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Travis County
D-1-GN-11-003130

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

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| **THE TEXAS TAXPAYER & STUDENT FAIRNESS COALITION, et al.** | § | **IN THE DISTRICT COURT** |
| ***Plaintiffs*** | § | |
| **vs.** | § | **200th JUDICIAL DISTRICT** |
| **ROBERT SCOTT, COMMISSIONER OF EDUCATION, IN HIS OFFICIAL CAPACITY, et al.** | § | |
| ***Defendants*** | § | **TRAVIS COUNTY, TEXAS** |

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## INTERVENOR-PLAINTIFFS' REQUEST FOR ADDITIONAL AND AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Intervenor-Plaintiffs Texans for Real Efficiency and Equity in Education, et al. ("Efficiency Intervenors") file this Request for Additional Findings of Fact and Conclusions of Law under Texas Rules of Civil Procedure 298 and 299. On March 12, 2013, Efficiency Intervenors submitted the attached proposed findings of fact and conclusions of law to the Court, but the Court did not include them in the Court's findings and conclusions. Accordingly, the Efficiency Intervenors respectfully request that the Court enter these additional findings and conclusions as previously submitted by them.

The Efficiency Intervenors additionally object to any of the Court's findings and conclusions that contravene the Efficiency Intervenors' proposed findings and conclusions, including Findings of Fact 649-650, 655-660, 664, 673-679, and 1463-1489, and Conclusions of Law 58-60, 68-69, 87-88, and 117. The Efficiency Intervenors ask the Court to amend its findings of fact and conclusions of law to delete these findings and conclusions.

Finally, the Efficiency Intervenors' claims turned, in part, on the state's lack of knowledge of the cost of educating students, rendering the system arbitrary and unconstitutional.

Because the Court expressly reached this same conclusion (Conclusions of Law 30, 40, and 78), the Court should have rendered judgment for the Efficiency Intervenors on their claims.

Respectfully submitted,

By: */s/ Craig T. Enoch*

J. Christopher Diamond
SBN: 00792459
THE DIAMOND LAW FIRM, P.C.
17484 Northwest Freeway, Suite 150
Houston, Texas 77040
(713) 983-8990
(832) 201-9252 fax

Craig T. Enoch
SBN: 00000026
Melissa A. Lorber
SBN: 24032969
ENOCH KEVER PLLC
600 Congress, Suite 2800
Austin, Texas 78701
(512) 615-1200
(512) 615-1198 fax
***ATTORNEYS FOR THE EFFICIENCY INTERVENORS***

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**CERTIFICATE OF SERVICE**

I hereby certify that, on September 8, 2014 a true and correct copy of the above has been served via electronic service on the following:

***Attorneys for Plaintiffs:***
Richard E. Gray, III.
Toni Hunter
GRAY & BECKER, P.C.
900 West Ave.
Austin, Texas 78701
512-482-0924 (fax)

***Attorneys for Plaintiffs:***
J. David Thompson, III
Philip Fraissinet
THOMPSON & HORTON LLP
3200 Phoenix Tower, Suite 2000
Houston, Texas 77027
713-583-9668 (fax)

***Attorneys for Plaintiffs:***
David G. Hinojosa
Marisa Bono
MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND, INC.
110 Broadway, Suite 300
San Antonio, Texas 78205
210-224-5382 (fax)

***Attorneys for Plaintiffs:***
Mark R. Trachtenberg
HAYNES AND BOONE, LLP
1221 McKinney St., Suite 2100
Houston, Texas 77010
713-547-2600 (fax)

***Attorney for Defendants:***
Shelley N. Dahlberg
James "Beau" Eccles
Erika Kane
TEXAS ATTORNEY GENERAL'S OFFICE
P.O. Box 12548, Capitol Station
Austin, Texas 78711

