



Q. So I take it that all of your assessment data, the charts in your report, include charters?

A. With the deposition of—no, without exception.

Q. Thank you. And then—

A. I'm sorry. All of the assessment reports include charters, none of the finance reports.

Q. I understand that. I said assessment, I believe.

A. Okay.

Q. Turning back to Section 2.1. You say, "On the finance side, many of the State funding increases have been devoted to property tax reduction"?

A. Yes.

Q. Are you aware of how charters are funded?

A. Generally.

Q. So all charters, if I'm to summarize, are based to a part on an average of every district's funds that they get for under their taxing authority. Correct? Not bonding, but M&O?

A. From state and local sources, yes, under the Foundation Program.

Q. Then it's also true, would it not be, that if any one independent school district lowers their tax by 1 cent, that's going to affect every single charter in the state, is it not?

A. I would assume so, yes.

Q. I just want to clear up a couple of other things that you said. You said that the formula for school finances has changed. Are you aware of any change to the basic formula, that is, the statutory base formula, for charters? Did the legislature, to your knowledge, make any change whatsoever?

A. To my knowledge, it did not address changes in the charter system directly or indirectly.

Q. Thank you.

MR. SCHWARTZ: Pass the witness. Thank you very much.

Respectfully submitted,

**SCHULMAN, LOPEZ & HOFFER, LLP**



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**Attorneys for Flores, et al. Plaintiffs**

**CERTIFICATE OF CONFERENCE**

On February 27, 2014, Cynthia Pacheco, one of the firm's Paralegals in the San Antonio office, sent out an e-mail request to counsel to obtain their agreement or opposition to the filing of the **Charter School Plaintiffs' Proffer of Lynn Moak Deposition Testimony** with proposed Exhibit 9073 referenced and attached therein. Shortly thereafter, defense counsel notified the undersigned of her objection to such proffer. Therefore, this matter is presented to the judge for resolution.



---

Leonard J. Schwartz

**CERTIFICATE OF SERVICE**

The undersigned certifies that on March 4, 2014, a true and correct copy of the foregoing Charter School Plaintiffs' Opposed Proffer of Lynn Moak Deposition Testimony (and exhibit referenced therein) has been 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:

Shelley N. Dahlberg, Nichole Bunker-Henderson, Linda Halpern, Amanda Cochran-McCall, Eric Vinson, 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. Hinojosa, Marisa Bono, and Celina Moreno, 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; and Randall (Buck) Wood and Douglas Ray, 2700 Bee Caves Road, Austin, Texas 78746; Attorneys for Texas Taxpayer & Student Fairness Coalition, *et al.* Plaintiffs;

  
\_\_\_\_\_  
Leonard J. Schwartz

1 CAUSE NO. D-1-GN-11-003130  
 2 TEXAS TAXPAYER & STUDENT ) IN THE DISTRICT COURT OF  
 FAIRNESS COALITION, ET )  
 3 AL., CALHOUN COUNTY ISD, )  
 ET AL.; EDGEWOOD ISD, ET )  
 4 AL. FORT BEND ISD, ET )  
 AL.; TEXAS CHARGER SCHOOL )  
 5 ASSOCIATION, ET AL., )

6 Plaintiffs, )

7 )  
 8 JOYCE COLEMAN, ET AL., ) TRAVIS COUNTY, TEXAS

9 Intervenors, )

10 VS. )

11 )  
 12 MICHAEL WILLIAMS )  
 COMMISSIONER OF )  
 13 EDUCATION, IN HIS )  
 OFFICIAL CAPACITY; SUSAN )  
 14 COMBS, TEXAS COMPTROLLER )  
 OF PUBLIC ACCOUNTS, IN )  
 15 HER OFFICIAL CAPACITY; )  
 TEXAS STATE BOARD OF )  
 16 EDUCATION, )

17 Defendants. ) 200TH JUDICIAL DISTRICT

18  
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 20  
 21 ORAL DEPOSITION OF LYNN M. MOAK  
 NOVEMBER 15, 2013  
 22 VOLUME 2

23 Reported By:  
 24 Tamara Chapman  
 25 Job # 67342

Unofficial Copy Travis Co. District Clerk Velya L. Price

1 ORAL DEPOSITION OF LYNN M. MOAK, produced as a  
 2 witness at the instance of the Defendant and duly sworn,  
 3 was taken in the above styled and numbered cause on  
 4 Wednesday, 15th day of November, 2013, from 9:02 a.m. to  
 5 5:15 p.m., before Tamara Chapman, CSR in and for the State  
 6 of Texas, reported by computerized stenotype machine, at  
 7 the offices of Thompson & Horton, 400 West 15th Street,  
 8 Suite 1430, Austin, Texas, pursuant to the Texas Rules of  
 9 Civil Procedure and the provisions stated on the record  
 10 herein.  
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A P P E A R A N C E S

