above-named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer on the plaintiffs' attorneys within twenty (20) days after the service of the summons, exclusive of the day of service (or within thirty (30) days after the service is complete if the summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Latham, New York  
February 19, 2013

RICHARD E. CASAGRANDE  
Attorney for Plaintiffs  
800 Troy-Schenectady Road  
Latham, New York 12110  
(518) 213-6000

By:   
Richard E. Casagrande

STATE OF NEW YORK  
SUPREME COURT COUNTY OF ALBANY

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AVA PEARL and NOLAN PEARL, BRIAN PICKFORD,  
HILARY STRONG as a Parent, Individually and on behalf  
of her child KEVIN STRONG,

VERIFIED COMPLAINT

Plaintiffs,

Index No.: \_\_\_\_\_

-against-

Date Filed: \_\_\_\_\_

The STATE OF NEW YORK, ANDREW M. CUOMO  
as Governor of the State of New York, THOMAS P. DiNAPOLI  
as Comptroller of the State of New York, and JOHN B. KING, JR.,  
as Commissioner of the New York State Education Department.

Defendants.

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Plaintiffs New York State United Teachers, by its president Richard C. Iannuzzi, Naomi Avery, Seth Cohen, Timothy Michael Ehlers, Kathleen Tobin Flusser, Michael Lillis, Robert Pearl, individually and on behalf of his children Kyleigh, Micaela, Ava and Nolan Pearl, who are pupils in a New York school district, Brian Pickford, Hilary Strong individually and on behalf of her child Kevin Strong, who is a pupil in a New York school district, by their attorney, Richard E. Casagrande, Esq. (Matthew E. Bergeron, Esq., Laura R. Hallar, Esq., and Robert T. Reilly, Esq., of Counsel), for their complaint against defendants respectfully allege, upon information and belief, as follows:

## PRELIMINARY STATEMENT

1. Plaintiffs are school district voters, residents, and taxpayers, as well as parents of children who are New York State public school district students. Plaintiffs support – and their children would benefit from – enhanced educational funding for their school districts. Plaintiff NYSUT represents over 600,000 in-service and retired public and private employees, including more than 98% of New York’s public school teachers and a majority of other public school employees, including guidance counselors, nurses, teaching assistants, aides, school secretaries, and bus drivers, among others. The overwhelming majority of NYSUT members are state residents and taxpayers, and many have children who attend New York’s public schools.

2. Plaintiffs bring this declaratory judgment action seeking to declare unconstitutional the so-called “tax cap” legislation enacted in 2011, as it applies to public school districts.

3. The tax cap places an undemocratic and unconstitutional supermajority requirement on votes for school budgets seeking to increase the school funding tax levy by more than 2% or the rate of inflation, whichever is less. The apparent purpose and practical effect of the tax cap is to limit the ability of school boards and school district voters to increase school funding beyond that permitted under the tax cap, and to deter efforts to exceed the tax cap.

4. The tax cap has the effect of perpetuating and widening the existing gross education funding inequities between school districts. As a result, the tax cap has a particularly negative impact on the State’s poor and minority school children, denying them the educational opportunities provided by other, wealthier districts, and denying all local school boards and their voters of the right to close existing funding and achievement gaps, or to provide enhanced educational opportunities to school children.

5. The tax cap deprives or arbitrarily and impermissibly interferes with the individual plaintiffs' constitutionally protected liberty interests.

6. Specifically, in violation of the Education Article of the New York State Constitution and the equal protection provisions of the State and United States Constitution, the tax cap deprives school children of equal educational opportunity by perpetuating and expanding the gross inequalities in funding among school districts. This is because the tax cap, absent a supermajority vote of a school district's qualified voters, prohibits a school board from increasing a tax levy by more than the rate of inflation or 2%, whichever is less. This disproportionately and negatively impacts on the ability of lower wealth districts to provide educational opportunity to their school children. Second, the tax cap deprives all school districts and their voters the right to provide equal or enhanced educational services and facilities to school children, by impermissibly and arbitrarily capping the right of school districts and voters, absent a supermajority vote, to increase a tax levy by more than the rate of inflation or 2%, whichever is less. Third, the tax cap impermissibly impairs the plaintiffs' right, under the Education Article, to participate in the governance and spending decisions of their school district, by diminishing local control over such decisions. Fourth, the tax cap deprives plaintiffs of their right to equal protection of law as compared with voters, residents and taxpayers of other, non-school district local governments, who are not subject to the tax cap's supermajorities and ballot notice provisions. Fifth, the tax cap unconstitutionally interferes with plaintiffs' fundamental voting rights, in violation of the principle of one-person, one-vote, because it gives disproportionate voting power to voters who oppose a proposal to exceed the tax cap. Sixth, the tax cap deprives plaintiffs of their right to equal protection of law based on their views, because voters who oppose a proposal to exceed the tax cap are given disproportionate voting power over

voters who favor such a proposal. Seventh, the tax cap violates plaintiffs' rights to free expression because it discriminates against voters based on their political viewpoint.

7. Plaintiffs in this litigation do not seek a judicially-ordered increase in the tax levy of any school district, nor do plaintiffs seek a court-ordered increase in State education aid. Plaintiffs also do not challenge the right of wealthier school districts or voters to provide enhanced educational services and facilities to school children at the level they see fit. Rather, the essence of plaintiffs' claim is that the State cannot legally justify an education funding system that permits gross disparities in district funding and educational opportunities for school children, and then impose an arbitrary, across-the-board percentage cap on local spending. While, on its face, the tax cap gives the appearance of equality, in effect the tax cap locks in existing inequalities, and has a disproportionate, negative impact on the ability of the lower wealth districts and their voters to provide educational opportunity to school children.

8. Plaintiffs also do not seek to establish any specific, district-wide failure to provide a sound basic education. While the tax cap impedes school districts' ability to provide a sound basic education, and while the tax cap may have already led to such failures, plaintiffs in this litigation assert only that the tax cap, on its face and as applied, is unconstitutional.

9. In addition to seeking a declaratory judgment declaring the tax cap unconstitutional, plaintiffs seek further and consequential relief, including a permanent injunction of the application of the tax cap to education funding.

#### JURISDICTION

10. The court has jurisdiction to grant a declaratory judgment and further and consequential relief pursuant to CPLR §3001 and §3017(b).

11. The court has jurisdiction to grant plaintiffs relief to remedy defendants' violations of the United States Constitution pursuant to 42 U.S.C. §§1983 and 1988. The tax cap is a New York state law, and all of the actions of the defendants to enact, implement and enforce the tax cap were and are taken under color of state law.

#### VENUE

12. Venue for this action is set in Albany County pursuant to Article 5 of the CPLR, as defendants' principal places of business are in Albany County.

#### PLAINTIFFS

##### Naomi Avery

13. Naomi Avery is a 20 year resident of, taxpayer within, and parent of a child who is a pupil in the Elmira City School District.

14. Ms. Avery is a fourth grade teacher employed by the Elmira City School District.

15. Ms. Avery voted in favor of the Elmira school budget on May 15, 2012.

##### Seth Cohen

16. Seth Cohen is a 27 year resident of, taxpayer within, and parent of one child who is a pupil in the Stillwater Central School District.

17. Mr. Cohen voted in favor of the Stillwater school budget on May 15, 2012.

##### Kathleen Tobin Flusser

18. Kathleen Tobin Flusser is a 12 year resident of, taxpayer within, and parent of three children who are pupils in the New Paltz Central School District.

19. Ms. Tobin Flusser served on the Board of Education of the New Paltz Central School District for three years from 2009 to June 30, 2012.

20. Ms. Tobin Flusser voted in favor of the New Paltz school budget on May 15, 2012.

Timothy Michael Ehlers

21. Timothy Ehlers is a seven year resident of, taxpayer within, and parent of one child who is a pupil in the Three Village Central School District.

22. Mr. Ehlers is a tenured American history teacher who has been teaching in the District for 10 years.

23. Mr. Ehlers voted in favor of the Three Village school budget on May 15, 2012.

Michael Lillis

24. Michael Lillis is an 18 year resident of, taxpayer within, and parent of one child who is a pupil in the New Paltz Central School District.

25. Mr. Lillis voted in favor of the New Paltz school budget on May 15, 2012.

Robert Pearl

26. Robert Pearl is a 17 year resident of the Brookhaven-Comsewogue Union Free School District, taxpayer within, and parent of four children who are pupils in the Brookhaven-Comsewogue Union Free School District.