***Attorneys for Plaintiffs:***
Robert Schulman
SCHULMAN, LOPEZ & HOFFER
517 Soledad St.
San Antonio, Texas 78205-1508

*via email to the following addresses by agreement of the parties*

christopherdiamond@yahoo.com
Mark.Trachtenberg@haynesboone.com
dhinojosa@MALDEF.org
dthompson@thompsonhorton.com
Rick.Gray@graybecker.com
Shelley.Dahlberg@texasattorneygeneral.gov
pfraissinet@thompsonhorton.com
Lacy.Lawrence@haynesboone.com
hmcintush@thompsonhorton.com
robert.o'keefe@texasattorneygeneral.gov
Toni.Hunter@graybecker.com
John.Turner@haynesboone.com
Lora.Faruque@haynesboone.com
Debbie.Noel@haynesboone.com
rlr@shore.net
ipina@maldef.org
srodriguez@thompsonhorton.com
lpayton@thompsonhorton.com
richard.grayIV@graybecker.com
buckwood@raywoodlaw.com
dray@raywoodlaw.com
cenoch@enochkever.com
nichole.bunkerhenderson@texasattorneygeneral.gov
mary.sisler@texasattorneygeneral.gov
Linda.Halpern@texasattorneygeneral.gov
mbono@MALDEF.org

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*/s/ Craig T. Enoch*
Craig T. Enoch

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| Defendants. | § | TRAVIS COUNTY, TEXAS |

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**EFFICIENCY INTERVENOR'S FINDINGS OF FACT**

Note: At the time of the submission of these findings of fact and conclusions of law, the final transcripts for the last few weeks of the trial, including the Efficiency Intervenors' case-in-chief, were not available, so exact citations to testimony was not possible.

1. To meet its constitutional obligation to establish and make suitable provision for the support and maintenance of an efficient system of public free schools for Texas children, the Texas Legislature established Independent School Districts and assigned them both the task of educating the children and the authority to tax to raise revenue to accomplish that task. The Legislature also re-allocates the Independent School Districts' tax revenue and adds state revenue to the state public education system. This is the current Texas Legislature's public school effort, which will be called the Texas School District System.

2. The Texas Supreme Court admonishes that to be constitutionally sound, the Texas School District System must be:

a. adequate; that is, it can accomplish a general diffusion of knowledge,

b. suitable; that is, it is structured, operated, and funded to accomplish its purpose, and

c. efficient; that is, it uses resources that produces results with little waste.[1]

[1] *Edgewood Indep. Sch. Dist. v. Kirby,* 777 S.W.2d 391, 395 (Tex. 1989) (*Edgewood I*); *see also, Neeley v. W. Orange-Cove Consol. Indep. Sch. Dist.*, 176 S.W.3d 746,

It is none of these.

3. For the past three decades the Texas School District System has periodically sued itself to force reallocation of financial resources, revised taxing authority, and for additional tax revenue.

4. But in no lawsuit, has the Texas School District System presented evidence that shows what it costs to educate a child to any level of achievement that the System established as its educational goal.

5. The Texas School District System – either that part which is the plaintiffs or that part which is the defendant – has presented no evidence in this case showing the cost to educate a child to any particular level of achievement.

6. No Texas School District System district superintendent presented at trial could answer, credibly, how much it costs to produce educational achievement for any student in their district. Nearly all had not attempted to calculate that cost.[2]

7. The Texas School District System can collect, but does not require the collecting or reporting of data in a format designed to determine the actual cost to educate a child to the point of being college or career ready on graduation from a Texas high school.[3]

8. Failing to know how much it costs to produce educational achievement for Texas school children leaves the Texas School District System without a necessary tool, the absence of which deprives Texas school children of an adequate, suitable, and efficient system of public free schools.[4]

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753 (Tex. 2005)(*W. Orange-Cove II*) *citing Edgewood Indep. Sch. Dist. v. Meno*, 917 S.W.2d 717, 736-37 (Tex. 1995)(*Edgewood IV*).

[2] Kay Waggoner, 10/25/12 testimony, p. 83 l. 6-18 to p. 84, l. 4; Tracy Hoke 11/6/12 testimony, pp. 96-99; Dupre 12/5/12 testimony and deposition, Exhibit 3204; Chambers 10/31/12 testimony and deposition, Exhibit 3205; Hill report, Exhibit 1341 and 1/15/13 testimony; McAdams report, Exhibit 1013 and 1/17/13 testimony; Deposition of Mark Hurley, Exhibit 8144 and Report, Exhibit 1.

[3] Financial Allocation Resource Guide, Exhibit 8000; FAST study, Exhibits 32, 951 and 963; McAdams report, Exhibit 1013 and 1/17/13 testimony; Hill report, Exhibit 1341 and 1/15/13 testimony; Hanushek reports, Exhibits 1001 and 8001, and 1/16/13 testimony, Deposition of Mark Hurley, Exhibit 8144 and Report, Exhibit 1.

