



constitutional issues because courts should avoid passing on the constitutionality of statutes, even where jurisdiction arguably exists, until the issues are presented with clarity, precision, and certainty, . . . in clean-cut and concrete form. . . . ‘A court cannot pass on the constitutionality of a statute unless the facts have matured, forming the concrete basis against which the statute may be applied.’ *Efficiency Interveners’ Plea to the Jurisdiction* at 7-8 (citing *Atmos Energy Corp. v. Abbott*, 127 S.W.3d 853, 857-58 (Tex. App.—Austin 2004, no pet.).

A trial on this case was completed in February 2013. Thereafter, and after months of hearings and testimony, from taxpayers, educators, superintendents, teachers, students, and business and community leaders the 83rd Legislature passed over 100 bills which significantly and materially altered the funding, testing, accountability, tax and other provisions of the Texas public education system starting in the 2014-15 school year. The new system has not been fully implemented and data about student performance under that system is not currently available. The first student performance data will not be available until after the conclusion of this case.

The Calhoun County ISD Plaintiffs, the Fort Bend ISD Plaintiffs, and the Texas Taxpayer Plaintiffs each uniformly responded to Defendants’ latest interrogatories seeking information about the current availability of “outputs” data from the 2014-15 school year as defined in *Neeley v. West Orange-Cove Consol. I.S.D.*, 176 S.W.3d 746 (Tex. 2005), on which they planned to rely to prove their claims.

The Plaintiff’s Calhoun ISD Plaintiffs, the Fort Bend ISD Plaintiffs, and the Texas Taxpayer ISD Plaintiffs responded:

“Outputs” data from the 2013-2014 and 2014-2015 school year will not be available until after those school years are completed and therefore all applicable discovery and report deadlines for the evidentiary hearing/additional trial have passed. Therefore, [the Calhoun County ISD Plaintiffs, the Fort Bend ISD Plaintiffs, and the Texas Taxpayer Plaintiffs] will rely on the most recent

“outputs” that are available in time for expert analysis, as have all plaintiffs and defendants during past school finance trials.

Exs. A, B, C.

The Edgewood ISD Plaintiffs and the Charter Plaintiffs responded as follows:

Because data such as TAKS commended performance rates; college readiness indicators noted in AEIS reports and other state reports; STAAR test results and standards; college remediation rates; dropout rates; and graduation rates for the 2013-2014 and 2014-2015 schools years will not be available in January 2014, Plaintiffs do not intent to rely on “outputs” from those years. [Edgewood Plaintiffs and Charter Plaintiffs] maintain that they will rely on the most recent available output data compiled by their school districts and the state.

Exs. D, E.

While each Plaintiff implies that the Court can imply rely on the “output” data from the 2012-13 or early school year, as they contend courts have done previously in school finance litigation - they ignore the fact that never, in the history of school finance litigation, has there been a substantial, material intervening changes in the laws regarding the public education system that were key to the adequacy claims and thus every other claim in the lawsuit between the trial court’s ruling and the eventual appeal to the Texas Supreme Court. In the past, the historical performance-related, “output” evidence was from an ongoing and still *existing* public school system that the reviewing court could consider in evaluating the system’s constitutionality and could enjoin. That is undisputedly not the case here. Here the system has been fundamentally, substantially and materially altered in all aspects by legislative action. Any output data from the 2012-13 or early school years is irrelevant and incompetent evidence to prove the public education system adopted by the Texas legislature during the 83rd legislative , and that will be implemented during the 2014-15 school year, is unconstitutional under any of the Plaintiff’s theories.

Because the ISD Plaintiff and Charter Plaintiffs admit there is no “output evidence” from the existing public education system they cannot prove a constitutional injury after the substantial, material legal changes made by the 83rd Texas Legislature “with clarity, precision, and certainty, . . . in clean-cut and concrete form,” the court should not “pass on the constitutionality of [the school finance system until] the facts have matured, forming the concrete basis against which the statute may be applied.” *Atmos Energy Corp.*, 127 S.W.3d at 857-58.<sup>1</sup>

### CONCLUSION

Accordingly, under the prudential aspect of the ripeness doctrine, the Defendants respectfully move the Court to dismiss the Plaintiff ISDs’ and Charter Plaintiffs’ claims for lack of jurisdiction.

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<sup>1</sup> A prospective injunction, as the Plaintiffs seek, cannot be based on past data that alleges a past violation. As the United States Supreme Court has explained that injunctive relief is generally *inapplicable* to past violations of law:

The sole function of an action for injunction is to forestall future violations. It is so unrelated to punishment or reparations for those past that its pendency or decision does not prevent concurrent or later remedy for past violations by indictment or action for damages by those injured. . . . Even where [injunctive] relief is mandatory in form, it is to undo existing conditions, because otherwise they are likely to continue.

