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ATTORNEYS AND COUNSELORS FOR TEXAS PUBLIC SCHOOLS AND LOCAL GOVERNMENT

March 12, 2013

The Honorable Judge Dietz
250th Judicial District Court
Heman Marion Sweatt
Travis County Courthouse
1000 Guadalupe, 3rd Floor
Austin, Texas 78701

RE: Cause No. D-1-GV-11-003130; *The Texas Taxpayer & Student Fairness Coalition, et al. v. Robert Scott, et al.*; In the 250th Judicial District Court, Travis County, Texas

Dear Judge Dietz:

We submit the attached proposed Findings and Conclusions for the Charter School Plaintiffs regarding their claims, in response to the proposed Findings and Conclusions provided to us by the District Plaintiffs and State Defendants last week.

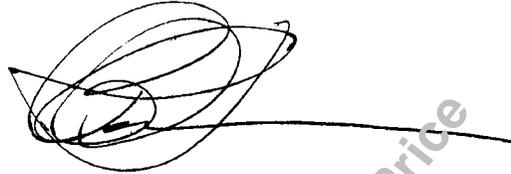
You announced that the Charter Schools claim of receiving no facility funding is a permissible funding disparity and a Legislative decision.

However, in considering your finding that the public school finance system is constitutionally inefficient, we came to believe that such a finding, applicable to the parents and taxpayers complaining for the school districts, must also extend to the charter parents and taxpayers who equally complained.

You will find this reasoning for your consideration in the Findings and Conclusions we submit today

Also included with this submission for your reconsideration is a proposed Judgment.

Yours truly,
SCHULMAN, LOPEZ & HOFFER, L.L.P.



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CERTIFICATE OF SERVICE

The undersigned certifies that on March 12, 2013, a true and correct copy of Charter School Plaintiffs' Proposed Findings of Fact and Conclusions of Law 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:

Shelley N. Danberg, Nicole Bunker-Henderson and Robin Pearson,
Texas Attorney General's Office, P. O. Box 12548, Capitol Station, Austin,
Texas 78711; **Attorneys for State Defendants;**

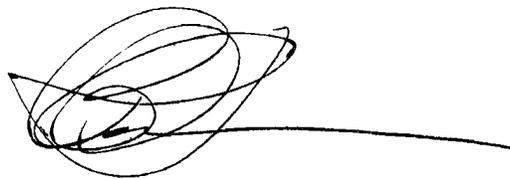
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I. Proposed findings of fact

(1) *Findings relating to Charter School Plaintiffs' Claims.*

(1.a) Background on Texas charter schools

- FOF 1. A charter is “an opportunity for a group of educators . . . to come together and provide innovative learning possibilities for students.” (1/24 Tr. at 5-6) Charter Schools are public schools (TEX. EDUC. CODE §§ 12.005, 12.103) Charter Schools serve as an alternative to traditional school districts for families and students. (1/28 Tr. at 84) Charter Schools, along with school districts are the two primary implementers of the public school system charged with providing a general diffusion of knowledge. (TEX. EDUC. CODE § 11.002)
- FOF 2. The Legislature created charter schools as an integral and critical part of the public education system in Texas. (1/30 Tr. at 120) Most charter schools in Texas are operated by 501c3 non-profit corporations. (1/24 Tr. at 7) (1/28 Tr. at 56)
- FOF 3. An open-enrollment charter school is a creature of statute, expressed in the form of a contract between the SBOE and a charter school applicant. (1/24 Tr. at 5-6; 13; Ex. 9043)(TEX. EDUC. CODE § 12.112) Currently, charters are issued for a five-year term, after which time the charter is up for renewal. If the charter is renewed, its term is ten years. (1/24 Tr. at 13)
- FOF 4. Once a charter is awarded, TEA treats the charter school in a manner similar to the way it treats a traditional public school. The charter school interacts with TEA’s curriculum, performance-based monitoring, and monitoring and interventions departments, and with TEA’s financial review division. (1/24 Tr. at 19)
- FOF 5. Charter schools and school districts are similar in many ways. For instance, both entities are subject to financial accountability requirements, have access to the Teacher Retirement System, and must satisfy state curriculum and graduation requirements. (Ex. 9048 at 22)
- FOF 6. Charter Schools follow same State and Federal academic accountability rules as do Public School Districts. (1/28 Tr. at 48)
- FOF 7. Charter Schools are judged by the same State financial accounting rubric as School Districts. (1/28 Tr. at 48-49)
- FOF 8. Charter School employees contribute to and charter school employees are eligible for the teacher Retirement System the same as School District employees. (1/28 Tr. at 49)(TEX. EDUC. CODE § 12.1057(a))
- FOF 9. Charter Schools are subject to the Open Meetings Act and Public Information Act. (1/28 Tr. at 49)