[4] Waggoner 10/25/12 testimony, p. 83 l. 6-18 to p. 84, l. 4; McAdams report, Exhibit 1013 and 1/17/13 testimony; Hill report, Exhibit 1341 and 1/15/13 testimony; Hanushek reports, Exhibits 1001 and 8001, and 1/16/13 testimony.

9. Because the Texas School District System has no design to determine the cost of a productive education for Texas school children, it has incorporated litigating against itself as a standard management tool. Litigation is a non-productive business cost.

10. Because the State provides both the Texas School District System and the Texas Court System that must handle the periodic litigation, the Texas School District System cannot produce educational results with little waste. To the contrary, the evidence shows that massive increases in public dollars committed to the Texas School District System has produced no change in educational achievement.[5] The waste is massive.

11. Though invited on numerous occasions by the Texas Supreme Court to do so, the Texas School District System has never sued itself to force significant restructuring of the educational system.[6]

12. In this case, the Efficiency Intervenors have challenged the design and structure of the Texas School District System. They have challenged allocation of education resources; including personnel hiring and firing, facilities construction and maintenance, administrative (non-teaching) assignments and regulatory overlay. As designed the Texas School District System deprives Texas school children of an adequate, suitable, and efficient system of public free schools.

13. The Texas School District System does not have economic or competitive market incentives to control its resource allocation so to produce educational results with little waste.[7] The insulation from competitive pressure deprives Texas school children of an adequate, suitable, and efficient system of public free schools.

14. The Texas School District System's method of taxation deprives Texas school children of an adequate, suitable, and efficient system of public free schools.

15. The Texas School District System's allocation of tax revenue deprives Texas school children of an adequate, suitable, and efficient system of public free schools.

**Efficiency Intervenors**

16. Bo, Andrea, and Joel Smedshammer are Texas residents.[8]

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[5] Deposition Robert Scott, Exhibit 5630, p. 277, l. 10-17.

[6] *Id.*

[7] McAdams report, Exhibit 1013 and 1/17/13 testimony; Hill report, Exhibit 1341 and 1/15/13 testimony; Hanushek reports, Exhibits 1001 and 8001, and 1/16/13 testimony; Joseph Bast reports, Exhibits 8068 and 8069, and 1/22/13 trial testimony; Jacob Vigdor 12/4/12 testimony.

[8] Bo Smedshammer 1/15/13 testimony; Andrea Smedshammer 1/15/13 testimony.

17. Bo Smedshammer is eleven years old and has a constitutional right to receive an adequate education from the Texas system of public free schools.[9]

18. Bo and his parents, Andrea and Joe Smedshammer, were concerned that Bo was not prepared to attend a traditional public intermediate school in the Arlington Independent School District after elementary school and were also concerned that the intermediate school had safety and quality issues.[10]

19. Bo Smedshammer was harmed by the state's restriction on the number of charter schools that can open in the state, which increased the unavailability of openings at existing charter schools, including Arlington Classics Academy, a charter school in Arlington, Texas.[11]

20. Bo wanted to attend the Arlington Classics Academy for 5th grade and was harmed because he could not attend the school due to a lengthy waiting list. Bo was home-schooled by his mother for that year while his younger brother and sister attended the Academy.[12]

21. Bo was harmed in being unable to attend the same school events and field trips as his siblings and being socially integrated into his siblings' school experiences.[13]

22. Andrea and Joel Smedshammer were harmed by the year that Bo was unable to attend the Arlington Classics Academy because of the time required to prepare for teaching and to teach Bo the appropriate subjects while he was home-schooled, the emotional burden of addressing the negative impact on Bo and the other siblings since they could not attend school together, and the difficulty it presented to their family based on having to the care for Bo when the other siblings had events at the Academy that he could not attend.[14]

23. Danessa Bolling and her daughter Seanelle are Texas residents.[15]

24. The public high school that Seanelle was assigned to attend is one of the worst in the state with significant problems with drugs, gangs and violence. Additionally, the high school has limited extracurricular programs and an inadequate teaching staff.[16]

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[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] Danessa Bolling 1/23/13 testimony.