*United States v. Or. State Med. Soc’y*, 343 U.S. 326, 333 (1952). Thus, while an injunction may operate “to undo existing conditions” and “to forestall future violations,” it is “unrelated to . . . reparations for those past.” *Id.* This principle is established in Texas law as well. “*Democracy Coal. v. City of Austin*, 141 S.W.3d 282, 296 (Tex. App.—Austin 2004, no pet) (purpose of injunction is to halt wrongful acts that are threatened or in the course of accomplishment, rather than grant relief against past actionable wrongs); see also *Tex. Health Care Info. Council v. Seton Health Plan, Inc.*, 94 S.W.3d 841, 853 (Tex. App.—Austin 2002, pet. denied) (same); *Tex. Employment Comm’n v. Martinez*, 545 S.W.2d 876, 877 (Tex. Civ. App.—El Paso 1976, no writ) (same)

Respectfully submitted,

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I hereby certify that on the 3rd day of October, 2013, the foregoing document was served via electronic mail:

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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 <sup>TH</sup> JUDICIAL DISTRICT

**CALHOUN COUNTY ISD PLAINTIFFS’ OBJECTIONS AND RESPONSES TO DEFENDANTS’ SECOND SET OF INTERROGATORIES**

Pursuant to Texas Rule of Civil Procedure 197, the Calhoun County ISD Plaintiffs serve these Objections and Responses to Defendants’ Second Set of Interrogatories (singularly, an “Interrogatory,” collectively, the “Interrogatories”), as follows:

**GENERAL OBJECTIONS**

The Calhoun County ISD Plaintiffs’ Objections and Responses to Defendants’ Second Set of Interrogatories are made subject to the following General Objections, and the General Objections are incorporated by reference into the response to each specific Interrogatory.

1. The Calhoun County ISD Plaintiffs object to the Interrogatories and the definitions of “output” and “general diffusion of knowledge” in that they call for legal conclusions.
2. The Calhoun County ISD Plaintiffs object that the Interrogatories are vague and overbroad, and do not specify the information sought with sufficient particularity.
3. The Calhoun County ISD Plaintiffs object to the extent the Interrogatories require the Calhoun County ISD Plaintiffs to marshal their evidence.

## **RESPONSES TO INTERROGATORIES**

The Calhoun County ISD Plaintiffs incorporate by reference into each response below as applicable the sworn testimony of the various district superintendents that has been or will be provided in this matter, and the Calhoun County ISD Plaintiffs' expert reports (including common experts).

### **INTERROGATORY NO. 1:**

Please identify all "outputs" from only the 2013-2014 and 2014-2015 school years that you intend to rely on in this suit to prove that the Texas public school system is not accomplishing a "general diffusion of knowledge." In your answer, please include the dates that the "output" data will be available, who holds that data, and where it can be found if publically available.

### **RESPONSE:**

The "outputs" data that are common across all school districts and that was referenced by the Texas Supreme Court in *Neeley v. West Orange-Cove Consol. ISD*, 176 S.W.3d 746 (Tex. 2005), are largely maintained and controlled by the Defendants, who determine when to release the data. "Outputs" data from the 2013-14 and 2014-15 school year will not be available until after those school years are completed and therefore after all applicable discovery and report deadlines for the January 2014 evidentiary hearing have passed. Therefore, the Calhoun County ISD Plaintiffs will rely on the most recent "outputs" that are available in time for expert analysis, as have all plaintiffs and defendants during past school finance trials.

### **INTERROGATORY NO. 2:**

To the extent you intend to offer any evidence and/or testimony intended to forecast or predict any "outputs" from the 2013-2014 and 2014-2015 school years to prove that the Texas

public school system is not accomplishing a “general diffusion of knowledge,” please provide those predictions, and provide and describe the methodology used to create such forecasts and predictions. In your answer, please list all peer reviewed literature that has analyzed the methodology employed.

**RESPONSE:**

The Calhoun County ISD Plaintiffs do not intend to offer any evidence and/or testimony intended to forecast or predict any “outputs” from the 2013-2014 and 2014-2015 school years. The Calhoun County ISD Plaintiffs do intend to offer evidence of “outputs” from the 2011-12 and 2012-13 school years, which is directly relevant to the question of whether the Texas public school system is accomplishing a “general diffusion of knowledge,” because past performance is typically one of the best indicators of future performance.

Unofficial copy Travis Co. District Clerk Velaya Price

Respectfully submitted,

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ATTORNEYS FOR THE CALHOUN COUNTY  
ISD PLAINTIFFS

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the Calhoun County ISD Plaintiffs' Objections and Responses to Defendants' Second Set of Interrogatories has been served this 2nd day of October, 2013 as provided below:

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\_\_\_\_\_  
Michelle C. Jacobs

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

VS.

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

IN THE DISTRICT COURT OF

*Consolidated Case:*

FORT BEND INDEPENDENT SCHOOL  
DISTRICT, *et al.*,

Plaintiffs,

VS.

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

TRAVIS COUNTY, TEXAS

200<sup>TH</sup> JUDICIAL DISTRICT

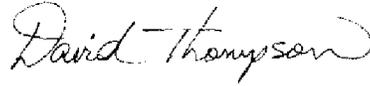
**FORT BEND ISD PLAINTIFFS OBJECTIONS AND RESPONSES TO DEFENDANTS  
SECOND SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION**

TO: Defendants, Michael Williams, Commissioner of Education; Susan Combs, Texas Comptroller of Public Accounts; and the Texas State Board of Education through their attorney Greg Abbott Attorney General of Texas, P.O. Box 12548, Capitol Station, Austin, Texas 78711.

Pursuant to Texas Rules of Civil Procedure, the Fort Bend ISD Plaintiffs (“FBISD Plaintiffs” or “Plaintiffs”) serve its Objections and Responses to Defendants Second Set of Interrogatories.