27. Mr. Pearl is a tenured special education teacher and has been employed by the Brookhaven-Comsewogue Union Free School District for nearly 10 years.

28. Mr. Pearl is a vice president of the Port Jefferson Station Teachers' Association, NYSUT Local 23040, and has held this position for two years.

29. Mr. Pearl is the parent of four children, Kyleigh Pearl, Micaela Pearl, Ava Pearl and Nolan Pearl, 16, 15, 11 and 5 years old respectively, who are pupils in Brookhaven-Comsewogue

Union Free School District, attending Comsewogue High School, JFK Middle School and Norwood Avenue Elementary school.

30. Mr. Pearl voted in favor of the Brookhaven-Comsewogue school budget on May 15, 2012.

Brian Pickford

31. Brian Pickford is a two year resident of, taxpayer within, and parent of one child who will be a pupil in the Three Village Central School District in the 2013-2014 school year.

32. Mr. Pickford voted in favor of the Three Village school budget on May 15, 2012.

33. Mr. Pickford is a tenured music teacher who has been teaching in the District for 11 years.

34. Mr. Pickford is a member and Treasurer of the Three Village Teachers Association.

Hilary Strong

35. Hilary Strong is a 23 year resident of, taxpayer within, and parent of two children who are pupils in the Elmira City School District.

36. Ms. Strong is the parent and has custody of Elmira student Kevin Strong.

37. Ms. Strong voted in favor of the Elmira school budget on May 15, 2012.

New York State United Teachers

38. New York State United Teachers ("NYSUT"), an unincorporated association, is a labor organization under state and federal law, and is the statewide affiliate for more than 1,260 affiliated local unions. These local unions represent over 600,000 public and private sector employees and retirees, including employees of school districts, colleges and universities, hospitals, centers for the developmentally disabled, libraries, and local governments. The majority of NYSUT



members, however, are public school teachers and school-related professionals, including secretaries, nurses, custodians and bus drivers, who are in-service or retired employees of public school districts in New York. The majority of NYSUT members live in New York state and are qualified voters in their school districts, and tens of thousands of them have children who attend New York's public schools. The constitutional rights of these members are infringed by the tax cap. The president of NYSUT is Richard C. Iannuzzi. Mr. Iannuzzi is a resident of and taxpayer in the Smithtown Central School District.

#### DEFENDANTS

39. Defendant State of New York is a state organized and maintained pursuant the New York Constitution. Its principal office is located at the State Capitol, Albany, New York 12224. The legislative power in New York is vested in the senate and the assembly, each of which chooses its own officers. The executive power in New York is vested in the governor. Bills are enacted by the Legislature and are signed into law by the governor.

40. Defendant Andrew M. Cuomo is the Governor of the State of New York; as such, he is the head of the executive branch of New York state government, and he has the powers and duties set forth in Article IV of the New York Constitution.

41. Defendant Thomas P. DiNapoli is the Comptroller of the State of New York, and as such he has the powers and duties set forth in Article V of the New York Constitution, the State Finance Law, the Retirement and Social Security Law, and various provisions of other New York laws, including the tax cap.

42. Defendant John B. King, Jr. is the Commissioner of the New York State Education Department and as such he has the powers and duties set forth in Article 7 of the Education Law and

various other provisions of New York law, including the tax cap.

43. The defendants are sued in only their official capacities.

## FACTS

### The Tax Cap

44. The "tax cap" refers to S. 5856/A. 8518, passed by the Legislature and signed into law by the governor as chapter 97 of the laws of 2011. [Education Law §2023-a.]

45. The tax cap imposes a limitation on the tax school districts and other non-school district local governments can levy on the real property subject to tax within their borders.

46. Generally, under the tax cap's formula, a school district or a non-school district local government cannot enact a budget that increases the levy on property taxes by more than approximately two percent (2%) per year or rate of inflation based on the Consumer Price Index (CPI), whichever is less. [Education Law §2023-a(1) and (2)(a).]

47. The tax cap, however, affects school districts differently from how it affects other non-school district local governments. This action challenges the tax cap only as it applies to school districts.

48. Under Education Law §2023-a(6), a non-school district local government can adopt a budget that increases the tax levy in excess of the tax cap if it authorizes an override of the tax cap for that year. It can achieve an override by enacting a local law with a vote of 60% of the total voting power of its governing body.

49. The voting power of governing bodies of non-school district local governments vary. A town board, for example, could be comprised of as few as three members - - a town supervisor and two town councilmen, two of whom constituting both a simple majority and a 60% supermajority.

Overwhelmingly, the most common form of town board in New York is a board with five members, consisting of a town supervisor and four town councilmen, three of whom constitute both a simple majority and a 60% supermajority. Villages are governed by a mayor and four trustees, three of whom constitute both a simple majority and a 60% supermajority. Some cities in New York, such as Auburn, have a governing body comprised of a mayor and four councilmen, three of whom constitute both a simple majority and a 60% supermajority.

50. Thus, in New York the majority of towns and villages, and some cities, can adopt a budget exceeding the tax cap with a vote that, while satisfying the supermajority requirement mathematically, is nothing more than a simple majority. Thus, the voters of most non-school district local governments, acting through their democratically elected representatives, can adopt a budget exceeding the tax cap with a simple majority vote.

51. Additionally, when a school board proposes a budget that would require a tax levy exceeding the tax cap, the ballot for such budget must include this statement:

**“Adoption of this budget requires a tax levy increase of \_\_\_\_\_ which exceeds the statutory tax levy increase limit of \_\_\_ for this school year and therefore exceeds the state tax cap and must be approved by sixty percent of the qualified voters present and voting.”** [Education Law §2023-a(6)(b).]

52. Non-school district local governments need not submit their budgets to their qualified voters, nor do their proposed budgets have to include any statement about the tax cap.

53. Prior to the effective date of the tax cap, neither non-school district local governments nor school districts were required to obtain more than a simple majority of the qualified governing board or voters voting on the budget to adopt a budget.

54. Under the tax cap, if a school board proposes a budget and it fails to obtain simple

majority approval (or the sixty percent supermajority approval in the case of a budget that exceeds the tax cap), the school district has the option of resubmitting the same or a revised budget for a second vote, or it may adopt a budget with a tax levy no greater than the tax levy that was levied for the prior school year. [Education Law §2023-a(7).]

55. Under the tax cap, if the school district resubmits the budget and it again fails to obtain a simple majority, or 60% supermajority approval in the case of a budget proposal exceeding the tap cap, the school district then must adopt a budget with a tax levy no greater than the tax levy that was levied for the prior school year. [Education Law §2023-a(8).]

56. This effectively imposes adverse consequences for a school board which proposes, but fails to pass by 60%, a budget that exceeds the tax cap. When a school board proposes a budget that would exceed the tax cap and that budget ultimately fails twice, the school board is prohibited from any increase in the tax levy.

57. Other, non-school district local governments are not subject to such adverse consequences.

58. In May 2012, the first year the tax cap applied to school district budgets, only fifty-three of the State's 678 school districts submitted budgets to their voters that proposed a tax levy above the tax cap for the 2012-2013 school year.

59. The fact that less than eight percent (8%) of the State's school districts sought to exceed the tax cap demonstrates the deterrent effect of the supermajority requirement, the statutory notice required by the tax cap law, and the adverse funding consequences that can occur where a proposed budget is defeated.

60. Not only does the tax cap place unique, onerous conditions on school districts, but

the tax cap also changed the manner in which school district contingency budgets are adopted.

61. Prior to the tax cap, a school board was itself empowered to adopt a contingency budget when the voters defeated a budget, and such contingency budget could result in a tax levy increase.

62. The tax cap's limits on local control of school funding comes at a time when there have been substantial cuts in state school aid, leaving many school districts starved of adequate funding and on the verge of educational and financial insolvency, and undermining their ability to provide school children with a sound basic education. Over the past several years, state funding for education has been as follows:

YEAR	FUNDING IN BILLIONS
2008-2009	\$21.4
2009-2010	\$21.6
2010-2011	\$20.1
2011-2012	\$19.6
2012-2013	\$20.1

*Educational Opportunity, Governance and Finance in New York*

63. Article XI §1 of the New York State Constitution provides: "The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated."

64. Under Article XI §1 of the New York State Constitution, as it has been interpreted by the Court of Appeals, the State is obligated to ensure the availability of a "sound basic education" to all its children.