- FOF 10. Charter Schools are subject to the same state curriculum, graduation, public education information management system (PEIMS), special populations and special education, bi-lingual, pre-k, alcohol and tobacco free schools, and immunization requirements as are School Districts. (1/28 Tr. at 49)
- FOF 11. Charter Schools are subject to UIL Rules (if they participate), and criminal background checks of employees as required of School Districts. (1/28 Tr. at 50)
- FOF 12. According to Robert Scott, former Commissioner of Education, “when you create a charter, it’s like creating a whole new school district” and “it adds that level of workload to the agency.” (Ex. 5630 at 110)
- FOF 13. The current number of Full Time Employees (FTEs) in all the TEA divisions is 700 (Ex. 9026 at 31). The current number of Full Time Employees (FTE) for the TEA Charter School Division is 6.5 (Ex. 9026 at 35)
- FOF 14. Charter schools teachers are generally employees “at will,” there is no minimum salary scale for teachers, and charter school students while partially subject to the disciplinary and placement procedures contained in Chapter 37 of the Texas Education Code are also protected by due process rights (Ex. 9048 at 23; 1/28 Tr. at 51-53; 1/28 Tr. at 54) Charter schools competing for the same teachers as school districts create their own salary scale which, while it may not be matched to the statute, is nonetheless matched to the market and aimed toward recruiting the best and brightest teachers to teach (1/28 Tr. 53) Although by state statute, a teacher in a charter school is required to only have a high school diploma, and is not required to be certified The law, however, does require every teacher in open enrollment charter schools be highly qualified, and for our special education, bilingual and ELL teachers to have certification. (TEX. EDUC. CODE § 12.129)(1/28 Tr. at 51) (1/28 Tr. at 86) The flexibility afforded to charter schools and helps them to be successful comes with a cost. While one law may not apply, another law will and especially with regard to employment, flexibility is not necessarily a cost savings but simply a requirements to adopt different practices. (1/29 Tr. at 93.)
- FOF 15. While Charter applicants are informed of the funding they will receive from the State when they enter into the charter contract, they have no choice in the matter; they either take the funding offered or they do not receive the charter. Those applicants which do receive a charter normally expect that the legislature will meet its duty “to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.” (1/29 Tr. at 152-53)
- (1.b) Tier I and Tier II funding for open-enrollment charter schools is based on statewide averages. Charters do not receive individualized adjustments in the same manner as school districts do**
- FOF 16. Charter schools are also funded differently than school districts. Charter schools, unlike school districts, lack taxing authority. (TEX. EDUC. CODE § 12.102(4)) Accordingly, charter schools funding flows from the state. The State provides charter schools Tier I funding based on student attendance and student population characteristics. The State also provides charter schools with Tier II funding, which is based on the statewide

average of school district tax effort in Tier II. Some charter schools receive ASATR if necessary to meet their revenue target per WADA. (Ex. 1188 at 14)

- FOF 17. Tier I funding for public school districts is based on each individual district's own adjusted allotment, which is a function of and is adjusted according to that district's M&O tax rate, size, sparsity, and the Cost of Education Index. Open-enrollment charter schools receive the same Tier I program grants for students allocated to school districts. However, unlike school districts, each charter school's adjusted allotment is not adjusted for a charter's specific size, sparsity, eligibility, or CEI. Instead, one adjusted allotment number is applied to all charter schools so that they receive a statewide average of all the CEI, sparsity, and size adjustments received by all Texas school districts within their adjusted allotment. (1/28 Tr. at 73-75)
- FOF 18. Tier I funding for open-enrollment charter schools is being calculated through three weighted funding elements: the basic allotment, the statewide average adjusted basic allotment, and the statewide average adjusted allotment. These state averages are then incorporated into the same funding formulas applicable to independent school districts. (Ex. 6441, Wisnoski Dep. at 9, 11 (referencing Ex. 5653 at 140-45, Ex. 5654 at 127-31))
- FOF 19. Open-enrollment charter schools receive Tier II funding calculated using average school district M&O tax effort in Tier II. (1/28 Tr. at 75)
- FOF 20. The target revenue amount for open enrollment charter schools is set at the level of funding under formulas in effect for charter school funding in year 2008-09 and using 2009-10 funding per WADA. Funding expert Joe Wisnoski described Tier II funding for open-enrollment charter schools as being calculated on the average tax efforts of independent school districts in Tier II. (Ex. 6441, Wisnoski Dep. at 9, 11 (referencing Ex. 5653 at 140-45, Ex. 5654 at 127-31))
- FOF 21. Charter schools are not eligible for separate facilities funding under either the Instructional Facilities Allotment or the Existing Debt Allotment. (Ex. 1188 at 15)
- FOF 22. The charter cap of no more than 215 allowable charters was reached once in 2008. A charter holder may open more than one campus under the charter but only after first applying for an amendment with TEA. Presently, there are only 209 active charters with over 500 charter campuses. (1/24 Tr. at 16-17)
- FOF 23. David Duan, the Director of TCSA, as a former official for the Texas Comptroller of Public Accounts, advisor to Texas Governor William Clements on school finance issues, liaison with the Legislature on school finance issues, member of a special consortium created by the State Legislature to study school finance and author of a report to the Texas Legislative Budget Board on charter schools to improve the condition of education within Texas, which influenced the final statute authorizing the creation of charter schools and which was passed and sign into law in 1995, testified that the state did not

have any rational basis for limiting the number of the allowable charters.(1/30 Tr. at 102-103)¹

- FOF 24. Charter schools have experienced exponential growth in Texas since 1996. (10/24 Tr. at 19; Ex. 11332 at 11)
- FOF 25. Although the majority of charter schools are either “Recognized” or “Academically Acceptable” under the state’s accountability system, charter schools are more than twice as likely as school districts to be ranked as either “exemplary” or “academically unacceptable.” (Ex. 11332 at 13.) Specifically, 8.5% of charter schools are exemplary compared to 4.4% of school districts. Likewise, 17.6% of charter schools are academically unacceptable, whereas only 4.9% of districts have that designation. *Id.*
- FOF 26. The charters schools, which teach over 71% economically disadvantaged students and operate over 26% more alternative accountability campuses than do the school districts, trail the school districts in TAKS scores and preparing students for college readiness and meeting standards for the general diffusion of knowledge, (1/30 Tr. at 82, Ex. 9052 at 79 (Table 12))
- FOF 27. When calculated using the same professional methods and standards as used by the state’s expert witnesses in prior school finance cases, the charter schools, when measured by ADA, experience an average deficit of \$1575 less revenue per student than do the school districts. Due to the large number of weight-adjusted students present in the charter school populations, this deficit shrinks to \$1000 per student when measured by WADA. However, a comparison using the same methods and standards utilized by the State in prior school finance cases and adjusted for size, reveals a deficit for the charter schools of \$2243 per student. (1/30 Tr. at 69-76, Ex. 9052 at 10 (Table 1 Summary), 16 (Table 2 Summary), 22 (Table 3 Summary), 28 (Table 4 Summary), 35 (Table 5 Summary))

II. Conclusions of law

(I) *The constitutional parameters and application of factual findings*

(1.a) Charter Schools claims

(1.a.i) The Charter School Plaintiffs’ adequacy claim.

