

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

TEXAS TAXPAYER & STUDENT	§	IN THE DISTRICT COURT OF
FAIRNESS COALITION, et al.,	§	
	§	
Plaintiffs,	§	
	§	
VS.	§	TRAVIS COUNTY, TEXAS
	§	
MICHAEL WILLIAMS, Commissioner of	§	
Education, et al.,	§	
	§	
Defendants.	§	200 TH JUDICIAL DISTRICT

**CALHOUN COUNTY ISD PLAINTIFFS, FORT BEND ISD PLAINTIFFS,
AND TTSFC PLAINTIFFS' BRIEF IN SUPPORT OF REOPENING THE EVIDENCE**

Pursuant to the Court's request, the Calhoun County ISD Plaintiffs, Fort Bend ISD Plaintiffs, and TTSFC Plaintiffs (together, the "School District Plaintiffs") file this Brief in Support of Reopening the Evidence.

INTRODUCTION

When this Court previously ordered that the record be reopened to reflect developments from the 2013 legislative session, it held that "the additional testimony is necessary to the due administration of justice" *See* June 19, 2013 Order on Motion to Reopen Evidence at 1. That decision was correct and should stand. Almost every party, including the State, agrees that evidence relating to key 2013 legislation must be considered and addressed in this Court's findings of fact and final judgment and be made a part of the record before this case goes up on appeal. The primary disagreement between the State and the undersigned parties is the extent to which this evidence can come in through judicial notice. As discussed below, important categories of evidence relating to the *impact* of the 2013 legislation do not satisfy Rule 201's judicial notice requirements and must come in through an evidentiary hearing. These categories include, but are not limited to:

- evidence relating to the increased costs that districts face from House Bill 5’s changes to the graduation and curriculum requirements, including the need to provide expanded vocational and other offerings;
- expert testimony relating to the various permutations of revenue gaps for adjudication of the equity claims;
- expert testimony relating to the capacity for revenue generation remaining in the system for adjudication of the state property tax claim; and
- evidence relating to the changes in the state testing system, including the tests specifically left in place by the Legislature as part of graduation requirements and the updated results of those tests after another year of administration.

At the August 20th work session, this Court identified two concerns about reopening the evidence, but neither warrants reconsideration of its decision. First, the Court asked whether reopening the evidence would open the door to relitigating the entire 13-week trial. But the cases interpreting Rule 270 demonstrate that the Court may reopen the evidence only for a specific purpose – such as to receive evidence of the legislative changes and their effect. The Court also has the power to set time limits on the parties, and exclude any evidence that is cumulative or irrelevant. In this case, the Court also may exclude or limit testimony from parties whose claims the Court already has determined have failed as a matter of law, because nothing occurred in the 2013 legislative session that should change the Court’s analysis of those claims.

Second, the Court asked whether the relevant data for the 2013-14 school year (the first year impacted by the legislation) would be sufficiently “final” by January 2014. As the attached affidavits from Joe Wisnoski and Lynn Moak explain, the Court need not wait on “final” or “near final” data to evaluate the impact of the formula changes enacted by the 2013 Legislature. Instead, as was done in prior school finance cases, the experts may use 2011-12 “final” or 2012-13 “near final” data and run this data through the formulas for the current 2013-14 school year and the upcoming 2014-15 school year. *See* Ex. A, Wisnoski Aff., at ¶ 8; Ex. B, Moak Aff., at ¶¶ 13-15. Doing so will allow the experts to reliably assess the impact of the formula changes

and be certain that any changes observed are driven solely by the legislative formula changes, and not the data.

ARGUMENT AND AUTHORITIES

A. Evidence of the new legislation and its impact must be included in the record.

In prior briefing, the Calhoun County ISD Plaintiffs and Fort Bend ISD Plaintiffs described the significant changes resulting from the actions of the 83rd Legislature and the need to supplement the record to reflect these changes. *See* Calhoun County ISD Plaintiffs' Motion to Reopen the Evidence; Fort Bend ISD Plaintiffs' Response in Support of Calhoun County ISD Plaintiffs' Motion to Reopen the Evidence. Because all plaintiffs are asking the Court to enjoin the operation of the current school finance system, this Court must assess and the record must reflect the most recent changes to that system. *Put another way, the Court should enjoin the operation of the current system based on evidence of the current system and current law.* If this case reaches the Texas Supreme Court on the present record and the Court's judgment is reversed and remanded for additional fact finding, the proceedings would be significantly delayed, as would the relief to the Plaintiff school districts and their students. The State Defendants have already signaled their intent to argue that the Court's judgment should be reversed if it is based on an incomplete record, claiming that "the Court's opinion would be inappropriately advisory in nature" if the Court entered judgment "on laws that no longer exists [sic] as a result of the bills that repealed, replaced and amended existing school finance law and policy" Ex. C, Mtn. to Reopen Spreadsheet, at 5.¹ To protect the Court's judgment from such an attack, and to prevent unnecessary expenditure of time and resources by all parties, the

¹ The Motion to Reopen Spreadsheet was submitted to the Court as Exhibit A to the State Defendants' Advisory to the Court of Parties' Positions Regarding Re-Opening of the Evidence and Entry of Judgment, dated June 19, 2013.

record provided to the Texas Supreme Court must include evidence of the recent changes to the school finance system and their impact.

Most of the parties in this case agree that the record must be supplemented in some form. The School District Plaintiffs assert that the record must be updated to include evidence of both the new legislation and its impact – or lack thereof – on the Court’s prior oral ruling that the school finance system violates Article VII, Section 1 and Article VIII, Section 1-e of the Texas Constitution. During the August 20th conference, the State Defendants argued that this Court or the Texas Supreme Court should take judicial notice of the new legislation, but that evidence of the *impact* of this legislation is unnecessary. The State Defendants’ argument is tantamount to claiming that the 13-week trial that began last year was unnecessary because the Court could have simply taken judicial notice of the system and legislation to adjudicate the parties’ constitutional claims. Furthermore, the State Defendants’ argument is belied by their previous acknowledgment that the impact of legislation is not apparent from the legislation itself. In an advisory to the Court, the State Defendants complained that the Plaintiffs’ draft spreadsheet outlining the relevant new legislation “does not identify how each bill, and the specific statutory changes within each bill, *impacts each of the Plaintiffs’ claims.*” Ex. D, Def.’s Advisory to the Court, at 2 (emphasis added). The State Defendants argued they were unable to prepare documents for the joint submission required by the Court without the “benefit of [the Plaintiffs’] analysis of the *potential impact of the new laws*” *Id.* (emphasis added). The State Defendants’ argument underscores that the legislation itself is insufficient to understand the impact of that legislation on the system. The Texas Supreme Court must receive a record complete with evidence of the new legislation and its effect.

B. A trial is necessary to receive evidence that is not subject to judicial notice.

Much of the evidence that must be included in the record (particularly relating to the impact of the legislative changes) is not subject to judicial notice. The Court must allow the parties to present this evidence in a trial before the Court to avoid the possible delay of a reversal and remand. Even the evidence that may properly be considered through judicial notice should first be considered by this Court through filing of a motion and a hearing. *See* TEX. R. EVID. 201(e) (requiring notice and opportunity to be heard). Appellate courts often resist taking judicial notice of evidence that was not first presented to the trial court. *See, e.g., Hadley v. State*, 735 S.W.2d 522, 530 (Tex. App.—Amarillo 1987, pet. ref'd). The Court should therefore allow the parties to present new evidence through a brief trial, and should allow the parties an opportunity to be heard on any evidence of which judicial notice may be taken.