65. A "sound basic education" is a "meaningful high school education" that prepares children to function productively as citizens and civic participants.

66. The opportunity to receive a sound basic education so as to function as a productive citizen should be deemed a fundamental right under Article XI §1.

67. In order to provide a sound basic education, certain educational "inputs" must be furnished, including qualified and competent teachers; schools and classrooms which provide enough light, space, heat and air, and reasonable class sizes to permit children to learn; and appropriate instrumentalities of learning, including classroom supplies, textbooks, libraries and computers.

68. The educational opportunities of school children are directly related to these educational inputs, which require adequate funding.

69. To comply with its obligation to provide a sound basic education to school children, New York has long maintained a common school system.

70. Throughout its history New York financed education with a system resting on State aid supplemented by local taxation. New York established a statewide system of support for public schools in 1795. This state aid was augmented by a local tax.

71. In 1805 the Legislature set up a fund for the support of common schools.

72. In 1812 the Legislature authorized the creation of a statewide system of common school districts.

73. The Legislature vested control of those common school districts in elected district trustees, inspectors, or town school commissioners.

74. As part of its 1812 legislation the Legislature also created a common school fund.

75. The State distributed money from the common school fund to the common school districts, which was matched by a property tax, with additional funds raised by tuition.

76. The 1812 Common School Act shaped the future of public education in New York by establishing that: (1) common schools are a state function under state control; (2) funding of public schools is a joint state-local responsibility; and (3) the school district is the primary administrative unit for public education.

77. This system of using the common school fund remained in place from 1812 through 1894.

78. In 1894, to address those areas of the state where common schools were not adequate, the state amended its Constitution to include the Education Article, as Article IX §1. This provision was renumbered as Article XI §1 during the 1938 Constitutional Convention, without any language change.

79. The right of school boards and voters in each school district to make their own decisions with regard to that district's local share of school funding, which it raises through property taxes, is enshrined in and protected by Article XI §1. This right is known as "local control."

80. This right gives local school boards and their voters the final say with regard to providing school children educational opportunities, services and facilities beyond those which are funded by the State.

81. With the exception of funding for the so-called "big five" districts (New York City, Yonkers, Syracuse, Rochester, and Buffalo), funding for each of the public school districts in New York is comprised of two major elements: funding from the state itself and funding based on taxes levied directly by a school district based on the value of taxable property within that district. The federal government also contributes, albeit for most districts Federal aid is a relatively small funding component.

82. Although state aid is wealth adjusted, this adjustment does not make up for the large variation in local wealth levels. As a result, low wealth school districts continue to spend far less per student than high wealth communities.

Local Control

83. Given the substantial local control over school district finance enshrined in the state constitution and exercised through levying taxes on real estate, school district budgets vary considerably from district to district.

84. New York's system of financing education almost inevitably results in large per student funding inequities between districts, given that property values vary from district to district.

85. This disparity is often greatest in districts where there is high poverty and a high percentage of minority students.

86. According to a 2005 New York State Education Department report ("Analysis of Local Effort in New York State School Districts"), the willingness and ability to raise funds locally to support education is essential in assuring that all children have the resources needed to achieve high academic standards.

87. According to this analysis, diminution of local tax effort in high need school districts poses a significant concern, particularly if the local tax effort is already inadequate.

88. Local control of supplemental school funding is the only rational basis that New York courts have identified for upholding the significant inequalities in the State's education financing system.



*The Decline in State Education Funding and Its Impact*

89. For many years, the state's share of school funding, on average across all districts, typically ran between 41% and 47%.

90. As of the 2011-2012 school year, the state's average share of funding dropped to approximately 39.7%, the lowest percentage since the 1992-1993 school year.

91. This average includes School Tax Relief (STAR) funding. If STAR relief is omitted, the 2011-12 State funding share was approximately 34.1%, the lowest State funding level since the 1948-49 school year.

92. Between 2008-2009 and 2011-2012, the total aid provided by the state to school districts declined by \$1.86 billion dollars, while during that same time period student enrollment in those districts remained virtually unchanged.

93. This decline in state funding occurred despite the Legislature's commitment, in Chapter 57 of the Laws of 2007, to increase education funding. This commitment was in response to the Campaign for Fiscal Equity (CFE) litigation.

94. In Chapter 57 of the Laws of 2007, the Legislature committed to increased Foundation Phase-in Aid for schools, of \$7 billion, by the 2010-2011 school year.

95. The Legislature failed to meet that mark. As of the 2012-2013 school year, the state has fallen short of its commitment by approximately \$5.4 billion.

96. Further, the shortfall does not account for the additional "gap elimination adjustment" funding reductions, made permanent in 2011.

97. The Gap Elimination Adjustment (GEA), first enacted by the Legislature in 2009 and made permanent in 2011, seeks to close the gap between the budgeted State expenditures and

revenues available to support them. In 2009-10, the \$1.5 billion Deficit Reduction Assessment (DRA) was offset through the use of federal stimulus funds. However, in 2010-11 the GEA reduced State aid to school districts by \$2.1 billion. While this reduction was partially offset by the availability of federal stimulus funds, school district losses eroded the gains made through the Foundation Aid phase-in. According to the New York State Board of Regents, the 2011-12 GEA reduced aid by \$2.6 billion, in a manner that imposed the largest per pupil spending cuts on high need and average need districts. These cuts to high and average need districts are being exacerbated by the tax cap.

98. The decline in State education funding is such that defendant Commissioner of Education has expressed publicly his concern that some of the State's school districts will face "educational insolvency" in the near future.

99. Many school districts may also be on the verge of actual financial insolvency.

100. The areas in which public schools can make further spending cuts without seriously harming educational quality are virtually nonexistent. Since 2008, New York's public schools have eliminated nearly 35,000 teaching and other staff.

*The Resulting Funding Gap According to Wealth*

101. The recent reduction and current stagnation in school funding has a disparate impact on certain school districts. While funding cuts hurt all districts, they affect some districts more adversely than others, depending upon the district's wealth.

102. In general, because the highest spending districts are the property wealthiest districts, they exert the least tax effort. Communities that desire a high level of educational services, but do not have a large tax base, must bear a disproportionately heavy tax burden in order to provide those

services. In addition, school districts serving concentrations of children from poverty backgrounds have a greater educational burden to bear, resulting in a greater need to fund programs that provide extra time and help to educate students. The tax cap makes it much harder for poor districts to raise the funds they need to provide the desired educational opportunity to schoolchildren, but leaves wealthier districts, which have more substantial tax bases, in a relatively better position to provide funding.

103. The State Education Department, the Division of the Budget and other state agencies use the “combined wealth ratio” (“CWR”) to compare the relative wealth of school districts. The CWR is a measure of relative wealth, indexing each district against the statewide average on a combination of two factors, property wealth per pupil and income wealth per pupil. The state average CWR is defined as being equivalent to 1.0. Districts with a ratio greater than 1.0 are wealthier than the state average, while districts with a ratio of less than 1.0 have below average wealth.

104. As of 2010-2011, the most recent school year for which complete data is available, the lowest decile of school districts in the state, or the least wealthy, have CWR values ranging from .147 to .358. Put another way, the property in the poorest district has 14.7% of the value of the average district. The highest decile of districts, or the most wealthy, have CWR values ranging from 2.18 to 36.25, meaning that the property in the wealthiest district is valued at 36.25% times more than average district.

105. In 2010-2011, the average amount spent per pupil by districts in the lowest decile was \$18,772. In contrast, the districts in the highest decile spent 50% more on average, or \$28,200 per student.

106. The stark disparity in funding between wealthy and non-wealthy districts is also illustrated by comparing districts according to enrollment and total expenditures. For example, in 2010-2011, the Salmon River Central School District—the least wealthy district—had an enrollment of 1471 and spent \$22,535 per student. This is contrasted with the Southhampton Union Free School District, which had an enrollment of 1573 and spent \$35,582 per student. Next, the Indian River Central School District had an enrollment of 4012 and spent \$16,935 per student, while the Scarsdale Union Free School District had an enrollment of 4724 and spent \$27,219 per student. The Friendship Central School District had an enrollment of 424 and spent \$21,984 per student, while the Montauk Union Free School District, with an enrollment of 464, spent \$37,507 per student. Finally, the Whitesville Central School District had an enrollment of 283 students and spent \$23,025, while the Shelter Island Union Free School District had 268 students and spent \$33,944 per student.