- COL 1. Because the ISD Plaintiffs established the inadequacy of their funding on the school funding formulas (*see supra* Part I.B), and because charter schools are funded based on state averages of ISD funding levels the Charter School Plaintiffs prevail on their claim

¹ The state objected to Mr. Dunn’s testimony as testimony calling for a legal conclusion. The court sustained the objection after Mr. Dunn had testified that he knew of no rational basis for the establishment of a maximum number of charter schools. However, the Charter School Plaintiffs Article I, Section III equal protection claims were accompanied by Article VII, Section I claims which will not allow the Legislature to structure a public school system that is inadequate, inefficient, unsuitable, or arbitrary regardless of whether it has a rational basis or even a compelling reason for doing so. (*Neeley v. West Orange-Cove Consol. Independent School Dist.*, 176 S.W.3d 746, 784 (Tex. 2005).

that funding for open-enrollment charter schools is also inadequate and unsuitable under Article VII, Section 1.

(1.a.ii) The Charter School Parent/Taxpayer claims of adequacy, suitability and efficiency.

COL 2. Because the ISD Plaintiff Parent/Taxpayers prevailed on adequacy, suitability and efficiency and because all these Parent/taxpayers pay taxes to public school district systems regardless of which school they choose for their students, the Charter School Parent/Taxpayer Plaintiffs also necessarily prevail on these claims under Article VII, Section 1.

(1.a.iii) The Charter School Plaintiffs' claims arising out of differential funding with ISDs, including facilities funding.

COL 3. The school districts and charter schools were created in accordance with the laws of this state and both have the primary responsibility for implementing the state's system of public education and ensuring student performance in accordance with this code. (TEX. EDUC. CODE § 11.002) Independent school districts are local public corporations of the same general character but created for school purposes alone. They, as are the charter schools, are the creatures of the statute and neither is required by the Texas Constitution. *Thompson v. Elmo Indep. Sch. Dist.*, 269 S.W. 868, 870 (Tex. Civ. App.--Waco 1925, no writ). TEX. EDUC. CODE § 12.001 *et seq.*; *LITS Charter Sch., Inc. v. C2 Constr., Inc.*, 342 S.W.3d 73, 81 (Tex. 2011).

COL 4. The Legislature, in its discretion, created charter schools to serve as an alternative form of education in Texas, and in doing so, has provided for different personnel requirements, subjects them to different levels of oversight and regulation, and allows them more flexibility in delivering curriculum to their students. While such differences may serve as a rational basis for the Legislature's policy choice to fund charter schools differently than it funds school districts, the Legislature remains constitutionally bound to fund the charter school system under the requirements of Article I, Section VII.

COL 5. The Equal Protection Clause directs governmental actors to treat all similarly situated persons alike. *Sanders v. Palunsky*, 36 S.W.3d 222, 224–25 (Tex. App.—Houston [14th Dist.] 2001, no pet.) (citing *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439-41 (1985)). Where neither a suspect classification nor a fundamental right is involved, the challenged law survives constitutional scrutiny if it is rationally related to a legitimate governmental purpose. See *Kadrmas v. Dickinson Pub. Sch.*, 487 U.S. 450, 457-58 (1988). However, the Texas Constitution makes adequate funding a fundamental right and requires a heightened degree of scrutiny. (*Neeley v. West Orange-Cove Consol. Independent School Dist.*, 176 S.W.3d 746, 784 (Tex. 2005).

COL 6. Section 12.106 of the Texas Education Code, which sets out the manner in which charter schools are funded, violates Article I, Section 3 of the Texas Constitution, because unlike the school districts, charter schools are not eligible for separate facilities funding. (*Texas Constitution*, Article I, Section 3)

(1.a.iv) The Article VII, Section 1 claim challenging the statutory cap on open-enrollment charters

COL 7. The SBOE may not grant more than 215 charters for an open-enrollment charter school. Tex. Educ. Code § 12.101(b).

COL 8. The Texas Legislature did not act arbitrarily in limiting the number of charter schools to 215 or in choosing to fund charter schools differently than traditional public school districts.

(2) Declaratory relief

(2.a) Charter School Plaintiffs' claims

COL 9. The Charter School Plaintiffs prevail on their claim that funding for open-enrollment charter schools is inadequate and unsuitable under Article VII, Section 1.

COL 10. The school finance system as applied to charter schools is inefficient and, therefore, unconstitutional under Article VII, section 1. The Charter School Parent/Taxpayer Plaintiffs prevail on claims of unconstitutional inefficiency under Article VII, Section 1.

COL 11. The State failed to provide a rational basis for denying Charter Schools adequate funding facilities.

COL 12. Even if the State had shown a rational basis for the discrepancy between the funding of ISD vis-à-vis charter schools and/or for the failure to provide charter schools with facility funding while granting it to ISDs, the charter schools plaintiff would still prevail on these issues. Because Article VII, section 1 of the Texas Constitution establishes a duty upon the "Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools," see *Neeley v. W. Orange-Cove Consol. Ind. Sch. Dist.*, 176 S.W.3d 746, 753 (Tex. 2005), and, unlike the federal constitution, education is made a fundamental right by that Constitution, the state's school finance laws are subject to strict scrutiny and can only be sustained if they are suitably tailored to serve a compelling state interest. It is the state test for a violation of equal protection that must be applied in this case as the state courts must interpret state statutes in light of Texas's own constitution and fashion their own tests to determine a statute's constitutionality. See *Whitworth v. Bynum*, 699 S.W.2d 194, 196 (Tex. 1985). The idea is that the government is permitted to give classes disparate treatment, notwithstanding the constitutional guarantee, as long as it has a rational basis for doing so.... does not fit in the context of article VII, section 1 which does not allow the Legislature to structure a public school system that is inadequate, inefficient, or unsuitable, regardless of whether it has a rational basis or even a compelling reason for doing so. (*Neeley v. West Orange-Cove Consol. Independent School Dist.*, 176 S.W.3d 746, 784 (Tex. 2005).