Respectfully submitted,

THOMPSON & HORTON LLP



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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing document has been forwarded on this 2nd day of October, 2013 to counsel of record in accordance with Rule 21a of the Texas Rules of Civil Procedure, as follows:

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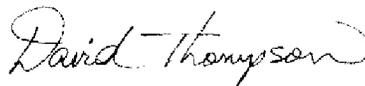
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---

J. David Thompson, III

## **GENERAL OBJECTIONS**

The Fort Bend ISD Plaintiffs' Objections and Responses to Defendants' Second Set of Interrogatories are made subject to the following General Objections, and the General Objections are incorporated by reference into the response to each specific Interrogatory.

1. The Fort Bend ISD Plaintiffs object that the interrogatories call for expert analysis and opinions in advance of the deadlines set for expert disclosures and reports in the agreed proposed scheduling order.

2. The Fort Bend ISD Plaintiffs object that, taken together, these Interrogatories ask the plaintiffs to marshal all of their evidence, in violation of Tex. R. Civ. P. 194.2.

3. The Fort Bend ISD Plaintiffs object that directing the Interrogatories to all plaintiff districts makes the request unduly burdensome and expensive taking into account the needs of the case and the likelihood of responses resolving the issues.

4. The Fort Bend ISD Plaintiff object that the Interrogatories are vague and overbroad, and do not specify the information sought with sufficient particularity.

5. The Fort Bend ISD Plaintiffs object that the definition of "Outputs" is vague and unclear.

## **INTERROGATORIES FOR FORT BEND**

The Fort Bend ISD Plaintiffs incorporate by reference into each response below as applicable the sworn testimony of the various district superintendents and the reports and testimony of the Fort Bend ISD Plaintiffs' experts previously or to be provided in this matter.

### **INTERROGATORY NO. I.**

Please identify all "outputs" from only the 2013-2014 and 2014-2015 school years that you intend to rely on in this suit to prove that the Texas public school system is not accomplishing a "general diffusion of knowledge." In your answer, please include the dates that the "output" data will be

available, who holds that data, and where it can be found if publically available.

**RESPONSE:**

The Fort Bend ISD Plaintiffs note that the “outputs” data that are common across all school districts and was referenced by the Texas Supreme Court in *Neeley v. West Orange-Cove Consol. ISD*, 176 S.W.3d 746 (Tex. 2005), are largely maintained and controlled by the Defendants, who determine when to release the data. “Outputs” data from the 2013-14 and 2014-15 school year will not be available until after those school years are completed and therefore after all applicable discovery and report deadlines for the evidentiary hearing/additional trial have passed. Therefore, the Fort Bend ISD Plaintiffs will rely on the most recent “outputs” that are available in time for expert analysis, as have all plaintiffs and defendants during past school finance trials.

**INTERROGATORY NO. 2:**

To the extent you intend to offer any evidence and/or testimony intended to forecast or predict any “outputs” from the 2013-2014 and 2014-2015 school years to prove that the Texas public school system is not accomplishing a “general diffusion of knowledge,” please provide those predictions, and provide and describe the methodology used to create such forecasts and predictions, and provide and describe the methodology used to create such forecasts and predictions. In your answer, please list all peer reviewed literature that has analyzed the methodology employed.

**RESPONSE:**

The Fort Bend ISD Plaintiffs do not intend to offer any evidence and/or testimony intended to forecast or predict any “outputs” from the 2013-2014 and 2014-2015 school years. The Fort Bend ISD Plaintiffs do intend to offer evidence of “outputs” from the 2011-12 and 2012-13 school years, which is directly relevant to the question of whether the Texas public school system is accomplishing a “general diffusion of knowledge” because past performance is typically one of the best indicators of future performance.

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 <sup>TH</sup> JUDICIAL DISTRICT

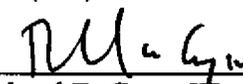
**COALITION PLAINTIFFS' OBJECTIONS AND RESPONSES TO DEFENDANTS' SECOND SET OF INTERROGATORIES**

TO: Defendants, Michael Williams, Commissioner of Education, Texas Education Agency, and the State Board of Education, by and through their attorney of record, Shelley N. Dahlberg, Assistant Attorney General, General Litigation Division, P.O. Box 12548, Capitol Station, Austin, Texas 78701

TEXAS TAXPAYER & STUDENT FAIRNESS COALITION, ET AL. serves these responses to Defendants' Second Set of Interrogatories.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on September 30, 2013, a true and correct copy of Plaintiffs' Responses to Defendants' Second Set of Interrogatories was served upon the following counsel of record via email pursuant to the agreement of the parties and in compliance with the Texas Rules of Civil Procedure and the Texas Local Rules:

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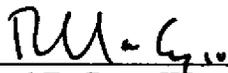
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*Attorneys for Ft. Bend ISD Plaintiffs*

  
\_\_\_\_\_  
Richard E. Gray, IV

## **GENERAL OBJECTION**

The TTSFC Plaintiffs' Objections and Responses to Defendants' Second Set of Interrogatories are made subject to the following General Objections, and the General Objections are incorporated by reference into the response to each specific Interrogatory.

1. The TTSFC Plaintiffs object that the interrogatories call for expert analysis and opinions in advance of the deadlines set for expert disclosures and reports in the agreed proposed scheduling order.
2. The TTSFC Plaintiffs object that, taken together, these Interrogatories ask the plaintiffs to marshal all of their evidence, in violation of Tex. R. Civ. P. 194.2.
3. The TTSFC ISD Plaintiffs object that the Interrogatories are vague and overbroad, and do not specify the information sought with sufficient particularity.

