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Amalia Rodriguez-Mendoza
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Travis District
D-1-GN-11-003130

Cause No. D-1-GN-11-003130

THE TEXAS TAXPAYER AND STUDENT FAIRNESS COALITION, *et al.*	§	**IN THE DISTRICT COURT**
Consolidated Case: **MARIO FLORES, *et al.*,**	§	
Plaintiffs	§	**TRAVIS COUNTY, TEXAS**
vs.	§	
MICHAEL L. WILLIAMS, *et al.*,	§	
Defendants.	§	**200TH JUDICIAL DISTRICT**

PLAINTIFFS' FIFTH AMENDED ORIGINAL PETITION AND REQUEST FOR DECLARATORY JUDGMENT

Now come Plaintiffs Mario Flores, individually and as next friend of Aidan Flores; Christopher Baerga, individually and as next friend of Abby Baerga; Dana Allen, individually as next friend of Teal Evelyn Allen; Jason and Sarah Christensen, individually and as next friends of their children Luke and Grace Christensen; Brooks Flemister, individually and as next friend of Ulric Flemister; and Texas Charter Schools Association (hereafter "Plaintiffs") in the above-styled action, and file this, their Fifth Amended Original Petition and Request for Declaratory Judgment against Defendants Michael L. Williams, in his official capacity as Commissioner of Education; the Texas Education Agency; the Texas State Board of Education; and Susan Combs, in her official capacity as the Texas Comptroller of Public Accounts (collectively hereafter "Defendants"), challenging the constitutionality of the Texas public school finance system, and in support, Plaintiffs would respectfully show the Court:

I. DISCOVERY

1. Plaintiffs submit that discovery should proceed under Level 3 of Rule 190.4 of the Texas Rules of Civil Procedure.

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II. PARTIES

A. Plaintiffs.

2. Plaintiff Mario Flores brings this suit individually and as parent and next friend of his minor child Aidan Flores. Mr. Flores pays local property taxes in Travis County and the Austin Independent School District. All minor children of Mr. Flores presently attend, or will soon attend, public schools at Wayside Schools charter school in Austin, Texas.

3. Plaintiff Christopher Baerga brings this suit individually and as parent and next friend of his minor child Abby Baerga. All minor children of Mr. Baerga presently attend, or will soon attend, public schools at New Frontiers charter school in San Antonio, Texas.

4. Plaintiff Dana Allen brings this suit individually and as parent and next friend of her minor child Teal Evelyn Allen. Ms. Allen pays local property taxes in Dallas County and the Dallas Independent School District. All minor children of Ms. Allen presently attend, or will soon attend, public schools at Lindsley Park charter school in Dallas, Texas.

5. Plaintiffs Jason and Sarah Christensen bring this suit individually and as parents and next friends of their minor children Luke and Grace Christensen. The Christensens pay local property taxes in Bexar County and the Judson Independent School District. All minor children of the Christensens presently attend, or will soon attend, public schools in the Judson Independent School District and in the Harmony Public Schools charter school in San Antonio, Texas.

6. Plaintiff Brooks Flemister brings this suit individually and as parent and next friend of his minor child Ulric Flemister. All minor children of Mr. Flemister presently attend, or will soon attend, public schools at SER-Niños Academy charter school in Houston, Texas.

7. Plaintiff Texas Charter Schools Association is a Texas non-profit corporation, a state-wide association, representing appropriately 500 charter schools and educating more than

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120,000 students in every part of Texas. Texas charter school members are directly affected by the Texas school finance system.

B. Defendants.

8. Defendants are Michael L. Williams, in his official capacity as Commissioner of Education; the Texas Education Agency; the Texas State Board of Education; and Susan Combs, in her official capacity as the Texas Comptroller of Public Accounts. All Defendants have been duly served with process and filed an Answer in this proceeding.

9. The Honorable Greg Abbott, Attorney General of Texas, was also served with notice in compliance with Section 37.006(b) of the Texas Civil Practice and Remedies Code.