107. In terms of total spending, the comparisons are equally stark. For example, with a budget of \$67,941,270 in 2010-2011, the Indian River district was able to spend only \$16,935 per student, while the East Hampton Union Free School District had a total budget of \$61,095,744 and spent \$34,972 per student. In the Friendship Central School District, total spending was \$9,321,659, or \$21,985 per student, while the Bridgehampton Union Free School District spent \$9,739,268, or \$66,707 per student. The Brookfield Central School District spent \$5,260,869, or \$20,712 per student, while the Fire Island Union Free School District had a total budget of \$4,476,987, and spent \$93,271 per student. Finally, the Hornell Central School District spent a total of \$31,043,843, or \$15,839 per student, while the Sag Harbor Union Free School District had a total budget of \$30,337,385, and spent \$32,137 per student.

*The Resulting Funding Gap According to Poverty*

108. The gap in State funding between district and the corresponding inability to raise revenue locally is illustrated by free and reduced lunch program (FRPL) rates. According to projected data for the 2012-13 school year, the schools in the decile with the highest FRPL percentage – which includes the Elmira School District with 61% eligibility – were able to raise only an additional \$161 in taxes per student, while the decile of school districts with the lowest FRPL rate were able to raise \$677 more per student.

*The Resulting Funding Gap According to Graduation Rate*

109. As schools endeavor to increase graduation rates, they are being forced to do so with stagnant or reduced funding from the State and virtually no ability to bridge that gap locally. In 2012-13, the school districts in the decile with the lowest graduation rates, which includes Elmira School District at 63%, were able to increase local taxes by an average of only \$5 per student, while the school districts in the decile with the highest graduation rates increased the local tax levy by \$359 per student.

*The Resulting Funding Gap According to Race/Ethnic Origin*

110. Many low-wealth districts are also districts with high proportions of minority school children.

111. Many of these districts spend, per student, far below the State average, and have graduation rates far below the State average.

112. Examples of these districts are demonstrated in the following chart:

District	2012-13 Spending Per Pupil	CWR	Graduation Rate	Minority %	Eligible for FRPL
Albany CSD	\$19,505	0.709	47.8%	71%	67%
Schenectady CSD	\$15,964	0.384	52.3%	50%	72%
Poughkeepsie CSD	\$19,117	0.580	57.2%	84%	88%
Newburgh CSD	\$19,040	0.579	60.7%	70%	69%
Dunkirk CSD	\$19,805	0.404	65.2%	50%	71%
Brentwood UFSD	\$19,378	0.426	65.5%	90%	74%

*The State "Caps" its Share of Funding*

113. In addition to capping a school district's ability to levy taxes, the state also has capped state aid; in effect, school districts have been doubly capped. The tax cap limits districts' abilities to raise local funds through property taxation to make up for state aid deficiencies; meanwhile, the State also has capped state aid to those same districts.

114. Chapter 58 of the Laws of 2011 made a significant change to the Education Law's methodology for funding school districts. It specifically linked the "allowable growth" of state school aid to the growth of personal income in the state, in effect capping such aid.

115. As a result, if according to its local needs a district determines that state aid and the current level of property taxation does not sufficiently provide for the needs of its children, its only choice is to raise property taxes.

116. Despite its facial equality, the tax cap in application has a disproportionately adverse impact on the ability of poor districts to provide educational opportunity to their school children. On a comparative basis, a wealthy district can raise significant funds within the tax cap. Poorer districts can only raise a relatively smaller amount, as a tax levy yields funding proportionate to the

tax base to which it applies.

117. For example, in the current school year, the Elmira City School District levied its maximum tax levy increase, according to the tax cap, of 2.83%. Based on its property wealth, that increase yielded an additional \$124 per student. In comparison, the Great Neck Union Free School District, which is comparable in terms of size of enrollment, imposed a maximum increase, according to the tax cap, of 2.49%, yielding an additional \$713 per student – 575% more per student than Elmira.

118. Similarly, the Unadilla Valley Central School District levied its maximum tax cap increase of 2.4%, yielding \$103 more per student. In contrast, the Island Park Union Free School District, which is comparable in size of enrollment, levied its maximum tax cap increase of 1.97%, resulting in an additional \$559 per student–543% more per student than Unadilla.

119. Compounding this inequity is the state's failure to make good on its 2007 commitment to increase foundation aid. For example, as of 2012-2013, Unadilla, with a CWR of .358, is still owed \$2,845,955 in foundation aid. Elmira, with a CWR of .379, is owed \$18,745,787. Conversely, Island Park and Great Neck, with CWRs of 2.253 and 3.358, respectively, receive \$318,097 and \$1,762,568 more than the foundation aid formula requires. This is because New York utilizes a “save harmless” approach to distributing education aid. A “save harmless” approach guarantees no district receives less funding than it received during the previous budget cycle.

120. Therefore, under the tax cap, poorer districts are significantly and unequally disadvantaged in their ability to make up for the state's failure to provide adequate funds. Wealthier districts, on the other hand, retain the ability to raise significant revenue as a result of their much wealthier tax bases. This creates an inexorable cycle that prevents poorer districts from closing the

funding gap, and from providing equal educational opportunity to school children. This funding gap disproportionately disadvantages poorer school districts with respect to providing education inputs: teachers, schools, appropriate classrooms, reasonable class sizes and appropriate instrumentalities of learning.

*The 2012 School Budget Votes*

121. In light of the tax cap's passage and the cap on state aid funding, school districts across New York formulated budget proposals for the 2012-2013 school year incorporating significant cuts in staffing and programs.

122. To alleviate the need for the deepest of cuts, school boards considered proposing budgets that included increased tax levies that would exceed the tax cap. Ultimately, however, an overwhelming majority of schools did not propose such budgets. Indeed, as noted, of New York's 678 school districts, only 53 (7.8%) proposed budgets that would have exceeded the tax cap.

123. For example in May 2012, Brookhaven-Comsewogue Union Free School District, Elmira City School District, Floral Park-Bellerose Union Free School District, Highland Central School District, Mt. Sinai Union Free School District, New Paltz Central School District, Stillwater Central School District, Three Village Central School District, and Unadilla Valley Central School District all proposed budgets that would have exceeded the tax levy increase limit.

124. Although each of these districts obtained simple majority support for these proposed budgets, each failed to obtain the tax cap's 60% supermajority requirement, as follows:



DISTRICT	YES VOTES
Brookhaven-Comsewogue Union Free School District	58.8%
Elmira City School District	55%
Elmont Union Free School District	56.7%
Floral Park-Bellerose Union Free School District	50.9%
Highland Central School District	51.1%
Mt. Sinai Union Free School District	52.4%
New Paltz Central School District	59.4%
Stillwater Central School District	56.3%
Three Village Central School District	56.4%
Unadilla Valley Central School District	50.2%

125. In the absence of the tax cap's supermajority requirement, each of these proposed budgets would have been adopted but, under the tax cap, none were. Thus, as detailed below, these districts could not implement the tax levies proposed in their initial budgets.

*Brookhaven-Comsewogue Union Free School District*

126. State funding for the Brookhaven-Comsewogue Union Free School District has decreased by 7.4% since 2009-2010. Thirty-two percent (32%) of its current budget comes from State aid.

127. According to the tax cap formula, the increased tax levy limit for the Brookhaven-Comsewogue Union Free School District for the 2012-2013 school year was 2.72%.

128. The Board of Education of the Brookhaven-Comsewogue Union Free School District determined that a local tax levy increase of 4.5% would provide the appropriate funding to meet the

educational needs of the district's students for the 2012-2013 school year.

129. On May 15, 2012 voters in the Brookhaven-Comsewogue Union Free School District considered a budget with a 4.5% levy increase.

130. Even with the proposed 4.5% levy increase limit, the District's budget cut or reduced numerous educational inputs, including:

- a. six (6) secondary staff member positions;
- b. academic intervention services;
- c. upper-level art and music electives;
- d. upper-level academic electives and advanced placement classes at the high school;
- e. athletic junior varsity teams;
- f. varsity assistant coach positions;
- g. after-school and extracurricular activities, clubs and organizations in both secondary and elementary schools, including the newspaper club, literary magazine, science club at two elementary schools, and the yearbook business manager position was also eliminated;
- h. supply and material budgets for curricula and classrooms were also cut in order to reach this levy increase limit.

131. Though 58.8% of the district's voters supported the proposed Brookhaven-Comsewogue budget, it was defeated due to the failure to meet the tax cap's 60% supermajority requirement.