COL 13. A cap on the number of charter schools has no rational basis.

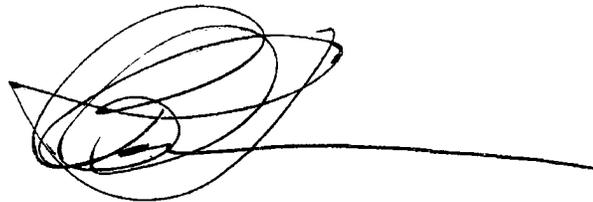
COL 14. The use of a weighted average to compute the amount of funding for charter schools has no rational basis and deprives individual charter schools and the students who attend them, adequate/suitable funding.

- COL 16. The Texas system of school funding, as a whole, for the reasons set out in the Findings of Fact and Conclusions of Law for all the other plaintiff groups deprives the individual Charter School Parent/Taxpayer plaintiffs a suitable, efficient system of public free schools that insures a general diffusion of knowledge.
- COL 17. The Court denies the Texas Charter School Association plaintiffs' request for declaratory judgment that the school finance system violates the efficiency provisions of Article VII, Section 1 of the Texas Constitution by failing to provide separate facilities funding to charter schools.
- COL 18. The Court grants the Charter School Parent/Taxpayer plaintiffs' request for declaratory judgment that the school finance system violates the efficiency provisions of Article VII, Section 1 of the Texas Constitution by failing to provide separate facilities funding to charter schools.
- COL 19. The Court grants the Charter School Parents/Taxpayer plaintiffs' request for declaratory judgment that the school finance system violates the equal protection provisions of Article I, Section 3 of the Texas Constitution.
- COL 20. The Court grants the Texas Charter School Association Plaintiffs' request for declaratory judgment that the limitation on the number of open-enrollment charter schools violates Article VII, Section 1 of the Texas Constitution in that it is not based upon any rational reason and that the state failed to demonstrate, as required by law, any compelling state interest for the particular number chosen by the legislature for limiting the number of charter schools within the State of Texas.

WHEREFORE, Premises considered, Charter School Plaintiffs request that the Court make Findings of Fact and Conclusions of Law as requested above.

Respectfully submitted,

SCHULMAN, LOPEZ & HOFFER, L.L.P.

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CERTIFICATE OF SERVICE

The undersigned certifies that on March 12, 2013, a true and correct copy of Charter School Plaintiffs' Proposed Findings of Fact and Conclusions of Law 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:

Shelley N. Dahlberg, Nicole Bunker-Henderson and Robin Pearson, Texas Attorney General's Office, P. O. Box 12548, Capitol Station, Austin, Texas 78711; **Attorneys for State Defendants;**

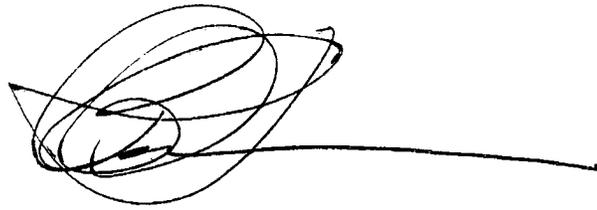
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Robert A. Schulman
Joseph E. Hoffer

Unofficial copy Travis Co. District Clerk Velda L. Price

ISD Plaintiffs,⁴ the Edgewood ISD Plaintiffs,⁵ the Charter School Plaintiffs,⁶ the Intervenors,⁷ and the State Defendants.⁸ The case was tried to the Court over the course of forty-five trial days. Based upon the competent evidence admitted at trial, the arguments of counsel, and this Court's contemporaneously-entered Findings of Fact and Conclusions of Law (incorporated herein by reference), the Court rules as follows:

4

The Fort Bend ISD Plaintiffs are those districts listed in paragraphs 2-83 of their Fifth Amended Petition filed with the Court on November 30, 2012.

5

The Edgewood ISD Plaintiffs are those plaintiffs listed in paragraphs 2-12 of their Second Amended Petition filed with the Court on December 3, 2012.

6

The Charter School Plaintiffs are those plaintiffs listed in paragraphs 5-10 of their First Amended Original Petition filed with the Court on October 15, 2012. Because the court herein rules, in part, for the named individual Parties in the Charter School Petition, Mario Flores, individually and as next friend of Aidan Flores; Christopher Baerga, individually and as next friend of Abby Baerga; Dana Allen, individually as next friend of Teal Evelyn Allen; Jason and Sarah Christensen, individually and as next friends of their children Luke and Grace Christensen; Brooks Flemister, individually and as next friend of Ulric Flemister, they are herein sometimes referred to as the Charter School Parent/taxpayer Plaintiffs and as distinguished from the Texas Charter School Association plaintiff that is singularly referenced as TCSA Plaintiffs. They are collectively called the Charter School Plaintiffs.

7

The Intervenors are those parties listed in paragraphs 1-2 of their Third Amended Plea in Intervention filed with this Court on October 15, 2012, as well as the Texas Association of Business.

8

The State Defendants are Michael Williams, in his official capacity as Texas Commissioner of Education; the Texas Education Agency; Susan Combs, in her official capacity as the Texas Comptroller of Public Accounts; and the Texas State Board of Education.