1. Rules of judicial notice

A court may take judicial notice of adjudicative facts, legislative facts, and law.² *O'Quinn v. Hall*, 77 S.W.3d 438, 447 (Tex. App.—Corpus Christi 2002, no pet.). Adjudicative facts are “the facts of the particular case” to which the law is applied. *O'Connell v. State*, 17 S.W.3d 746, 749 (Tex. App.—Austin 2000, no pet.); *O'Quinn*, 77 S.W.3d at 447. Thus, “when a court or an agency finds facts concerning the immediate parties, including who did what, where, when, how, and with what motive or intent, the court or agency is performing an adjudicative function, and the facts are called adjudicative facts.” *Id.* (quotation omitted).

In contrast, legislative facts “are general and usually do not touch individual questions of particular parties to a proceeding.” *Alaniz v. Hoyt*, 105 S.W.3d 330, 351 n.6 (Tex. App.—

² The Texas Rules of Evidence allow a court to take judicial notice of certain types of law that are not at issue in this case. *See* TEX. R. EVID. 202 (laws of other states); TEX. R. EVID. 203 (laws of foreign countries); TEX. R. EVID. 204 (ordinances of municipalities and counties of Texas, the contents of the Texas Register, and the codified rules of the agencies published in the Administrative Code).

Corpus Christi 2003, no pet.); *see also Gaston v. State*, 63 S.W.3d 893, 900 (Tex. App.—Dallas 2001, no pet.). Legislative facts include facts that judges rely on to decide the meaning, scope, and applicability of law. JEFF BROWN & REECE RONDON, TEXAS RULES OF EVIDENCE HANDBOOK 98-99 (Jones McClure Publishing 2013). Thus, while “adjudicative facts are the facts of the particular case, . . . legislative facts have relevance to legal reasoning and the lawmaking process.” *O’Connell*, 17 S.W.3d at 749. Legislative facts are not usually proven by evidence. *Kubosh v. State*, 241 S.W.3d 60, 64 (Tex. Crim. App. 2007).

Texas Rule of Evidence 201 governs judicial notice of adjudicative facts, but not of legislative facts. TEX. R. EVID. 201(a). To take judicial notice of an adjudicative fact, the fact must not be “subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” TEX. R. EVID. 201(b). Upon timely request, a party is entitled to an opportunity to be heard as to the propriety of taking judicial notice of an adjudicative fact. TEX. R. EVID. 201(e).

2. Judicial notice of the new evidence

To understand how the new legislation affects the plaintiffs’ claims, the Texas Supreme Court will require evidence of adjudicative facts. For example, the record should include evidence regarding the amount of available taxing capacity in the system after passage of the new legislation, the costs imposed on districts as a result of House Bill 5, and the relative distribution of funding among districts. These are adjudicative facts, in that they relate to the parties to the case and not to the lawmaking process generally. Adjudicative facts such as these are governed by Rule 201, and therefore the Court cannot take judicial notice of them unless they are (1) generally known within the territorial jurisdiction of the trial court or (2) capable of

accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. TEX. R. EVID. 201(b). Most of the adjudicative facts concerning the impact of the new legislation must be presented through expert testimony. While this testimony will come from reliable witnesses, it will not likely meet the requirements of Rule 201(b). See *In re J.L.*, 163 S.W.3d 79, 83-84 (Tex. 2005) (holding that court of appeals should not have taken judicial notice of expert testimony because it concerned disputed facts and opinions); *O'Quinn*, 77 S.W.3d at 447 (“[A]ssertions made by an individual, even under oath, are not the type of facts that are capable of accurate and ready determination by a source whose accuracy cannot reasonably be questioned.”) (quoting *Garza v. State*, 996 S.W.2d 276, 279-80 (Tex. App.—Dallas 1999, pet. ref’d)).

To the extent certain facts related to the passage of legislation itself (and not to the effects of the legislation) may be admissible via judicial notice, the Court should hold a hearing to determine the exact parameters of this evidence. This hearing should occur *before* the case proceeds to the Texas Supreme Court. Appellate courts are generally reluctant to take judicial notice of evidence that was not first presented to the trial court. *Hendee v. Dewhurst*, 228 S.W.3d 354, 377 (Tex. App.—Austin 2007, pet. denied) (declining to take judicial notice of Comptroller’s revenue estimate and memo from the LBB’s deputy director that were not presented to the trial court); see also *Gaston*, 63 S.W.3d at 900 (“As a general rule, appellate courts take judicial notice of facts outside the record only to determine jurisdiction over an appeal or to resolve matters ancillary to decisions that are mandated by law (e.g., calculation of prejudgment interest when the court renders judgment.)”). This is particularly true when judicial notice is sought by a party attempting to reverse the trial court’s ruling. See, e.g., *Hadley v. State*, 735 S.W.2d 522, 530 (Tex. App.—Amarillo 1987, pet. ref’d).

After allowing the parties an opportunity to request any judicial notice that may be appropriate, the parties should be allowed to present the remaining evidence relating to the new legislation in an efficient manner before the Court.

C. Upon reopening the record, the Court can ensure that evidence is presented expeditiously.

The Court has considerable authority to limit the scope of any new evidentiary hearing. Under Rule 270, courts frequently reopen the evidence only for a specific, limited purpose. *See, e.g., Vines-Herrin Custom Homes, LLC v. Great Am. Lloyds Ins. Co.*, 357 S.W.3d 166, 169 (Tex. App.—Dallas 2011, no pet.) (noting that trial court “reopened the evidence under Texas Rule of Civil Procedure 270 for the limited purpose of hearing evidence of when actual damage to the residence occurred”); *Cox v. Wilkins*, No. 03-05-00110-CV, 2006 WL 821202, at *3 (Tex. App.—Austin 2006, no pet.) (court did not abuse discretion by allowing party to reopen evidence “on the sole issue of attorney’s fees”).

Further, the trial judge has broad discretion with respect to the manner in which control of a trial is maintained and the extent of witness examination that is allowed. *Texas Emp. Ins. Ass’n v. Garza*, 557 S.W.2d 843, 846 (Tex. Civ. App.—Corpus Christi 1977, writ ref’d n.r.e.); *see also* TEX. R. EVID. 611(a) (“The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to . . . avoid needless consumption of time”) Utilizing this discretion, the Court may impose time limits on the parties for the presentation of evidence. *See, e.g., Jones v. Lurie*, 32 S.W.3d 737, 744 (Tex. App.—Houston [14th Dist.] 2000, no pet.) (trial court did not abuse discretion by limiting trial to two weeks); *Walton v. Canon, Short & Gaston*, 23 S.W.3d 143, 154 (Tex. App.—El Paso 2000, no pet.) (trial court did not abuse its discretion in limiting each side to 90 minutes to present case). The Court

may also limit the amount of evidence presented by applying traditional rules of evidence to exclude cumulative and irrelevant evidence. *See* TEX. R. EVID. 401-403.