132. At its June 4, 2012 meeting, the Brookhaven-Comsewogue Board of Education approved of additional cuts in the amount of \$858,000 to bring the tax levy increase down to 2.72%, the amount permitted by the tax cap.

133. This required additional, deeper cuts, changes and restructuring for the 2012-2013 school year:

a. district reconfiguration from the community elementary school model to the "Princeton Plan" model, restructuring the elementary schools and resulting in increased transportation time for families, longer bus times for elementary students, and an increased need for transitional psychological services for students have a hard time with the transition to new schools;

b. a total loss of thirty-one teaching positions (10% of the district's teaching positions) including eighteen excess positions in elementary, physical education, health, art, music, science, social studies, English and technology; eight teaching positions in science, English, math, family and consumer science, and psychology were reduced to part time; and five elementary and special education positions are now vacant due to retirements, and these positions will not be filled;

c. cuts in professional development;

d. increases in K-12 class sizes;

e. even further drastic reductions in supply and material budgets for classrooms and curricula, and as a result, Brookhaven-Comsewogue teachers are forced to buy computer software and classroom materials (pencils, calculators, etc.) with budgets as little as \$100.00 for an entire class, for the entire school year;

f. reduction of health classes;

g. deeper cuts in academic intervention services;

h. loss of high school electives and advanced placement courses in foreign languages and academic core subjects;

i. loss of both high school and elementary electives in art, music, technology, and family

and consumer science, which not only deprives mainstream students of much-needed coursework to better prepare themselves for a post-secondary education, but the lack of art and music classes especially divests the district's most needy special education students, those in self-contained classrooms, of much-needed social interactions with other student role models and mainstream students in those electives;

- j. budget cuts for special education curricula and classrooms;
- k. more drastic cuts in athletic programs on the varsity and junior varsity level; and
- l. even more drastic cuts for after-school and extracurricular activities, clubs and organizations.

134. On June 19, 2012, 78% of voters supported the Brookhaven-Comsewogue budget re-vote.

Elmira City School District

135. State funding for the Elmira City School District since 2009-2010 has decreased by approximately 3%. Sixty-nine percent (69%) of its current budget comes from State aid.

136. In 2010-2011, Elmira had a .379 CWR and a 47% free and reduced price lunch eligibility rate, as well as a 23% minority student population.

137. The Board of Education of the Elmira City School District determined that a local tax levy increase of 5% would provide the appropriate funding to meet the educational needs of the district's students for the 2012-2013 school year.

138. According to the tax cap formula, the tax levy increase limit for the Elmira district for the 2012-2013 school year was 2.83%.

139. Even with the proposed 5% tax levy increase, the district's budget cut numerous

educational inputs, including:

a. Elimination of 126.5 staff members, including 7 art teachers, 10 foreign language teachers, 7 elementary teachers, 7 librarians and library staff, 14 music teachers, 14.5 physical education teachers, 12 reading teachers, 8 guidance counselors, 5 special education teachers, 17 teaching assistants, and 2 school nurses;

b. intramural sports;

c. modified tennis;

d. modified swimming; and

e. numerous stipend positions.

140. As a result of the proposed budget cuts made by the District, the following changes and restructuring have been implemented:

a. with the elimination of the art, physical education, and music teachers, elementary teachers are being required to incorporate those subjects into their general education curriculums;

b. prior to the proposed cuts, 6<sup>th</sup> grade subjects were taught by separate, certified teachers. Under the cuts, 6<sup>th</sup> grade teachers will be required to teach all core subjects, regardless of their certifications, background, or training.

141. Though 55% of the district's voters supported the proposed Elmira budget on May 15, 2012, it was defeated due to the failure to meet the tax cap's 60% supermajority requirement.

142. Ultimately, a revised budget, with an additional \$720,000 in cuts, was approved by the voters.

143. The Elmira City School District serves as an above-average example of how the tax cap perpetuates underfunding in low-wealth districts, despite the effort and willingness of local

voters to reverse that trend in the face of reduced State aid.

Elmont Union Free School District

144. State funding for the Elmont Union Free School District has decreased by 5.8% since 2009-2010 and, of its current budget, 24.2% comes from State aid.

145. The Board of Education of Elmont Union Free School District determined that a local tax levy increase of 6.87% would provide the appropriate funding to meet the educational needs of the district's students for the 2012-2013 school year.

146. According to the tax cap formula, the tax levy increase limit for the Elmont Union Free School District for the 2012-2013 school year was 1.89%.

147. Even with the proposed 6.87% tax levy increase, the Board of Education was forced to reduce its budget by \$630,945.

148. On May 15, 2012, 56.7% of the district's voters supported the Elmont budget, but it was defeated due to the failure to meet the tax cap's 60% supermajority requirement.

149. The Elmont Board of Education then voted to make \$970,959 in additional reductions to propose a second budget with a 4.9% tax levy increase. To reach this reduced levy increase, the following budget cuts had to be made by the district for the 2012-2013 school year:

- a. elimination of the District's summer school Academic Program;
- b. elimination of the District's summer school Enrichment program;
- c. deferral of needed capital improvements to school buildings, such as window replacements;
- d. deferral of equipment replacement; and
- e. reduction of supply and support services.

150. On June 19, 2012, 62.5% of voters supported the Elmont Union Free School District budget re-vote, which demanded a total of \$1,601,904 in budget reductions to meet the 4.9% levy increase limit.

Floral Park-Bellerose Union Free School District

151. State funding for the Floral Park-Bellerose Union Free School District has decreased by 3.3% since 2009-2010. Of its current budget, 11.7% comes from State aid.

152. The Board of Education of Floral Park-Bellerose Union Free School District determined that a local tax levy increase of 6.58% would provide the appropriate funding to meet the educational needs of the district's students for the 2012-2013 school year.

153. According to the tax cap formula, the tax levy increase limit for the Floral Park-Bellerose district for the 2012-2013 school year was 4.71%.

154. On May 15, 2012 voters in the Floral Park-Bellerose Free School District considered a budget with a 6.58% tax levy increase.

155. Though 50.9% of the district's voters voted for the proposed budget, it was defeated due to the failure to meet the tax cap's 60% supermajority requirement.

156. The Board of Education then proposed a revised budget, which required only a 2.65% tax levy increase, which was within the tax cap's levy limit and, therefore, did not require a supermajority vote.

157. With this reduced levy increase, the district had to reduce its budget by \$583,000, requiring further budget cuts for the 2012-2013 school year:

- a. reduction of \$100,000 in capital improvements;
- b. reduction of \$70,000 in transportation services, including the elimination of one (1)

full time bus driver position and the reduction of one (1) school bus;

- c. elimination of three (3) full time teaching positions;
- d. elimination of two (2) full time teacher aide positions; and
- e. elimination of one (1) part time nursing position.

158. On June 19, 2012, a majority of 59.0% of voters supported the Floral Park-Bellerose Union Free School District budget re-vote.

Highland Central School District

159. State funding for the Highland Central School District since 2009-2010 has decreased by 5.1%. Of its current budget, 30% comes from State aid.

160. The Board of Education of Highland Central School District determined that a local tax levy increase of 5.12% would provide the appropriate funding to meet the educational needs of the district's students for the 2012-2013 school year.

161. According to the tax cap formula, the tax levy increase limit for the Highland Central School District for the 2012-2013 school year was only .87%.

162. On May 15, 2012 voters in the Highland Central School District considered a budget with a 5.12% tax levy increase.

163. Though 51.1% of the district's voters supported the proposed budget, it was defeated due to the failure to meet the tax cap's 60% supermajority requirement.

164. The Highland Board of Education then proposed a reduced tax levy increase limit of 2% for a second budget. Because this budget still exceeded Highland's .87% tax levy increase limit, a 60% supermajority vote was still required.

165. As a result of the budget cuts made by the district to achieve the 2% levy increase



limit, budget reductions and restructuring were implemented for the 2012-2013 school year:

- a. elimination of one (1) full time social worker position;
- b. attrition of one (1) full time foreign language position;
- c. attrition of one (1) full time English position;
- d. attrition of one (1) full time speech pathology position; and
- e. reduction of one (1) full time mathematics position.

166. On June 19, 2012 60.4% of voters supported the Highland Central School District budget re-vote.

Mt. Sinai Union Free School District

167. State funding for the Mt. Sinai Union Free School District since 2009-2010 has decreased by approximately 4.9%. Of its current budget, 26% comes from State aid.