1  
 2  
 3 COUNSEL FOR TEXAS TAXPAYER & STUDENT FAIRNESS COALITION:  
 4 Ms. Toni Hunter  
 5 GRAY & BECKER  
 6 900 West Avenue  
 7 Austin, Texas 78701

8 COUNSEL FOR MICHAEL WILLIAMS COMMISSIONER OF EDUCATION, IN  
 9 HIS OFFICIAL CAPACITY; SUSAN COMBS, TEXAS COMPTROLLER OF  
 10 PUBLIC ACCOUNTS, IN HER OFFICIAL CAPACITY; TEXAS STATE  
 11 BOARD OF EDUCATION:  
 12 Mr. Darren Gibson  
 13 Ms. Shelley Dahlberg  
 14 Ms. Kara Belew  
 15 ATTORNEY GENERAL OF TEXAS  
 16 300 W. 15th Street  
 17 Austin, Texas 78701

18 COUNSEL FOR FORT BEND INDEPENDENT SCHOOL DISTRICT  
 19 PLAINTIFFS:  
 20 Mr. Philip Fraissinet  
 21 THOMPSON & HORTON  
 22 400 West 15th Street  
 23 Houston, Texas 78701  
 24 -  
 25 Ms. Holly McIntush  
 THOMPSON & HORTON  
 400 West 15th Street  
 Austin, TX 78701

1 COUNSEL FOR INTERVENORS, JOYCE COLEMAN, ET AL.:  
 2 Mr. J. Christopher Diamond (via telephone)  
 3 THE DIAMOND LAW FIRM  
 4 17484 Northwest Freeway  
 5 Houston, Texas 77040

6 COUNSEL FOR EDGEWOOD INDEPENDENT SCHOOL DISTRICT  
 7 PLAINTIFFS AND THE WITNESS:  
 8 Ms. Marisa Bono  
 9 MALDEF  
 10 110 Broadway  
 11 San Antonio, Texas 78205

12 FOR THE CHARTER SCHOOL PLAINTIFFS:  
 13 Mr. Leonard Schwartz  
 14 SCHULMAN LOPEZ & HOFFER  
 15 701 Brazos Street  
 16 Austin, Texas 78701

17 FOR THE CALHOUN COUNTY PLAINTIFFS:  
 18 Mr. Adam Sencebaugh  
 19 HAYNES AND BOONE  
 20 600 Congress Avenue  
 21 Austin, Texas 78701

22 ALSO PRESENT:  
 23 Ms. Maria Whitsett  
 24  
 25

1 \* \* \*  
 2 EXAMINATION INDEX  
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9	EXAMINATION BY MS. BONO.....	208
10	EXAMINATION BY MR. FRAISSINET.....	213

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16	Exhibit 20060.....	6
17	"A 2013 Supplement to Performance and Funding Issues: Texas 2012" (FB000001 - FB000032)	
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19	Edgewood IV decision (No Bates - 3 pages)	

20 \* \* \*  
 21 PREVIOUSLY MARKED EXHIBITS

22	Exhibit 6322.....	137
23	"Performance and Funding Issues: Texas 2012" - Revised - A Report by Lynn M. Moak - October 15, 2012 (No Bates - 71 pages)	

1 A. To varying degrees, yes.

2 Q. I'd like to ask you a question or two about  
3 Figure 18. In either of the two years that you're dealing  
4 with here, if a district is taxing at above \$1.04 and --  
5 is above \$1.04 just to provide the basic program, then the  
6 percent of enrichment available that you put here would be  
7 an overestimate. Right?

8 A. If they need to use funds in excess of what they  
9 achieve at \$1.04 for the adequate program, then that would  
10 be correct.

11 Q. And if a district testifies, for example, that it  
12 needs \$1.17 just to begin to provide the basic program,  
13 then they would have zero percent available for  
14 enrichment. Correct?

15 A. That would be correct.

16 Q. And they'd have no revenue -- and they'd have  
17 used up all of the revenue capacity. Is that correct?

18 A. Correct.

19 MS. HUNTER: I pass the witness.

20 MR. DIAMOND: Nothing for me.

21 EXAMINATION

22 BY MR. SCHWARTZ:

23 Q. In your report, Section 2.1, you say,  
24 "Educational standards have increased." And also you have  
25 a whole Section 3.0.