Under these principles the Court may appropriately limit the scope of any new evidentiary hearing. For example, the Court may prevent further evidence from the Charter School Plaintiffs and Intervenors. The Court has already rejected these parties' claims as a matter of law, and the new legislation does not alter their claims. Evidence from these parties should therefore be excluded or significantly limited. *See Dallas County Hosp. Dist. v. Perrin*, 694 S.W.2d 257, 259-60 (Tex. App.—Dallas 1985, writ ref'd n.r.e.) (court did not abuse discretion by reopening evidence as to plaintiff's claim against one defendant, but not the other); *Lackey v. Perry*, 366 S.W.2d 91, 96 (Tex. Civ. App.—San Antonio 1963, n.w.h.) (court could reopen the evidence to hear additional testimony "from either or both parties").

The parties already have shown their intent to present evidence in an efficient manner. The Court originally ruled that the evidence would be reopened for six weeks beginning on January 6, 2014. The parties unanimously agreed that they could collectively present their proof in *no more than* four weeks, and accordingly proposed that the trial begin two weeks after the Court's proposed date, on January 21, 2014. *See* Ex. E, Proposed Scheduling Order, at 3.³ The parties' agreement confirms that the evidence can appropriately be limited in scope to ensure an expeditious trial.

³ The Proposed Scheduling Order was submitted to the Court as Exhibit A to the Fort Bend ISD Plaintiffs' Advisory to the Court Regarding Reopening the Evidence, dated July 18, 2013. Although the State Defendants filed an objection to the Proposed Scheduling Order, they did so only to "preserve their right to have the Court reconsider deadlines that have been agreed to in the absence of fair notice of the Plaintiffs' and Intervenors' claims." Ex. F, Def.'s Objections to Scheduling Order, at 2. All parties have now amended their petitions to provide notice of their amended claims, and the State Defendants have not objected that the trial date agreed to by the parties should be changed.

D. The impact of the legislative formula changes can be shown without “near final” data for the 2013-14 school year.

1. Prior Supreme Court analyses have evaluated the school finance system using the Foundation School Program formula guarantees.

This Court is not the first to face the question of how to assess the constitutionality of a large, complex, and dynamic school funding system that is driven, in part, by district level circumstances (student counts, property values, tax rates, etc.) that are regularly changing. However, a review of the Texas Supreme Court’s prior rulings on school finance make it clear that the assessment of the constitutionality of the system as a whole depends, not on an individual district’s circumstances, but on whether the Foundation School Program (“FSP”) formulas create a system that, as a whole, is adequate, suitable, and equitable. *See Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391, 392 (Tex. 1989) (*Edgewood I*) (discussing the funding elements of the FSP); *Edgewood Indep. Sch. Dist. v. Kirby*, 804 S.W.2d 491, 496 (Tex. 1992) (*Edgewood II*) (“The only material changes in the system since *Edgewood I* are those made by Senate Bill 1. The question we address is whether there is any evidence that those changes remove the constitutional violation.”); *Carrollton-Farmers Branch Indep. Sch. Dist. v. Edgewood Indep. Sch. Dist.*, 876 S.W.2d 489 (Tex. 1992) (*Edgewood III*) (evaluating whether the minimum and maximum tax rates and distribution system set by Senate Bill 351 established a statewide property tax); *Edgewood Indep. Sch. Dist. v. Meno*, 917 S.W.2d 717, 730-32 and n.10 (Tex. 1995) (*Edgewood IV*) (evaluating constitutionality of school finance system based on FSP funding formulas established in Senate Bill 7); *Neeley v. West Orange-Cove Indep. Sch. Dist.*, 176 S.W.3d 746, 761-62 (describing finance system based on FSP formula guarantees). In other words, the Supreme Court has always asked whether “the [current] public school system [is] structured, operated, and funded so that it can accomplish its purpose for all Texas children.” (*West Orange-Cove II*, 176 S.W.3d at 753). In answering that question, the Supreme Court has

regularly relied on evidence of the system/FSP formulas in place at the time of the trial. *See* Ex. B, *Moak Aff.*, at ¶¶ 8-9; *see also, e.g., Edgewood II*, 804 S.W.2d at 494-97 (applying new statute to existing tax rates to determine effect of legislation). If it did not, it would never be able to answer the question of whether the *current* school finance system is unconstitutional, as the final data is not available until well after the first year of the biennium ends, and the next legislative session is around the corner.

The School District Plaintiffs believe that neither the FSP formulas from the 2011-12 and 2012-13 school years, nor the FSP formulas from the 2013-14 and 2014-15 school years create a system that is structured, operated, and funded so that it can accomplish its purpose of graduating students who are prepared for a career or the workforce. Further, the Fort Bend ISD Plaintiffs and the TTSFC Plaintiffs believe that the 2013-14 and 2014-15 FSP formulas still fail to provide the equity required by the Constitution. But each of the School District Plaintiffs submitting this brief also believe that the Texas Supreme Court must be given a record complete with evidence of the changes in appropriation and their impact on the FSP formulas before it can decide whether the system is constitutional.

2. The impact of the 2013 FSP formula changes can be reliably measured by using a prior year's data in the new formulas.

When projecting the funding levels for a specific district for a given school year, district staff and TEA staff must take into consideration two main factors: (1) how a district's circumstances might change – e.g., student enrollment growth or decline, property value growth or decline, and tax collections – and (2) the FSP formulas for that year. *See* Ex. A, *Wisnoski Aff.*, at ¶¶ 3-6. The first factor, as the Court previously ruled, involves projections and cannot be fully known until the data is “final.” *See* Ex. A, *Wisnoski Aff.*, at ¶¶ 3-7. However, the second factor is known and final as soon as the legislature sets the formulas for a biennium.

School districts are currently being funded based on the 2013-14 FSP formulas as they were modified by the 2013 Legislature. *See* Ex. A, Wisnoski Aff., at ¶ 6. Further, we know that, absent Court intervention, districts will be funded next school year based on the 2014-15 FSP formulas as they were modified by the 2013 Legislature.

When evaluating system-wide patterns in FSP funding, the individual district's projected circumstances are not as important. This is true for two reasons. First, even variations that would be considered large to a district are small when considered system-wide (and balanced against a different district that had a "swing" in the opposite direction). *See* Ex. A, Wisnoski Aff., at ¶ 10 ("While changes in data from year to year can be significant for an individual district, in my experience, these changes are not widespread enough to alter the system-wide patterns that can be observed when assessing a legislative change."); Ex. B, Moak Aff., at ¶ 12 ("Although individual district data may be in error, the degree of data error is relatively small in almost all cases. Historically, the degree of error associated with these data are not so great that basic relationships are modified.").

Second, and more importantly, the impact of projection errors and changing district circumstances can be isolated and eliminated by using "near final" or "final" data from a prior year and running that data through the formulas. *See* Ex. B, Moak Aff., at ¶ 14 ("In my opinion, the best method is to use data from one year and apply it to the formulas for multiple years. Using this method allows the "noise" created by individual district level changes and circumstances to be eliminated and provides confidence that any systematic changes observed are the result of the formula changes"); Ex. A, Wisnoski Aff., at ¶ 8 ("Holding data constant across years allows for a clear isolation of the impact of formula change over time without allowing the changing circumstances of individual district data to obscure the impact of statutory

change.”). An added advantage of this approach is that the Court could direct all of the parties to use the same set of financial data, and thus ensure that any dispute between the parties and their experts is not data driven.