## INTERROGATORIES FOR TTSFC

The TTSFC Plaintiffs incorporate by reference into each response below as applicable the sworn testimony of the various district superintendents previously or to be provided in this matter, and the TTSFC ISD Plaintiffs' expert reports (including common experts).

### INTERROGATORY NO. 1:

Please identify all "outputs" from only the 2013-2014 and 2014-2015 school years that you intend to rely on in this suit to prove that the Texas public school system is not accomplishing a "general diffusion of knowledge." In your answer, please include the dates that the "output" data will be available, who holds that data, and where it can be found if publically available.

### **RESPONSE:**

The TTSFC Plaintiffs note that the "outputs" data that are common across all school districts and was referenced by the Texas Supreme Court in *Neeley v. West Orange-Cove Consol. ISD*, 176 S.W.3d 746 (Tex. 2005), are largely maintained and controlled by the Defendants, who determine when to release the data. "Outputs" data from the 2013-14 and 2014-15 school year will not be available until after those school years are completed and therefore after all applicable discovery and report deadlines for the evidentiary hearing/additional trial have passed. Therefore, the TTSFC Plaintiffs will rely on the most recent "outputs" that are available in time for expert analysis, as have all plaintiffs and defendants during past school finance trials.

### INTERROGATORY NO. 2:

To the extent you intend to offer any evidence and/or testimony intended to forecast or predict any "outputs" from the 2013-2014 and 2014-2015 school years to prove that the Texas public school system is not accomplishing a "general diffusion of knowledge," please provide those predictions, and provide and describe the methodology used to create such forecasts and predictions, and provide and describe the methodology used to create such forecasts and predictions. In your answer, please list all peer reviewed literature that has analyzed the methodology employed.

### **RESPONSE:**

The TTSFC Plaintiffs do not intend to offer any evidence and/or testimony intended to forecast or

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

TEXAS TAXPAYER & STUDENT	§	IN THE DISTRICT COURT
FAIRNESS COALITION, <i>ET AL.</i> ,	§	
	§	
Plaintiffs,	§	
	§	
EDGEWOOD INDEPENDENT SCHOOL	§	
DISTRICT, <i>ET AL.</i> , (consolidated)	§	
	§	
Plaintiffs	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
MICHAEL WILLIAMS, in his official	§	
Capacity as Commissioner of	§	
Education, <i>et al.</i> ,	§	
	§	
Defendants,	§	200TH JUDICIAL DISTRICT

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**EDGEWOOD PLAINTIFFS’ OBJECTIONS RESPONSE TO DEFENDANTS’  
SECOND SET OF INTERROGATORIES TO PLAINTIFFS AND  
INTERVENORS**

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TO: Defendants, Michael Williams, Commissioner of Education in his Official Capacity; Susan Combs, Texas Comptroller of Public Accounts, in her Official Capacity; the Texas State Board of Education and the State of Texas, by and through their attorney of record, Shelley N. Dahlberg, Assistant Attorney General, Texas Attorney General’s Office, General Litigation Division, P.O. Box 12548, Capitol Station, Austin TX 78711.

Edgewood I.S.D., *et al.*, Plaintiffs or Edgewood Plaintiffs, pursuant to Texas Rule of Civil Procedure 199.2, submit their responses to Defendants’ Second Set of Interrogatories as follows:

**I. OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS**

Plaintiffs respond only as required under said rules and reserve all objections. Plaintiffs further assert that the interrogatories sworn to below are for only the respective districts where identified separately and do not pertain on issues plainly calling for questions of law.

## II. RESPONSES TO INTERROGATORIES

1. Please identify all “outputs” from only the 2013-2014 and 2014-2015 school years that you intend to rely on in this suit to prove that the Texas public school system is not accomplishing a “general diffusion of knowledge.” In your answer, please include the dates that the “output” data will be available, who holds that data, and where it can be found if publically available.

ANSWER:

OBJECTION: This request calls for a legal conclusion, and is vague as to the definition of “outputs.” Additionally, this request is overly broad and does not describe with reasonable particularity, either by item or by category, the documents to be produced or inspected. TEX. R. CIV. P. 196.1(b).

RESPONSE: Subject to and without waiving the foregoing objections, Edgewood Plaintiffs respond as follows:

Because data such as TAKS commended performance rates; college readiness indicators noted in AEIS reports and other state reports; STAAR test results and standards; college remediation rates; dropout rates; and graduation rates for the 2013-2014 and 2014-2015 school years will not be available in January of 2014, Plaintiffs do not intend to rely on “outputs” from those years. Edgewood Plaintiffs maintain that they will rely on the most recent available output data compiled by their school districts and the state.

2. To the extent you intend to offer any evidence and/or testimony intended to forecast or predict any “outputs” from the 2013-2014 and 2014-2015 school years to prove that the Texas public school system is not accomplishing a “general diffusion of knowledge,” please provide those predictions, and provide and describe the methodology used to create such forecasts and predictions. In your answer, please list all peer reviewed literature that has analyzed the methodology employed.

OBJECTION: This request calls for a legal conclusion, and is vague as to the definition of “outputs,” “forecasts,” and “predicts.” It also requests information about testifying experts. TEX. R. CIV. P. 196.1(b).

ANSWER:

To the extent this interrogatory request non-expert conclusions, Plaintiff district witnesses will rely on their personal and professional experience, and their personal observations and knowledge of current and past performance levels in their districts compared to the resources they have available to meet evolving student educational needs. Plaintiffs further refer Defendants to the State’s determination of “required improved” used in past years, which may be considered by Plaintiffs.