1 Is there any increase on standards that did not  
2 apply to charters?

3 A. Not to my knowledge.

4 Q. Okay. I'd like to just make one other thing  
5 clear. If you turn to Figure A-9 in your report, it  
6 includes charters. Is that correct?

7 A. Yes.

8 Q. So I take it that all of your assessment data,  
9 the charts in your report, include charters?

10 A. With the deposition of -- no, without exception.

11 Q. Thank you.

12 And then --

13 A. I'm sorry. All of the assessment reports include  
14 charters, none of the finance reports.

15 Q. I understand that. I said assessment, I believe.

16 A. Okay.

17 Q. Turning back to Section 2.1. You say, "On the  
18 finance side, many of the State funding increases have  
19 been devoted to property tax reduction"?

20 A. Yes.

21 Q. Are you aware of how charters are funded?

22 A. Generally.

23 Q. So all charters, if I'm to summarize, are based  
24 to a part on an average of every district's funds that  
25 they get for under their taxing authority. Correct? Not

1 bonding, but M&O?

2 A. From state and local sources, yes, under the  
3 Foundation Program.

4 Q. Then it's also true, would it not be, that if any  
5 one independent school district lowers their tax by  
6 1 cent, that's going to affect every single charter in the  
7 state, is it not?

8 A. I would assume so, yes.

9 Q. I just want to clear up a couple of other things  
10 that you said. You said that the formula for school  
11 finances has changed.

12 Are you aware of any change to the basic formula,  
13 that is, the statutory base formula, for charters? Did  
14 the legislature, to your knowledge, make any change  
15 whatsoever?

16 A. To my knowledge, it did not address changes in  
17 the charter system directly or indirectly.

18 Q. Thank you.

19 MR. SCHWARTZ: Pass the witness. Thank you  
20 very much.

21 EXAMINATION

22 BY MS. BONO:

23 Q. Mr. Moak, I'm actually not sure if we've ever met  
24 formally. My name is Marisa Bono. I'm an attorney with  
25 MALDEF.

1 A. Yes.

2 Q. I just have some quick questions for  
3 clarification. If you could turn back to Figure F-3 on  
4 Page 19. And in Figure F-3 --

5 A. Just a moment.

6 Q. Oh, yes. Sorry.

7 A. Page --

8 Q. It's Page 19 of your supplemental report.

9 A. I'm there. Thank you.

10 Q. All right. In this figure, you were not  
11 attempting to demonstrate the lack of equity in the  
12 system. Correct?

13 A. This was not intended to address equity, no.

14 Q. Did you consider the average adopted tax rate for  
15 each of the groupings you have listed here as part of your  
16 analysis of the ten different revenue groups?

17 A. We did not.

18 Q. And you did nothing in your supplemental report  
19 to determine whether districts have substantially equal  
20 access to similar revenues at similar levels of tax  
21 effort. Correct?

22 A. Somehow that phrase sounds familiar. But I did  
23 not analyze that issue in this report.

24 Q. And you're not providing any expert opinions or  
25 analysis regarding the equity or financial efficiency of

1 although there are certain -- certain indicators that  
 2 there is comparable data for over time, there is not  
 3 comparable data for -- for instance, for the State  
 4 assessment program of comparing the tax results with the  
 5 STAAR results, but I didn't want to -- I didn't intend by  
 6 that to leave the impression that there is no evidence  
 7 that things are -- that the challenges faced under today's  
 8 standards are greater than the challenges under the 2006  
 9 standards, in particular, that the -- the results of  
 10 the -- the results of the STAAR test, the new graduation  
 11 requirements all tied into related elements in terms of  
 12 curriculum, all tied into a much higher standard level,  
 13 the standard level that the legislature has set of college  
 14 ready -- college or career ready with the elimination of  
 15 performance gaps is a significantly higher standard than I  
 16 think we were facing in 2006.

17 Q. Thank you very much.

18 MR. FRAISSINET: No further questions.

19 (THE DEPOSITION CONCLUDED AT 5:15 P.M.)

1 CORRECTION PAGE

2 WITNESS NAME: LYNN M. MOAK DATE: 11/15/2013

3 PAGE LINE CHANGE REASON

4	_____	_____
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1 SIGNATURE PAGE

2 I, LYNN M. MOAK, have read the foregoing deposition  
 3 and hereby affix my signature that same is true and  
 4 correct, except as noted on the correction page.  
 5

6 \_\_\_\_\_  
7 LYNN M. MOAK

8  
9 THE STATE OF TEXAS )  
10 COUNTY OF \_\_\_\_\_ )

11 Before me \_\_\_\_\_ on this day personally  
12 appeared \_\_\_\_\_ known to me [or proved to  
me on the oath of \_\_\_\_\_ or through

13 \_\_\_\_\_ (description of identity card or  
other document)] to be the person whose name is subscribed  
14 to the foregoing instrument, and acknowledged to me that  
he/she executed the same for the purposes and  
consideration therein expressed.