The question before the Court on reopening will not be how an individual district’s circumstances changed; rather, it will be whether the impact of the 2013 legislative changes was enough to alter the Court’s ruling that the system as a whole is unconstitutional on several grounds. Holding the data constant and comparing the results under the system in place during the trial to the new system will allow the parties to present evidence on, and the Court to evaluate, exactly how significant of an impact the legislation had on the system.

CONCLUSION

For the reasons stated above and in earlier briefing, the School District Plaintiffs respectfully request that this Court (1) stand by its previous and correct decision to reopen the evidence, (2) allow the parties to present evidence on the subjects outlined in Part I of Calhoun County ISD Plaintiffs’ Motion to Reopen the Evidence, (3) enter the Proposed Scheduling Order attached as Exhibit A to the Fort Bend ISD Plaintiffs’ Advisory to the Court Regarding Reopening the Evidence, dated July 18, 2013, and (4) grant any other appropriate relief.

Respectfully submitted,

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This is to certify that a true and correct copy of the foregoing document has been served this 10th day of September, 2013 as provided below:

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EXHIBIT A

AFFIDAVIT OF JOE WISNOSKI

STATE OF TEXAS §
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, personally appeared JOE WISNOSKI, who, being by me duly sworn, deposed and said:

1. My name is Joe Wisnoski, and I am a resident of Travis County. I am over eighteen (18) years of age and have never been convicted of a felony or crime involving moral turpitude, nor have I ever been adjudged incompetent. I am duly competent and qualified in all respects to make this affidavit from my own personal knowledge.
2. I have more than thirty-five years' experience in the financing of Texas education and state government services, including eleven years as the Deputy Associate Commissioner for Finance of the Texas Education Agency (TEA), and six years as a Division Director at TEA. In both positions, I was responsible for supervising the projections used to estimate the cost of proposed legislative changes to the Foundation School Program (FSP). As Deputy Associate Commissioner, I also oversaw the use of projected data in the FSP payment system, which distributes state aid to Texas school districts and charter schools. In my current position, I have continued to monitor the summary of finances as presented by TEA, including its use of both projected and final reported data in the state aid calculations.
3. TEA is charged in statute with projecting student populations and tax rates for each school district for the biennial period that follows a legislative session. It provides those projections to the Legislature in October of even-numbered years, and updates those projections in March of odd-numbered years. Those projections are used by the Legislature when establishing the appropriations to the agency for the FSP. The Legislature also uses a projection of total taxable property value in the state for the following biennium prepared by the Comptroller of Public Accounts.
4. TEA and the Legislative Budget Board (LBB) separately project the cost to the state of the FSP using projected data. These projections form part of the basis of appropriations made to TEA for the FSP. Both TEA and the LBB also estimate the cost impact of legislative changes for a period of five years as part of the fiscal note process. When statutory changes impact the (FSP), both TEA and the LBB use models that employ projections of students, tax rates, and property values to estimate costs associated with those statutory changes. The cost estimates identified in fiscal notes also are used to make appropriations.

5. In my experience, the most common method for analyzing the impact of proposed formula changes to the FSP for fiscal note and appropriation purposes is to hold the student, tax rate, and property values as projected for each year constant in the model of the FSP while applying the different formula changes, then comparing the results to the projected costs of the current-law formulas using the same data. Because the data are held constant, the observed changes are definitively the result of the formula changes.
6. When a new school year begins, school districts must be funded based on the new formulas and the entitlement these formulas create. TEA is directed in statute to use estimates or projections of data to establish the amount of payments to school districts during the year until final data are obtained. It is directed by rider to use projections of students and property value growth as adopted by the Legislature in making appropriations. The state aid resulting from these projected data, as well as the projections themselves, are commonly referred to as "Legislative Payment Estimates" or LPE, since they form the basis of sending cash to school districts during a year. A separate set of estimates, reflecting changes to data that attempt to better project the final earnings of a district, are referred to as "District Planning Estimates" or DPE.
7. When final student counts and tax collections are available, TEA uses a "settle-up" process to pay additional state aid to those districts that earned more than was sent to them during the year, and to recover overpaid state aid from those districts that earned less than was paid.
8. In making my presentation to the Court in *Texas Taxpayer and Student Fairness Coalition v. Michael Williams* (Cause No. D-1-GN-11-003130 in the 200th Judicial District Court of Travis County) on the mechanics of the summary of finances and the state aid system, I used a similar method to that described in Paragraph 5, but with one distinction. The Court requested that the presentation include information on how the 2011 formula cuts impacted funding for sample districts. I used the 2011-12 summary of finance data as of July 2012 for Itasca ISD, Pleasanton ISD, Garland ISD, and Austin ISD, and held all input data constant, while applying the formulas for the 2010-11 school year, the 2011-12 school year, and the 2012-13 school year. Using this method allowed me to isolate how the legislative budget cuts and formula changes altered the districts' funding levels. Holding data constant across years allows for a clear isolation of the impact of formula change over time without allowing the changing circumstances of individual district data to obscure the impact of statutory change.
9. The cost estimation process described in Paragraph 5 is substantially similar to the process described in Paragraph 8 in that it holds data constant while applying alternative sets of formulas. It is dissimilar in that the process in

Paragraph 5 holds data constant only within an individual year while varying the formulas that apply to that year, which is a more appropriate strategy for estimating funding needs for the Legislature. The process in Paragraph 8 would be inappropriate for projecting funding needs, either for an individual district or for the system as a whole.

10. While changes in data from year to year can be significant for an individual district, in my experience, these changes are not widespread enough to alter the system-wide patterns that can be observed when assessing a legislative change. In other words, typical changes in any individual district's characteristics do not alter whether a particular formula change will result in more or less FSP funding overall.
11. To assess the broad system impacts of formula change, I believe a legitimate conclusion about the effects of statutory change can be reached using either data held constant from some base year through all future years, or by using projections of data that are held constant while applying alternative sets of formulas.
12. I have read this affidavit and all statements herein are true and correct and within my personal knowledge.

Further affiant sayeth not.

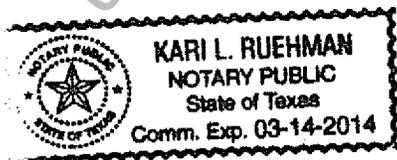
Dated September 9, 2013

By:


JOE WISNOSKI

Subscribed and sworn to before me, the undersigned authority, this 9th day of September, 2013.


Notary Public in and for the State of Texas



Unofficial copy Travis County District Clerk Velda L. Price

EXHIBIT B

AFFIDAVIT OF LYNN M. MOAK

STATE OF TEXAS §
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, personally appeared LYNN M. MOAK, who, being by me duly sworn, deposed and said:

1. My name is Lynn Moak, and I am a resident of Travis County. I am over eighteen (18) years of age and have never been convicted of a felony or crime involving moral turpitude, nor have I ever been adjudged incompetent. I am duly competent and qualified in all respects to make this affidavit from my own personal knowledge.
2. I have more than 47 years' experience in the field of public education finance, data analysis, and policy. In addition, I also have experience in the fields of Texas governmental finance, legislative and congressional redistricting, and general state policy development. For 20 years, I held senior positions within Texas state government including Director of School Finance Special Projects at the Texas Education Agency, Assistant Comptroller for Planning and Research at the Office of State Comptroller, Director of Research at the Office of Lieutenant Governor, and Deputy Commissioner for Research and Development at the Texas Education Agency. I am currently a partner at Moak, Casey & Associates, a school finance and accountability consulting firm that I founded with my partner, Daniel T. Casey in 1998. The firm provides a variety of services in the areas of public education, financial services, accountability and economic development support and works with over 300 school districts in Texas.
3. I have been involved in and testified during every school finance trial since the initial Edgewood litigation in 1984.
4. During the *Edgewood I, II & III* trials, I was Deputy Commissioner for Research and Development at the Texas Education Agency. I participated in the trials as an expert witness for the State. I also served as Chief of Staff for a court-appointed master, charged with development of a constitutional school finance plan.
5. During the *Edgewood IV* trial, I was a school finance consultant and served as an expert witness for the State. I also served as a court-appointed expert charged with development of a constitutional school finance plan.
6. During the *West Orange-Cove II* trial, I was an education policy and finance consultant and served as an expert witness for the plaintiffs.