168. The Board of Education of Mt. Sinai Union Free School District determined that a local tax levy increase limit of 4.76% would provide the appropriate funding to meet the educational needs of the district's students for the 2012-2013 school year.

169. According to the tax cap formula, the tax levy increase limit for the Mt. Sinai Union Free School District for the 2012-2013 school year was 2.13%.

170. Even with the 4.76% levy increase limit, the district's proposed budget made the following reductions in spending and educational inputs:

- a. cut \$221,530 from pupil curriculum instruction and supervision services and programs;
- b. cut \$16,710 from all pupil activities; and
- c. cut additional programs such as second middle school athletic teams; approving the

4.76% levy increase limit would allow for restoration of all elementary clubs and activities, middle school clubs and activities, all middle school teams (excluding second middle school athletic teams), and restoration of varsity bowling, varsity gymnastics, JV golf, JV wrestling and JV cheerleading teams.

171. Though 52.4% of the district's voters supported the proposed budget, but nonetheless it was defeated due to the failure to meet the tax cap's 60% supermajority requirement.

172. At its May 31, 2012 meeting, the Mt. Sinai Board of Education approved of additional cuts in the amount of \$735,000 to bring the tax levy increase down to the tax cap's 2.13% limit. As a result of the budget cuts made by the district, the above-mentioned reductions were made in addition to the following deeper cuts, changes and restructuring of educational inputs for the 2012-2013 school year:

a. overall reduction of funding to athletics, co-curricular activities and clubs by 15%;

b. further reductions in funding, including: \$11,935 for junior varsity boys' golf; \$25,583 for varsity gymnastics; \$562 for varsity swimming; \$11,679 for junior varsity girls' tennis; \$18,607 for varsity bowling; and \$6,054 for middle school gymnastics; \$10,000 reduction in funding for athletic equipment for all athletic teams; \$38,695 reduction in staff athletic salaries; and a reduction of \$43,500 of funding for athletic supplies and materials;

c. only academic clubs and performing activities were fully funded for the 2012-2013 school year, whereas all other middle and high school clubs and activities were given drastically reduced budgets for their programs, leading to reductions in student activity and the clubs' duration;

173. On June 19, 2012, 66.9% of voters supported budget re-vote.

New Paltz Central School District

174. State funding for the New Paltz Central School District since 2009-2010 has decreased by 4.2%. Of its current budget, 24.8% comes from State aid.

175. The Board of Education of New Paltz Central School District determined that a local tax levy increase of 4.4% would provide the appropriate funding to meet the educational needs of the district's students for the 2012-2013 school year.

176. According to the tax cap formula, the tax levy increase limit for the New Paltz district for the 2012-2013 school year was 3.4%.

177. Even with the proposed 4.4% tax levy increase, the district's proposed budget cut or reduced numerous educational inputs, include:

a. Twenty-three staff members, including 2 fifth and sixth grade teachers; part-time elementary art, music and physical education teachers; 1 middle school seventh and eighth grade teacher; 2.4 high school teachers; an elementary library media specialist; a part-time school psychologist; an occupational therapist; a special education teaching assistant; 2 monitors; 4 teacher aides; and a school nurse;

b. elementary school foreign language instruction;

c. junior varsity sports; and

d. extracurricular clubs, including drama club, art club, Students Against Drunk Driving, literary magazine, and poetry club.

178. Though 59.4% of the districts voters supported the proposed budget, it was defeated due to the failure to meet the tax cap's 60% supermajority requirement.

179. At its May 30, 2012 meeting, the New Paltz Board of Education proposed additional

cuts, in the amount of \$340,000, to bring the tax levy increase limit down to the tax cap's 3.4% tax levy increase limit. Those additional cuts include:

- a. a behavioral intervention specialist position;
- b. summer school help center and guidance services;
- c. alternate education placements, out of school suspension education, and special education placement tuition; and
- d. all-county band and chorus.

180. On June 19, 2012, 65% of voters in the New Paltz District approved the revised budget.

*Stillwater Central School District*

181. State funding for the Stillwater Central School District since 2009-2010 has decreased by 4.1%. Of its current budget, 45.9% consists of State aid.

182. In 2010-2011, Stillwater had a .661 CWR and a 17% free and reduced price lunch eligibility rate.

183. The Board of Education of Stillwater Central School District determined that a local tax levy increase limit of 3.08% would provide the appropriate funding to meet the educational needs of the district's students for the 2012-2013 school year.

184. According to the tax cap formula, the tax levy increase limit for the Stillwater district for the 2012-2013 school year was -4.1%.

185. Because Stillwater's "cap" is negative, any increase in taxes above the 2011-2012 level would require a 60% supermajority approval.

186. Even with the proposed 3.08% tax levy increase limit, the District's budget cut or

reduced numerous educational inputs, including:

- a. one special education teacher;
- b. one middle school teacher;
- c. one elementary counseling position;
- d. elementary summer school;
- e. Middle School Newbury Book Club; and
- f. requiring students to pay tuition for "University in the High School" classes.

187. Though 56.3% of the District's voters supported the proposed budget, it was defeated due to the failure to meet the tax cap's 60% supermajority requirement.

188. Stillwater serves as an above-average example of how the tax cap perpetuates underfunding in low-wealth districts, despite the willingness of the Board of Education and of local voters to reverse that trend in the face of stagnated or reduced State aid.

#### Three Village Central School District

189. State funding for the Three Village Central School District since 2009-2010 has decreased by approximately 3.3%. Of its current budget, 19.7% comes from State aid.

190. The Board of Education of Three Village Central School District determined that a local tax levy increase limit of 4.48% would provide the appropriate funding to meet the educational needs of the district's students for the 2012-2013 school year.

191. According to the tax cap formula, the tax levy increase limit for the Three Village Central School District for the 2012-2013 school year was 2.19%.

192. Even with the 4.48% proposed levy increase, the District cut programs, increased class sizes, eliminated 85.3 positions, including the reduction of 38.5 full time equivalent (FTE)

teaching positions and 46.8 other positions, including 3 administrators, 20 monitors and 10.5 teaching assistants:

a. At the P.J. Gelinas Jr. High School: 5 FTE staff reductions in the tenure areas of English, foreign language, mathematics, science, social studies, art, family and consumer science (FACS), business, physical education, and music; larger class sizes for the courses of general music, music lessons, chorus, physical education, social studies, science, mathematics, Italian, Spanish; and the electives of earth smart, studio art, media, and international food were eliminated; the district also reduced staff for co-curricular activities;

b. At the R.C. Murphy Jr. High School: 7.7 FTE staff reductions in the tenure areas of English, foreign language, mathematics, science, social studies, art, business, health, physical education, and music; large class sizes for the courses of English, French, Spanish, mathematics, science, social studies, art, health, and physical education; and the earth smart elective was eliminated;

c. At the Ward Melville High School: 9.4 FTE staff reductions in the tenure areas of English, foreign language, mathematics, science, social studies, art, FACS, health, music, physical education, technology, business, and reading; the district also reduced staff for PM school, FOCUS program for the science curriculum; elimination of technology courses "Wood Tech I" and "Know Your Car," elimination of yearbook and reduction of art electives, reduction of FACS electives "Gourmet Foods" and "Child Psychology"; increase in class sizes for English, French, Spanish, Economics, health, physical education, and larger lesson groups for music;

d. At the Elementary schools: 9.9 FTE staff reductions in the tenure areas of kindergarten-grade 6, art, health, music, physical education, special education and literacy;

elimination of sections of art, health, music, music composition, physical education and special education; and reduction of teacher support and professional development from the Literacy Coordinator;

193. Though 56.74% of the district's voters supported the proposed budget, it was defeated due to the failure to meet the tax cap's 60% supermajority requirement.

194. At its May 29, 2012 meeting, the Three Village Board of Education proposed additional cuts in the amount of \$1.9 million to bring the tax levy limit down to 2.99%. As a result of the budget cuts made by the district, the above-mentioned reductions were made in addition to the following deeper cuts, changes and restructuring that will be implemented for the 2012-2013 school year:

a. the additional reduction of 23.7 positions, bringing the total number of positions eliminated and reduced for the 2012-2013 school year to 109 FTE positions, 45.2 of which were teaching positions and 63.8 of which were other positions;

b. more courses were subject to class size increases; and

c. further reductions in technology, special education, extracurricular and summer work programs.

195. On June 19, 2012, 68.7% of voters supported the budget re-vote.

Unadilla Valley Central School District

196. State funding for the Unadilla Valley Central School District since 2009-2010 has decreased by 2.5%. Of its current budget, 72% comes from State aid.