III. JURISDICTION AND VENUE

10. Jurisdiction is proper in this Court under Article V, section 8 of the Texas Constitution and the Texas Uniform Declaratory Judgments Act, as Plaintiffs are persons whose rights are affected by the statutes, rules and administrative actions challenged by this suit, and seek to determine questions of construction and validity arising under said statutes, rules and administrative actions, and to obtain a declaration of their rights within the meaning of Texas Civil Practice and Remedies Code Sections 37.004(a) and 37.002(b).

11. Venue is proper in Travis County, Texas pursuant to Texas Civil Practice and Remedies Code Sections 37.006(b) and 15.002 and 15.005 because the relevant governmental entities must be made parties when a claim challenges the validity of statutes, rules and administrative actions; because all or a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in Travis County, Texas; because one or more of the official-capacity Defendants resided in Travis County, Texas at the time the causes of action accrued; and because one or more of the institutional Defendants maintained its principal offices in Travis County, Texas at the time the causes of action accrued.

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IV. HISTORY OF THE LITIGATION

12. The constitutionality of the public school finance system was challenged by the Charter School Plaintiffs and four other Plaintiff groups in 2011. Trial on these claims commenced on October 22, 2012 and concluded on February 4, 2013, hereinafter "October trial." After the parties rested, the Court ruled from the bench, declaring the system unconstitutional because it was qualitatively inefficient, was unsuitable, and inadequate to provide a general diffusion of knowledge. The Court has not issued its findings of fact and conclusions of law, nor has it issued its written Judgment.

V. OVERVIEW

13. The Texas Legislature (the "Legislature") created charter schools in 1995 as "part of the public school system of this state." Tex. Educ. Code § 12.105. Charter schools, together with traditional public schools, "have the primary responsibility for implementing the state's system of public education." *Id.* § 11.002. Thus, charter schools share the primary responsibility—equally with school districts—to implement the public education system in Texas. The Legislature, having established charter schools as part of the public school system, must fund these public schools in compliance with the Texas Constitution.

14. Charter schools were designed to "increase the choice of learning opportunities within the public school system," to "create professional opportunities that will attract new teachers to the public system," to serve as a "new form of accountability for public schools," and to "encourage different and innovative learning methods." *LTTS Charter Sch., Inc. v. C2 Constr., Inc.,* 342 S.W.3d 73, 77 (Tex. 2011); Tex. Educ. Code § 12.001.

15. Charter schools, like school districts, must meet the same academic and financial mandates as school districts, including the rigorous assessment standards, increasing curriculum requirements, and the requirement to ensure that students attain post-secondary readiness.

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Tex. Educ. Code §§ 12.059, 12.104, 12.111. With passage of Senate Bill 2 by the 83rd Legislature, charter schools are additionally and uniquely subject to the performance frameworks requirements of "high-stakes" accountability, performance standards which are applied only to open-enrollment charter schools.

Charter School Funding Mechanism

16. The state funding mechanism for charter schools is a derivative of the formula used to calculate funding for school districts. Currently, the Legislature funds charter schools begins by applying the school district funding mechanism to charter schools, as if they were a school district with no tax base. Tex. Educ. Code § 12.106. Consequently, similar to school district funding, charter school funding is computed in two tiers, Tier I and Tier II.

17. For school districts in Tier I, the statutorily set Basic Allotment is adjusted for district characteristics and use in conjunction with student enrollment to calculate the entitlements for different programs, enrichment deemed necessary by the state. Tex. Educ. Code § 42.002(b). The Local Fund Assignment is calculated for each district and the state equalizes entitlements, to a certain level, ensuring each student has equal access to adequate funding. Tex. Educ. Code § 42.002(a)(2).

18. For school districts, the Basic Allotment is then adjusted to account for each school district's size, sparsity and cost of education. No tax collection specific information is used by the State of Texas to make these adjustments for school districts. Tex. Educ. Code § 42.101. Yet, these particular adjustments are not made for the non-taxing public charter schools. Tex. Educ. Code § 12.102-105. Instead, the same Statewide Average Adjusted Allotment, the average of all school district Adjusted Allotments, is applied to each charter school, regardless of that school's size, sparsity or cost of education. Tex. Educ. Code § 12.106.

