



Respectfully submitted,

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**CERTIFICATE OF SERVICE**

This is to certify that on January 25, 2013, a true and correct copy of the foregoing was served upon the following counsel of record *via* e-mail, pursuant to the agreement of the parties, and in compliance with the Texas Rules of Civil Procedure and the Texas Local Rules:

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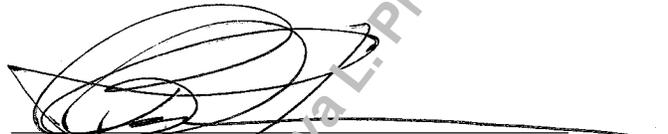
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CAUSE NO. D-1-GN-11-003130

TEXAS TAXPAYER & STUDENT ) IN THE DISTRICT COURT  
FAIRNESS COALITION, ET )  
AL., )

VS. )

MICHAEL WILLIAMS, ET AL., ) OF TRAVIS COUNTY, TEXAS

CONSOLIDATED CASE: )

MARIO FLORES, ET AL., )

VS. )

MICHAEL WILLIAMS, )  
ET AL., ) 200TH JUDICIAL DISTRICT

\*\*\*\*\*

ORAL DEPOSITION OF  
THOMAS ANDERSON SAGE  
JANUARY 18, 2013

\*\*\*\*\*

ORAL DEPOSITION OF THOMAS ANDERSON SAGE, produced as  
a witness at the instance of the Defendant(s), and duly  
sworn, was taken in the above-styled and numbered cause on  
Friday, January 18, 2013, from 10:13 a.m. to 12:13 p.m.,  
before Tamara K. Chapman, CSR in and for the State of  
Texas, reported by machine shorthand, at the offices of  
Schulman, Lopez & Hoffer, LLP, 517 Soledad Street, San  
Antonio, Texas, pursuant to the Texas Rules of Civil  
Procedure and the provisions stated on the record or  
attached hereto.

A P P E A R A N C E S

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COMMISSIONER SCOTT, IN HIS OFFICIAL CAPACITY; TEA;  
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1                                    THOMAS ANDERSON SAGE,  
2    having been first duly sworn, testified as follows:

3                                    EXAMINATION

4    BY MS. DALBERG:

5                    Q.    Mr. Sage, I introduced myself to you earlier, but  
6    just for purposes of the record my name is Shelley  
7    Dalberg. I am lead counsel in the school finance trial  
8    that is currently ongoing, and I want to ask you some  
9    questions about your report and the anticipated testimony  
10   that you are going to give during the trial in a couple of  
11   weeks.

12                    So with that, if you'll please state your full  
13   name for the record.

14                    A.    Thomas Anderson Sage.

15                    Q.    And where are you currently employed?

16                    A.    I'm a partner at Andrews Kurth. It's a law firm  
17   in Houston, Texas.

18                    Q.    How long have you been there?

19                    A.    I've been at Andrews Kurth for two and a half  
20   years now.

21                    Q.    Where were you before that?

22                    A.    I was with a law firm called Vinson & Elkins.  
23   Also in Houston, Texas.

24                    Q.    Let me take a step back. In your job at Andrews  
25   Kurth, what kind of law do you practice?

1           A. I practice -- I'm a bond lawyer, and as a bond  
2 lawyer we handle tax exempt financings for local  
3 government school districts as well as charter schools,  
4 501(c)(3) entities like charter schools.

5           Q. Okay. And did you do also that type of law at  
6 Vinson & Elkins?

7           A. It's all I've ever done.

8           Q. And have you had any other jobs other than  
9 serving as an attorney, a bond attorney?

10          A. Since law school?

11          Q. Yes. I'm sorry.

12          A. Okay. No.

13          Q. Do you supervise any lawyers currently in your  
14 office?

15          A. Yes.

16          Q. How many?

17          A. The public finance group at Andrews Kurth is  
18 approximately 22 lawyers, I think, now. I'm a partner in  
19 that group and so have supervisory relationship with a  
20 significant number of them. My direct team, with  
21 paralegals and associates, is probably -- I'm sorry, I  
22 haven't counted -- one, two -- eight people.

23          Q. And they do all the same public finance?

24          A. They do different parts of this, yes. I mean,  
25 there are tax lawyers that handle tax issues, there are

1 real estate lawyers that handle real estate issues.

2 Q. You stated earlier that you represent -- or you  
3 have represented charter schools in this public finance  
4 area. About how many charter school clients have you had  
5 or currently have?

6 A. I think we have handled transactions for  
7 approximately 40 charter schools.

8 Q. Is that since you started at Andrews Kurth?

9 A. Uh-huh. I'm sorry. In my career.

10 Q. Oh, in your career.

11 A. Let me make sure I'm clear.

12 Q. And just so you know, I did talk to people over  
13 at TEA, and Lisa Dawn-Fisher thinks very highly of you.

14 A. Thank you very much.

15 Q. You're welcome.

16 A. That's very kind.

17 Q. Sure.

18 Now, have you been retained by the Charter School  
19 Association in this case?

20 A. Yes, I have.

21 Q. And do you have like a contract with them?

22 A. I have an engagement with them, yes.

23 Q. And are they paying you?

24 A. Yes.

25 Q. How much are they paying you? Or how are they

1 paying you, is it hourly or something else?

2 A. They're paying hourly with a cap.

3 Q. And what's the hourly rate?

4 A. I'm embarrassed to say my hourly rate. It's like  
5 \$630 an hour.

6 Q. I'm sure you deserve it.

7 And what's the cap?

8 A. \$5,000.

9 (Discussion off the record.)

10 Q. (BY MS. DALBERG) Are any of your charter school  
11 clients members of the Charter School Association that's a  
12 plaintiff in this lawsuit?

13 A. I think almost all of them are, but I'm not sure.  
14 I know several of them are.

15 Q. And just quickly, when were you retained or when  
16 did you sign the engagement with --

17 A. The engagement letter, I think we signed it last  
18 week.

19 (Exhibit 1373 was marked.)

20 Q. (BY MS. DALBERG) I'm going to hand you what's  
21 been marked as Exhibit 1373. Do you recognize that  
22 document?

23 A. Yes, I do.

24 Q. And can you, just for purposes of the record,  
25 tell us what that is.

1           A. This is the report I prepared in connection with  
2 my testimony.

3           Q. Okay. And before we get to that, I want to ask  
4 you -- I'm going to hand you what's been marked as  
5 Exhibit 1374.

6                               (Exhibit 1374 was marked.)

7           Q. (BY MS. DALBERG) And do you recognize that  
8 document?

9           A. Yes.

10          Q. And if you'll turn to -- well, just for purposes  
11 of the record, will you please identify what that is?

12          A. This is the "Plaintiff's Designation of Expected  
13 Trial Experts and Witnesses."

14          Q. And if you turn to Page 2 of the document,  
15 Paragraph A(4), do you see your name right there?

16          A. Yes, I do.

17          Q. Okay. Could you just quickly read that paragraph  
18 to yourself, and then I'm going to ask you some questions  
19 about it.

20                               (Witness reviews document.)

21          A. Okay.

22          Q. (BY MS. DALBERG) In the first sentence here it  
23 says, "Mr. Sage may testify regarding the facilities'  
24 needs of Texas open-enrollment charter schools, including  
25 but not limited to, the costs and methods of facility

1 acquisition."

2 And I want to focus on the first part of that  
3 sentence that says that you may testify regarding facility  
4 needs of Texas open-enrollment charter schools.

5 A. Uh-huh.

6 Q. Can you tell me what it is -- what -- and just  
7 generally, what testimony you may offer about facilities'  
8 needs of open-enrollment charter schools in Texas?

9 A. And I'm not -- I'm honestly not trying to avoid  
10 the question. I haven't prepared any testimony on that.  
11 I'm prepared to answer questions and offer information on  
12 it. I don't --

13 Q. Okay.

14 A. I don't know how else to answer your question.

15 Q. Well, so let me ask you this. Have you done an  
16 analysis on the facilities' needs of open enrollment  
17 charters in Texas?

18 A. I have not done any formal analysis of all the  
19 facilities' needs for the charter schools in Texas.

20 Q. Have you done an informal analysis?

21 A. In my experience in visiting the schools that  
22 have handled financings and schools that have not been  
23 able to do financings, I've seen -- I've probably visited  
24 almost half the schools -- charter schools in Texas, and  
25 have assessed their facilities as far as what the naked

1 eye would give me. I've not done a mechanical or  
2 structural analysis of their facilities.

3 Q. Based on just your visual evaluation of --

4 A. Sure.

5 Q. -- the facilities, what is your overall  
6 impression of open-enrollment charter school facilities'  
7 needs?

8 A. Of the needs or of the facilities themselves?

9 Q. Well, of the facilities.

10 A. The facilities -- generally, when you visit a  
11 school prior to them being able to handle financing, like  
12 any start-up business they're finding space that --  
13 whatever space they can get ahold of. And you see them in  
14 what would be kindly described as suboptimal facilities.  
15 They're in strip malls, they're in barns, they're in metal  
16 buildings, they're in old doctors' offices, they're in,  
17 you know, apartment buildings that have been -- where  
18 holes have been knocked in the walls so people could move  
19 between classrooms.

