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**VIA ELECTRONIC FILING**

Mr. Blake A. Hawthorne, Clerk  
Supreme Court of Texas  
201 West 14th Street, Room 104  
Austin, Texas 78701

Re: *Williams v. Tex. Taxpayer & Student Fairness Coal.*  
No. 14-0776

Dear Mr. Hawthorne:

This letter responds to the post-submission letter brief filed by the ISD Plaintiffs on September 16, 2015. Please distribute it to the Court.

TO THE HONORABLE SUPREME COURT OF TEXAS:

The arguments in the ISD Plaintiffs' post-submission letter brief do not support an affirmance of the judgment below. Their attempts to dissect and dismiss the Legislature's recent increases to education funding do not resolve the ripeness problem caused by those changes. Their assertions about new test scores omit information necessary to understand what those scores mean. Finally, their prediction that an affirmance will spur the same course of events that followed *West Orange-Cove II* is as speculative as it is naïve, and it fails to diminish the prospect of future litigation that the ISD Plaintiffs themselves raised at oral argument.

## **I. The ISD Plaintiffs' Attempt to Discount Recent Funding Increases Does Not Resolve the Ripeness Problem.**

The ISD Plaintiffs first challenge the Governor's description of the 2015 increases in education funding in his amicus brief. ISD Plaintiffs' Post-Sub. Ltr. 2-10. According to the ISD Plaintiffs, the additional funding is "not meaningful" because (1) factors such as enrollment growth, inflation, and the earmarking of some funds for specific purposes (*e.g.*, school facilities, teacher-retirement contributions) dampen that funding's impact; (2) the new appropriation "does not fully restore the 2011 funding cuts"; and (3) the additional funding results in part from increased local tax collections due to rising property values. *Id.* The State Defendants already have addressed the 2015 funding increases in their reply. State Reply Br. 17-21. Still, three brief responses are in order.

*First*, it bears repeating that funding levels are not the proper metric for the ISD Plaintiffs' claims. Whether the additional funding is truly "meaningful" depends on whether and how it affects student achievement and school districts' discretion over their tax rates—effects that cannot be known one month into the fiscal year in which that funding became available. *See* State Br. 67-70; State Reply Br. 20, 37, 98-99, 105-06. The only claim for which one arguably could estimate the new funding's impact now is the financial-efficiency claim. *See* LEGISLATIVE BUDGET BOARD, FOUNDATION SCHOOL PROGRAM ESTIMATES, 84TH LEGISLATURE, REGULAR SESSION 2015, at 2-3 (2015), [http://www.lbb.state.tx.us/Document/Teams/Public\\_Education/Models\\_84497\\_and\\_95129\\_Summaries.pdf](http://www.lbb.state.tx.us/Document/Teams/Public_Education/Models_84497_and_95129_Summaries.pdf) (estimating the weighted average change in total M&O revenue for school districts classified by wealth). The ISD Plaintiffs do not attempt that analysis in their letter, presumably because they cannot agree among themselves whether the system was or is constitutionally efficient.

*Second*, the ISD Plaintiffs' attack on the Governor's description of recent funding increases rests largely on factors that were also present in 2013, when many of them conceded that additional funding and other legislative changes warranted further trial proceedings. Then, as now,

school districts had to grapple with enrollment growth, inflation, and the dedication of some education funds for specific purposes. *See* ISD Plaintiffs' Post-Sub. Ltr. 3-6. They also contended, as they still do, that the Legislature had not restored funding to pre-2012 levels. *See id.* at 7-9. Yet, the Calhoun Plaintiffs supported reopening the evidence following the 2013 funding increases and legislative changes because "the Supreme Court's ultimate decision must be based on the system as it currently stands, not as it once existed." 5.CR.231. The Fort Bend ISD Plaintiffs agreed that the evidence should be re-opened to "examine any impact (or lack thereof)" of the legislative changes "to avoid a probable remand by the Supreme Court." 5.CR.326-27. While those parties may now attempt to downplay the recent legislation as less "meaningful" than the prior reforms to the system, there is no principled basis for saying that those sorts of changes required a new evidentiary hearing in 2013 but pose no ripeness concerns in 2015.