7. During the original trial of the current litigation—*Texas Taxpayer and Student Fairness Coalition v. Michael Williams* (Cause No. D-1-GN-11-003130 in the 200th Judicial District Court of Travis County)—I testified as an expert on the adequacy and suitability of the school finance system on behalf of the Texas Taxpayer and Student Fairness Coalition, the Fort Bend ISD Plaintiffs, and the Calhoun County ISD Plaintiffs. In addition, I addressed the subjects of the degree of meaningful discretion in the finance system, the impact of state budget reductions, and the relationship between student performance and costs.
8. In each of the prior trials (*Edgewood I*, *Edgewood II*, *Edgewood III*, *Edgewood IV*, and *West Orange-Cove II*), the trial court and the parties faced the question of how to analyze the impact of formula changes. To the best of my memory, each court accepted the use of either current data applied to new formulas or projected data applied to new formulas. Trial and appellate courts most often evaluated the constitutionality of the system using current and future year formulas with projections of school district property values, student counts, and tax rates to assess these formulas. In the alternative, experts used a single year's data and applied it to formula structures for different years. In several cases, a common projected data framework and source was established with the consent of all parties.
9. To the best of my knowledge the only case in which a specific set of data and formulas was restricted to a single historical year is the *Texas Taxpayer and Student Coalition v. Michael Williams* case currently before the district court. Even in this case, the restriction was not applied to all data analyses.
10. I have personally used all three methods in my work at the Texas Education Agency, in legislative presentations, in my work at Moak, Casey and Associates, and in my testimony as an expert witness in the school finance trials. I have participated in the construction of school finance models since 1968.
11. End of year final data is the most precise base for the determination of impact, when compared to any projection or simulation. However, the inherent problem is that judgments over the efficacy of legislative enactments must often be made prior to the availability of actual final information. This judgment takes place in the legislative process, state agency determinations, and school board decisions. Predicted levels of funding are used in each of these forums with adjustments as data becomes available.
12. Both multiyear formula projections and simulations using a single year's data do, in my judgment, provide an adequate basis for the analysis of overall patterns of school finance impact. Although individual district data may be in error, the degree of data error is relatively small in almost all cases.

Historically, the degree of error associated with these data are not so great that basic relationships are modified. Reliance on these methodologies has been proven over the past several decades.

13. However, the value of projected data is often diminished by an inability of all parties to agree on a specific set of projected values. In Texas, there are at least three sets of projected data at any time. As a result, I favor the approach used by Mr. Wisnoski (single year of data with multiple years of formulas) in the case of courtroom use.
14. In my opinion, the best method is to use data from one year and apply it to the formulas for multiple years. Using this method allows the "noise" created by individual district level changes and circumstances to be eliminated and provides confidence that any systematic changes observed are the result of the formula changes.
15. Using either 2012-13 "near final" data or 2011-12 "final" data with the 2012-13, 2013-14 and 2014-15 formulas will allow experts in this case to reliably and accurately isolate and evaluate the impact, if any, of the 2013 legislative changes to the FSP formulas on the adequacy, suitability, and equity of the current school finance system.
16. I have read this affidavit and all statements herein are true and correct and within my personal knowledge.

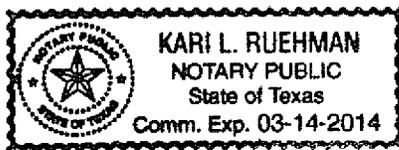
Further affiant sayeth not.

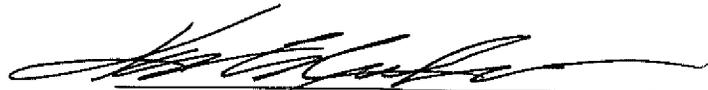
Dated September 10, 2013

By:


LYNN M. MOAK

Subscribed and sworn to before me, the undersigned authority, this 10 day of September, 2013.




Notary Public in and for the State of Texas

Unofficial copy Travis Co. District Clerk Velda L. Price

EXHIBIT C

PARTIES' VIEWS ON ISSUES PERTAINING TO MOTION TO REOPEN

Calhoun County ISD Plaintiffs	Position on Reopening the Evidence	Topics to be covered	Views on possible witnesses required	Length of hearing	Timing of hearing	Scope and timing of discovery	Issuance of findings
<p>In light of the significant impact of the legislation identified in our 270 motion, the record should be reopened to reflect the changes to the school finance system, accountability system, and graduation requirements. We do not believe that the legislative changes negate the Court's ultimate rulings on either the adequacy or the state property tax claim. But we do believe it is important to have a record that reflects these changes when the case is appealed to the Supreme Court.</p> <p>In addition, the changes in distribution of funding between districts do affect the financial efficiency claim, and show that the legislature has further narrowed the per-WADA funding gaps between districts. We believe these changes in distribution among districts must be considered by this Court and by the Supreme Court when evaluating this claim.</p> <p>If the record is not modified to reflect these changes, we believe there is a significant possibility that the Supreme Court would remand for additional fact-finding or otherwise find that the Court's findings have been superseded by the legislative changes.</p>	<p>(1) Changes to the statutory funding formulas and the resulting impact on the amount and distribution of public education funding (both on an absolute level and on a per-student basis) taking into account projected student population growth during the biennium). These changes affect both the state-wide average funding levels and the levels of relative per student and per-WADA funding among districts.</p> <p>(2) Changes to the STAAR end-of-course testing regime and graduation requirements, along with 2013 student performance data relating to these tests</p> <p>(3) Changes to the accountability system</p> <p>(4) Raising of the statutory cap on open-enrollment charters.</p>	<p>While the Court may take judicial notice of the new legislation itself, we believe the impact of the new legislation on the relevant facts and legal arguments must be established through a limited number of additional witnesses.</p> <p>We envision Lynn Moak, Lisa Dawn-Fisher, and perhaps 1-2 TEA witnesses to changes to accountability system, graduation requirements, and STAAR EOC regime.</p> <p>We do not believe it is necessary or desirable to recall superintendents or national experts on subjects such as pre-K, class size, the relationship of money to student performance, and other topics covered at length during trial. We need not and should not revisit such debates. The additional hearing should be a supplement to the main trial and should be narrowly focused on the major changes made in the recent legislative session and on an updating of the test data.</p>	<p>5-7 days</p>	<p>Sometime between mid-August and Thanksgiving, subject to the Court's and counsel's schedules. We believe delaying a hearing date beyond this time would create a concern about undue delay and could result in a situation where the Supreme Court does not rule even before the 2015 legislative session.</p>	<p>Limited to impact of legislative changes to the system. We propose a disclosure deadline one month before hearing where parties disclose witnesses and any expert opinions, with depositions to occur in the month before the hearing. No other written discovery.</p>	<p>The findings and final judgment should issue together after any evidentiary hearing. If a final judgment were issued now, the Court would lose plenary power after 30 days (or 105 days with post-trial motion). If the Court agrees that final judgment should be delayed, so should findings. The purpose of findings is to support and explain this Court's rulings in its final judgment. If the Court is going to wait to issue a final judgment, we think it should also wait to issue the findings that will support that judgment at the same time. See TRCP 299 ("When findings of fact are filed by the trial court, they shall form the basis of the judgment upon all grounds of recovery and of defense embraced therein.")</p> <p>In addition, some of the proposed findings are outdated in light of the passage of the legislation; they no longer describe the system going forward. If findings similar to those that the parties submitted in March were issued now, it may not be clear which findings are applicable going forward and which ones are not. Some of those findings would have to be later modified, and some would no longer be accurate when issued. We believe a single set of findings, issued after the conclusion of the subsequent hearing, is the most reasonable and efficient approach.</p>	