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19. Tier II funding provides guaranteed levels of enrichment to school districts and charter schools. Tier II funding is dependent upon Tier I funding, and for charter school is consequently impacted by the use of the Statewide Average Adjusted Allotment used to calculate this adjustment, as opposed to the school districts' independently adjusted allotments.

20. In addition to their state funding entitlements in Tier I and Tier II, school districts can levy local property taxes to pay for facilities. School districts that do not levy taxes or that are property poor are nonetheless guaranteed a level of facilities funding from the state through the Instructional Facilities Allotment (IFA) and the Existing Debt Allotment (EDA). Tex. Educ. Code § 42.007. Not so for charter schools.

21. Despite having no taxing authority, public charter schools are not eligible to receive facilities funding through the IFA and EDA, both of which are used to provide facilities funding for school districts without a tax base or with minimal tax collections. Thus, as Defendant, the Texas Education Agency acknowledges, charter schools, having neither a local tax base or state assistance for instructional facilities, receive no facilities funding of any sort.

22. The result of these marked differences in funding between school districts and charter school funding is a significant and continual disparity between the amount of combined state and local funding that school districts and charter schools receive from the State of Texas. On average over the past three years charter schools have received approximately $1700 less per student. Furthermore, the range from the highest per student funding in school districts to the lowest per student funding in charter schools is a sadly remarkable $9303.

State Legislative Action

23. In 2011, the 82nd Legislature cut $5.4 billion from the 2012-2013 biennium. The impact of these cuts dramatically and adversely affected Texas public schools, both charter

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schools and school districts. The State also cut, or eliminated entirely, funding for programs for the costly to teach at-risk student. In 2013, the 83rd Legislature restored an estimated $3.4 billion of the total $5.4 billion in foundation school program cuts made in 2011. In doing so, the Legislature did not fully restore the amounts removed the year prior from the foundation school program, Nor did the Legislature restore funding to address the at-risk performance gap, address the cost to public schools for meeting the State's increased academic standards.

24. The 83rd Legislature made no structural changes to the funding mechanism for charter schools. In fact, while the partial restoration of funding by the 83rd Legislature resulted in no appreciable changes to the funding disparity between school district and charter schools.

25. House Bill 5, an education bill passed by the 83rd Legislature, significantly impacts Texas public schools, including charter schools, by increasing their educational burden while not reducing the level of knowledge they are required deliver to *all* Texas school children who enter their doors.

26. Prior to the 83rd Legislature, Texas law set a statutory cap of 215 on the number of open-enrollment charters that may be granted by the State Board of Education. With the enactment of Senate Bill 2, the cap on the number of open-enrollment charter schools increased, but a cap remains.

VI. PLAINTIFFS' CLAIMS

A. The Current Public School Finance System is Unconstitutional as to Public Charter Schools.

27. The above factual allegations, arguments and authorities are incorporated, re-alleged and repeated herein by reference as though set forth in full.

28. In the over two decades of Texas school finance litigation, the Legislature and Texas courts have examined the constitutionality of the State's public school finance system

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from the school districts' perspective only. Plaintiffs' claims address the unconstitutional aspects of the State's school finance system uniquely applied to public charter schools, and the rights of their respective taxpayers and parents, which claims and rights have yet to be decided by the Court.

29. Article VII, section 1 of the Constitution requires the Legislature to provide a free public education system that is adequate, suitable and qualitatively and quantitatively efficient. *West Orange-Cove ISD II*, 176 S.W.3d at 751-753. A constitutionally adequate public school finance system provides opportunity for a general diffusion of knowledge, and whether the public education system is constitutionally adequate in fulfilling its purpose depends upon whether the public education system is reasonably able to provide all Texas public school children access to a quality education that enables them to achieve their potential and fully participate now and in the future in the social, economic, and educational opportunities of our state and nation. *West Orange-Cove ISD II* at 787; Tex. Educ. Code 4.001(a).