20 So they don't -- I'm trying to think -- I'm  
21 hesitant to use the word "ever." I cannot recall ever  
22 visiting a school prior to the initial financing and the  
23 school looked like a school. They don't look like  
24 schools.

25 Q. In looking at any of these schools that don't

1 look like schools --

2 A. Sure.

3 Q. -- do they appear to have any structural  
4 problems?

5 A. Some of them do. I mean, some of them are  
6 obvious even to me, you know, kind of swaying ceiling and  
7 you kind of see, you know, poor ventilation, you're kind  
8 of -- in them, it's hot in the summer, it's cold in the  
9 winter. The poor light. I mean, you're in a building  
10 that was intended to be, for instance, like a grocery  
11 store. Grocery stores don't have any windows. So you  
12 have a lot of just unusual settings for them. So, yeah, I  
13 mean -- are the -- you know, are we dodging pieces of the  
14 ceiling that are falling on our head, no, but they're not  
15 nice places.

16 Q. And have you -- you said you're not dodging  
17 anything falling on people's heads. Have you observed  
18 anything that you would deem unsafe?

19 A. No.

20 Q. And do you know if open-enrollment charter  
21 schools are required to comply with any either -- well,  
22 let's start with state regulations in terms of their  
23 school facility?

24 A. I think they're required to comply with certain  
25 space regulation, the regulations on space, the size of

1 each classroom based on student population, how much space  
2 per student, there are requirements that the State puts on  
3 school districts and charter schools. That's, I think,  
4 the only thing the State requires.

5 Q. What about any local requirements, local  
6 ordinances or anything else?

7 A. Under local ordinances they have to comply with  
8 whatever they may be to obtain a certificate of occupancy,  
9 and they're different in each city. Compliance with the  
10 fire code, building codes, other things like that.

11 Q. Have you -- and I understand that you didn't do  
12 any formal analysis. I would assume that that would  
13 include not looking at the facilities' needs of the  
14 charter schools and comparing those to any facilities'  
15 needs of the school districts.

16 MR. SCHULMAN: Objection to form.

17 Tom, I haven't told you about this, but  
18 that's just a formal objection. You can answer the  
19 question.

20 A. Okay. Can you clarify it? I mean, and I'm --  
21 what I'm -- I mean -- okay. Yeah.

22 Q. (BY MS. DALBERG) If you want to help me ask  
23 it --

24 A. I don't understand the question.

25 Q. -- but if you don't understand.

1 A. I mean --

2 Q. Let me -- and I'll take a step back.

3 A. And let me say that school districts don't start  
4 in temporary facilities. So that's why I have a hard time  
5 answering that question.

6 Q. I totally understand that.

7 A. Okay.

8 Q. But I will represent to you that the school  
9 districts in this case are claiming that they also have  
10 inadequate funding for facilities. And part of the legal  
11 analysis in the case is what are your facilities needs,  
12 and you've got to quantify those and you got to compare  
13 those to the other people and show me how it's  
14 inequitable. Or not show me, show the Court.

15 A. Okay. I understand. I'm just trying to answer  
16 your question.

17 Q. So what I'm trying to understand is, if when you  
18 are looking at the charter school facilities needs if  
19 you've compared their needs to any of the needs or the  
20 purported needs of the school districts?

21 A. They're different. The school district's needs  
22 are generally one space and the charter school needs are  
23 both space and quality. Is that --

24 Q. Yes. But you haven't done any analysis to  
25 quantify those needs, like put a dollar number on those?

1 A. No.

2 Q. I'm going to ask you about the costs and methods  
3 here in a little while.

4 A. Sure.

5 Q. So if you'll look here in this next sentence with  
6 me -- and I know this is going to be sort of hard to --

7 A. No, go ahead.

8 Q. -- anticipate, since you already told me you  
9 don't have prepared trial presentation.

10 But it says here, "Mr. Sage may further testify  
11 about issues within his area of expertise."

12 Can I fairly assume that the areas of expertise  
13 that you're only going to talk about in trial is charter  
14 school facilities funding and facilities needs and  
15 essentially funding and the costs of acquiring funding for  
16 the school?

17 A. I'm trying to think if there is anything that  
18 would be outside that universe of things to talk about.

19 Probably within -- yes, within that as well as  
20 kind of the inequities that you mentioned earlier --

21 Q. So --

22 A. -- related to that issue, yes --

23 Q. Inequities between the charter schools and the  
24 school districts?

25 A. Probably the inequities between there as well as

1 just general lack of access to capital. Right.

2 Q. For charters?

3 A. That means for the facilities for the charter  
4 schools, yes.

5 Q. Okay.

6 A. Sorry.

7 Q. And the inequities that that creates?

8 A. Correct.

9 Q. When it says here your areas of expertise, and it  
10 says as reflected in your résumé and writings, I don't  
11 have a copy of your résumé. But are there any particular  
12 writings that you're going to use as either evidence in  
13 trial or that you plan to talk about?

14 A. Let me think about that. The only writings I  
15 would think that would be relevant would be, for instance,  
16 presentation materials I put together for conferences and  
17 things like that, but I don't have any published materials  
18 that I would provide. I don't have any.

19 Q. So if we look at what's been marked as, I think  
20 it was, Exhibit 1373 --

21 A. Yes, the report?

22 Q. -- your report.

23 A. Yes.

24 Q. Yeah. Are you the sole author of that?

25 A. No. Counsel assisted me in writing this.

1 Q. Okay. Mr. Schulman, counsel?

2 A. His associate.

3 Q. Joe Hoffer?

4 A. Allen.

5 MR. SCHULMAN: Keller.

6 A. Allen Keller. I'm sorry.

7 Q. (BY MS. DALBERG) Did you write any of it?

8 A. Yes. I heavily edited and wrote it. We  
9 interviewed and put it together, and I reviewed it several  
10 times, commented heavily upon it. I leaned on him mostly  
11 for format. I honestly didn't know how this was supposed  
12 to be laid out.

13 Q. Okay. I understand. So he interviewed you and  
14 then put something together and then you edited it and  
15 filled it out?

16 A. And rewrote large parts of it and things like  
17 that, yes.

18 Q. And what is your understanding of Mr. Keller's  
19 role in this case?

20 A. He's an associate at Schulman, Lopez & Hoffer.  
21 That's all I know.

22 Q. Have you reviewed any other expert reports in  
23 this case?

24 A. No.

25 Q. Okay. Are you going to offer any opinions about

1 their testimony or their report?

2 A. I don't think so, no.

3 MS. DALBERG: Mr. Schulman, can I get an  
4 agreement from you on the record that if that's going to  
5 change that you'll let me know?

6 MR. SCHULMAN: I'll tell you right now that  
7 I'm going to have him review Mr. Strohmeier's report.  
8 Strohmeier's the architect that speaks to the cost of  
9 building schools in three metropolitan areas. It's a very  
10 short report. And you already did a deposition on him.  
11 Tom doesn't even know that, that I was going to ask him to  
12 look at that.

13 THE WITNESS: No, I didn't.

14 MR. SCHULMAN: But that's it.

15 MS. DALBERG: Okay. Well, we may have an  
16 objection to that because we can't depose him on what his  
17 opinions are about that particular report today, but we  
18 can't do anything about it now.

19 MR. SCHULMAN: I can show it to him. It's  
20 so short. If we take a break in a few minutes, he could  
21 look at it quickly and then you could ask him questions.

22 THE WITNESS: I'll be happy to do that.

23 MS. DALBERG: Okay. We'll get back to that  
24 in a minute.

25 Q. (BY MS. DALBERG) With respect to facilities,

1 have you reviewed any reports or research regarding the --  
2 any affect on facilities on student learning?

3 A. I've been to a number of conferences and heard  
4 presentations on it. I'm trying to think of any specific  
5 report that I've read regarding that. I have visited with  
6 a number of architects and gone through presentations on  
7 that topic dealing with student learning, school  
8 administration. Honestly, in high schools, how passing  
9 periods work and being able to move kids quietly and  
10 efficiently from class to class, kind of the various  
11 different schematics that people have for student  
12 learning, whether it's in pods or traditional kind of  
13 hallway schools and things like that, so, yeah, I've been  
14 exposed to that.

15 Q. Okay. Do you consider yourself an expert in that  
16 particular area?

17 A. No.

18 Q. And you haven't done any research yourself --

19 A. No.

20 Q. -- to make yourself familiar with that kind of --  
21 those facts or anything like that?

22 A. (Witness nods.)

23 Q. Are you aware of any charter school in Texas that  
24 is unable to educate its students because of its  
25 facilities?

1 A. That it's unable to educate the student, no.

2 MR. SCHULMAN: Excuse me just a second.

3 Objection to form.

4 Now you can go ahead and answer.

5 A. No, not unable to educate their students.

6 Q. (BY MS. DALBERG) Okay. And so you haven't done  
7 any analysis of the performance of the kids like on  
8 standardized tests or anything like that in the charter  
9 schools?