*Third*, the complaint that funding increases represent more growth in local revenue than state revenue is irrelevant. The State Defendants already have explained that the Constitution does not require any particular ratio of state to local revenue in education funding. State Br. 177-79; State Reply Br. 103-04. In any event, excluding the federal component of education program funding, the ratio of local to state revenue for the current fiscal year is 57 to 43 percent. *See* TEX. EDUC. AGENCY, COMPARISON OF AGENCY BUDGET BY MAJOR COMPONENT: FISCAL YEARS 2012 - 2017 (July 20, 2015), <http://tea.texas.gov/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=25769822448&libID=25769822547>.<sup>1</sup> That was the same ratio before the Court in *Edgewood IV*, in which the Court held that the system was constitutionally suitable and did not impose a state property tax. *Edgewood ISD v. Meno*, 917 S.W.2d 717, 735 (Tex. 1995).

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<sup>1</sup> As this document shows, total education program funding for FY 2016 is \$53,304,625,258, of which \$4,991,046,408 comes from federal funding, \$27,480,360,279 from local property taxes, and the remainder from state revenue sources.

## **II. The ISD Plaintiffs Distort the Meaning of Recent Test Scores by Omitting Relevant Information.**

The ISD Plaintiffs also claim that two sets of exam scores released after oral argument bolster their position that the public-education system is inadequate. ISD Plaintiffs' Post-Sub. Ltr. 10-14. In doing so, however, they omit critical information necessary to understand those results. In context, the new testing data shows a system continuing to work toward its goals.

The ISD Plaintiffs first compare passing rates on the Spring 2015 STAAR mathematics tests for Grades 3-8 to those from Spring 2014. *Id.* at 10-11. They stress that, although TEA lowered the percentages of correct answers needed to pass most of the 2015 exams, passing rates improved only in Grades 3, 4, and 7, while remaining the same in Grade 5 and declining in Grades 6 and 8. *Id.*

The ISD Plaintiffs fail to mention that there was a significant change in the level of math standards taught to those students from the previous school year. Jeffrey Weiss, *Texas Math STAAR Results Unexpectedly About Same as Prior Years*, DALL. MORNING NEWS (Sept. 22, 2015), <http://www.dallasnews.com/news/education/headlines/20150922-texas-math-staar-results-unexpectedly-about-same-as-prior-years.ece>; see also 262.RR(Ex. 10773).1 (showing plan to implement revised K-8 math TEKS in 2014-2015). For example, over half of the material taught in Grade 6 in 2014-2015 had been taught in Grade 7 the year before. Weiss, *supra*. And around 40 percent of the 2014-2015 Grade 3 standards were new to the curriculum, while “the TEKS in higher grades assumed that students [had already] covered that material.” *Id.*

As with all revisions to the TEKS, it was necessary to revise the STAAR exams to test those new standards. *Id.* TEA adjusted the passing scores so that, to the extent possible, “the passing marks for the new exams [would] represent the same level of proficiency for the new standards as the old passing marks did for the old standards.” *Id.*

Given that context, the ISD Plaintiffs are wrong to suggest that “the passing bar was lowered,” and to imply that therefore the improvement in three grades’ passing rates is not meaningful while the decline in two others is all the more troubling. *See* ISD Plaintiffs’ Post-Sub. Ltr. 11. To the contrary, in light of the widespread agreement that students would be “unusually challenged” by the revised math standards and STAAR exams, the results exceeded expectations. *Weiss, supra.* Indeed, the superintendent of Alief ISD (a plaintiff in this case) remarked that “our kids performed a lot better than a lot of people expected them to perform,” even as he questioned the year-to-year comparison. *Id.* (quoting HD Chambers). That students in four out of six grade levels maintained or improved passing rates on “dramatically” changed math tests shows that the system continues to make progress.

The ISD Plaintiffs also note that the gap between Texas’s average SAT scores and the national average grew in 2015. ISD Plaintiffs’ Post-Sub. Ltr. 11-13. Again, though, they omit relevant information from their discussion.