30. Public school districts and public charter schools are primary implementers of the public school system. The State has failed to provide adequate resources to these public schools so that the schools are able to provide students with the general diffusion of knowledge, as required by Article VII, section 1 of the Texas Constitution.

31. Public charter schools suffer constitutional violations independent, distinct, and in excess of those suffered by school districts. The unconstitutionality of the means of funding charter schools is not dependent upon the unconstitutionality of the means of funding the independent school districts.

32. While the Legislature enjoys flexibility and discretion in determining how public schools are funded, that discretion is subject to constitutional limitations. Profoundly inadequate

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and inequitable public school funding, whether between school districts or between school districts and public charter schools, is unconstitutional. Moreover, such inadequacy and inequity cannot be the result of an arbitrary decision of the Texas Legislature in the means it provides a Texas public school to reach the constitutionally required general diffusion of knowledge.

33. Although the Legislature is not required to establish either independent school districts or charter schools, once it acts to do so, it must act in accordance with the Texas Constitution to fund these systems suitably, efficiently, equitably, and not arbitrarily to provide all public school students a general diffusion of knowledge.

34. Public charter schools are required to meet the same state and federal education standards as are school districts. They are subject to the same academic and financial accountability requirements. Yet, for the past several years, charter schools have received on average $1700 less revenue per student than their school district counterparts. Moreover, students in the poorest charter schools receive on average $9303 less revenue than their peers in the most wealthy school districts.

35. Charter schools have achieved notable success particularly with respect to the historically under-served students in Texas. Nevertheless, significantly large numbers of charter school students are failing to meet college-readiness standards. A public education system that requires public charter schools to meet the same educational and accountability standards as school districts, that inadequately funds school districts and denies charter schools even a similar means provided to school districts to accomplish the same standards required of school districts cannot, for the charter schools, be constitutionally adequate.

36. The Constitution also requires that the public education system be "suitable" in that it must be structured, operated, and funded so that it can accomplish its purpose for all Texas

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children. *West Orange-Cove ISD II*, 176 S.W. 3d at 753. But, especially as to charter schools and their state funding mechanism, the Texas public school finance system is not structured, operated, or adequately funded to provide all charter school students with a general diffusion of knowledge, thus, failing to make suitable provision for the support and maintenance of charter schools in violation of Article VII, section 1 of the Constitution.

37. The Constitution also imposes on the Legislature an affirmative duty to ensure that the education system remains efficient. Tex. Const. art. VIII, § 1; *West Orange-Cove ISD II*, 176 S.W. 3d at 776. The constitutional guarantee of efficiency requires the education finance system to use of resources so as to produce results with little waste while affording children a substantially equal opportunity to have access to educational funds no matter where they live. Gross inequalities exist between students attending school districts as compared to students attending charter schools. As such, the system itself is grossly inefficient and must be reformed. *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391 (Tex. 1989) ("*Edgewood I*"); *Edgewood Indep. Sch. Dist. v. Kirby*, 804 S.W.2d 491 (Tex. 1991) ("*Edgewood II*").

38. Texas courts have yet to address the constitutionality of the state funding mechanism for charter schools as that mechanism is related to the constitutional requirement of efficiency applied to charter schools. Efficiency, as the Supreme Court articulated in *Edgewood I*, requires that districts have "substantially equal access to similar revenues per pupil at similar levels of tax effort." *Edgewood I* at 392-93. Therefore, with respect to charter schools, efficiency requires a comparison between a public charter school and a school district that includes *all* state and local funds received by the school district.

39. Severe structural failures in the state funding mechanism for charter schools result in a continual disparity between the amount of funding available per student in a school district

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versus the amount of funding available per student in a public charter school. A comparison a charter school funding to school district funding for the past three years, using historically and universally accepted methods, demonstrates a disparity averaging approximately $1700 per student.