10 A. No, I have not done a study.

11 Q. Okay. And what about the facilities affect on  
12 teachers, are you aware of any teachers in the charter  
13 school system that are unable to deliver education to any  
14 students in charter schools because of facilities?

15 A. I'm not sure how to answer that question. Can I  
16 expound on it?

17 Q. Yeah.

18 A. In that if they were unable, they would have been  
19 fired. So, I mean, I don't know how --

20 Q. That's what you think.

21 A. Okay.

22 Q. In the real world, maybe.

23 A. But the -- but, no, I mean, the teachers who are  
24 there are teaching in the circumstances that they've been  
25 handed.

1 Q. Okay. Do you think that a student's race would  
2 affect the way an educational facility would be built?

3 A. I hope not.

4 Q. Do you think that a student's economic status  
5 would affect the way an educational facility is built?

6 A. No.

7 Q. What about do you believe that whether a child  
8 speaks English fluently or not would affect the way a  
9 charter school is constructed?

10 A. In one case, yes, but it was to accommodate it.  
11 They had a dual language program and they would -- and  
12 half the kids got English half the day and then they'd  
13 switch. All the kids got English and Spanish, and so they  
14 built the facility to accommodate that program. That's  
15 the only thing that I know, but it was intended to further  
16 the program. It's Amigos Por Vida in Houston, and they  
17 have -- all the kids are taught in a dual language  
18 setting.

19 Q. So that was a special circumstance?

20 A. Uh-huh.

21 Q. But generally speaking --

22 A. No.

23 Q. -- whether the kids speaks English or Spanish --

24 A. Yes.

25 Q. -- they can go to school in the same building?

1           Okay. In your work with charter schools, have  
2 you ever essentially gotten in with an applicant for a  
3 charter school and worked with them to prepare their  
4 application?

5           A. No.

6           Q. Do you know whether your clients, when they enter  
7 into the charter agreement with the State, if they know or  
8 understand that there will be no separate facilities  
9 funding, state facilities funding other than the --  
10 essentially the block grant that they receive from the  
11 State?

12                       MR. SCHULMAN: Objection to form.

13           A. I -- the clients that I've worked with who've  
14 reached the point of being able to do a financing, I  
15 assume they know what they're getting into, but I don't  
16 know. I wasn't there.

17           Q. (BY MS. DALBERG) That's why I struggled with  
18 that question a little bit.

19                       Would you expect them to know that when they  
20 entered that agreement with the State?

21           A. I would hope so.

22           Q. Do you know how the State funds charter schools?

23           A. Yes.

24           Q. Can you tell me what your understanding or  
25 knowledge is of how the State funds charter schools?

1 A. Do I have to go into the formula?

2 Q. No.

3 A. Thank you.

4 The State funds charter schools --

5 (Discussion off the record.)

6 A. The State funds charter schools on a per-pupil  
7 basis, or a weighted ADA basis, and they're funded under a  
8 number of programs, both the foundation school funding as  
9 well as various other funding mechanisms for special ed,  
10 for books, for federal funding that comes through the  
11 State, for free and reduced lunch. I probably already  
12 said textbook money. But all this is distilled to a  
13 per-pupil amount. And depending on each charter school  
14 situation, with their student population, with, you know,  
15 whether they're handling a disproportionate number of  
16 special needs students or any of those things, it reduces  
17 to a number, and that number is how they are funded, per  
18 pupil.

19 Q. (BY MS. DALBERG) Okay. And you understand that  
20 that's all -- I'm not saying that's wrong, but do you  
21 understand that they get an average of a certain basic  
22 allotment that the districts have that they start with and  
23 then those are all additional add-ons?

24 A. I think that was one or two legislatures ago.  
25 It's based upon the Travis County or the Austin ISD kind

1 of average.

2 Q. Yes.

3 A. Yes.

4 Q. Okay. Are you going to offer any opinions in  
5 this case about how that State funding is somehow -- that  
6 the charters receive is inequitable in relation to what  
7 the school districts receive?

8 A. As far as the nonfacilities funding?

9 Q. Yes. Just the total --

10 A. I don't think I've been asked to talk about that.

11 Q. Okay. Now, can you -- I'm going ask you to be  
12 creative here for a minute, if you can. I know you are a  
13 lawyer. I'm kidding.

14 Can you think of any reason why the legislature  
15 would choose to fund charters the way that it does?

16 MR. SCHULMAN: Objection to form.

17 A. I don't know why the legislature does a lot of  
18 things.

19 I think that charters are new, and I think that  
20 when they started in '95, all they had to use is ISD  
21 funding formulas and it was distilled from there. And  
22 like anything, once you start with a baseline, most  
23 adjustments are from that baseline versus going back and  
24 kind of reinventing the entire situation.

25 Q. (BY MS. DALBERG) Okay.

1 A. That's my best guess.

2 Q. Okay. Do you think it would have anything to do  
3 with the fact that a charter doesn't have a tax base?

4 A. The original formulas?

5 Q. Uh-huh.

6 A. No, because the original formulas didn't account  
7 for the fact that charters don't have a tax base.

8 Q. The 1995 formulas?

9 A. Yeah. I mean, the original formulas were based  
10 on what states formally -- what ISDs normally receive from  
11 the state. But it ignored the fact that ISDs have the  
12 ability to levy taxes in addition -- in addition to that  
13 funding.

14 Q. Right.

15 A. So, no, they didn't -- there was no accounting  
16 for -- for the ability or the lack of the ability to levy  
17 taxes.

18 Q. So when they went to this average basic allotment  
19 and added the weights to that, do you think that that took  
20 into account the fact that they didn't have a tax base?  
21 When I say "they" I mean --

22 A. I think it tried to, and like I said, that's  
23 getting into, you know, the core funding mechanism for  
24 schools, and I think there have been attempts to do so.  
25 But -- I mean, the \$1.50 tax rate was a lot to -- was a

1 big gap to close. Now it's \$1.04.

2 MR. SCHULMAN: Compressed.

3 THE WITNESS: Compressed.

4 MR. SCHULMAN: Well, a \$1.17.

5 THE WITNESS: Well, if you add the election.

6 So, yeah, I mean, that's...

7 Q. (BY MS. DALBERG) Okay. So what types of funds,  
8 other than State funds, are available to charters?

9 A. Some of them do fundraising. Really, that's --  
10 the two sources of funding are State funding with the  
11 federal monies mixed in and fundraising.

12 Q. And so when we get into fundraising, what are --  
13 can you list for me like categories of fundraising, the  
14 different like -- I mean, I'm assuming we could go all the  
15 way from bake sale to huge --

16 A. The Gates Foundation.

17 Q. -- investments from venture capitalists. If you  
18 can sort of categorize those for me.

19 A. First of all, there are no huge investments from  
20 venture capitalists.

21 Q. Well --

22 A. But they do run the gamut from bake sales to car  
23 washes all the way to, you know, meetings with the Gates  
24 Foundation, the Dell Foundation and LISC and other  
25 national kind of philanthropic foundations that provide

1 funding. And I should say there are very, very few  
2 schools that access the big foundations. The vast  
3 majority is bake sales and car washes and --

4 Q. Okay. And so you say the vast majority is bake  
5 sales and car washes, can you tell me any of -- well, can  
6 you give me some examples of some of the larger  
7 philanthropic donations that have been made to any charter  
8 schools that you're aware of?

9 A. Sure. Recently, I think it was in the paper,  
10 Uplift received a grant of \$10 million, \$20 million, I'm  
11 trying to recall, for -- in kind of the Race to the Top  
12 grant that they received. It was actually a federal grant  
13 that they received, and I think it was public schools in  
14 the Valley.

15 Other philanthropic efforts, the Gates Foundation  
16 has given money to KIP and YES, and Uplift and IDEA.  
17 Those schools, I would say, KIP, YES, IDEA and Uplift, do  
18 the most fundraising in that -- or do a lot of fundraising  
19 in that area. I'm not aware of anyone else that does.

20 Q. Why do you think that is?

21 A. I don't know. I think their board and their  
22 approach has attracted these national foundations, whether  
23 by gaining national notoriety for their academic  
24 performance, for being kind of leaders in the charter  
25 school effort that they garner a lot of attention and,

1 therefore, attract a lot of fundraising.

2 Q. Okay. And those are sort of the -- I don't know  
3 a whole lot about charter schools, but of those four that  
4 you mentioned, I actually am aware of those, so I'm  
5 assuming that those are the sort of bigger, more  
6 successful charter schools, at least in Texas?

7 A. They are successful, but they are not the  
8 biggest.

9 Q. What's the biggest? Do you know?

10 A. Probably Harmony, Harmony Schools or Responsive  
11 Education Solutions are probably the biggest in Texas.  
12 Student population, probably Harmony. I'd have to check.  
13 Campuses, Responsive Education, no question. I think they  
14 have 50-some-odd campuses. They have a lot of campuses.  
15 And Harmony Schools is pushing 25, 30,000 student. So,  
16 yeah.

17 Q. Would you agree with me that over the last, let's  
18 say, 10 or 15 years, that the charter movement in Texas is  
19 growing?