PARTIES' VIEWS ON ISSUES PERTAINING TO MOTION TO REOPEN

	Position on Reopening the Evidence	Topics to be covered	Views on possible witnesses required	Length of hearing	Timing of hearing	Scope and timing of discovery	Issuance of findings
Fort Bend ISD Plaintiffs	The Fort Bend ISD Plaintiffs are not joining the motion to re-open, and we do believe that re-opening the evidence is needed so that the record fully reflects actions taken by the 83rd Texas Legislature and the impact, if any, on the trial Court's decision, in order to avoid a potential remand and unnecessary delay, which would be injurious to our districts.	The Fort Bend ISD Plaintiffs believe that any supplemental evidence should focus on significant changes made by the 83rd Texas Legislature, and the best way to identify the topics to be covered is to designate specific bills that may have created such changes, including SB 1, HB 1025, HB 5, SB 2, and	Fort Bend ISD Plaintiffs potential witnesses include Mr. Lynn Moak, Dr. Curtis Culwell, possibly some superintendents from our districts.	The Fort Bend ISD Plaintiffs believe that it probably will take two four-day trial weeks for an additional evidentiary hearing.	The Fort Bend ISD Plaintiffs prefer that the additional evidentiary hearing take place in January or February 2014. If the hearing occurs sooner, the trial weeks of September 9th and September 16 appear to be good options. Mr. Moak will be out of the county the last week of September and the entire month of October.	The Fort Bend ISD Plaintiffs believe that necessary discovery can be conducted in one month to six weeks before the new hearing.	The Fort Bend ISD Plaintiffs support the Court issuing preliminary FOF and COOL soon, to assist with framing the issues needed to be covered at the new hearing, with final FOF and COOL issued after the hearing. We do not support issuing the Final Judgment until after the new hearing.
TTSFC Plaintiffs	We do not join in the motion.	If the evidence is reopened, it seems to us that an explanation of all of the legislation and its affects and anticipated affects would be covered.	We would anticipate that expert witnesses and fact witnesses would be necessary.	Depending on topic to be covered, 2 weeks or so	Late 2013 or early 2014	Expert reports to be due 30 days prior to hearing and depositions to be concluded 2 weeks prior to hearing	We strongly urge the court to enter its findings now and if the evidence is reopened and if the Court chooses to supplement its finding to do so following any hearing.
Edgewood ISD Plaintiffs	The Edgewood ISD Plaintiffs will be setting forth their positions in a separate filing.						

PARTIES' VIEWS ON ISSUES PERTAINING TO MOTION TO REOPEN

	Position on Reopening the Evidence	Topics to be covered	Views on possible witnesses required	Length of hearing	Timing of hearing	Scope and timing of discovery	Issuance of findings
Efficiency	If the Court is inclined to re-open the case as to the ISD's claims, the Court will be necessary to also re-open and examine the efficiency and charter cap issues in recent legislation, including, but not limited to SB1, SB2 and HB5.	Efficiency issues regarding the increased funding and decreased accountability passed during the session. Additionally, the merger and in a equitable increase in the charter change cap, as well as evidence that the current state district school system fought the increase of the charter cap for political reasons and ignored the best interests of children and the obvious increasing demand for charters.	Difficult to say until the scope of the ISD's potential hearing is revealed. As it stands, and reserving the right to amend, 2-3 witnesses (experts and/or fact witnesses) will be required to cover the current scope of topics. There may also be a need to have additional witnesses to respond to any ISD or state claims.	The court should consider admitting as much evidence as possible by way of stipulation. The court should also consider taking briefs on the specific topics that parties believe need to be included in the additional evidence.	When everyone necessary for each party, attorneys and witnesses are available. The Intervenor do not see any reason this needs to be expedited, i.e. August/September time frame is necessary. Chairman Grusendorf is not available in September until the week of the 23rd. His presence at trial is necessary as a client representative and potential witness	30 days prior to the hearing/trial. The parties should consider taking trial depositions and have those simply entered in the record to decrease the amount of time in trial.	No position on this issue.
Intervenor				Difficult to say until the scope of the ISD's potential hearing is revealed. The Intervenor could put on additional evidence in 1 1/2 to 2 days.			

PARTIES' VIEWS ON ISSUES PERTAINING TO MOTION TO REOPEN

	Position on Reopening the Evidence	Topics to be covered	Views on possible witnesses required	Length of hearing	Timing of hearing	Scope and timing of discovery	Issuance of findings
Charter School Plaintiffs	Opposed.	Recent Legislative actions, if considered through judicial notice. If limited if accomplished through trial depositions (See Scope and timing of discovery)	Limited only by number of depositions allowed per party. (See Scope and timing of discovery)	Hearing unnecessary (See Scope and timing of discovery)	Mid- to late October at the earliest.	The charter school plaintiffs are opposed to reopening the evidence, but if the trial is reopened: (1) limit evidence to court's judicial notice of all Legislative actions. (2) Or... utilize trial depositions with full evidentiary objections obviating necessity for in-court testimony. While extended discovery period would be required, a combined discovery/trial term would be significantly longer	Necessary if trial is reopened and evidence limited.