[16] *Id.*

25. Because Danessa Bolling felt so strongly that her daughter should not go this public school, she transferred guardianship of Seanelle to her older daughter, so that Seanelle resided with her older sister in order to attend a different public high school with better resources and teachers.[17]

26. Danessa Bolling and Seanelle were and are harmed by having to live apart during the week while Seanelle attends school. Living apart has hurt their bond as mother and daughter and has caused it to be exceedingly difficult for Danessa to be involved with Seanelle's school life and activities.[18]

27. The Texas Association of Business represents the interests of its 3,500 corporate members and 200 chamber of commerce members.[19]

28. The adequacy of the education provided by Texas public schools is one of the top three issues facing Texas businesses.[20]

29. The goal of the Texas Association of Business is to create the best business climate on the planet, so if companies wish to expand or relocate they will choose to come to Texas.[21]

30. The availability of an adequately educated workforce is essential to meeting this goal of Texas having a strong business climate.[22]

31. Texas businesses have a need for employees who graduate from high school ready to succeed in a career or post-secondary education program.[23]

32. Texas businesses increasingly require employees with some post-secondary education.[24]

33. Texas businesses are harmed because they are currently unable to fulfill their employee needs with qualified employees.[25]

34. When Texas businesses are unable to fill their employee needs with qualified employees, they cannot produce as many products or services as the market would allow, and their profits are reduced.[26]

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[17] *Id.*

[18] *Id.*

[19] Bill Hammond 1/17/13 testimony, direct examination.

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *Id.*

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35. Texas businesses have suffered financial harm as a result of being unable to fulfill their employee needs with qualified employees.[27]

36. Texas businesses are harmed as a result of less than a quarter of Texas high school graduates being qualified to learn the skills necessary to work in a meaningful way for Texas business.[28]

37. Texas businesses are harmed as a result of less than a quarter of Texas high school graduates being qualified to attend post-secondary education, without the need for remediation.[29]

38. Students who require remediation before completing post-secondary education are more likely to drop out before completing their education program.[30]

39. If the public education system does not improve and increase the number of high school graduates who are college or career ready, business will leave the state, Texas will lose its business tax base, and it will be devastating to the future of the state.[31]

40. With just replacing the bottom 5-8% performing teachers with average performing teachers, the U.S. could move to the level of Canada, and possibly Finland, on international achievement tests. The added growth over the next 80 years would have a present value 5 to 8 times our current GDP.[32] The Texas economic climate would benefit substantially.

**Adequacy**

41. The Texas School District System is not adequate.[33]

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[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] *Id.*

[32] Hanushek reports Exhibits 1001 and 8001, and 1/16/13 testimony.

[33] Lynn Moak 10/30/12 testimony, p. 74, line 11 - p. 75, line 25; Eric A. Hanushek reports Exhibits 1001 and 8001; Hanushek 1/16/13 testimony; Hammond 1/22/13 testimony; Nabour Cortez report 4000 and 11/20/12 testimony; Don McAdams report, Exhibit 1013 and 1/17/13testimony,; Deposition of Karen Garza, Exhibit 3198, p. 247, lines 18-22 (". . . we are concerned with how we're doing . . ."; Deposition Roy Knight, Exhibit 3199, p. 196, lines 11-19 (". . . we're woefully inadequate."); Deposition Jodie Witte, Exhibit 3201, p. 240, line 10 - p. 241, line 7; Deposition of Tom Wallis, Exhibit 3200, p. 283, line 15 - p. 284, line 2 (". . . as a superintendent, we're not as productive as I would like; and as a daddy, we're not as productive as I would like."; Deposition Jerilynn Pfeifer, Exhibit 3202, p. 271, line 6