40. An even greater disparity is revealed comparing funding for a child attending a public charter school where the child resides to that which the child would draw if the child had attended the resident public school district. As an example, funding for a student residing in the High Island Independent School District is $3791 *more* per school year than funding for that same student were s/he to attend nearby Ambassadors Preparatory Academy charter school in Galveston.

41. The Foundation School Program formula compensates property poor school districts that are unable to raise significant local revenues through taxes. But charter schools, having even less resources than a school district with a property poor tax base, receive no such formula assistance. In an attempt to provide charter schools with per-pupil funds roughly equivalent to the average State and local per pupil funds provided to school districts, state funding for charter schools is determined through an "averaging" formula.[1]

42. Averaging allotment adjustments, as opposed to individualizing adjustments, as is done for school districts, creates significant shortfalls throughout the school funding mechanism for charter schools. Even were the receipt by charter schools of the average of school district funding a constitutional mechanism (Plaintiffs assert it is not), the charter school funding mechanism is a poor substitute for local taxing authority, as the amount of additional funds paid to charters per pupil is significantly less than the funds the school districts can raise through local

[1] Tex. Educ. Code § 12.106. Subsection (a-2) provides that a charter school is entitled to enrichment funding based on the state average tax effort.

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taxes. The result is a persistent and significant disparity between the combined state and local funding that school districts and the funding charter schools receive, a result which denies charter schools and charter school students substantially equal access to the education funding available to school districts.

43. For all of these reasons, the charter school funding mechanism is constitutionally inefficient, and because the funding system not substantially equal, is failing these schools, the parents of charter school students who attend them and their students.

44. Capping the disparities created by the State Average Adjusted Allotment, charter schools at categorically denied any measure of facilities funding, and are omitted entirely from the facilities funding equalization mechanism of the Foundation School Program.

45. As the Supreme Court explicitly recognized in *Edgewood Indep. Sch. Dist., et al. v. Meno, et al.*, 917 S.W.2d 717 (1995) ("*Edgewood IV*"), "An efficient system of public education requires not only classroom instruction, but also the classrooms where that instruction is to take place. These components of an efficient system—instruction and facilities—are inseparable." *Edgewood IV*, 917 S.W.2d at 726. Yet, despite this undisputed recognition that facilities are a component of a constitutional school finance system, public charter schools, as part of the public school system and charged with the same responsibility as districts to educate Texas students, are categorically denied any facilities assistance or funding.

46. The arbitrary denial of facilities funding impacts charter schools tremendously, as school districts receive on average $971 in facilities funds and charter schools receive $0.

47. Because charter schools do not receive facilities funding, they have no choice but to spend less on education than their school district counterparts, using their instructional dollars

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on facilities costs. This fact is a significant factor in the difficulty facing charter schools in reaching the constitutional threshold of a general diffusion of knowledge.

48. While the Legislature is afforded significant discretion with respect to how it funds public charter schools, that discretion is limited by the constitutional guarantee of efficiency, promising "substantially equal access" to State revenues for all public schools. The current State funding mechanism for charter schools fails in this regard.

B. The Means Provided by the Legislature to Fund Public Charter Schools and the Statutory Cap on Charter Schools Violate the Constitutional Prohibition Against An Arbitrary Public School Finance System.

49. While the Legislature is afforded significant discretion in determining the means by which it funds the level of education required to achieve a general diffusion of knowledge, that discretion is limited by the Constitution, and the decisions made by the Legislature cannot be arbitrary. Since 1995, Texas Education Code Section 12.118(c)(1) has required the commissioner of education to conduct an annual evaluation of open-enrollment charter schools to include "… the costs of instruction, administration and transportation incurred by open-enrollment charter schools." On information and belief, this has not been annually conducted nor has a reliable cost of education analysis of open-enrollment charter schools demonstrating that it is less costly for charter schools to bring their students to the levels of knowledge than it is for schools districts been annually or ever conducted. Absent such cost of education analysis and findings there can be no legislative purpose for the wholesale denial of facilities funding or support to charter schools, for the gross disparity between school district and charter school funding, or for the application of a public school funding formula and mechanism which ignores the individualized characteristics and circumstances of charter schools but provides customized funding adjustments for school districts. Such arbitrary funding of charter schools is the epitome of the

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inefficiency that is not permitted under the Texas Constitution, Article VII, section 1, as well as a violation of Equal Protection under Article I, section 3 of the Constitution.