20 A. It is growing.

21 Q. Okay. Do you think it's going to continue to  
22 grow or there will be more demand for charter schooling?

23 A. I hope so.

24 Q. Are you aware of any state statute, whether it  
25 relates to education or transportation or infrastructure

1 or anything, that allows the State to provide seed money  
2 to a corporation?

3 A. To a corporation?

4 Q. Uh-huh.

5 A. There are some economic development grants that  
6 are administered through the State, economic development  
7 program through the Governor's office. I know of them,  
8 but not specifically about them.

9 Q. Okay. Can you think of anything else where the  
10 State basically becomes an investor in a business?

11 MR. SCHULMAN: Objection to form.

12 A. There have been some attempts. I'm trying to  
13 think of one that was successful. For instance, the toll  
14 road efforts, kind of privatizing some of the state  
15 highways that did not work out. I can't think of any  
16 others where the State was an investor. I'm trying to  
17 think if there were any of those wind projects out in West  
18 Texas or anything like that. No, I don't think so, that I  
19 know of.

20 Q. (BY MS. DALBERG) That's fine. I'm not checking  
21 you. I don't know either.

22 Are you aware of any instances where -- and,  
23 again, this is in any area of the state, where the State  
24 of Texas would either purchase or lease a property for a  
25 private business to use?

1 A. State? I don't think I can think of a case.

2 Q. And would you agree with me that a -- and I think  
3 you set this out earlier, that we basically have two pots  
4 of money for the charter schools. We have the state and  
5 federal money and the fundraising, right?

6 A. Yes.

7 Q. And would you agree with me that the per pupil  
8 state money that they receive, that the charter schools  
9 receive, is the most regular source of funding that the  
10 charters can rely on from year over year?

11 A. Yes.

12 Q. And so would you agree with me that when a -- an  
13 applicant for a charter comes to the State of Texas and  
14 has only a projected enrollment versus any kind of actual  
15 enrollment, that it would be reasonable for the State to  
16 not -- not to give them either a grant or a loan or  
17 something to purchase a facility for projected students?

18 MR. SCHULMAN: Objection to form.

19 A. As far as what's reasonable for the State, I  
20 think that it's -- in granting -- it's kind of a question  
21 of what the State contemplates in granting the charter.  
22 And if in granting the charter they expect a school to  
23 start and perform, I think it would be reasonable to -- to  
24 provide some funding, especially given the protections in  
25 Chapter 12 for the state funding and the ongoing interest

1 the State has in the facilities, kind of an unperfected,  
2 unrecorded property lien on the facilities, that it would  
3 not be unreasonable to provide some start-up money.

4 Q. (BY MS. DALBERG) That doesn't really answer my  
5 question.

6 A. Okay. I'm sorry.

7 Q. That's okay.

8 It may not be unreasonable to provide start-up  
9 money, but assuming the State were in the business of  
10 providing seed money to a small business, it would also be  
11 reasonable to deny that funding, wouldn't it, if they  
12 didn't have any customer base.

13 MR. SCHULMAN: Objection to form.

14 A. I think that it would be reasonable for them to  
15 evaluate the investment, yeah.

16 Q. (BY MS. DALBERG) Just like any bank or --

17 A. Any investment.

18 Q. -- anybody. Okay.

19 I am going to hand you what's been marked as  
20 Exhibits 1375, 1376 and 1377 and 1379.

21 (Exhibits 1375, 1376, 1377 and 1379 were  
22 marked.)

23 A. Okay. I read these all the time.

24 Q. (BY MS. DALBERG) So what I'm going to ask you to  
25 do is, I want you to give me a lesson in --

1 A. Sure.

2 Q. First, tell me what those are and then -- just  
3 generally, and then, if you can, show me how you used  
4 those in preparing your report. If you did.

5 A. Okay. What we have --

6 Q. Let me stop you -- hold on a second. Let me stop  
7 you. When you do refer to a specific document, if you'll  
8 just make sure you put the exhibit number for the court  
9 reporter and for whoever else decides to look at this  
10 later.

11 A. Okay. Exhibit 1375 is the closing memorandum for  
12 the Ser Ninos Charter School 2012 bond transaction with  
13 the final numbers attached.

14 I'll try to take them in order.

15 1376 are the final numbers for Deer Park  
16 Independent School District financing that priced two days  
17 ago.

18 1377 is the -- are the numbers and the final  
19 pricing numbers for Wayside Schools, Series 2012 bonds.  
20 And that pricing closed in December of 2012.

21 And the Exhibit 1379 are the final numbers for  
22 the A.W. Brown 2012 bonds that priced and closed in early  
23 fall of 2012, October 11th, 2012.

24 These -- when bonds are issued -- when bonds are  
25 taken to the market and the underwriters price them, they

1 have brokers and their brokers desk, and they call their  
2 customer base and they say, "Hey, would you like to buy  
3 some Wayside Schools bonds? Here's where the school is,  
4 he's the prospectus, here's everything we know."

5 And you, as an investor, say, "Yeah, I think I'd  
6 like to buy those. I'll buy them at X interest rate, at  
7 5 percent" --

8 Q. Right.

9 A. -- "6 percent," whatever the percentage is. And  
10 that broker tries to sell all the bonds to the world --

11 Q. Okay.

12 A. -- all the investors in the world. And there is  
13 a pushing -- and between the school and our role as their  
14 counsel as well as a consultant that's involved, called a  
15 financial advisor, who is an investment banker who  
16 represents the school negotiating with the underwriter who  
17 is interacting with the world of investors, we work out  
18 what the terms of the ultimate financing are, the  
19 financial terms of the transaction.

20 Q. Okay.

21 A. The rest of the legal terms and the covenants and  
22 everything else are negotiated separately, not with the  
23 investor.

24 So these are the results of pricing bonds in the  
25 open markets to a discrete group of investors. I mean,

1 just to the world. There is no way I can identify who the  
2 ultimate investor was.

3 Q. Right.

4 A. And at the end of the day we reach the  
5 conclusions, and the results here we can go through, and  
6 the bonds are sold to the underwriter. The school doesn't  
7 sell the bonds to all, like you and me and everybody  
8 else --

9 Q. Right.

10 A. -- who might buy 5,000, \$10,000 worth of bonds.

11 Q. Right.

12 A. They sell them all to one underwriting firm who  
13 gives them the whole check. We give them all the bonds,  
14 and then they disperse them to investors.

15 Q. To whoever bought them. Okay.

16 A. And this is the result of that effort.

17 Q. Okay.

18 A. And I can go through any one of them. They're  
19 similar. I would say 1375, 77 and 79 are kind of a  
20 similar layout. They're run through a system called DVC,  
21 which means nothing to you. The Deer Park one, which  
22 we'll probably need to go through because it's a school  
23 district one, is simply run through another system and the  
24 layout is very different. But we can do whatever you  
25 want.

1 Q. So because you -- I think you compared Deer Park  
2 and --

3 A. Wayside.

4 Q. -- Wayside, why don't we look at those two,  
5 assuming they're all sort of generally representative.

6 A. Sure.

7 (Discussion off the record.)

8 A. Let me think where to go.

9 MR. SCHULMAN: Let her ask a question.

10 MS. DALBERG: Yeah.

11 THE WITNESS: I'm sorry.

12 Q. (BY MS. DALBERG) So when we look at -- let's  
13 look at 1376 and the Deer Park -- or Deer Park ISD. Is  
14 this first page essentially a summary of everything that's  
15 contained --

16 A. No.

17 Q. So what is this first paragraph here?

18 A. This first page we -- this was a refunding and  
19 new money transaction, and this summarizes the refunding  
20 effects, the effects of the refunding, which were a  
21 portion of that transaction.

22 Q. Okay. So that's a summary of one portion of the  
23 transaction.

24 A. Correct.

25 Q. If we turn to Page 2, is this the total

1 summary --

2 A. This is the --

3 Q. -- or is this --

4 A. -- total summary of the transaction.

5 Q. Okay. So really what I need you to explain to me  
6 is when -- how you calculated the true interest cost, if  
7 it's from this document, of this 2.95 percent for Deer  
8 Park.

9 A. Let me -- this -- these are final numbers as of  
10 Wednesday of this week, as of two days ago.

11 Q. Okay. This week.

12 A. And we prepared our report --

13 Q. You're looking at the miscellaneous bond issuance  
14 information?

15 A. I'm just telling you general.

16 Q. Oh, just generally. Okay.

17 A. When we prepared the report we were working off  
18 preliminary numbers, what the investment bankers in the  
19 transaction anticipated getting in the transaction. We  
20 actually -- Deer Park actually did better. So the initial  
21 estimates are included in my report.

22 The actual number is right here, the third line  
23 from the bottom, All Costs Included TIC on the new issue  
24 is 2.21226440 percent. And they actually do take the  
25 numbers out that far.

1 Q. And so if I understand correctly, this is not a  
2 document that a person puts together, this is something  
3 that people input data all day long and this number -- the  
4 "all costs included" number that you just gave me is  
5 automatically calculated?