PARTIES' VIEWS ON ISSUES PERTAINING TO MOTION TO REOPEN

State Defendants	Position on Reopening the Evidence	Topics to be covered	Views on possible witnesses required	Length of hearing	Timing of hearing	Scope and timing of discovery	Issuance of findings
<p>The Legislature passed in its 23rd Regular Session over 100 bills on public education. The State is opposed to re-opening the evidence unless and until the plaintiff's demonstrate whether and how the bills passed by the Legislature – including all bills that repealed, amended, or replaced the key components of the existing school finance framework - impact their claims. Specifically, for each claim, including the claims supporting the plaintiffs' proposed findings of fact and conclusions of law, the plaintiffs should identify if their claims still exist, how the new laws impact their claim, and when the bills impacting their claims will be or are anticipated to be fully implemented.</p> <p>Preliminarily, the Court must reassess in light of these changes whether it has jurisdiction over the Plaintiffs claims. The Court should hold a preliminary, evidentiary hearing to examine the bills the Legislature passed and determine if the Plaintiffs' claims still exist or that they seek on the present record.</p>	<p>Assuming the Court determines it has jurisdiction over the Plaintiffs' claims, the State submits that the record should be re-opened and evidence should consist of the following facts: (1) the new legislation does, who is responsible for its implementation, when it is expected to be implemented, and when outputs resulting from the change can be anticipated. Any hypothetical or speculative evidence regarding the actual impact of the legislation on student or district outputs or results should not be admitted. Such speculation is about events, which may or may not occur, at some future date and is unreliable.</p>	<p>Assuming the plaintiff's claims still exist and the evidence is re-opened, the State believes TEA witnesses regarding the changes to the critical components of school finance system framework, including changes to the funding, testing, curriculum, charter, and accountability systems, when those changes will be implemented and by who, and when outputs can be anticipated, at a minimum would be necessary. The State reserves the right to add to this list if necessary.</p>	<p>2 weeks at most.</p>	<p>Mid-September</p>	<p>Very limited. Discovery should be limited to facts including understanding what bills have the potential to impact the plaintiff's claims, what the bills do, when the bill will be implemented and by what entities, and when student or district outputs as a result of the changes might be available. Discovery about hypothetical or speculative evidence about future student or districts outputs – which may or may not occur – should not be permitted.</p>	<p>The State submits that further analysis of the impact of the separate education related bills and their impact on the plaintiffs' claims is necessary before the Court can enter judgment and issue findings. If the court enters judgment on laws that no longer exist as a result of the bills that repealed, replaced and amended existing school finance law and policy, the Court's opinion would be inappropriately advisory in nature.</p> <p>If the Court is inclined to issue findings before re-opening the evidence, it should enter judgment first. The parties then can proceed according to the Rules of Civil Procedure.</p>	

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EXHIBIT D

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

THE TEXAS TAXPAYER & STUDENT §
FAIRNESS COALITION, et al; §
CALHOUN COUNTY ISD, et al; §
EDGEWOOD ISD, et al; §
FORT BEND ISD, et al; §
TEXAS CHARTER SCHOOL §
ASSOCIATION, et al. §

Plaintiffs §

JOYCE COLEMAN, et al §
Intervenors §

vs. §

IN THE DISTRICT COURT

200th JUDICIAL DISTRICT

MICHAEL WILLIAMS, COMMISSIONER §
OF EDUCATION, IN HIS OFFICIAL §
CAPACITY; SUSAN COMBS, §
TEXAS COMPTROLLER OF PUBLIC §
ACCOUNTS, IN HER OFFICIAL §
CAPACITY; TEXAS STATE BOARD §
OF EDUCATION, the TEXAS §
EDUCATION AGENCY, and the §
STATE OF TEXAS §
Defendants. §

TRAVIS COUNTY, TEXAS

DEFENDANTS' ADVISORY TO THE COURT

TO THE HONORABLE JOHN K. DIETZ, TRAVIS COUNTY DISTRICT COURT

In accordance with the Court's June 19 Order on Motion to Reopen the Evidence, the Defendants submit the following spreadsheets to demonstrate how the Texas Legislature, following months of hearings with testimony from the school officials, business and industry leaders, teachers, superintendents, students, parents and taxpayers, and after considerable

deliberation during the 83rd Legislative Session, made significant statutory changes to Texas public education laws that the Defendants believe may moot or otherwise impact the Plaintiffs' claims in this case.

The Plaintiffs bear the burden of proof in this case. Because only the Fort Bend Independent School District Plaintiffs have amended their petition as of this date, Defendants lack any notice, much less fair notice, of the remaining Plaintiffs' and Intervenors' claims that still exist, and in what form, after the extensive statutory and funding changes made by the Texas Legislature during the recent 83rd Legislative Session. The Plaintiffs did not submit to Defendants a chart with the specific bills impacting their claims until Thursday, July 11, 2013. The chart the Plaintiffs submitted on Thursday, July 11, identifies only a list of bills and a general description of each bill. The descriptions of some bills contain information regarding relevant changes in the law; however, this is not true of every identified bill. More importantly, Plaintiffs' chart does not identify how each bill, and the specific statutory changes within each bill, impacts each of the Plaintiffs' claims. Without knowing most of the Plaintiffs' live claims or benefit of their analysis of the potential impact of the new laws, the Defendants were not able to prepare documents for joint submission from all parties and merely guessed at what analysis might be relevant to the Court at this time.

In compliance with the Court's June 19 Order, the Defendants are submitting the following analysis of changes made by the Legislature during the recent 83rd Legislative Session. For Senate Bill 1, the 2014-15 General Appropriations Act adopted by the Legislature for the 2014-2015 biennium, Defendants have submitted three documents:

- The first document, titled “SB1 Side-by-Side Comparison” compares the 2012-2013 General Appropriations Act Riders to the 2014-2015 General Appropriations Act Riders. Only the Riders that appear to be relevant to the Plaintiffs’ claims were included.
- The second document, titled “SB1 Item of Appropriation” is a side-by-side comparison of the key “Items of Appropriation” schedule included in both the 2012-2013 General Appropriations Act and the new 2014-2015 General Appropriations Act. The Defendants have added columns D and H to show biennial totals. It should be noted the General Appropriations Acts are not finalized; for example, more funding was appropriated by the Legislature for FY2013 during the recent 83rd Legislative Session and more funding may be appropriated to FY2014-15. As a result, the Defendants’ side-by-side comparisons may underestimate actual appropriations for certain fiscal years. When final general appropriations numbers – reflecting additional appropriated amounts for all fiscal years – become available, the Defendants will submit an update of this schedule.
- The final document, titled “SB1 Method of Finance” is a side-by-side comparison of the key “Method of Finance” schedule included in the 2012-2013 General Appropriations Act and the 2014-2015 General Appropriations Act. The Defendants have added columns D and H to show biennial totals. It should be noted the General Appropriations Acts are not finalized; for example, more funding was appropriated by the Legislature for FY2013 during the recent 83rd Legislative Session and more funding may be appropriated to FY2014-15. As a result, the Defendants’ side-by-side comparisons may significantly underestimate actual appropriations for certain fiscal years. When final general appropriations numbers – reflecting additional appropriated amounts for all fiscal years – become available, the Defendants will submit an update of this schedule.

The remaining spreadsheets are side-by-side comparisons of Senate Bills 2 and 758, and House Bills 5, 866, 1025, 1926, 2201 and 2836, which appear to be relevant to the Plaintiffs' claims. On each spreadsheet, in the first column "Old Law" are Texas statutory provisions as they existed prior to passage of the relevant bill by the Legislature during the 83rd Legislative Session. In the second column, "New Law" are the changes made to the relevant statutory provisions by the passage of the listed bill by the Legislature during the recent session. These statutes are currently effective or will become effective on September 1, 2013. Even if the statute is not currently effective, the Texas Education Agency may be making efforts to implement the statutory provisions. There are over 100 additional bills that made statutory changes and that may be relevant to this case.