To the extent that this interrogatory requests expert conclusions and methodologies, Plaintiffs will produce such expert opinions on the dates set forth in the Agreed Scheduling Order.

DATED: September 30, 2013

Respectfully Submitted,

**MEXICAN AMERICAN LEGAL DEFENSE AND  
EDUCATIONAL FUND, INC.**

David G. Hinojosa  
State Bar No. 24010689  
Marisa Bono  
State Bar No. 24052874  
110 Broadway, Suite 300  
San Antonio, Texas 78205  
(210) 224-5476  
(210) 224-5382 Fax

By:           s/David G. Hinojosa  
David G. Hinojosa

**MULTICULTURAL, EDUCATION,  
TRAINING AND ADVOCACY, INC.**

Roger L. Rice\*  
240A Elm Street, Suite 22  
Somerville, MA 02144

Ph: (617) 628-2226  
Fax: (617) 628-0322  
\*Pro Hac Vice Application Filed

Attorneys for Edgewood Plaintiffs

Unofficial copy Travis Co. District Clerk Veva L. Price

**CERTIFICATE OF SERVICE**

By my signature below, I certify that on September 30, 2013, I served the foregoing document via electronic mail to Defendants and to the other parties listed below:

GREG ABBOTT  
Attorney General of Texas  
DANIEL T. HODGE  
First Assistant Attorney General  
DAVID C. MATTAX  
Deputy Attorney General for Defense Litigation  
ROBERT B. O'KEEFE  
Chief, General Litigation Division  
SHELLEY N. DAHLBERG  
Assistant Attorney General Texas  
Texas Attorney General's Office  
General Litigation Division  
P. O. Box 12548, Capitol Station  
Austin, Texas 78711  
Fax: (512) 320-0667

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RAY & WOOD  
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Attorneys for Plaintiffs, Texas Taxpayer & Student Fairness Coalition, et al.

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Houston, Texas 77027  
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Attorneys for Plaintiffs, Fort Bend ISD

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The Diamond Law Firm, P.C.  
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Melissa A. Lorber  
Enoch Kever PLLC  
600 Congress, Ste. 2800  
Austin, Texas 78701  
Fax: (512) 615-1198

Attorneys for Intervenors, Joyce Coleman, et al.

Robert A. Schulman  
Joseph E. Hoffer  
Ricardo R. Lopez  
517 Soledad Street  
San Antonio, Texas 78205-1508  
Telephone: (210) 538-5385  
Telecopier: (214) 538-5384

Attorneys for Charter School Group

s/David G. Hinojosa  
David G. Hinojosa



**control of you or your attorney, documents reflecting such information.**

**(4) if the expert is retained by you or your attorney:**

**(a) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and**

**(b) the expert's current resume and bibliography.**

1. Toni Templeton, Quality Initiatives Data Analyst, Texas Charter Schools Association, 700 Lavaca St., Suite 930, Austin, Texas 78701, Telephone: (512) 584-8282. Ms. Templeton will testify on the effect that HB 5 and SB 2<sup>1</sup> has on the Charter School Plaintiffs. She will also testify on (a) how the charter schools are inequitably funded by the State of Texas and demonstrate that the legislation passed in the 83rd Legislative Session dealing with schools has not changed the unsuitability, inadequacy and inefficiency of the public free schools; (b) why the funding of the charter schools does not make suitable provision for the support and maintenance of an efficient system of public free schools; (c) the failure of the legislature to provide for a general diffusion of knowledge; (d) how the overall school funding is in violation of the state Constitution; and (e) the inequality between children who attend charter schools and students who attend independent school districts' schools in property rich districts and are therefore not afforded a substantially equal opportunity to have access to educational funds.

Ms. Templeton's resumé and bibliography is attached hereto and incorporated herein by reference.

2. R. Anthony Rolle, Ph.D., Wood Rolle & Associates, 8711 Southwest 46th Lane, Gainesville, Florida 32608, Telephone: (979) 595-7976. Dr. Rolle may testify regarding the Texas school finance system as it impacts open-enrollment charter schools. Dr. Rolle may further testify about issues within his area of expertise (as reflected in his resumé and writings), and as raised in testimony by other witnesses in this cause. Dr. Rolle may additionally be called as a rebuttal witness on issues raised by the testimony and reports of

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<sup>1</sup> She will also discuss other legislation passed by the 83rd Legislature.

other witnesses. He may also testify on (a) how the charter schools are inequitably funded by the State of Texas and demonstrate that the legislation passed in the 83rd Legislative Session dealing with schools has not changed the unsuitability, inadequacy and inefficiency of the public free schools; (b) why the funding of the charter schools does not make suitable provision for the support and maintenance of an efficient system of public free schools; (c) the failure of the legislature to provide for a general diffusion of knowledge; (d) how the overall school funding is in violation of the state Constitution; and (e) the inequality between children who attend charter schools and students who attend independent school districts' schools in property rich districts and are therefore not afforded a substantially equal opportunity to have access to educational funds. He may also expound on the facts elicited from Ms. Templeton's testimony and report.

Dr. Rolle's résumé (vita) and bibliography was previously made available to the defendants.

3. Robert Schulman will testify on the amount of attorneys' fees due to the Charter Plaintiffs, the time expended and the reasonableness of the hours and rates. His report on fees will be made available to the defendants upon completion of the trial and a judgment allowing Charter Plaintiffs their fees and costs.