50. Qualitative efficiency required by the Constitution and enumerated by the Supreme Court, has yet to be addressed by the lower courts. *West Orange Cove ISD II*, 176 S.W. 3d at 793. Charter schools were intended and designed to "increase the choice of learning opportunities within the public school system," and to "create professional opportunities that will attract new teachers to the public system." Tex. Educ. Code § 12.001(2)-(3). The cap on the number of open-enrollment charters contradicts this stated purpose, and is an entirely arbitrary barrier to the furtherance of this purpose. Placing an arbitrary cap on the number of open-enrollment charter schools prevents new and innovative educators from operating in the State of Texas, reducing rather than increasing public school options. Despite the 83rd Legislature having recently increased the cap in Senate Bill 2, a cap remains. If our State public school system is to reach the level of qualitative efficiency required by the Texas Constitution, a cap on charter school growth must be set aside.

51. Open-enrollment charter schools have demonstrated the qualitative efficiency required by the Texas Constitution, achieving equal or better educational outcomes for less money, which in turn provides precisely the kind of efficiency envisioned by our Constitution. Yet, the cap on the number of open-enrollment charter school is an arbitrary obstacle preventing facilitation of this efficiency.

C. Results of the 83rd Legislature.

52. In 2011, the 82nd Legislature cut $5.4 billion from the 2012-2013 biennium. The impact of these cuts dramatically affected both charter schools and school districts. In 2013, the 83rd Legislature restored an estimated $3.4 billion of the total $5.4 billion in foundation school

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program cuts made in 2011, but did not fully restore the formula cuts or restore funding for programs aimed at closing the performance gap for at-risk students.

53. The 83rd Legislature made no structural changes to the state funding mechanism for public schools. Weights utilized in the system for adjusting program funding have not been updated for years and significantly understate the true costs of educating children. The actions of the 83rd Legislature did nothing to affect these outdated and understated weights. Moreover, the 83rd Legislature made no structural changes to the state funding mechanism for charter schools and the partial restoration of State funds by the 83rd Legislature yielded an insignificant increase in educational funds for charter schools. The restoration of $3.4 billion of the total $5.4 billion cut by the 82nd Legislature in 2011 resulted in an average increase of $113 per weighted student for school districts, and an average increase of $114 per weighted student for charter schools. Consequently, the partial restoration of funding to the school finance system by the 83rd Legislature, and absence of legislation addressing the inequities of the charter school funding system, did nothing to diminish Plaintiffs' claims that the current charter school funding system is unconstitutional. The school finance system as it applies to charter schools remains inadequate, unsuitable, and inefficient, in violation of the Constitution.

54. Two bills passed by the 83rd Legislature significantly impacted Texas charter schools: House Bill 5 and Senate Bill 2. Charter schools, like school districts, are subject to the major changes made by House Bill 5 to the public education system: changes in the State's graduation plans, reduction of standardized testing requirements for high school students, and changes/additions to the public school accountability system. These changes, however, do not impact the Plaintiffs' claims or evidence in this case, as House Bill 5 does not alter what is required of public schools to reach a general diffusion of knowledge, *i.e.,* to graduate students

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post-secondary ready. House Bill 5 does not address the state funding mechanism for charter schools.

55. Furthermore, House Bill 5 does not alter the level of knowledge required to be diffused to all Texas school children by its public schools. House Bill 5 does not alter the obligation to graduate students post-secondary ready, or how a public school measures post-secondary readiness. House Bill 5 did not alter the remediation requirements for students not achieving the minimum scores on the EOCs and STAAR exams. Charter school students must meet the same STAAR exam requirements and pass the same STAAR end-of-course exams ("EOCs") as was required prior to House Bill 5.