Defendants reserve the right to add additional spreadsheets to the record subject to the Plaintiffs' and Intervenors' pleading amendments and supplemented responses to requests for disclosures and in the event that the Legislature makes any additional changes to the public education system during the ongoing special session or any others that may be called in the future and to update General Appropriations Act information and schedules when they are finalized.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

DAVID C. MATTAX
Deputy Attorney General for Defense Litigation

JAMES "BEAU" ECCLES
Division Chief, General Litigation Division

/s/ Shelley N. Dahlberg
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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of July, 2012, I forwarded the foregoing document to counsel of record via email at the following addresses:

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SHELLEY N. DAHLBERG
Deputy Chief – General Litigation Division

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EXHIBIT E

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

TEXAS TAXPAYER & STUDENT
 FAIRNESS COALITION, *et al.*,

Plaintiffs,

VS.

MICHAEL WILLIAMS, TEXAS
 COMMISSIONER OF EDUCATION, *et al.*,

Defendants

§
§
§
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§
§
§
§

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

200TH JUDICIAL DISTRICT

PROPOSED SCHEDULING ORDER

1. INITIAL AMENDMENT TO PLEADINGS/PARTIES

- 8/7/13** Parties asserting claims for affirmative relief shall amend or supplement pleadings by this date.
- 9/8/13** Parties resisting claims for affirmative relief shall amend or supplement pleadings by this date.

2. DESIGNATION OF FACT WITNESSES FOR TRIAL

- 8/26/13** Plaintiffs agree to designate any fact witnesses that they may call at trial by this date.
- 9/16/13** Defendants agree to designate any fact witnesses that they may call at trial by this date.

3. AMENDMENT TO PLEADINGS/PARTIES

- 10/11/13** Parties asserting claims for affirmative relief may amend or supplement pleadings after this date only by agreement of all parties or with leave of Court.
- 10/25/13** Parties resisting claims for affirmative relief may amend or supplement pleadings after this date only by agreement of all parties or with leave of Court.

4. DESIGNATION OF EXPERTS

- 10/14/13** Any party seeking affirmative relief on any claim shall, by this date:
 - (1) designate experts pursuant to and in compliance with Tex. R. Civ. P. 194.2(f) and 195;
 - (2) serve all other parties with expert reports, which shall include: (A) a complete statement of the opinions the expert(s) will offer and the bases for same, (B) a description of the compensation for the expert(s)' work in the rehearing

portion of this case, (C) a list of the expert(s)' publications for the previous seven (7) years, and (D) a list of matters in which the expert(s) provided deposition or trial testimony for the previous seven (7) years; and

- (3) provide three dates prior to November 22, 2013, upon which each such expert will be made available for oral deposition (deposition dates beyond November 22, 2013 may be provided by agreement of the parties or with leave of Court).

11/11/13 Any party resisting claims for affirmative relief on any claim shall, by this date:

- (1) designate experts pursuant to and in compliance with Tex. R. Civ. P. 194.2(f) and 195;
- (2) serve all other parties with expert reports, which shall include: (A) a complete statement of the opinions the expert(s) will offer and the bases for same, (B) a description of the compensation for the expert(s)' work in the rehearing portion of this case, (C) a list of the expert(s)' publications for the previous seven (7) years, and (D) a list of matters in which the expert(s) provided deposition or trial testimony for the previous seven (7) years; and
- (3) provide three dates prior to December 20, 2013, upon which each such expert will be made available for oral deposition (deposition dates beyond December 20, 2013 may be provided by agreement of the parties or with leave of Court).

The parties agree to participate in good faith negotiations regarding amended or supplemental expert reports if the need arises. If no agreement can be reached, the party seeking to amend or supplement may seek leave of court.

5. DISCOVERY LIMITATIONS & COMPLETION DEADLINE

12/9/13 All discovery shall be completed by this date except as provided herein for depositions of experts for parties resisting relief or as otherwise agreed by the parties.

The parties have not reached agreement with regard to limitations on written and oral discovery; however, the parties are committed to negotiate in good faith to reach mutually agreeable limitations and to notify the Court of such limitations by filing a formal agreement pursuant to Texas Rule of Civil Procedure 11. In the event that an agreement cannot be reached by the parties, the parties will submit the issue to the Court for a final determination of appropriate limitations.

The parties will continue to abide by the Rule 11 agreement regarding Depositions and Discovery that was entered into and filed with the Court on April 20, 2012.

6. DISPOSITIVE MOTIONS DEADLINE

12/9/13 Any dispositive motions shall be filed by this date, except that a plea to the jurisdiction may be filed at any time.

7. DESIGNATION OF TRIAL EXPERTS, WITNESSES, AND EXHIBITS

1/6/14 All parties shall file and serve upon each other and the Court a list of all expert witnesses and fact witnesses who may testify at trial and all deposition designations and exhibits that may be used at trial, as well as copies of all exhibits that may be used at trial. Any objections and counter deposition designations thereto shall be filed at least four days before the first day of trial.

1/13/14 All parties seeking affirmative relief shall serve upon the other parties and the Court the anticipated sequence of witness testimony.

1/27/14 All parties resisting claims for affirmative relief shall serve upon the other parties and the Court the anticipated sequence of witness testimony at least seven days prior to witness presentation, but no later than this date.

8. PRE-TRIAL HEARING

9/12/13 (Suggested date subject to the Court's preference)

9. TRIAL

1/21/14

Unofficial copy Travis Co. District Clerk Velda Price

Unofficial copy Travis County District Clerk Velda L. Price

EXHIBIT F

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

THE TEXAS TAXPAYER & STUDENT
FAIRNESS COALITION, et al;
CALHOUN COUNTY ISD, et al;
EDGEWOOD ISD, et al;
FORT BEND ISD, et al;
TEXAS CHARTER SCHOOL
ASSOCIATION, et al.

Plaintiffs

JOYCE COLEMAN, et al

Intervenors

vs.

IN THE DISTRICT COURT

200th JUDICIAL DISTRICT

MICHAEL WILLIAMS, COMMISSIONER
OF EDUCATION, IN HIS OFFICIAL
CAPACITY; SUSAN COMBS,
TEXAS COMPTROLLER OF PUBLIC
ACCOUNTS, IN HER OFFICIAL
CAPACITY; TEXAS STATE BOARD
OF EDUCATION, the TEXAS
EDUCATION AGENCY, and the
STATE OF TEXAS
Defendants.

TRAVIS COUNTY, TEXAS

DEFENDANTS' OBJECTIONS TO SCHEDULING ORDER

TO THE HONORABLE JOHN K. DIETZ, TRAVIS COUNTY DISTRICT COURT

On June 19, 2013, the Court ordered the parties to "submit a Scheduling Order addressing deadlines for filing amended or supplemental pleadings to govern the additional trial days, responsive pleadings, discovery, designation of experts, and any other matters the parties agree are pertinent." Because only the Fort Bend Independent School District Plaintiffs have amended

their petition as of this date, Defendants lack any notice, much less fair notice, of the remaining Plaintiffs' and Intervenors' claims going forward regarding the legislative changes to the public education system. For this reason, Defendants object to the requirement to provide a proposed scheduling order *before* each of the Plaintiffs and Intervenors file their amended or supplemental pleadings.

Nevertheless, Defendants entered into good faith negotiations with the Plaintiffs and Intervenors to agree upon a proposed scheduling order for the Court's consideration. Defendants objection to the proposed scheduling order only serves to preserve their right to have the Court reconsider deadlines that have been agreed to in the absence of fair notice of the Plaintiffs' and Intervenors' claims.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of July, 2013, the foregoing document was electronically filed and served via email on the following.

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