The Charter School Plaintiffs' experts are yet to be deposed for the continuation of the trial scheduled for January 12, 2014. Charter Plaintiffs may utilize, at trial, the reports of said experts, any or all parts of the deposition testimony and deposition exhibits offered by other witnesses yet to be deposed, deposition testimony and deposition exhibits marked or included by any party, and data from public records.

As of this time, new reports by the designated experts have not been prepared. As soon as reasonably possible, the revised or new reports will be disclosed to the other plaintiffs and the adverse parties.

Depending on the evidence brought by all parties and a determination of the scope and issues to be determined in the continuation of this trial, Charter Plaintiffs reserve the right to call rebuttal witnesses or supplement this list, and also cross-designate each and every (Fact and Expert) witness identified by all Plaintiffs and/or Interveners to this action on their respective trial witness designations.

**(c) The legal theories and, in general, the factual bases of your claims or defenses (you need not marshal all evidence that may be offered at trial).**

In further response, the Charter Plaintiffs hereby incorporate and adopt by reference the responses previously set forth in their previous Answers to Interrogatories, Answers to Requests for Admissions and Responses to Requests for Production. Furthermore, the defendants have equal access to the names, addresses, and telephone numbers of each Texas charter school and each organization whose membership is, in whole or in part, comprised of charter schools, and each organization that has either or both, in whole or in part, administrators and teachers of charter schools.

The legal theories and, in general, the factual bases of the Charter Plaintiffs' claims, for the purposes of the continuation of the trial only, are as follows:

Charter Plaintiffs maintain that they are entitled to declaratory and injunctive relief based on the prior trial and that the standard for reopening the evidence has not been met, as previously described in their filings on this matter. Moreover, or in the alternative, as the case may be, the recent legislative changes did not provide a general diffusion of knowledge between students attending charter schools and those students attending high property-wealth school districts. The system of funding of charter schools, as amended by the 83rd Legislature, continues to violate the efficiency provision of article VII § 1 of the Texas Constitution as described in Plaintiffs' Petition, as amended.

The State also did not alter the expectation that all students graduate college and career ready during the 2013 Legislative Session and cannot define an adequate education so low so as to avoid its constitutional obligations of providing an adequate and suitable education. In addition, much of the legislation identified by defendants in their First Request to Court to Take Judicial Notice does not become effective during the 2013-14 session, such as changes to the accountability system and the different diploma tracks. The inadequacy of the funding can still be seen in the most recent achievement results of the ELL and low income student groups, including but not limited to, the following outputs: standardized test scores, college readiness indicators; and graduation and dropout rates.

The charter schools were, prior to the legislation, inequitably funded by the State of Texas, and the method of funding of charter schools was

unconstitutional as described in the previous Charter School Plaintiffs' pleadings, including, but not limited to, the Amended Original Petition, the Answers to Interrogatories, and other discovery, and the Charter Plaintiffs will demonstrate that the legislative changes passed in the 83rd Legislative Session dealing with schools has not changed the unsuitability, inadequacy and inefficiency of the public free schools, in general, and the charter schools, in particular; (b) why the funding of the charter schools does not make suitable provision for the support and maintenance of an efficient system of public free schools; (c) the failure of the legislature to provide for a general diffusion of knowledge; (d) how the overall school funding is in violation of the state Constitution; and (e) the inequality between children who attend charter schools and students who attend independent school districts' schools in property rich districts and are therefore not afforded a substantially equal opportunity to have access to educational funds.

Charter Plaintiffs also maintain that even if the current legislation has rendered the above-styled and numbered lawsuit moot as to one or more plaintiffs' groups, the legislative changes did not substantially change the previous funding of charter schools, including the formula for allocation of state funds, and the mandates required of charter schools established by law, as to render its case moot.

**(e) the name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case.**

Each and every person called at the original trial of this action is a person who has knowledge of relevant facts. Moreover, most members of the staff of defendant TEA are persons with knowledge of relevant facts. The persons listed in Charter Plaintiffs' designation of fact witnesses are likewise such persons. The names, addresses and telephone numbers of parties who have knowledge of relevant facts are equally accessible to the defendants as they have in their possession the names, addresses, and telephone numbers of each Texas charter school; and/or the charter schools' administrators, teachers and other employees.

## **B. Response to Interrogatories**

1. Please identify all "outputs" from only the 2013-2014 and 2014-2015 school years that you intend to rely on in this suit to prove that the Texas public

school system is not accomplishing a “general diffusion of knowledge.” In your answer, please include the dates that the “output” data will be available, who holds that data, and where it can be found if publically available.

**ANSWER:**

OBJECTION: This request calls for a legal conclusion, and is vague as to the definition of “outputs.” Additionally, this request is overly broad and does not describe with reasonable particularity, either by item or by category, the documents to be produced or inspected. TEX. R. CIV. P. 196.1(b).

RESPONSE: Subject to and without waiving the foregoing objections, Charter Plaintiffs respond as follows: It will use all outputs in the possession of the defendants, in general, and the Texas Education Agency (TEA), in particular. At this time, the available outputs are not known. However, upon further discover, Charter School Plaintiffs will amend this response to include all outputs identified by TEA.

Because data such as TAKS commended performance rates; college readiness indicators noted in AEIS reports and other state reports; STAAR test results and standards; college remediation rates; dropout rates; and graduation rates for the 2013-2014 and 2014-2015 school years will not be available in January of 2014, Plaintiffs do not intend to rely on “outputs” from those years. Charter Plaintiffs maintain that they will rely on the most recent available output data compiled by their constituent school and the state.