The decline in Texas’s SAT scores in 2014-2015 likely reflects the extraordinary increase in the number of Texas public-school students taking the test over the previous school year. Participation rates jumped 9.2% from 2013-2014, whereas the increase from 2012-2013 to 2013-2014 was less than half of that (4.37%). *See* Tex. Educ. Agency, Press Release, SAT, AP Exam Participation Rates in Texas Continue to Climb (Sept. 3, 2015), [http://tea.texas.gov/About\\_TEA/News\\_and\\_Multimedia/Press\\_Releases/2015/SAT,\\_A\\_P\\_exam\\_participation\\_rates\\_in\\_Texas\\_continue\\_to\\_climb/](http://tea.texas.gov/About_TEA/News_and_Multimedia/Press_Releases/2015/SAT,_A_P_exam_participation_rates_in_Texas_continue_to_climb/). The evidence at trial showed that, as SAT participation rates rise, average scores tend to fall, because higher rates represent a wider range of academic backgrounds and motivation among test-takers. 35.RR.126; 273.RR(Ex. 11269).18. For example, the newspaper article cited by the ISD Plaintiffs notes that two dozen Texas school districts (including Dallas and Fort Worth) now make *all* upperclassmen take the SAT, regardless of whether they are applying to institutions that require it or are planning to attend college at all. Terrence Stutz, *SAT Scores in Texas Plummet as More Students Take Exam*, DALL. MORNING NEWS (Sept. 3, 2015), <http://www.dallasnews.com/news/education/>

headlines/20150903-sat-scores-in-texas-plummet-as-more-students-take-exam.ece. And while the inverse relationship between participation and average scores “begins to stabilize between 40 and 60 percent participation,” the lowest average scores appear when participation rates exceed 60%. 273.RR(Ex. 11269).18-19. With last year’s surge in SAT participation, 62.3% of Texas public-school students in the Class of 2015 took the exam. Tex. Educ. Agency, SAT, AP Participation Rates, *supra*.

The ISD Plaintiffs further assert that a comparison between Texas’s and California’s 2015 SAT performance is “[p]articularly telling” in part because “the demographics of the two states are comparable.” ISD Plaintiffs’ Post-Sub. Ltr. 13. In fact, there is a significant difference in the states’ demographics that helps explain the performance gap. While the ISD Plaintiffs note that the states’ percentages of Hispanic and white students are similar, *id.*, they fail to mention that 20% of California’s SAT takers in the Class of 2015 were classified as “Asian, Asian American, or Pacific Islander,” compared to just 7% in Texas, *compare* COLLEGE BOARD, 2015 COLLEGE BOUND SENIORS, STATE PROFILE REPORT: CALIFORNIA 3 (2015), [https://secure-media.collegeboard.org/digitalServices/pdf/sat/CA\\_15\\_03\\_03\\_01.pdf](https://secure-media.collegeboard.org/digitalServices/pdf/sat/CA_15_03_03_01.pdf), *with* COLLEGE BOARD, 2015 COLLEGE BOUND SENIORS, STATE PROFILE REPORT: TEXAS 3 (2015), [https://secure-media.collegeboard.org/digitalServices/pdf/sat/TX\\_15\\_03\\_03\\_01.pdf](https://secure-media.collegeboard.org/digitalServices/pdf/sat/TX_15_03_03_01.pdf). That group outscored all other ethnic groups on each section of the SAT in Texas, and ranked first or second on each section in California. *Compare* STATE PROFILE REPORT: TEXAS, *supra*, at 3, *with* STATE PROFILE REPORT: CALIFORNIA, *supra*, at 3.

Of course, the ISD Plaintiffs also neglect entirely the positive news for Texas students that the College Board reported in conjunction with the SAT results. Performance on AP exams “increased for all groups” over the previous school year, “with African-American students increasing by 12.4 percent and Hispanic students increasing by 10.3 percent.” Tex. Educ. Agency, SAT, AP Participation Rates, *supra*. That sort of progress belies the ISD Plaintiffs’ argument that the system is not constitutionally adequate.