6 A. It is calculated based on the pricing of the  
7 bonds and also includes the cost of issuance in that  
8 number. It's at a calculation that's intended to  
9 represent the cost of the funds to the client, to the  
10 district. All-in costs.

11 Q. And is that the costs across the life of the  
12 bond?

13 A. Yes, these are fixed rate bonds so they don't  
14 vary.

15 Q. So when we come up with a number that's all costs  
16 included, and you say this is a calculation based on  
17 pricing and the cost of issuance, where in Exhibit 1376 is  
18 the pricing information?

19 A. The pricing information?

20 Q. Is that in here?

21 A. It's laid out differently in here. Let me see if  
22 I can show you where it's put together. It is  
23 essentially -- it's kind of everywhere. On Page 3, you're  
24 looking at the aggregate bond issue on a  
25 maturity-by-maturity basis. And when bonds are issued,

1 they mature in each year. So it's not like you're a  
2 mortgage that's a total amount, that's just a fixed  
3 payment --

4 Q. Right.

5 A. -- you're bleeding off principal as you go.

6 Q. Right.

7 A. There are set amounts of bond that mature at each  
8 year, and each one of these has its own coupon, its own  
9 interest rate.

10 Q. Okay.

11 A. So, for instance, we pull -- it doesn't matter,  
12 the 2022 maturity is \$7,175,000. It has an interest rate  
13 of 5 percent and a yield, which is a whole other  
14 discussion, of 1.62 percent.

15 The yield is essentially the actual price -- it's  
16 a function of how that bond was priced.

17 And if you keep reading across, it was sold at a  
18 price of 128 percent of principal. So for a 5 percent  
19 coupon that yields 1.62 you pay more than the principal  
20 amount to bring the yield down to the market yield, which  
21 is 1.62 percent. So I'm giving you Bonds 101 in two  
22 minutes.

23 Q. Okay.

24 A. And so you read across. So that -- that bond,  
25 that 2022 maturity, sold for -- where am I here?

1           For essentially -- I mean, if it's not -- this is  
2 a representative number, this \$8,132,550, takes up that --

3           Q. The total debt service number?

4           A. Yeah. That's -- let me get you a better  
5 representation of the pricing.

6           Well, actually, here. I'm sorry. I was reading  
7 too far across. You go back to 2022, 7.175 million. The  
8 next column. 9.198.

9           Q. Okay.

10          A. The proceeds.

11          Q. Oh, there you go. Yeah, okay.

12          A. The proceeds. So those sold for that 128 percent  
13 of the par amount, that's the price that the bondholders  
14 paid for those bonds to have a 5 percent coupon. And by  
15 paying more than the par amount, you achieve the 1.62  
16 yield.

17                 And so in the aggregate, the price is in the  
18 summary page on Page 2, which is -- look at the very top.  
19 You have a principal amount of bonds at 50 --

20          Q. Uh-huh.

21          A. -- or 69,430,000 --

22          Q. 69, uh-huh.

23                   THE REPORTER: Wait.

24                   MS. DALBERG: I'm sorry.

25                   THE REPORTER: You guys are talking on top

1 of each other.

2 A. Okay. The CIB premium, that's the amount that's  
3 paid over the additional amounts that are paid to the  
4 district for the bonds, and this is a structuring issue,  
5 whether you issue par or premium bonds. In this case it  
6 was more efficient to issue premium.

7 You walk down, the issuer had to put some money  
8 in because they had it in the bank for their refunding and  
9 the accrued interest. So the pricing is right there.

10 The bonds sold -- the sale price, and I'd have to  
11 do the math here because it's not laid out for us, is the  
12 69,430,000 plus \$12,969,631.80 less what's called the  
13 underwriter's discount down here below of \$381,865. That  
14 means that the underwriters, when they buy the bonds, are  
15 paying that amount less, this is their fee, and they just  
16 take it out of the purchase price.

17 Q. (BY MS. DALBERG) Okay.

18 A. And so the purchase price of the bonds is the  
19 result of that equation, and I'd have to get a calculator  
20 to do it.

21 Q. That's okay.

22 I am assuming that this Deer Park ISD bond was --  
23 arose out of some election that they had at some point in  
24 the last couple of years. Do you know whether that's  
25 true --

1 A. Correct.

2 Q. -- or not?

3 A. Correct. These bonds were all voted.

4 Q. And obviously they passed?

5 A. Yes.

6 Q. In your experience working with school districts  
7 and bonds, do they generally have -- do their bonds -- do  
8 the voters generally pass the TREs?

9 A. The TREs or the bonds?

10 Q. Or the bonds. Pass the election to hold the  
11 bond, to offer the bond?

12 A. Bond elections generally pass, yes.

13 Q. Okay. Regardless of the wealth of the school  
14 district?

15 A. Sometimes they're more likely to pass in a poorer  
16 school district.

17 Q. Okay. Have you talked to any superintendents or  
18 anybody who have told you, "This is what I think about the  
19 bond elections," or "This is what my voters think," or  
20 anything like that?

21 A. Every time.

22 Q. Every time. And what do they generally -- are  
23 they -- do they act like they're generally in favor of the  
24 bonds, of holding the election?

25 A. The voters --

1 Q. Well, the superintendent?

2 A. -- or the superintendents?

3 Yes.

4 Q. Okay.

5 A. We've never had an election where a  
6 superintendent didn't want to --

7 Q. Was all behind that. Okay.

8 So what you just explained to me is how we came  
9 up with this TIC number in your report, which the  
10 estimated number was 2.95 percent. Correct? And actually  
11 on this document, 1376, the true cost of the bond to the  
12 district was this 2.21226440 percent?

13 A. That is correct.

14 Q. And I want to ask you just quickly about in  
15 the -- on Page 2 of this document in the uses of the  
16 funds. These issuance expenses, are those expenses that  
17 charter schools also have to pay for?

18 A. Yes.

19 Q. Okay. Are there -- are the -- are the expenses  
20 that charter schools incur in issuing a bond, generally,  
21 are they calculated the same as the ISDs?

22 A. They are the same categories of expenses. I'm  
23 not sure if -- in regards to the true interest costs or  
24 just in regards to how the fee is arrived at?

25 Q. Well, so what I'm trying to understand is if you

1 can isolate for me where the difference in the cost of  
2 issuance of the bond is, where that difference arises in  
3 calculating that cost between the charter schools and the  
4 ISDs.

5 A. Sure.

6 Q. Okay.

7 A. Costs of issuance, I guess on what we would call  
8 a per-bond basis, is tremendously higher for a charter  
9 school than an ISD. That is a function of a number of  
10 things. Number one, the financing is very, very  
11 different. The financing for a school district is based  
12 on -- this is a limited tax, but generally unlimited tax  
13 bonds -- there is not a meaningful difference, for  
14 purposes of this discussion -- where a school district has  
15 the ability to levy taxes, and generally what the voters  
16 grant is unlimited as to rate or amount, which means that  
17 no matter what happens to property value, no matter what  
18 happens to the student population, no matter what happens  
19 to anything, the school district can levy sufficient taxes  
20 to pay the bond.

21 Q. Right.

22 A. So, therefore, it's a very safe investment. And  
23 it doesn't require a whole lot of structure to support it.  
24 It's -- they're generally simply issued on that promise to  
25 levy taxes and that's it.

1 Q. Okay.

2 A. And so the documentation is much lighter. The  
3 bond covenants are much less heavily negotiated. The -- I  
4 mean, school districts also have access to PSF that  
5 provides additional credit support that really makes it a  
6 safe investment, and, therefore, you don't have to build a  
7 lot of support for that investment. Now --

8 Q. Can I --

9 A. I'm sorry.

10 Q. Let me quickly stop you. You mentioned the  
11 permanent school fund.

12 A. Okay.

13 Q. Are you aware of the change in the law that  
14 has -- you know what I'm about to ask you?

15 A. Keep going.

16 Q. -- that is going to back the charter schools with  
17 the permanent school fund? Are you aware of that?

18 A. I'm very aware of it.

19 Q. Okay. Were you instrumental in making that  
20 happen for the charter schools?

21 A. Yes, I was.

22 Q. Okay. And if you'll -- can you explain to me  
23 what it is that the State is waiting on from the IRS to  
24 make that happen for the charter schools? Do you know?

25 A. I do know.

1 Q. Okay.

2 A. It's a very long explanation. I'll give you the  
3 short explanation.

4 Q. Okay.

5 A. The short explanation is that we are waiting for  
6 the IRS to make a regulation change or a change to  
7 essentially the tax code that amends the existing  
8 exception for the permanent school fund. As currently  
9 written, the Federal laws, they do not -- they require --  
10 they don't -- they didn't contemplate charter school  
11 financing. They're written very narrowly for school  
12 district financing. And we are waiting for the U.S.  
13 Treasury and the U.S. Congress, in the tax reform, to fix  
14 that.