56. The implementation of House Bill 5 is likely to increase instructional costs for charter schools due to the increased accountability requirements and the necessity to make available a variety of graduation plans (endorsements in particular) that a student may now choose. House Bill 5 imposes multiple new measures of student academic performance, beyond the standardized test scores. It also establishes a rating system to evaluate charter schools on academic performance, financial performance, and a self-evaluation of community and student engagement. Charter schools will be held to increased measures of performance and additional accountability requirements under House Bill 5, placing additional demands on teachers, support staff and administration. Simply put, House Bill 5 will increase instructional costs for charter schools and did nothing to resolve the multitude of failings of the Texas school finance system toward charter schools.

57. In addition to the increased graduation requirements and heightened accountability measures imposed by House Bill 5, charter schools are also and uniquely subject to heightened accountability and performance measures imposed by Senate Bill 2. Under Senate

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Bill 2 charter schools will be held to the same academic and financial standards and measures as school districts, and will additionally be responsible for meeting the yet to be developed charter school specific performance frameworks under which the Commissioner of Education is charged to annually evaluate, measure and report on the performance of each charter school in the State on an established set of "quality standards." Senate Bill 2 also imposes on charter schools, and not on school districts, a heightened, or more accurately, "high stakes" accountability requirements, closing charter school operations if a charter school fails to meet academic and financial requirements. School districts are not subject to these unprecedented requirements and death penalty sanctions.

58. The Senate Bill 2 enhanced performance standards to be imposed only on charter schools, coupled with the new accountability and performance measures imposed on all public schools under House Bill 5, and layered with a nuclear option for charter schools which fail to meet the increased level of performance, come on the heels of the State's existing and ongoing failure to adequately and equitably fund its charter schools.

59. Thus, the current school finance system for charter schools, under Chapters 12 and 42 of the Texas Education Code, remains arbitrarily structured and funded so that despite recent legislative developments, the system continues to be arbitrary, inefficient, and unsuitable. This is especially so for the system's public charter schools which remain not reasonably able to afford all students the constitutionally-required access to educational opportunity as is necessary to accomplish a general diffusion of knowledge

VII. CONCLUSION

60. The above factual allegations, arguments and authorities are incorporated, re-alleged and repeated herein by reference as though set forth in full.

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61. Charter schools, parents, and students continue to be shortchanged. The current school finance system provides traditional school districts with two types of funding: operations and facilities funding. Charter school students generate, on average, less instructional funding per pupil than their traditional school district peers, and their schools receive no facilities funding. The arbitrary denial of facilities funding, a necessary component for suitability and efficiency, combined with arbitrary and inequitable funding mechanisms, along with the arbitrary cap on charter school growth, and the additional impositions of instructional rigors, with little to no financial relief offered to charter schools by the 83rd Legislature, impedes the progress of these schools toward an efficient system for all public schools. Removing these arbitrary limitations on charter schools would not only relieve Plaintiffs' constitutional complaints, it would continue and support the charter schools' impressive start toward the achievement of an efficient state school system and a brighter educational future for the school children of our State, as promised by our Constitution and prayed for by our Supreme Court.

VIII. CAUSES OF ACTION

62. The above factual allegations, arguments and authorities are incorporated, re-alleged and repeated herein by reference as though set forth in full.

63. Plaintiffs bring the following claims and seek declaratory relief under the Uniform Declaratory Judgment Act, Tex. Civ. Prac. & Rem. Code § 37.001 *et seq.,* in order to settle and to receive relief from uncertainty and insecurity with respect to their rights, status, and other legal relations under Article VII, section 1 of the Texas Constitution and under the applicable statutes of the Education Code. The claims arise under both Article VII, Section 1-Adequacy and Suitability and Article VII, Section 1-Quantitative/Financial Efficiency (Equity). The public school finance system is further and uniquely arbitrary and unsuitable because charter

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schools do not have access to funds for facilities or equal access to funding adjustments based on their individualized needs.