2. To the extent you intend to offer any evidence and/or testimony intended to forecast or predict any “outputs” from the 2013-2014 and 2014-2015 school years to prove that the Texas public school system is not accomplishing a “general diffusion of knowledge,” please provide those predictions, and provide and describe the methodology used to create such forecasts and predictions. In your answer, please list all peer reviewed literature that has analyzed the methodology employed.

**ANSWER:**

OBJECTION: This request calls for a legal conclusion, and is vague as to the definition of “outputs.” Additionally, this request is overly broad and does not

describe with reasonable particularity, either by item or by category, the documents to be produced or inspected. TEX. R. CIV. P. 196.1(b).

RESPONSE: Subject to and without waiving the foregoing objections, Charter Plaintiffs respond as follows: It will use all outputs in the possession of the defendants, in general, and the Texas Education Agency (TEA), in particular. At this time, the available outputs are not known. However, upon further discover, Charter School plaintiffs will amend this response to include all outputs identified by TEA.

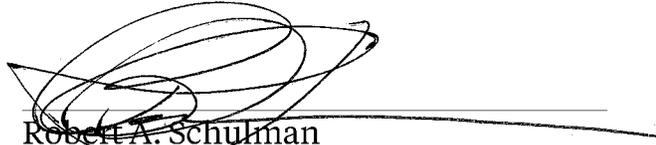
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To the extent this interrogatory request non-expert conclusions, Charter School Plaintiffs' witnesses will rely on their personal and professional experience, and their personal observations and knowledge of current and past performance levels in their respective schools compared to the resources they have available to meet evolving student educational needs. Plaintiffs further refer Defendants to the State's determination of "required improved" used in past years, which may be considered by Plaintiffs.

To the extent that this interrogatory requests expert conclusions and methodologies, Charter Plaintiffs will produce such expert opinions on the dates set forth on the Scheduling Order, as it may be amended from time to time.

Respectfully submitted,

**SCHULMAN, LOPEZ & HOFFER, LLP**



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Leonard J. Schwartz  
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Attorneys for Plaintiffs

**CERTIFICATE OF SERVICE**

The undersigned certifies that on October 1, 2013, a true and correct copy of the foregoing was served upon the following counsel of record *via* e-mail pursuant to the agreement of the parties, and in compliance with the Texas Rules of Civil Procedure and the Texas Local Rule:

Shelley N. Dahlberg, Nichole Bunker-Henderson, Linda Halpern and Beau Eccles, Texas Attorney General's Office, P. O. Box 12548, Capitol Station, Austin, Texas 78711; Attorneys for State Defendants;

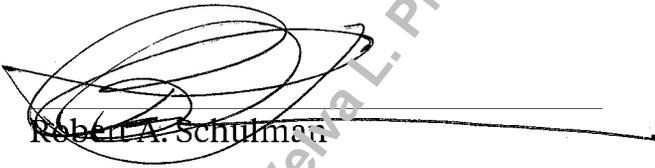
Mark R. Trachtenberg, Haynes & Boone, LLP, 1 Houston Center, 1221 McKinney Street, Suite 2100, Houston, Texas 77010; and John W. Turner, Micah E. Skidmore and Michelle C. Jacobs, Haynes & Boone, LLP, 2323 Victory Avenue, Suite 700, Dallas, Texas 75219; Attorneys for Calhoun County, *et al.* Plaintiffs;

David G. Hincosa and Marisa Bono, Mexican American Legal Defense and Educational Fund, Inc., 110 Broadway, Suite 300, San Antonio, Texas 78205; and Roger Rice, META, Inc., 240 "A" Elm Street, Suite 22, Somerville, Massachusetts 02144; Attorneys for Edgewood ISD, *et al.* Plaintiffs;

J. Christopher Diamond, The Diamond Law Firm, PC, 17484 Northwest Freeway, Suite 150, Houston, Texas 77040; and Craig T. Enoch, Melissa A. Lorber and Amy Saberian, Enoch Keever, PLLC, 600 Congress, Suite 2800, Austin, Texas 78701; Attorneys for Efficiency Intervenors;

J. David Thompson III and Philip Fraissinet, Thompson & Horton, LLP, Phoenix Tower, Suite 2000, 3200 Southwest Freeway, Houston, Texas 77027; and Holly G. McIntush, Thompson & Horton, LLP, 400 West 15th Street, Suite 1430, Austin, Texas 78701; Attorneys for Fort Bend ISD, *et al.* Plaintiffs; and

Richard E. Gray III, Toni Hunter and Richard Gray IV, Gray & Becker, PC, 900 West Avenue, Austin, Texas 78701; Attorneys for Texas Taxpayer & Student Fairness Coalition, *et al.* Plaintiffs.



Robert A. Schulman

Unofficial copy Travis Co. District Clerk Verna L. Price

**VERIFICATION**

**STATE OF TEXAS**       §  
**COUNTY TRAVIS**       §

On this day, Denise Nance Pierce, General Counsel and Vice President, Member Services, Texas Charter Schools Association, the Affiant, appeared before me, a notary public, who knows the Affiant to be the person whose signature appears below. According to the Affiant's statements under oath, the Affiant is the General Counsel and Vice President, Member Services, of the Texas Charter Schools Association, a party in this case; the Affiant has read the foregoing Answers to Interrogatories; the Answers to Interrogatory Nos. 1 and 2 are based on information obtained from other persons; and the Answers to these Interrogatories are true and correct, according to the Affiant's personal knowledge.