15 Q. Okay.

16 A. Exactly right.

17 Q. Okay. And I will let you get back to identifying  
18 or isolating the --

19 A. Cost ratio, sure.

20 Q. -- the cost differences, but I just wanted to  
21 make sure that I asked you about that.

22 Assuming that the U.S. Treasury Department and  
23 the U.S. Congress ever get around to changing those  
24 regulations, will that -- do you believe that that will  
25 help stabilize the perception that you talk about, about

1 charter schools being somewhat of a riskier investment  
2 than the ISDs?

3 MR. SCHULMAN: Objection to form.

4 A. The current state public -- permanent school fund  
5 guaranteed for charter schools is limited to a percentage  
6 based on the number of students in charter schools,  
7 et cetera, et cetera. For the bonds issued under that  
8 program, I think they will be issued much more -- much  
9 more efficiently, but I don't think it's going to be  
10 enough to cover everybody yet.

11 Q. (BY MS. DALBERG) So when you say it won't be  
12 enough to cover everybody, it will only cover certain  
13 bonds, is that what you mean?

14 A. Right. I mean, the amount -- the last  
15 calculation I saw was somewhere around \$385 million of the  
16 permanent school fund would be available. I mean, we've  
17 already issued well over \$500 million worth of charter  
18 school bonds in the state of Texas, and it's increasing.

19 So the bond community anticipates that if a  
20 charter school were to qualify for PSF bonds, there would  
21 be a portion of their debt that would be guaranteed by the  
22 PSF and there would be a portion that would not --

23 Q. Okay.

24 A. -- because it's not enough to do everything.  
25 It's an important first step. I think those transactions

1 that are PSF will be more efficient because of the things  
2 that we're about to talk about.

3 Q. Okay. For the PSF guarantee, is that over a  
4 biennium, or is it -- so is there 300 -- let me start  
5 over.

6 Is there a 375 -- is it for the life of the bond?  
7 Does that make sense?

8 A. The permanent school fund guarantee is for the  
9 life of the bond, and the permanent school fund is  
10 allocated out based on the corpus of the permanent school  
11 fund, and the way the State does it is just on the par out  
12 of the bonds.

13 So in this case, in the Deer Park example, which  
14 is Exhibit 1376, they used \$69,430,000 of the permanent  
15 school fund, the top number, the par out of the bonds.

16 Q. Oh, okay.

17 A. The guarantee is for the life of the bonds.

18 Q. Okay. So earlier you were talking -- you were  
19 explaining that because the ISDs have a more stable base  
20 source, I guess, that that's one reason why they are able  
21 to secure bonds at a lesser issuance cost than charters.

22 Is that a fair statement?

23 A. Do you mind if I restate it a little bit?

24 Q. No, I do not.

25 A. Okay.

1 Q. I told you when we started I don't know what I'm  
2 talking about.

3 A. Okay. Given that the school district can levy  
4 taxes, like I said, sufficient to pay the debt, they  
5 are -- and with the permanent school fund, they are a  
6 much -- or perceived to be a much safer investment, and  
7 therefore, you get a lower interest rate. It's just a  
8 measure of risk.

9 Q. Right.

10 A. So for -- and what that's also expressed in, in  
11 the cost of issuance, is that if you are dealing with  
12 something that's -- that the investors don't have a  
13 tremendous amount of concerns about, you don't have to  
14 build a lot and negotiate a lot of investor protections in  
15 the transaction.

16 When you do a charter school transaction, for  
17 instance, one of the biggest issues that charter schools  
18 have to deal with is that we are, without exception,  
19 expected to mortgage our facilities. The school district  
20 doesn't mortgage their facilities.

21 Now, you know, I mean, we've all closed on houses  
22 and stuff like that, you go to the title company and sign  
23 the papers, but in commercial mortgages -- and now your  
24 charter school financing starts looking like a commercial  
25 loan, and you start putting in -- and you start having to

1 pay for title policies for all these facilities. You have  
2 to get surveys. You have to get environmental phase  
3 grants. You have to pay real estate lawyers to do the  
4 real estate work because, invariably, you find something  
5 that's wrong that has to be fixed, whether it's a lien,  
6 whether it's old barrels buried on the back of a piece of  
7 property, whatever it is.

8 And so just dealing with the real property alone  
9 is a significant expense and requires, you know,  
10 significant more in documentation to deal with it. And  
11 how do you deal with real property if there is a default?  
12 And how do you deal with it if they want to sell it? What  
13 if they want to close one school but they have five others  
14 open? How do you release it from the financing? It's  
15 just all of the complexities that that brings to the deal  
16 are layered on.

17 Now, you also have, you know, the inability to  
18 levy taxes. So you have what are called revenue bonds  
19 versus tax bonds. They're called general obligation  
20 bonds. Charter school bonds are revenue bonds. In a  
21 revenue bond structure, what you're doing is you're  
22 capitalizing a stream of revenue. There is a stream of  
23 revenue coming in and you're going to borrow money against  
24 it into the future, and it can only pay so much. I mean,  
25 you know, cities issue water/sewer bonds. Airports issue

1 airport revenue bonds. Charter schools issue student  
2 revenue bonds. And they're based on the students in the  
3 seat and the amount of funding that they receive and  
4 whatever they can cover for debt service out of their  
5 funding.

6 Now, since it's revenue funding, since you don't  
7 have the ability to levy taxes, since you don't have, you  
8 know, other credit support, PSF, whatever, you have to  
9 build in other investor protections. For instance -- and  
10 if you don't mind, I'm going to refer to just this  
11 Exhibit 1377.

12 Q. That's fine.

13 A. You look down here in the middle of the page,  
14 "Other Fund Deposits: Debt Service Reserve Fund." We're  
15 expected to establish a reserve fund that's equal to the  
16 maximum annual debt service, one year's maximum annual  
17 debt service, on the bonds, so we borrow an extra, in this  
18 case, \$1,313,000, and we put it in the bank. And what  
19 it's intended to do is to cover temporary short --  
20 temporary blips in the revenue stream. It's not enough to  
21 guarantee all the bonds, but what it's intended to do is  
22 if there's a hiccup, if there's a State-funding hiccup, if  
23 the school gets knocked down and the students aren't there  
24 for a month and they don't receive funding, whatever, that  
25 it allows the investors a protection that a school can

1 access these funds, continue making debt service payments,  
2 and kind of recover. That's what's there.

3 Underwriter's discount is higher, because, if you  
4 think about it, when you're going out to sell the bonds, I  
5 mean, if you're selling Coca-Cola, it's very -- it's not  
6 as hard to sell to sell to people as if it's ABC Cola that  
7 I just brewed up in my garage. I mean, it's an unknown  
8 quantity, so people don't know this school and the  
9 marketing efforts.

10 So if you look at it in this case, the  
11 underwriter's discount is almost the same from the Deer  
12 Park deal to the Wayside deal, if you look at what the  
13 underwriters were paid, 326,000 versus 381,000, and look  
14 at the par amount of bonds, you have almost 70 million  
15 versus 20 million. So the underwriter's discount, the  
16 take-down for the underwriters, is almost three times as  
17 much on a charter school deal. And that's really due to  
18 going through all the credit, going through all the  
19 rating, going through all the premarketing, going through  
20 all the disclosure, going through investor calls. The  
21 marketing effort to sell the bonds is so much harder than  
22 school district bonds. I mean, it's not even in the same  
23 realm.

24 I mean, it takes -- the Deer Park ISD deal  
25 probably would take -- and the only reason it delayed was

1 probably because we had Christmas fall in there, 30 days,  
2 45 days. The Wayside deal took a year.

3 Q. And so you would have costs associated with just  
4 the time even?

5 A. Just getting it all done. That, and then you add  
6 on -- it's a 501(c)(3) organization versus being a unit of  
7 local government; and, therefore, you have to make sure  
8 that you prove up, satisfy and continue to maintain those  
9 qualifications under the tax code.

10 And it goes on and on and on. But it's a much  
11 different -- it's just a very different financing and --  
12 and -- and so -- and it's just much less efficient to  
13 issue, I mean, just by it's nature.

14 Q. And when we talk about these inefficiencies,  
15 these are market-driven inefficiencies?

16 A. These are -- for instance, the mortgage is a  
17 market expectation because the school -- because of the  
18 situation the school's in. They're just reflections of  
19 the credit. And I'm trying to answer your question.  
20 The -- if the charter school had more wherewithal, you'd  
21 have less protections.

22 Q. Right.

23 MR. SCHULMAN: Excuse me. Could this be a  
24 moment where we take a short break?

25 MS. DALBERG: Sure. That's fine.

1 (Break.)

2 Q. (BY MS. DALBERG) So I think when we last left we  
3 were talking about the differences in expenses to the  
4 charters. And I want to -- let me just make sure.

5 Let's go ahead and take a look at -- I'm going to  
6 hand you what's been marked as Exhibit 1378.

7 (Exhibit 1378 was marked.)