15 Given under my hand and seal of office this \_\_\_\_\_  
16 day of \_\_\_\_\_, 2013.

17  
18 \_\_\_\_\_  
19 NOTARY PUBLIC IN AND FOR  
20 THE STATE OF TEXAS

21 My Commission Expires:  
22 \_\_\_\_\_  
23  
24  
25

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

2 TEXAS TAXPAYER & STUDENT ) IN THE DISTRICT COURT OF  
 3 FAIRNESS COALITION, ET )  
 4 AL., CALHOUN COUNTY ISD, )  
 5 ET AL.; EDGEWOOD ISD, ET )  
 6 AL. FORT BEND ISD, ET )  
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TEXAS STATE BOARD OF )  
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1 officer and that the transcript of the oral deposition is  
2 a true record of the testimony given by the witness;

3 That the deposition transcript was submitted on  
4 11/25/2013 to the witness or to the attorney for  
5 the witness for examination, signature and return to TSG  
6 Reporting, by 12/15/2013;

7 That the amount of time used by each party at the  
8 deposition is as follows:

- 9 Mr. Darren Gibson - 5:56
- 10 Ms. Toni Hunter - 00:02
- 11 Mr. Philip D. Fraissinet - 00:15
- 12 Ms. Marisa Bono - 00:06
- 13 Mr. J. Christopher Diamond - 00:00
- 14 Mr. Leonard J. Schwartz - 00:03
- 15 Mr. Adam H. Sencenbaugh - 00:00

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

19 Ms. Toni Hunter - COUNSEL FOR TEXAS TAXPAYER &  
20 STUDENT FAIRNESS COALITION

21 Mr. Darren Gibson - ATTORNEY FOR MICHAEL WILLIAMS  
22 COMMISSIONER OF EDUCATION, IN HIS OFFICIAL CAPACITY; SUSAN  
23 COMBS, TEXAS COMPTROLLER OF PUBLIC ACCOUNTS, IN HER  
24 OFFICIAL CAPACITY; TEXAS STATE BOARD OF EDUCATION

25 Mr. Philip D. Fraissinet - ATTORNEY FOR FORT BEND  
INDEPENDENT SCHOOL DISTRICT PLAINTIFFS

Mr. J. Christopher Diamond - ATTORNEY FOR COUNSEL FOR  
INTERVENORS, JOYCE COLEMAN, ET AL.  
Ms. Marisa Bono - COUNSEL FOR EDGEWOOD INDEPENDENT  
SCHOOL DISTRICT PLAINTIFFS

Mr. Leonard J. Schwartz - FOR THE CHARTER SCHOOL  
PLAINTIFFS

Mr. Adam H. Sencenbaugh - FOR THE CALHOUN COUNTY

1 I further certify that I am neither counsel for,  
2 related to, nor employed by any of the parties in the  
3 action in which this proceeding was taken, and further  
4 that I am not financially or otherwise interested in the  
5 outcome of the action.

6 Further certification requirements pursuant to Rule  
7 203 of TRCP will be certified to after they have occurred.  
8 Certified to by me this 22nd day of November, 2013.

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11 Tamara Chapman, CSR, RPR  
12 CSR No. 7248  
13 Expiration Date: 12/31/14  
14 TSG Reporting, Inc.  
15 Firm Registration No. 615  
16 Nationwide - Worldwide  
17 Phone: (877) 702-9580  
18 Info@tsgreporting.com  
19 www.tsgreporting.com

1 FURTHER CERTIFICATION UNDER RULE 203 TRCP

2  
3 The original deposition was/was not returned to the  
4 deposition officer on \_\_\_\_\_

5 If returned, the attached Changes and Signature Page  
6 contains any changes and the reasons therefor;

7 If returned, the original deposition was delivered to  
8 Mr. Darren Gibson, Custodial Attorney;

9 That \$ \_\_\_\_\_ is the deposition officer's  
10 charges to Defendants for preparing the original  
11 deposition transcript and any copies of exhibits;

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

15 Certified to by me this \_\_\_\_\_ day of  
16 \_\_\_\_\_, 2013.

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19  
20 Tamara Chapman, CSR, RPR  
21 CSR No. 7248  
22 Expiration Date: 12/31/14  
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