197. In 2010-2011, Unadilla had a .358 CWR and had a 48% free and reduced price lunch eligibility rate.

198. The Board of Education of Unadilla Central School District determined that a local tax levy increase of 4.25% would provide the appropriate funding to meet the educational needs of the district's students for the 2012-2013 school year.

199. According to the tax cap formula, the tax levy increase limit for the Unadilla Valley district for the 2012-2013 school year was 2.4%.

200. Even with the proposed 4.25% tax levy increase limit, the District was forced to eliminate a part time BOCES Transportation Coordinator position.

201. Though 50.2% of the District's voters supported the proposed budget, it was defeated due to the failure to meet the tax cap's 60% supermajority requirement.

202. The Board of Education then proposed cuts in the amount of \$440,608 to bring the proposed budget within the tax cap's tax levy increase limit of 2.4%. As a result of the budget cuts made by the District, the above-mentioned reduction was made in addition to the following deeper cuts, changes and restructuring for the 2012-2013 school year:

- a. elimination of a part time BOCES itinerant physical education teaching position;
- b. elimination of the summer swimming program;
- c. elimination in participation in the Regional BOCES Summer School for students who failed courses during the regular school year;
- d. elimination of district funds to provide summer school programs, including all transportation;
- e. elimination of summer school for all students, with the exception of seniors graduating in June which, in combination with the loss of the summer swimming program, affected 200 students;



f. elimination of district funds for afterschool programs for students with academic needs in the Response to Intervention/Academic Intervention Services (RTI/AIS) programs and for Enrichment programs;

g. elimination of all transportation for afterschool programs for RTI/AIS and Enrichment programs;

h. reduction of the District's fund balance by \$361,684;

i. attrition of one (1) full time remedial reading teacher position.

203. On June 19, 2012, 73.8% of voters supported budget re-vote.

204. Unadilla Valley serves as an above-average example of how the tax cap perpetuates underfunding in low-wealth districts, despite the effort and willingness of local voters to reverse that trend in the face of stagnated state funding.

205. Due to the tax cap, none of the school districts listed in paragraph 124 were able to adopt the budget its school board deemed necessary to provide the educational opportunity its students needed, despite the majority support of the District's qualified voters.

206. Under the tax cap, without any rational or compelling basis, plaintiffs have been denied basic and fundamental constitutional rights and protections under the New York and United States Constitutions.

207. No prior application for the relief sought in this action has been made in any other forum.

AS AND FOR A FIRST CAUSE OF ACTION:

THE TAX CAP VIOLATES THE RIGHTS OF SCHOOL CHILDREN UNDER THE EDUCATION ARTICLE AND DEPRIVES SCHOOL CHILDREN OF EQUAL PROTECTION OF LAW.

208. Article XI §1 obligates the state to provide a sound basic education to all the school children of this state.

209. The opportunity to receive a sound basic education so as to function as a productive citizen should, under Article XI §1, be deemed a fundamental right.

210. Article XI §1 also protects the right of school boards, parents and all other local taxpayers to make basic decisions on funding and operating their public schools, and to provide enhanced educational opportunities to school children, beyond a minimum sound basic education, if they choose to do so.

211. School children have a fundamental right to learn and benefit from any enhanced educational opportunities that are provided through local control of education. This is a liberty interest protected by the fourteenth amendment to the United States Constitution.

212. As education is currently funded in New York, some school districts spend substantially more on education, per student, than other districts.

213. For instance, the wealthiest 10% of school districts in the State spend an average of 50% more per student than the poorest 10% of school districts spend.

214. This inequality in funding limits education "inputs" and opportunities for students in certain districts, and particularly in districts with high percentages of poor, minority and special needs students.

215. This inequality is only permissible, under Article XI, §1, and under the equal protection guarantees of the State and United States Constitutions, to the extent that school boards and voters are able to address their school children's educational needs through their local budgets.

216. The tax cap unconstitutionally deprives school children of their rights under the Education Article, and under the equal protection provisions of the State and United States Constitution, by arbitrarily and unequally limiting the right and ability of local school boards and school district taxpayers to address existing funding inequalities, and to provide enhanced educational opportunities, if they choose to do so.

217. The purpose and effect of the tax cap is to deprive school districts and district taxpayers of local control of education funding by:

a. arbitrarily setting a general cap on property tax increases, tied to the lesser of the rate of inflation or 2%, effectively locking in and expanding existing funding disparities between districts based on the wealth of those district;

b. deterring local school boards and taxpayers from even seeking increases in excess of the tax cap, by requiring a notice to be placed on school budget ballots negatively highlighting any effort to exceed the cap;

c. by imposing an arbitrary requirement, unique to school budgets, mandating 60% supermajority voter approval of an increased levy exceeding the cap; and

d. by imposing adverse budget consequences on school districts which try to exceed the cap and fail.

218. The tax cap thus has the apparent purpose and effect of reducing or limiting local

school district funding of education, and has the apparent purpose and effect of limiting local control over such funding.

219. The tax cap also has the apparent purpose and effect of perpetuating and expanding existing disparities and inequalities in educational opportunities for school children, based on the taxable wealth of their school district.

220. Prior to the tax cap's implementation, the courts determined that the only rational basis for the state's unequal education financing system was a local school district's right to raise additional funds. This rational basis no longer exists under the tax cap.

221. Thus, under the tax cap, school children are effectively and arbitrarily classified and denied educational opportunity based on the relative, taxable wealth of their school district, because poorer districts are effectively and arbitrarily deprived of the opportunity to raise education funding to the same degree as wealthier districts.

222. There is no compelling or rational basis for this classification, which has particularly adverse effects on poor and minority school children.

AS AND FOR A SECOND CAUSE OF ACTION:

THE TAX CAP VIOLATES THE EDUCATION  
ARTICLE BY IMPAIRING THE RIGHT OF PLAINTIFF  
TAXPAYERS, AND OF SCHOOL BOARDS, TO SUBSTANTIALLY  
CONTROL THEIR SCHOOL DISTRICT FINANCES.

223. Under the Education Article, voters in each school district have the right to make their

own decisions with regard to their school district's local share of school funding, which it raises through property taxes, and with respect to the educational opportunities they wish to provide to school children.

224. The intent and practical effect of the tax cap is to arbitrarily impair local control of education funding decisions.

225. The tax cap thus limits the right of local school boards and voters in all school districts, and especially in poorer districts, to address deficiencies in the educational inputs provided to students, to eliminate or reduce funding disparities, or to enhance the educational opportunities they wish to provide their school children, all in violation of Article XI §1 of the State Constitution.

AS AND FOR A THIRD CAUSE OF ACTION:

THE TAX CAP VIOLATES THE PLAINTIFFS' RIGHT TO  
EQUAL PROTECTION OF LAW, BECAUSE IT ARBITRARILY  
AND DISCRIMINATORILY IMPAIRS THE RIGHT OF LOCAL  
SCHOOL BOARDS AND THEIR VOTERS  
TO PROVIDE EDUCATIONAL FUNDING.

226. Local school boards and voters have the right, through taxation, to provide funding for the education of their school children. The right to provide an education to one's children is a liberty right protected by the fourteenth amendment to the United State Constitution.

227. The tax cap, without any rational or compelling basis, imposes an arbitrary limit on tax levy increases for education funding.

228. Within this arbitrary limit, voters in districts with greater taxable wealth are able to raise substantially more revenue and provide substantially enhanced educational opportunities for

school children. Conversely, voters in low wealth districts are able to raise substantially less revenue and provide less educational opportunity for school children.

229. Effectively, the tax cap arbitrarily classifies and limits the ability of districts and voters to raise revenue and provide educational opportunity according to their existing taxable wealth, causing a discriminatory, adverse impact on the poorest districts and school children.

230. This arbitrary classification impairs the right of school boards and voters to provide educational opportunity to school children, and violates their right to equal protection of law.

AS AND FOR A FOURTH CAUSE OF ACTION:

THE TAX CAP DENIES EQUAL PROTECTION  
BY TREATING SCHOOL BOARDS, SCHOOL DISTRICT  
VOTERS, AND EDUCATION FUNDING UNEQUALLY  
COMPARED WITH OTHER, LOCAL GOVERNMENT VOTERS  
AND NON-EDUCATION FUNDING PROPOSALS.