8 Q. (BY MS. DALBERG) Do you know what that is?

9 A. Yes.

10 Q. Have you seen it before?

11 A. Yes, I have.

12 Q. Did you write it at all?

13 A. I did not.

14 Q. If we turn to Page 37, where it says -- do you  
15 see the heading there where it says "Analysis by State"?

16 A. Yes.

17 Q. I'll start from sort of a high level. Are you  
18 familiar with this -- generally this analysis by state of  
19 the outstanding debt, the defaults by state, all those  
20 kinds of things --

21 A. I'm generally familiar with it, yes.

22 Q. -- that's contained in this report?

23 And if we look at this bar chart here that's on  
24 the bottom of Page 7, when you look at Texas in comparison  
25 to the other states, would you say that Texas is doing

1 pretty good or not so good in comparison to the other  
2 states?

3 MR. SCHULMAN: Objection to the form.

4 A. That we have more debt outstanding?

5 Q. (BY MS. DALBERG) Yes.

6 A. Yes, we have more debt outstanding.

7 Q. And is that a good thing for charter schools in  
8 Texas?

9 A. As compared to, I guess, other states? I mean,  
10 I'm -- it's good for the ones that have issued the debt.

11 Q. Yes. Would this -- does this tell you anything  
12 at all about the growth of charter schools in Texas as  
13 compared to the other states that are listed on this  
14 chart?

15 A. Yes.

16 Q. Does it tell you anything about the investors'  
17 interest in charter schools in Texas as compared to any  
18 other states?

19 A. Not necessarily.

20 Q. Why not?

21 A. Because this is a measure of issuance, and that's  
22 driven by other factors such as, you know, student  
23 population. Texas has more urban centers which tend to  
24 create more charters. Some of these states are in  
25 different situations. For instance, Minnesota, most of

1 the charter schools are issued by universities, so it's  
2 university debt, not charter debt.

3 Q. Okay.

4 A. So it's not a true measure.

5 In Florida they're issued by the county,  
6 generally, because each school district is countywide. So  
7 it doesn't -- I mean, it's -- it's kind of a nice chart,  
8 but I don't think it leads you to a conclusion.

9 Q. If you'll turn to Page 38 and look at the chart  
10 at the top of the page. What does that chart tell us?

11 A. Give me a moment.

12 Q. Sure.

13 (Witness reviews document.)

14 A. I think it is indicating a debt burden per  
15 student for different categories of charter schools,  
16 whether rated or unrated.

17 Q. (BY MS. DALBERG) Okay. And is -- in looking at  
18 that chart, is Texas high or low or anywhere in the  
19 document can you tell -- oh, there it is right there.

20 A. Is Texas high or low? On that chart --

21 MS. DALBERG: Excuse me.

22 A. -- it doesn't lay out states.

23 MR. SCHULMAN: Objection to form.

24 Go ahead.

25 A. On the chart it doesn't delineate states.

1 Q. (BY MS. DALBERG) On Page 38.

2 A. On Page 38.

3 Q. Yes.

4 A. The -- okay. This chart is showing -- now I know  
5 why you're so confused. This chart is showing the debt  
6 outstanding based on the -- as compared to enrollment of  
7 the schools. Or enrollment in charter schools. Yeah.

8 Q. And would it be fair to say that the debt burden,  
9 I mean, just based on the chart, is lower than -- well,  
10 what conclusion would you draw from this chart, if any?

11 A. I'd honestly have to think about that.

12 MR. SCHULMAN: Objection to form.

13 A. I'm trying to --

14 MR. SCHULMAN: Objection to form.

15 A. I'd have to think about that.

16 Q. (BY MS. DALBERG) Okay. Do you think this is  
17 just a comparison of the amount of debt versus the number  
18 of -- I guess it's enrollment? That can't be right.

19 A. This chart is showing the -- the average amount  
20 of debt for the average amount of enrollment for schools  
21 who have been able to access the capital markets on a  
22 state-by-state basis. So I don't know that it leads to  
23 any conclusion, but that's what I think it's trying to  
24 show.

25 Q. And if you go to this page.

1 A. 39.

2 Q. 39. Do you know what DCRS means -- DSCR stands  
3 for?

4 A. Can you show me where that is on the page? I'm  
5 sorry.

6 Q. It's on the top of the page.

7 A. Oh. DSCR means debt service coverage ratio.

8 Q. And so what does the chart on the top of the page  
9 tell us?

10 A. It is showing the -- I need to read the  
11 description. I assume this is on an average. If I can  
12 just read it a sec.

13 (Discussion off the record.)

14 A. It's the median covered ratio, so it's not an  
15 average, but it's the median. So this chart showing the  
16 median debt service covered ratios, again, for debt issued  
17 into the capital markets by schools that did so. Well, it  
18 says -- but it's not -- median -- median debt service  
19 coverage ratio by state.

20 Q. (BY MS. DALBERG) Okay. And when we look at the  
21 bottom one it says "Median debt burden by state."

22 (Brief disturbance.)

23 Q. (BY MS. DALBERG) I'm sorry. Let me take a step  
24 back. What is this MADS, do you know?

25 A. MADS is a term called maximum annual debt

1 service.

2 Q. And what does that mean?

3 A. Maximum annual debt service is the mech- -- on  
4 the debt service schedule for bonds, it is the year with  
5 the maximum amount of debt service. It's the maximum  
6 annual debt service in a debt service schedule.

7 Q. Okay. And so why are they -- do you know why  
8 they would compare the maximum annual debt service to all  
9 debt?

10 A. Refreshing my memory by rereading this, it's  
11 not -- I don't see it as a meaningful comparison.

12 Q. Okay.

13 A. I'm trying to think why it would even be...

14 (Witness reviews document.)

15 Q. (BY MS. DALBERG) Before I get too far, or really  
16 any further, do you know who the Local Initiative Support  
17 Corporation is?

18 A. They are a -- one of -- they are a national  
19 foundation that makes both charitable donations as well as  
20 provides charitable lending to local initiatives,  
21 including charter schools.

22 Q. And do you know who their intended audience is in  
23 preparing this document?

24 A. No, I don't.

25 Q. Okay. When I read this, I drew the conclusion

1 that they were trying to convince maybe other investors  
2 that charters are actually a better investment than they  
3 are perceived to be. Would that be something that you  
4 think this local initiative support corporation might do?

5 A. Try to convince investors?

6 Q. (Nods.)

7 A. Are you asking me -- I mean -- I don't know. I  
8 mean, they're involved with charter schools and are  
9 supportive. But this isn't an investor publication.  
10 Those look very different.

11 Q. That's what I thought. You can set that aside.

12 A. Okay.

13 Q. If you'll look at Page 5 of your report,  
14 Exhibit 1373. Paragraph -- it's the second paragraph from  
15 the bottom.

16 A. Okay.

17 Q. You say, "Thus, the goal of bond financing system  
18 for charter schools is ownership - which the State  
19 considers a more solid financial system for the school -  
20 combined with the reduction in the cost to their  
21 facilities."

22 And I had wondered what the basis of the  
23 statement -- or that part of the sentence that's separated  
24 by the dashes where it says "the State considers a more  
25 solid financial system for the school." Who in the State

1 considers ownership a more solid financial system for the  
2 school?

3 A. Who specifically? I don't know.

4 Q. Okay. Do you know of any written policy or  
5 anything where that's set out either in the education code  
6 or the rules or anything?

7 A. The education code has a number of provisions  
8 that have been passed specifically to allow charter  
9 schools to buy facilities. Chapter 53 of the education  
10 code has been amended to do so.

11 Q. Okay.

12 A. There were provisions added for the TPFAs to serve  
13 that role to issue bonds for the purchase of charter  
14 schools in addition to the bulk of Chapter 45 that deals  
15 with the construction and ownership of schools for  
16 traditional school districts.

17 Q. Okay. Is it your experience that when a charter  
18 school seeks bond financing that they're able to get it?

19 A. No, it's not my experience.

20 Q. And what is generally your experience?

21 A. The experience is that very few have the credit  
22 quality to go to the capital markets and issue bonds.

23 Q. And is that so that they don't even attempt to  
24 obtain that financing?

25 A. At that point, that's correct.

1 Q. Okay.

2 A. And -- and there are times we'll work with them  
3 to help them reach that point.

4 Q. Okay. If a charter school doesn't have the  
5 credit quality to go into the bond market, what other ways  
6 do you help them to obtain funding sources in addition to  
7 what they receive from the state and federal government?

8 A. There are a number. We will work with them both  
9 to -- as well as the financial team to kind of get their  
10 credit to a point where they can access the capital  
11 markets, but in the interim work with banks, LISC, any  
12 number of foundations that are out there that make  
13 charitable loans, to commercial loans with banks that are  
14 not trying to use any other kind of charitable lending  
15 credit they will generally allocate capital for, to  
16 developers who will step in and own the facility and lease  
17 it to the school --

18 Q. Okay.

19 A. -- to just negotiating a lease until they -- and  
20 try to put them a position under that lease where they  
21 have the ability to either get out of the lease or  
22 purchase the facility when they're able to borrow.

23 Q. Turn to Page 6 of your report. In the paragraph  
24 under "Difficulties in Entering the Bond Market," you talk  
25 about the strict -- the very last sentence, the "strict

1 market requirements," and then you list the five bullet  
2 points?