III. Declaratory Relief relating to Article VII, Section 1 adequacy and suitability claims

This Court GRANTS FINAL JUDGMENT to the TTSFC Plaintiffs, the Calhoun County ISD Plaintiffs, the Fort Bend ISD Plaintiffs, the Edgewood ISD Plaintiffs, and the Charter School Plaintiffs on their requests for declaratory relief in connection with their Article VII, Section 1 adequacy and suitability claims. Accordingly, the Court makes the following declarations (which summarize or restate those made in the accompanying Findings of Fact and Conclusions of Law):

1. The TTSFC Plaintiffs have shown that the cost of meeting the constitutional mandate of adequacy (the “general diffusion of knowledge”) exceeds the maximum amount of funding that is available to them at the \$1.04 M&O tax rate (the highest rate accessible without a Tax Ratification Election, or “TRE”). Accordingly, this Court hereby declares the State’s school finance system fails to satisfy the Article VII, section 1 adequacy and suitability requirements as to the TTSFC Plaintiff districts. The TTSFC Plaintiffs also have shown that the cost of meeting the constitutional mandate of adequacy exceeds the amount of funding that is or would be available to them at the maximum \$1.17 M&O tax rate.
2. The Calhoun County ISD Plaintiffs have shown that the cost of meeting the constitutional mandate of adequacy (the “general diffusion of knowledge”) exceeds the maximum amount of funding that is available to them at the \$1.04 M&O tax rate (the highest rate accessible without a TRE). Accordingly, this Court hereby declares the State’s school finance system fails to satisfy the Article VII, section 1 adequacy and suitability requirements as to these districts. The Calhoun County ISD Plaintiffs also have shown that the cost of meeting the constitutional mandate of adequacy exceeds the amount of funding that is or would be available to them at the maximum \$1.17 M&O tax rate.
3. The Fort Bend ISD Plaintiffs have shown that the cost of meeting the constitutional mandate of adequacy (the “general diffusion of knowledge”) exceeds the maximum amount of funding that is available to them at the \$1.04 M&O tax rate (the highest rate accessible without a TRE). Accordingly, this Court hereby declares the State’s school finance system fails to satisfy the Article VII, section 1 adequacy and suitability requirements as to these districts. The Fort Bend ISD Plaintiffs also have shown that the cost of meeting the constitutional mandate of adequacy exceeds the amount of funding that is or would be available to them at the maximum \$1.17 M&O tax rate.
4. The Edgewood ISD Plaintiffs have shown that the cost of meeting the constitutional mandate of adequacy (the “general diffusion of knowledge”) exceeds the maximum amount of funding that is available to them at the \$1.04 M&O tax rate (the highest rate accessible without a TRE). Accordingly, this Court hereby declares the State’s school finance system fails to satisfy the Article VII, section 1 adequacy and suitability requirements as to these districts. The Edgewood ISD Plaintiffs also have shown that the

cost of meeting the constitutional mandate of adequacy exceeds the amount of funding that is or would be available to them at the maximum \$1.17 M&O tax rate.

5. Because the ISD Plaintiffs collectively have also established a systemic/statewide “adequacy” and “suitability” violation, this Court declares that the Texas school finance system is presently in violation of Article VII, section 1 of the Texas Constitution. Stated another way, this Court finds that the Legislature violated the “arbitrary” standard described in *West Orange Cove II* by “defin[ing] the goals for accomplishing the constitutionally required general diffusion of knowledge,” and then providing “insufficient means for achieving those goals.” *Neeley v. West Orange Cove Consolidated I.S.D.*, 176 S.W.3d 746, 785 (Tex. 2005).
6. The current public school finance system also is unsuitable for the provision of a general diffusion of knowledge for low income and English Language Learner students under Article VII, section 1 of the Texas Constitution.
7. Because charter schools share with school districts the role of primary implementers of the public school system and in light of the Court’s findings of a systemic/statewide “adequacy” and “suitability” violation of the system under Article VII, section 1 of the Texas Constitution, and additionally because charter schools are financed on state averages of school district funding levels and state averages of school district funding adjustments, the Court further declares that funding for open-enrollment charter schools is inadequate and unsuitable as to the Charter School Plaintiffs.

IV. Declaratory Relief relating to Article VIII, Section 1-e state property tax claims

This Court GRANTS FINAL JUDGMENT to the TTSFC Plaintiffs, the Calhoun County ISD Plaintiffs, the Fort Bend ISD Plaintiffs, and the Edgewood ISD Plaintiffs on their requests for declaratory relief in connection with their Article VIII, Section 1-e state property tax claims. Accordingly, the Court makes the following declarations (which summarize or restate those made in the accompanying Findings of Fact and Conclusions of Law):

1. The TTSFC Plaintiffs have lost meaningful discretion to set their M&O tax rates, as their current rates effectively serve as a floor (because they cannot lower taxes without further compromising their ability to meet state standards and requirements) and a ceiling (because they are either legally or practically unable to raise rates further). Further, to the extent any of the TTSFC Plaintiff districts could raise their M&O tax rate to the statutory maximum rate of \$1.17 (and have not already done so), the district would still remain unable to meaningfully use local tax dollars for local enrichment beyond the level required for a constitutionally adequate education, in violation of the prohibition on state ad valorem taxes.
2. The Calhoun County ISD Plaintiffs have lost meaningful discretion to set their M&O tax rates, as their current rates effectively serve as a floor (because they cannot lower taxes

without further compromising their ability to meet state standards and requirements) and a ceiling (because they are either legally or practically unable to raise rates further). Further, to the extent any of the Calhoun County ISD Plaintiff districts could raise their M&O tax rate to the statutory maximum rate of \$1.17 (and have not already done so), the district would still remain unable to meaningfully use local tax dollars for local enrichment beyond the level required for a constitutionally adequate education, in violation of the prohibition on state ad valorem taxes.

3. The Fort Bend ISD Plaintiffs have lost meaningful discretion to set their M&O tax rates, as their current rates effectively serve as a floor (because they cannot lower taxes without further compromising their ability to meet state standards and requirements) and a ceiling (because they are either legally or practically unable to raise rates further). Further, to the extent any of the Fort Bend ISD Plaintiff districts could raise their M&O tax rate to the statutory maximum rate of \$1.17 (and have not already done so), the district would still remain unable to meaningfully use local tax dollars for local enrichment beyond the level required for a constitutionally adequate education, in violation of the prohibition on state ad valorem taxes.
4. The Edgewood ISD Plaintiffs have lost meaningful discretion to set their M&O tax rates, as their current rates effectively serve as a floor (because they cannot lower taxes without further compromising their ability to meet state standards and requirements) and a ceiling (because they are either legally or practically unable to raise rates further). Further, to the extent any of the Edgewood ISD Plaintiff districts could raise their M&O tax rate to the statutory maximum rate of \$1.17 (and have not already done so), the district would still remain unable to meaningfully use local tax dollars for local enrichment beyond the level required for a constitutionally adequate education, in violation of the prohibition on state ad valorem taxes.
5. Because the ISD Plaintiffs collectively have established a systemic/statewide violation, this Court declares that the Texas school finance system is presently in violation of Article VIII, section 1-c of the Texas Constitution.