64. More specifically, Plaintiffs ask the Court to declare that the school finance system violates the "efficiency" provisions of Article VII, section 1 of the Texas Constitution, in that it fails to provide efficient and non-arbitrary access to revenues, including facility and other funding necessary for public charter schools to provide a general diffusion of knowledge, and that the school finance system, as applied to public charter schools, does not make suitable provision for the support and maintenance of the education system, in violation of the Texas Constitution.

65. Plaintiffs ask the Court to declare that the school finance system violates the equal protection provisions of Article I, section 3 of the Texas Constitution, in that in 1997 and again in 2001 (and continuing therefrom) the Texas Legislature arbitrarily and capriciously amended open-enrollment charter school funding statutes, and failed to provide charter schools with substantially equal access to revenues and funding adjustments which are provided to independent school districts, entirely omitting facility funding, and other funding, as well as failing to provide adequate funding for the support and maintenance of the education system in general, doing so without rational basis, all in violation of Article I, section 3 of the Texas Constitution.

66. Plaintiffs ask the Court to declare that the artificial limitation on the number of open-enrollment charter schools violates the equal protection provisions of Article I, section 3 of the Texas Constitution and Article VII, section 1 of the Texas Constitution, in that it is without rational basis, is arbitrary in concept and scope, and serves as a deterrent to constitutionally-required qualitative efficiency in the public schools system.

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67. Plaintiffs seek from Defendants their reasonable attorneys' fees and costs, pursuant to Section 37.009 of the Texas Civil Practice and Remedies Code.

IX. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request that the Court grant the declaratory relief sought herein:

a. That the Court declare that Article VII, section 1 of the Texas Constitution, with respect to the public school finance system, applies equally to open- enrollment charter schools;

b. That the Court grant Plaintiffs declaratory relief pursuant to the Texas Uniform Declaratory Judgments Act, in order to settle and to receive relief from uncertainty and insecurity with respect to their rights, status, and other legal relations under the Texas public school finance system under Article VII, section 1 of the Texas Constitution, the Texas Education Code, and other law;

c. That the Court declare that the public school finance system, insofar as it creates artificial, arbitrary and capricious differences between the sources of funding available to open-enrollment charter schools, without rational basis, is in violation of the equal protection provisions of Article 1, section 3 of the Texas Constitution;

d. That the Court grant a permanent injunction prohibiting Defendants from giving any force and effect to the unconstitutional sections of the Texas Education Code relating to the financing of open-enrollment charters schools until the constitutional violation is remedied;

e. That the Court retain continuing jurisdiction over this matter until the Court has determined that the Defendants have fully and properly complied with its orders;

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f. That the Court find that the constitutional requirements upon the Legislature, for a suitable and efficient free public school system to provide general diffusion of knowledge, requires facility funding for open-enrollment charter schools;

g. That the Court find that the charter school cap in Section 12.101(b) of the Education Code is arbitrary and inefficient within the meaning of Article VII, section 1 of the Texas Constitution;

h. That the Court grant Plaintiffs recovery of reasonable attorneys' fees and costs, as allowed by Chapter 37.009 of the Texas Civil Practice and Remedies Code, and as otherwise provided by law; and

i. That the Court grant Plaintiffs such other and further relief, general and special, at law and in equity, to which they may be justly entitled.

Respectfully submitted,

SCHULMAN, LOPEZ & HOFFER, LLP

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Unofficial copy Travis Co. District Clerk Velva L. Price

CERTIFICATE OF SERVICE

The undersigned certifies that on November 21, 2013, a true and correct copy of Plaintiffs' Fifth Amended Original Petition was served upon the following counsel of record *via* e-mail pursuant to the agreement of the parties and in compliance with the Texas Rules of Civil Procedure and the Texas Local Rules:

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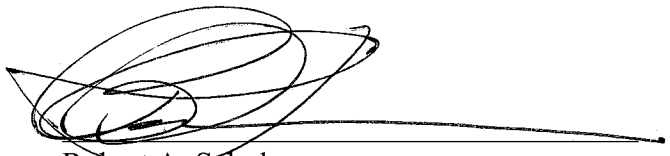

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