3 A. Uh-huh.

4 Q. Those -- are those required in all instances for  
5 bond financing for a charter school?

6 A. I'm just noticing something on here. I think at  
7 least 7- to 800 students. Clearly if they have 20,000  
8 students, that's better, so it's not -- I didn't see a  
9 minimum here, but that's what that's intended to be.  
10 Yeah, I think -- yes, I think all of them have had to have  
11 at least that.

12 Q. Is that -- and I guess are -- are these -- these  
13 are just realities of the market, right? Let me --

14 A. Yes.

15 Q. -- ask it a different way.

16 There is not some document in writing that says  
17 if you don't have these qualifications, don't even come to  
18 the table?

19 A. That is correct. These are -- in my experience,  
20 this is the minimum to go into the capital markets and  
21 issue bonds.

22 Q. And in the next paragraph, when you say, "In my  
23 experience and opinion approximately 40 to 50 charter  
24 schools are currently able to meet these market  
25 requirements," where are you getting that number?

1           A. I've handled 40 to date. So that's the -- or  
2 approximately 40, give or take one or two. And I'm  
3 currently working with six or eight others.

4           Q. But you haven't scoured the ledgers and  
5 enrollment lists and fund balances of the -- all the other  
6 charters in the state to see if they're able to access the  
7 capital markets, have you?

8           A. I haven't scoured all of them, but in my  
9 business, it's my business to find people I think could.

10          Q. You are a lawyer. And so what have you looked at  
11 to say that it's -- only 40 to 50 can do that?

12          A. Information that's available on the TEA website,  
13 lists of schools, sizes of schools, the academic ratings  
14 come out every year that are published and you can scan  
15 those pretty quickly. And then you delve into the extra,  
16 these other issues.

17          Q. Right. Okay.

18                 I don't know if I asked you this or not, but when  
19 you're working with your clients as part of what you do,  
20 do you look at their charter applications with the state  
21 and then the actual agreement?

22          A. We -- yes, we review their charter.

23          Q. And the application is generally incorporated  
24 into the charter, right?

25          A. Yes.

1 Q. And so you review that, too?

2 A. Yes.

3 Q. And any amendments to that?

4 A. All of them.

5 Q. And so if I show you a charter, at some point  
6 you'll have seen that before?

7 A. I've seen that.

8 Q. Maybe. I don't know if I'm going to show you one  
9 or not. Not today anyway.

10 Are you working with the legislature at all right  
11 now on any of these school choice bills or anything that  
12 are being talked about?

13 A. I've been asked to comment on several of them.

14 Q. Which ones? Do you remember?

15 A. I don't remember the bill numbers, to tell you  
16 the truth.

17 Q. Do you remember what the bills were generally  
18 related to?

19 A. They were related to closing underperforming  
20 charter schools. They're related to -- there is another  
21 one related to kind of an alternate type of school  
22 district that would be kind of a charter district concept.  
23 There is another one that was related to the nature of the  
24 charter, whether it should be a license or a charter or  
25 the time -- or how it's renewed and whether it's going to

1 be an incremental, the current five- and ten-year or  
2 something more attenuated. Those are the ones that I  
3 recall.

4 Q. Okay. Are you going to testify at trial on the  
5 virtues of charter schools?

6 MR. SCHULMAN: Objection to form.

7 A. What do you mean by "the virtues"? I'm sorry, I  
8 don't know what --

9 Q. (BY MS. DALBERG) Are you going -- let me ask --

10 Are you going to -- do you hold the opinion that  
11 there should be more charter schools or more school choice  
12 in the state of Texas?

13 MR. SCHULMAN: Objection to form.

14 A. I think that there -- and I'm -- I'm trying to  
15 answer your question. I think that there are good schools  
16 and bad schools just like there are anything else in life.  
17 You know, there are good restaurants and bad restaurants,  
18 and that there -- and that the ability of people to be  
19 able to move their kids around is a good thing. And so I  
20 guess that would say that I would be for school choice,  
21 and whether that's expressed moving from ISD to ISD or ISD  
22 to charter doesn't make any difference to me.

23 Q. (BY MS. DALBERG) Okay. Are you aware of the  
24 charter cap in Texas?

25 A. Yes.

1 Q. Are you -- do you have an opinion on whether or  
2 not that cap is arbitrary?

3 A. I have no idea how the cap was arrived at.

4 Q. Do you believe that the legislature, as a policy  
5 matter, can decide whether to lift the cap or somehow do  
6 away with it altogether or otherwise handle the licensing  
7 or chartering of open-enrollment charter schools in Texas?

8 MR. SCHULMAN: Objection to form.

9 A. I think the legislature can pretty well do  
10 whatever they want with the cap, the licensing, the nature  
11 of charters, yes.

12 Q. (BY MS. DALBERG) And that's because charters are  
13 a creature of statute, right?

14 A. Charters are -- charters are nonprofit  
15 corporations who have the ability to operate public  
16 schools pursuant to state statute, yes.

17 MS. DALBERG: I have no further questions.

18 MR. SCHULMAN: I have none.

19 (THE DEPOSITION CONCLUDED AT 12:13 P.M.)  
20  
21  
22  
23  
24  
25



1 I, THOMAS ANDERSON SAGE, have read the foregoing  
2 deposition and hereby affix my signature that same is true  
and correct, except as noted above.

3  
4  
5 \_\_\_\_\_  
THOMAS ANDERSON SAGE

6  
7 THE STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

8  
9 Before me, \_\_\_\_\_, on this  
day personally appeared THOMAS ANDERSON SAGE, known to me  
(or proved to me under oath or through  
10 \_\_\_\_\_) (description of identity card  
or other document)) to be the person whose name is  
11 subscribed to the foregoing instrument and acknowledged to  
me that they executed the same for the purposes and  
12 consideration therein expressed.

13 Given under my hand and seal of office this  
\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

14  
15  
16 \_\_\_\_\_  
NOTARY PUBLIC IN AND FOR  
17 THE STATE OF \_\_\_\_\_  
COMMISSION EXPIRES: \_\_\_\_\_

Unofficial copy Travis Co. District Clerk Velda L. Price

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CAUSE NO. D-1-GN-11-003130

1 TEXAS TAXPAYER & STUDENT ) IN THE DISTRICT COURT  
 2 FAIRNESS COALITION, ET )  
 3 AL., )  
 4 )  
 5 VS. )  
 6 MICHAEL WILLIAMS, ET AL., ) OF TRAVIS COUNTY, TEXAS  
 7 )  
 8 CONSOLIDATED CASE: )  
 9 MARIO FLORES, ET AL., )  
 10 VS. )  
 11 )  
 12 MICHAEL WILLIAMS, )  
 ET AL., ) 200TH JUDICIAL DISTRICT

13  
 14 REPORTER'S CERTIFICATION  
 DEPOSITION OF THOMAS ANDERSON SAGE  
 15 January 18, 2013

16 I, Tamara K. Chapman, Certified Shorthand Reporter in  
 17 and for the State of Texas, hereby certify to the  
 18 following:

19 That the witness, THOMAS ANDERSON SAGE, was duly  
 20 sworn by the officer and that the transcript of the oral  
 21 deposition is a true record of the testimony given by the  
 22 witness;

23 That the deposition transcript was submitted on  
 24 January 23, 2013 to the witness or to the attorney for  
 25 the witness for examination, signature and return to me by

1 February 12, 2013;

2 That the amount of time used by each party at the  
3 deposition is as follows:

4 Ms. Shelley Dalberg - 1:40

5 Mr. Robert A. Schulman - 00:00

6 That pursuant to information given to the deposition  
7 officer at the time said testimony was taken, the  
8 following includes counsel for all parties of record:

9 Ms. Shelley Dalberg - COMMISSIONER WILLIAMS, IN HIS  
10 OFFICIAL CAPACITY; TEA; COMPTROLLER OF PUBLIC ACCOUNTS,  
11 SUSAN COMBS, IN HER OFFICIAL CAPACITY

12 Mr. Robert A. Schulman - COUNSEL FOR THE FLORES  
13 PLAINTIFFS

14 I further certify that I am neither counsel for,  
15 related to, nor employed by any of the parties or  
16 attorneys in the action in which this proceeding was  
17 taken, and further that I am not financially or otherwise  
18 interested in the outcome of the action.

19 Further certification requirements pursuant to Rule  
20 203 of TRCP will be certified to after they have occurred.

21 Certified to by me 23rd day of January, 2013.

22

23

24

25

---

Tamara K. Chapman, Texas CSR 7248  
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FURTHER CERTIFICATION UNDER RULE 203 TRCP

The original deposition was/was not returned to the deposition officer on \_\_\_\_\_;

If returned, the attached Changes and Signature page contains any changes and the reasons therefor;

If returned, the original deposition was delivered to Shelley Dahlberg Esq., Custodial Attorney;

That \$\_\_\_\_\_ is the deposition officer's charges to the Defendant(s) for preparing the original deposition transcript and any copies of exhibits;

That the deposition was delivered in accordance with Rule 203.3, and that a copy of this certificate was served on all parties shown herein on and filed with the Clerk.

Certified to by me this \_\_\_\_\_ day of

\_\_\_\_\_, 2013.

\_\_\_\_\_  
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