231. Under Article XI §1, parents of school children and other school district voters have the right, through their local school district, to provide educational opportunities to their school children. This right is also a protected “liberty” interest within the meaning of the fourteenth amendment.

232. The tax cap, without rational or compelling basis, arbitrarily and unequally classifies school boards and school district voters with respect to other, non-school district local government voters.

233. Under the tax cap, a non-school district local government can exceed the cap with a vote of its governing body, but a school district cannot exceed the cap unless it secures a 60% supermajority of the qualified voters in the district voting on the budget.

234. The voting power of governing bodies of non-school district local governments vary. A town board for example could be comprised of as few as 3 members, a town supervisor and two town councilmen, two of whom constitute a 60% supermajority and a simple majority. Overwhelmingly, the most common form of town board in New York is a board with five members, a town supervisor and four town councilmen, three of whom constitute a 60% supermajority and a simple majority. Villages are governed by a mayor and four trustees. Some cities in New York, including Auburn, have a governing body comprised of a mayor and four councilmen. Thus, the overwhelming majority of towns, villages, and some cities in New York can adopt a budget that exceeds the tax cap with a vote that satisfies the supermajority requirement mathematically, but in reality is nothing more than a mere simple majority.

235. Accordingly, while the voters of many towns, villages and some cities, acting through their elected representatives, can adopt a budget exceeding the tax cap with a simple majority vote, the voters of a school district cannot do so. Rather, they must achieve a 60% supermajority to adopt a budget exceeding the tax cap.

236. The tax cap's 60% supermajority requirement, in practice, does not apply equally to all local government budgets. Rather, it arbitrarily and discriminatorily places a higher hurdle on school district voters who favor providing enhanced educational opportunities to school children, all in violation of plaintiffs' rights to equal protection of law under the New York and United States Constitutions.

AS AND FOR A FIFTH CAUSE OF ACTION:

THE TAX CAP VIOLATES PLAINTIFFS'  
FUNDAMENTAL RIGHT TO VOTE

237. The right to vote is a fundamental liberty right under both the United States and New York State Constitutions.

238. Plaintiffs' voting power is protected by Article II, §1 of the New York Constitution and by the First Amendment to the United States and Article 1, §8 of the New York State Constitutions.

239. Under the tax cap, a school district voter who casts a ballot favoring increased education funding that exceeds the tax cap has only two-thirds the voting power of a voter who votes against the proposal.

240. This undemocratically dilutes the voting power of voters who favor a proposal to exceed the tax cap and violates the principle of one person, one vote.

241. As such, without any rational or compelling basis, the tax cap's supermajority requirement unconstitutionally impairs the voting rights of voters who favor a proposal to exceed the tax cap.

AS AND FOR A SIXTH CAUSE OF ACTION:

THE TAX CAP VIOLATES PLAINTIFFS' RIGHT  
TO EQUAL PROTECTION OF LAW BY DIMINISHING  
THEIR VOTING POWER BASED ON THEIR DESIRE  
TO INCREASE SCHOOL FUNDING

242. Under the tax cap, where a school district proposes a budget that exceeds the tax cap, a 60% supermajority vote is required.



243. The 60% supermajority requirement, without any rational or compelling basis, thus classifies and treats unequally voters according to those who vote for and would benefit from increased education funding, as contrasted with those who are opposed to increased education funding.

244. The votes of those who favor exceeding the tax cap are given 2/3 the weight of those who oppose exceeding the cap.

245. This arbitrary classification and disparate treatment deprives voters of their protected liberty interest in voting, based on their viewpoint, all in violation of their right to equal protection of law.

AS AND FOR A SEVENTH CAUSE OF ACTION:

THE TAX CAP VIOLATES THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION AND OF ARTICLE I, §8 OF THE NEW YORK CONSTITUTION BECAUSE IT IMPAIRS SCHOOL DISTRICT VOTERS' RIGHTS TO FREE EXPRESSION BY DIMINISHING THEIR VOTING POWER AND IMPOSING ADVERSE CONSEQUENCES ON THEM IF THEY FAIL TO GAIN SUPERMAJORITY SUPPORT

246. Favoring increased local school funding is a political viewpoint protected by the First Amendment and by Article 1 §8 of New York's Constitution.

247. Voting is free expression protected by the First Amendment to the United States Constitution and by Article 1 §8 of the New York Constitution.

248. When a school district proposes a cap-exceeding budget, the tax cap requires the school district to include in the ballot for such budget the following statement: "Adoption of this budget requires a tax levy increase of \_\_\_\_\_ which exceeds the statutory tax levy increase limit of \_\_\_\_\_ for this school year and therefore exceeds the state tax cap and must be approved by sixty

percent of the qualified voters present and voting.”

249. This notice is not viewpoint neutral and is meant to discourage voters from approving a proposal to exceed the tax cap.

250. Under the tax cap, if a school district proposes a budget and it fails to obtain the approval of the voters, that school district has the option of resubmitting the same or a revised budget for a second vote or it may adopt a budget with a tax levy no greater than the tax that was levied for the prior school year.

251. Under the tax cap, if the school district resubmits the budget and it again fails to obtain approval, the school district then must adopt a budget with a tax levy no greater than the tax that was levied for the prior school year.

252. This effectively raised the stakes for a school district to propose a budget that would exceed the cap, by imposing adverse funding consequences where a supermajority is not achieved.

253. This "poison pill" is intended to and has the effect of discouraging attempts to exceed the tax cap.

254. The tax cap thus places a chilling effect on the free expression and voting rights of taxpayers who wish to increase school funding above the tax cap.

255. The tax cap, without rational or compelling basis, is thus specifically designed to discourage and interfere with voters' constitutional rights to free expression, by imposing adverse consequences on voters who favor school aid increases if they fail to obtain a supermajority of voters to agree with them.

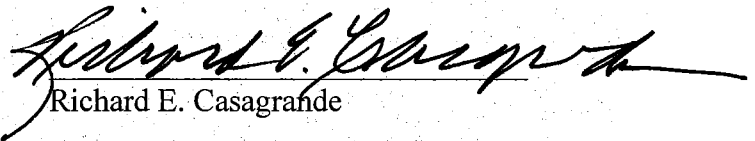
WHEREFORE, plaintiffs requests that a judgment be made as follows:

1. Declaring the tax cap, as it applies to public school district to be null and void, as it violates the New York and United States Constitutions;
2. Permanently enjoining the continuation of the tax cap, as it applies to school districts;
3. Awarding plaintiffs' costs, disbursements and attorneys' fees; and
4. Providing plaintiffs such other and further relief as this Court may deem just and proper.

Dated: Latham, New York  
February 19, 2013

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Tel. No. (518) 213-6000

By:

  
Richard E. Casagrande

105813/CWA1141

STATE OF NEW YORK  
SUPREME COURT COUNTY OF ALBANY

NEW YORK STATE UNITED TEACHERS by its President  
RICHARD C. IANNUZZI, NAOMI AVERY, SETH COHEN,  
TIMOTHY MICHAEL EHLERS, KATHLEEN TOBIN FLUSSER,  
MICHAEL LILLIS, ROBERT PEARL as a Parent, Individually and  
on behalf of his children KYLEIGH PEARL, MICAELA PEARL,  
AVA PEARL and NOLAN PEARL, BRIAN PICKFORD,  
HILARY STRONG as a Parent, Individually and on behalf  
of her child KEVIN STRONG,

VERIFICATION

Plaintiffs,

-against-

The STATE OF NEW YORK, ANDREW M. CUOMO  
as Governor of the State of New York, THOMAS P.  
DiNAPOLI as Comptroller of the State of New York,  
and JOHN B. KING, JR., as Commissioner of the  
New York State Education Department.

Defendants.


STATE OF NEW YORK             )  
  ) ss.:  
COUNTY OF ALBANY            )

RICHARD C. IANNUZZI, being duly sworn, deposes and says that he is President of New York State United Teachers, one of the plaintiffs in the above proceeding, deponent has read the foregoing Summons and Verified Complaint and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes them to be true.

The source of deponent's knowledge as to matters stated upon information and belief is a review of documents, conversations with members of NYSUT who are employed by various New York State school districts, with research staff employed with NYSUT, and with counsel for plaintiffs.

  
RICHARD C. IANNUZZI

Sworn to before me this  
19<sup>th</sup> day of February, 2013.

  
Notary Public - State of New York  
105912/cwa1141

JOAN NAUMAN  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01NA6010484  
Qualified in Albany County  
Commission Expires July 20, 2014