V. Declaratory Relief relating to Article VII, Section 1 financial efficiency (equity) claims

This Court GRANTS FINAL JUDGMENT to the TTSFC Plaintiffs, the Fort Bend ISD Plaintiffs, the Edgewood ISD Plaintiffs and the Charter School Parent/Taxpayer Plaintiffs, on their requests for declaratory relief in connection with their Article VII, Section 1 financial efficiency or equity claims. Accordingly, the Court makes the following declarations (which summarize or restate those made in the accompanying Findings of Fact and Conclusions of Law):

FOF 28. The TTSFC Plaintiffs, the Ft. Bend ISD Plaintiffs, the Charter School Individual Plaintiffs, and the Edgewood Plaintiffs have shown that, in the current system, there is not a direct and close correlation between a district's tax effort and the educational resources available to it, and, as a result, there are large gaps in funding levels between low property wealth and high property wealth districts. These plaintiffs have shown that these gaps disadvantage the students in their districts in becoming college and career ready and cannot be tolerated in a system that requires that "children who live in poor districts and children who live in rich districts . . . be afforded a substantially equal opportunity to have access to educational funds. *WOCII*, 176 S.W.3d at 753.

FOF 29. The school finance system violates the "efficiency" provisions of Article VII, Section I of the Texas Constitution in that it fails to provide substantially equal access to revenues necessary to provide a general diffusion of knowledge.

FOF 30. The school finance system violates the "efficiency" provisions of Article VII, Section I of the Texas Constitution in that the amount of unequal local supplementation in the system is so great as to destroy the efficiency of the system.

FOF 31. While the Court finds discretion in the Legislature to fund charter schools different from school districts, the Court finds favor with the claim of the TCSA Parent/Taxpayer Plaintiffs who have demonstrated that funding gaps for charter schools disadvantage charter school students in becoming college and career ready, that the school finance system violates the "efficiency" provisions of Article VII, Section I of the Texas Constitution in that it fails to provide substantially equal access to revenues necessary to provide a general diffusion of knowledge. However, open-enrollment charter schools, partially funded on formulas averaging the tax efforts of the school districts are not themselves taxing authorities and are thus not entitled to their "efficiency" provision of Article VII, Section I claim.

VI. This Court denies the TTSFC Plaintiffs' request for declaratory relief relating their Article VIII, section 1(a) "taxpayer equity" claim.

For the reasons set forth in its Findings of Fact and Conclusions of Law, this Court declines to grant the relief sought by the TTSFC Plaintiffs in connection with their Article VIII, section 1(a) "taxpayer equity" claim and GRANTS FINAL JUDGMENT to the State Defendants on this claim.

VII. This Court denies the Intervenor's request for declaratory relief relating to their Article VII, Section 1 "qualitative efficiency" claim.

For the reasons set forth in its Findings of Fact and Conclusions of Law, this Court declines to grant the relief requested by the Intervenor on their Article VII, Section 1

“qualitative efficiency” claim and GRANTS FINAL JUDGMENT to the State Defendants on this claim.

VIII. This Court denies the TCSA Plaintiffs’ request for declaratory relief relating to their Equal Protection Claims under Article 1, Section III of the Texas Constitution).

As noted in Part I above, this Court GRANTS FINAL JUDGMENT to the TCSA Plaintiffs on their Article VII, Section 1 adequacy, suitability and efficiency claims, and GRANTS FINAL JUDGMENT to the Charter School Individual Plaintiffs on all their claims to the same extend, and coextensively, as it is granting judgment to the other named individual plaintiffs, in their individual capacity, excepting those claim regarding the denial by the state of funding for charter school facilities. For the reasons set forth in its Findings of Fact and Conclusions of Law, this Court declines to grant the remaining relief requested by the TCSA Plaintiffs in connection with their Equal Protection claims and GRANTS FINAL JUDGMENT to the State Defendants on these claims.

IX. Injunctive Relief

This Court GRANTS FINAL JUDGMENT in favor of the TTSFC Plaintiffs, Calhoun County ISD Plaintiffs, Fort Bend ISD Plaintiffs, Edgewood ISD Plaintiffs, and the TCSA Plaintiffs on their claims for injunctive relief. Accordingly, this Court:

a.i.1. ENJOINS the State Defendants from giving any force and effect to the sections of the Education Code relating to the financing of public school education (Chapters 41 and 42 and Section 12.106 of the Education Code) and from distributing any money under the current Texas school financing system until the constitutional violations are remedied. The effect of this injunction shall be stayed until July 1, 2014 in order to give the Legislature a reasonable opportunity to cure the constitutional deficiencies in the finance system before the foregoing prohibitions take effect.

a.i.2. As part of remedying the constitutional violation of the suitability clause of Article VII, Section 1 and in order to ensure that the public school system is structured, operated and funded so as to accomplish its purpose for all students, the State Defendants shall make a good faith effort to determine, in accordance with a Court-approved methodology and with the input and participation of the Plaintiffs,

the true costs of meeting the State's performance requirements for all school districts and students, including appropriate weights and adjustments to accurately reflect the cost associated with specific groups of students and/or concentration levels of those students, specific instructional arrangements, and/or specific district characteristics.

a.i.3. This injunction shall in no way be construed as enjoining the State Defendants, their agents, successors, employees, attorneys, and persons acting in concert with them or under their direction, from enforcing or otherwise implementing any other provisions of the Education Code.

a.i.4. This injunction shall not bar suits for collection of delinquent taxes, penalties, and interest.