### **III. The ISD Plaintiffs' Assurances That an Affirmance Will Trigger the Same Events That Followed *West Orange-Cove II* Do Not Establish Redressability and, in Any Event, Are Unfounded.**

Finally, the ISD Plaintiffs contend that their requested declaratory and injunctive relief satisfies the redressability prong of standing. ISD Plaintiffs' Post-Sub. Ltr. 14. They argue that, because "the same relief" in *West Orange-Cove II* prompted new legislation and an agreement by all parties to dissolve the injunction, "[t]here is no reason to believe that this case would be any different." *Id.* But the ISD Plaintiffs' mere expectation of a similar legislative response does not support redressability. And there is ample reason to believe that an affirmance would *not* bring about a smooth reprise of the events that followed *West Orange-Cove II*.

The State Defendants already have shown that redressability is lacking when complete relief depends on a non-party reacting in a certain way to the remedy the plaintiff seeks from the courts, however reasonable or likely that anticipated reaction may appear. State Br. 61-66; State Reply Br. 9-13. The State Defendants also have explained that *West Orange-Cove II* does not establish that the relief granted in that case would fulfill the redressability requirement here, as redressability was neither raised nor addressed in that appeal. State Reply Br. 14-15.

In any event, the ISD Plaintiffs can claim that they are requesting "the same relief" provided in *West Orange-Cove II* only by describing that relief in the most general terms: "a declaration of unconstitutionality and an injunction prohibiting the continued operation of the unconstitutional system." ISD Plaintiffs' Post-Sub. Ltr. 14. In fact, the ISD Plaintiffs are asking the Court to affirm more extensive declaratory relief than that ultimately approved in *West Orange-Cove II*, most of which is unlikely to produce the tidy denouement that the ISD Plaintiffs are promising.

The only declaratory relief affirmed in *West Orange-Cove II* was a judgment that the school-finance system effectively imposed an unconstitutional state property tax because school districts lacked

meaningful discretion in setting tax rates. *Neeley v. W. Orange-Cove Consol. ISD*, 176 S.W.3d 746, 794-98, 800 (Tex. 2005) (“*WOC II*”) (affirming Final Judgment, *W. Orange-Cove Consol. ISD v. Neeley*, No. GV-100528, 2004 WL 5714938, at \*1 (250th Dist. Ct.—Travis County Nov. 30, 2004)). The Legislature’s ensuing changes to the system patently restored a range of taxing discretion, *see* State Br. 26-27, 34-35, which inexorably led the parties to agree that the injunction should be dissolved.

While the ISD Plaintiffs seek affirmance of a similar state-property-tax judgment here, they also are asking the Court to approve declarations that the system is neither adequate nor suitable. *See* 12.CR.194-96. Those sorts of violations would not lend themselves to simple or obvious legislative solutions. Indeed, the Court has recognized that the Legislature may pursue diverse paths to fulfill those mandates. *WOC II*, 176 S.W.3d at 790 (noting that a hypothetical adequacy violation could be avoided through “increased funding, improved efficiencies, or better methods of education”), 793 (“The Legislature may well find many ways of improving the efficiency and adequacy of public education—ways not urged by the parties to this case—that do not involve increased funding.”).

Perhaps for that reason, the ISD Plaintiffs stated at oral argument that, as they “envision the remedy playing out,” the State will bear the burden to explain to the district court how subsequent legislation cured any constitutional defects. And, if one of those violations is inadequacy, the district court will evaluate whether the revised system provides “sufficient revenues” and “enables districts to do the bread and butter things, like early childhood, like afterschool and extended day [programs.]” If the district court is not satisfied, presumably that cycle will repeat under the “continuing jurisdiction” that the court reserved for itself. *See* 12.CR.208. The ISD Plaintiffs may now be trying to walk back that answer in Part III of their letter. But given their singular focus on funding, and the parties’ fundamental disagreement over the relationship between money and education outcomes, a consensual end to a case involving adequacy and suitability violations seems far less likely than further litigation over the Legislature’s response—including another appeal to this Court.

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**CERTIFICATE OF SERVICE**

On October 7, 2015, the foregoing letter was served by File & Serve

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