-----  
Denise Nance Pierce

SUBSCRIBED and SWORN TO before me on this 1st day of October 2013.

-----  
Notary Public, State of Texas

-----  
Commission  
Expiration Date

Unofficial copy Travis Co. District Clerk Velva Price

## **Toni Templeton**

2028 Encino Circle

Austin, Texas 78723

Email: ttempleton@txcharterschools.org

Phone: 512-584-8272

### **Education and Certifications**

**Master of Science**, Applied Statistics, University of Texas San Antonio, In Progress

**Master of Education**, Curriculum and Instruction, University of Phoenix, 2009

**Bachelor of Science Neurobiology**, The University of Texas, 2004

**Instructional Leadership Development Certificate**, 2007

**Texas Teaching Certificate**, Life Sciences 8-12, 2005

**Phi Beta Kappa Honor Society Member**, 2000

### **Skills and Areas of Specialization**

Policy Analysis, Statistical Analysis, Database Development and Management, Teaching and Training, Research Analysis, Technology Usage, Efficiency Improvement, Process Analysis

### **Professional Experience**

**Data Analyst**, Texas Charter Schools Association September 2010 to present  
Develop and implement metrics for charter school quality; Provide descriptive and comparative statistics for charter school advocacy and media; Assist in drafting legislation to improve charter school movement; Analyze school finance funding formulas; Provide assistance to charter schools in applying for charters, expansion amendments and renewals from the Texas Education Agency; Train charter school staff in state and federal accountability, school finance, school finance accountability, school improvement and data analysis; Educate legislative staffers on school finance and accountability.

**School Improvement Specialist**, Austin Can Academy August 2008 to September 2010  
Created improvement plan based upon needs assessment and data analysis; Developed goals and action steps to reach goals; Implemented improvement plan, monitored change, and intervened where needed; Implemented federal programs for school improvement; Ensured compliance with all federal and state regulations in accountability and budget; Created and improved tutorial program; Incorporated SES providers into successful tutorial program; Recruited and trained tutorial staff; Created and managed student learning plans and goals.

**Science Instructional Specialist**, Texans Can Academy August 2007 to July 2008  
Wrote science curriculum for dropout recovery program in Texas, Louisiana and Missouri; Trained teachers on curriculum, instruction and classroom management; Monitored district and campus performance on standardized tests; Evaluated curriculum and instruction.

**Online Classroom Facilitator, Weblessons** March 2008 to June 2009  
Instructed classes on technology use in the classroom; developed online class platform;  
wrote curriculum for class.

**Data Analyst Contractor, Fiveash and Associates** August 2007 to August 2011  
Provided data analysis services to schools in the areas of school improvement, cohort  
monitoring, needs assessments, grant reporting, transcript evaluation, program evaluation  
and budget analysis.

**Assistant Principal, Austin Can Academy** August 2006 to July 2007  
Served as an Assistant Principal at a dropout recovery charter high school.

**Anatomy and Physiology Teacher, Austin Community College** May 2006 to June 2007  
Taught basic anatomy and physiology concepts to massage therapy students; Prepared  
massage therapy students for anatomy and physiology exam for licensing.

**Science Teacher, Austin Can Academy** August 2004 to July 2006  
Taught biology, chemistry, and physics at a dropout recovery charter high school.

**Montessori Preschool Teacher, Northwest Montessori** January 2000 to July 2004  
Taught 18 month and 3 year old classrooms.

## **Presentations**

### **Live Presentations**

#### **TCSA Trainings**

Accountability and Compliance, August 1, 2013  
Update on 83<sup>rd</sup> Legislative Changes, August 1, 2013  
Board Training for Accountability and Compliance,  
October 5, 2012 & August 12, 2012

#### **TCSA 2012 Member Council Meetings**

Recap of 83<sup>rd</sup> Legislative Session- Charter Funding Changes- July 24, 2013  
2013 Legislative Session- School Funding Proposed Changes- February 5, 2013  
TEA Expansion Amendment Decisions- September 11, 2012  
Student Growth Metric Measure- June 12, 2012

#### **TCSA 2012 Annual Conference Sessions**

Accountability Overview  
2012 Accountability Update  
Similar Students Measure and Student Growth Percentiles

#### **TCSA 2011 Annual Conference Sessions**

Reviewing Results and Data Pack in Quality Framework

#### **TCSA Webinars**

Calculating 2013 Accountability June 6, 2013  
83<sup>rd</sup> Legislature Public Education Budget Overview- June 5, 2013  
Understanding the State Accountability System- July 26, 2011

Accountability Proposal Update March 6, 2013  
2012 Federal Accountability Update August 2, 2012

**The Network- A Collaboration between TEA, Region II and TCSA**  
**Webinars**

New Staff Orientation and the Quality Framework-August 7, 2013  
Teambuilding Toward Excellence July 17, 2013  
Quality Framework Reports and Data Overview- Get Started- June 19, 2013  
SSM and SGP Overview- April 10, 2013

**Service and Volunteering**

*Youth Mentor, Southwest Key Programs*  
*Mobile Food Pantry Volunteer, Capital Area Food Bank*  
*Foster Parent, Austin Boxer Rescue*

Unofficial copy Travis Co. District Clerk Velda L. Price