a.i.5. This injunction does not impair any lawful obligation created by the issuance or execution of any lawful agreement or evidence of indebtedness before July 1, 2014, that matures after that date and that is payable from the levy and collection of ad valorem taxes, and a school district may, before, on, and after July 1, 2014, levy, assess, and collect ad valorem taxes at the full rate and in the full amount authorized by law necessary to pay such obligations when due and payable. A school district that, before July 1, 2014, issues bonds, notes, public securities, or other evidences of indebtedness under Chapter 45 of Education Code, or other applicable law, or enters into a lease-purchase agreement under Subchapter A, Chapter 271 of the Local Government Code, may continue, before, on, and after July 1, 2014, to receive state assistance with respect to such payments to the same extent that the district would have been entitled to receive such assistance under Chapter 42 or 46 of the Education Code, notwithstanding this injunction.

a.i.6. This injunction does not limit, modify, or eliminate the authority of a school district to issue or execute bonds, notes, public securities, or other evidences of indebtedness under Chapter 45 of the Education Code, or other applicable law, before, on, or after July 1, 2014, or to levy, assess, and collect, before, on, or after July 1, 2014, ad valorem taxes at the full rate and in the full amount authorized by Section 45.002 of the Education Code or other applicable law, necessary to pay such bonds, notes, public securities, or other evidences of indebtedness when due and payable.

a.i.7. This injunction does not limit, modify, or eliminate the authority of the commissioner of education, before, on, or after to July 1, 2014, to grant assistance to a school district under Chapter 42 or 46 of the Education Code, in connection with bonds, notes, public securities, lease-purchase agreements, or evidences of indebtedness, including those described by Subchapter A, Chapter 271 of the Local Government Code.

X. Attorneys' Fees and Costs

In response to an agreed motion by all parties, this Court bifurcated the issue of attorneys' fees from the trial on the merits of the plaintiffs' claims in an order dated August 29th, 2012. Following the conclusion of the trial on the merits, the parties agreed to try the attorneys' fees issues by submissions of expert affidavits to this Court. This Court is of the opinion that the TTSFC Plaintiffs, Calhoun County ISD Plaintiffs, Fort Bend ISD Plaintiffs, Edgewood ISD Plaintiffs and the Charter School Plaintiffs are entitled to reasonable and necessary attorneys' fees as set forth below, and that such an award of fees would be equitable and just.

(1) *TTSFC Plaintiffs' Attorneys' Fees*

IT IS THEREFORE ORDERED that under Section 37.009 of the Texas Civil Practice and Remedies Code, the TTSFC Plaintiffs shall recover from the State Defendants attorneys' fees in the sum of \$1,516,776.41, an amount that this Court finds to be both reasonable and necessary and equitable and just.

IT IS FURTHER ORDERED that the sum awarded to the TTSFC Plaintiffs shall bear post-judgment interest at the rate of five percent (5%), compounded annually, from the date the judgment is signed until the judgment is paid in full.

IT IS FURTHER ORDERED that the TTSFC Plaintiffs shall recover from the State Defendants appellate attorneys' fees in the following amounts that the Court also finds to be reasonable and necessary and equitable and just:

- (A) \$325,000 if the State Defendants seek and obtain direct review in the Texas Supreme Court, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date the direct appeal is perfected in the Texas Supreme Court, with all such post-judgment interest to run until the judgment against the State Defendants is paid in full; or

- (B) (1) \$325,000 if the State Defendants perfect an appeal from this Final Judgment to the Court of Appeals, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date of the notice of appeal in the Court of Appeals; plus (2) \$100,000 if the State Defendants seek review in the Texas Supreme Court, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date a petition for review is filed with the Supreme Court of Texas; with all such post-judgment interest to run until the judgment against the State Defendants is paid in full.

IT IS FURTHER ORDERED that if, following an appeal, the TTSFC Plaintiffs do not prevail on one or both of their claims, the Court finds that this award of attorneys' fees would still be equitable and just under Section 37.009 of the Texas Civil Practice and Remedies Code, because they have made significant contributions to the public debate on school finance law through this lawsuit.

(2) Calhoun County ISD Plaintiffs' Attorneys' Fees

IT IS THEREFORE ORDERED that under Section 37.009 of the Texas Civil Practice and Remedies Code, the Calhoun County ISD Plaintiffs shall recover from the State Defendants attorneys' fees in the sum of \$2,091,244.37, an amount that this Court finds to be both reasonable and necessary and equitable and just.

IT IS FURTHER ORDERED that the sum awarded to the Calhoun County ISD Plaintiffs shall bear post-judgment interest at the rate of five percent (5%), compounded annually, from the date the judgment is signed until the judgment is paid in full.

IT IS FURTHER ORDERED that the Calhoun County ISD Plaintiffs shall recover from the State Defendants appellate attorneys' fees in the following amounts that the Court also finds to be reasonable and necessary and equitable and just:

- (A) \$500,000 if the State Defendants seek and obtain direct review in the Texas Supreme Court, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date the direct appeal is perfected in the Texas Supreme Court, with all such post-judgment interest to run until the judgment against the State Defendants is paid in full; or
- (B) (1) \$400,000 if the State Defendants perfect an appeal from this Final Judgment to the Court of Appeals, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date of the notice of appeal in the Court of Appeals; plus (2) \$325,000 if the State Defendants seek review in the Texas Supreme Court, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date a petition for review is filed with the Supreme Court of Texas; with all such post-judgment interest to run until the judgment against the State Defendants is paid in full.

IT IS FURTHER ORDERED that if, following an appeal, the Calhoun County ISD Plaintiffs do not prevail on one or both of their claims, the Court finds that this award of attorneys' fees would still be equitable and just under Section 37.009 of the Texas Civil Practice and Remedies Code, because they have made significant contributions to the public debate on school finance law through this lawsuit.

(3) Fort Bend ISD Plaintiffs' Attorneys' Fees

IT IS THEREFORE ORDERED that under Section 37.009 of the Texas Civil Practice and Remedies Code, the Fort Bend ISD Plaintiffs shall recover from the State Defendants attorneys' fees in the sum of \$1,315,984.25, an amount that this Court finds to be both reasonable and necessary and equitable and just.

IT IS FURTHER ORDERED that the sum awarded to the Fort Bend ISD Plaintiffs shall bear post-judgment interest at the rate of five percent (5%), compounded annually, from the date the judgment is signed until the judgment is paid in full.

IT IS FURTHER ORDERED that the Fort Bend ISD Plaintiffs shall recover from the State Defendants appellate attorneys' fees in the following amounts that the Court also finds to be reasonable and necessary and equitable and just:

- (A) \$400,000 if the State Defendants seek and obtain direct review in the Texas Supreme Court, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date the direct appeal is perfected in the Texas Supreme Court, with all such post-judgment interest to run until the judgment against the State Defendants is paid in full; or
- (B) (1) \$300,000 if the State Defendants perfect an appeal from this Final Judgment to the Court of Appeals, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date of the notice of appeal in the Court of Appeals; plus (2) \$250,000 if the State Defendants seek review in the Texas Supreme Court, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date a petition for review is filed with the Supreme Court of Texas; with

all such post-judgment interest to run until the judgment against the State Defendants is paid in full.

IT IS FURTHER ORDERED that if, following an appeal, the Fort Bend ISD Plaintiffs do not prevail on one or both of their claims, the Court finds that this award of attorneys' fees would still be equitable and just under Section 37.009 of the Texas Civil Practice and Remedies Code, because they have made significant contributions to the public debate on school finance law through this lawsuit.

(4) Edgewood ISD Plaintiffs' Attorneys' Fees

IT IS THEREFORE ORDERED that under Section 37.009 of the Texas Civil Practice and Remedies Code, the Edgewood ISD Plaintiffs shall recover from the State Defendants attorneys' fees in the sum of \$1,760,953.14, an amount that this Court finds to be both reasonable and necessary and equitable and just.

IT IS FURTHER ORDERED that the sum awarded to the Edgewood ISD Plaintiffs shall bear post-judgment interest at the rate of five percent (5%), compounded annually, from the date the judgment is signed until the judgment is paid in full.

IT IS FURTHER ORDERED that the Edgewood ISD Plaintiffs shall recover from the State Defendants appellate attorneys' fees in the following amounts that the Court also finds to be reasonable and necessary and equitable and just:

- (A) \$[] if the State Defendants seek and obtain direct review in the Texas Supreme Court, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date the direct appeal is perfected in the Texas Supreme Court, with all such post-judgment interest to run until the judgment against the State Defendants is paid in full; or

- (B) (1) \$200,000 if the State Defendants perfect an appeal from this Final Judgment to the Court of Appeals, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date of the notice of appeal in the Court of Appeals; plus (2) \$100,000 if the State Defendants seek review in the Texas Supreme Court, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date a petition for review is filed with the Supreme Court of Texas; with all such post-judgment interest to run until the judgment against the State Defendants is paid in full.

IT IS FURTHER ORDERED that if, following an appeal, the Edgewood ISD Plaintiffs do not prevail on one or both of their claims, the Court finds that this award of attorneys' fees would still be equitable and just under Section 37.009 of the Texas Civil Practice and Remedies Code, because they have made significant contributions to the public debate on school finance law through this lawsuit.

(5) Charter School Plaintiffs' Attorneys' Fees

IT IS THEREFORE ORDERED that under Section 37.009 of the Texas Civil Practice and Remedies Code, the Charter School Plaintiffs shall recover from the State Defendants attorneys' fees in the sum of \$558,483, an amount that this Court finds to be both reasonable and necessary and equitable and just. This amount represents an award of only 85% of the reasonable attorney's fees incurred by the Charter School Plaintiffs in prosecution of this case, because the TCSA Plaintiffs did not prevail on all issues.

IT IS FURTHER ORDERED that the sum awarded to the Charter School Plaintiffs shall bear post-judgment interest at the rate of five percent (5%), compounded annually, from the date the judgment is signed until the judgment is paid in full.

IT IS FURTHER ORDERED that the Charter School Plaintiffs shall recover from the State Defendants appellate attorneys' fees in the following amounts that the Court also finds to be reasonable and necessary and equitable and just:

- (A) \$325,000 if the State Defendants seek and obtain direct review in the Texas Supreme Court, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date the direct appeal is perfected in the Texas Supreme Court, with all such post-judgment interest to run until the judgment against the State Defendants is paid in full; or
- (B) (1) \$325,000 if the State Defendants perfect an appeal from this Final Judgment to the Court of Appeals, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date of the notice of appeal in the Court of Appeals; plus (2) \$100,000 if the State Defendants seek review in the Texas Supreme Court, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date a petition for review is filed with the Supreme Court of Texas; with all such post-judgment interest to run until the judgment against the State Defendants is paid in full.

IT IS FURTHER ORDERED that if, following an appeal, the Charter School Plaintiffs do not prevail on one or both of their claims, the Court finds that this award of attorneys' fees would still be equitable and just under Section 37.009 of the Texas Civil Practice and Remedies Code, because they have made significant contributions to the public debate on school finance law through this lawsuit.

Intervenors' Attorneys' Fees

[Await Court Ruling]

XI. Continuing Jurisdiction

This Court will retain continuing jurisdiction over this matter until the Court has determined that the State Defendants have fully and properly complied with its judgment and orders.

XII. Miscellaneous

IT IS FURTHER ORDERED that all costs of court expended or incurred in this cause by the TTSFC Plaintiffs, the Calhoun County ISD Plaintiffs, the Fort Bend ISD Plaintiffs, the Edgewood ISD Plaintiffs and the TCSA Plaintiffs are taxed against the State Defendants. [The costs of court expended or incurred in this cause by the State Defendants in their defense of the Intervenors' claims are taxed against _____].

IT IS FURTHER ORDERED that all writs and processes for the enforcement and collection of this judgment or the costs or court may issue as necessary.

This Judgment finally disposes of all parties and all claims and is appealable. All other relief not expressly granted is denied.

SIGNED this ____th day of _____, 2013.

JOHN DIETZ
Presiding Judge