- p. 272, line 7 ("Are we where we need to be, no."); Deposition Jim Knight, Exhibit 3203, p. 305, line 23 - p. 304, line 17 ("We obviously aren't producing college ready students . . . No, it can't be efficient if you are not getting the job done."); Deposition Charles Dupre, Exhibit 3204, p. 254, line 16 - p. 255, line 7 ("Would it also be fair to say that Pflugerville is not productive of results such that it's not efficient? A: That's true, yes."); Deposition H.D. Chambers, Exhibit 3205, p. 52, line 14 - p. 53, line 2, ("Can Alief [I.S.D.] . . . get to the point that even 50 percent of your graduates are college and career ready . . . [A:]unless we get additional resources . . . it's going to be difficult to get much higher than that . . ."); Deposition Michael French, Exhibit 3206, p. 58, lines 7-19 ("Do you think you're preparing a large percentage of the kids in your district to be college ready? A: No, we're behind the state average routinely there."); Deposition Gonzalo Salazar, Exhibit 3207, p. 69, lines 13-21 (". . . only 26% of our students go to a four-year college, 28% go to a two-year college, and . . . there's only 15% of them that complete either . . ."); Deposition Todd Williams, Exhibit 3208, p. 198, lines 13-17 ("Does the recognized rating that you have equate to having your kids college ready or career ready? A: No."); Deposition James Blincoe, Exhibit 3209, p. 263, lines 11 - 19 ("I'm not providing a general diffusion of knowledge . . ."); Deposition Guy Sconzo, Exhibit 6334, p. 92, lines 5-9 (". . . what's your opinion on how your district students are performing under the college readiness indicators set forth by the State? A: Not well."); Deposition Bonny Cain, Exhibit 6335, p. 86, line 13 - p. 87, line 14 ("And do you feel that Waco ISD is accomplishing that goal [college and/or career ready] at this time? A: At this point, no."); Deposition Heath Burns, Exhibit 6336, p. 22, lines 1-9 ("we strongly believe . . . we do not have the appropriate funding to achieve that level of success, but that remains the expectation."); Deposition Jeffrey Hanks, Exhibit 6337, p. 257, line 17 - p. 258, line 1 (". . . the students are having a difficult time meeting the standard set by the state for the college- and career-readiness . . ."); Deposition Bamberg, Exhibit 6339, p. 96, lines 20-24; Deposition Floyd Miles, Exhibit 6340, p. 115, lines 14-22 ("I think most of our students are not college-ready."); Deposition Diane Frost, Exhibit 6341, p. 54, lines 5-9 ("The district is not where we need to be on the college-ready criterion."); Deposition Alfred Ray, Exhibit 6342, p. 204, lines 14-23 (". . . more than 50% we have not had the opportunity to provide [the general diffusion of knowledge."); Deposition Rodney Schroder, Exhibit 6343, p. 81, lines 18-25; Deposition Maria Carstarphen, Exhibit 6344, p. 82, line 19 - p. 83, line 4; Deposition John Folks, Exhibit 6345, p. 58, lines 9-16 ("Northside has a long way to go in getting kids at the college ready standard."); Deposition Susan Kincannon, Exhibit 3226, p. 27, lines 6-12 ("We aren't performing very well by our own standards."); Deposition James Gilcrease, Exhibit 3227, p. 174, lines 7-14 ("Obviously we're preparing them at a 49 percent level [college readiness] at this point."); Deposition Joseph Patek, Exhibit 5614, p. 175, lines 1-23; Deposition Stephen Waddell, Exhibit 5615, p. 57, lines 8-24; FAST District outcomes, Exhibit 8073; ERG Focus ISD's, Exhibit 8011; Rick Reedy 1/24/13 testimony 1/24/13. *See also* 2011-12 AEIS reports

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42. The most critical factor affecting student performance and achievement is teacher quality.[34]

43. The best way to improve student performance is to improve the performance of teachers and attracting quality teachers.[35]

44. The Texas School District System operates under rules that impose uniform teaching methods, restricting individual teaching innovation that would respond to student needs.[36]

45. The most critical factor affecting student performance and achievement is teacher quality.[37]

46. The best way to improve student performance is to improve the performance of teachers and attracting quality teachers.[38]

47. A year with a bad teacher can be devastating and can hinder a child's development.[39]

48. With a one-time replacement of the bottom 5 to 8 percent of teachers with just average teachers, and by paying attention after the first year to recruiting and retaining average or better teachers, Texas educational achievement would dramatically improve.[40]

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of every plaintiff and/or focus district as part of this litigation, and as discussed in either trial or deposition testimony.

[34] Hanushek reports, Exhibits 1001 and 8001, and 1/16/13 testimony; Deposition Robert Scott, Exhibit 5630, p. 22, l. 1-5; Michael Podgursky , 12/13/12 testimony; Russ Whitehurst trial 12/6/13; Vigdor report, Exhibit 1122, p. 6; Vigdor Powerpoint, Exhibit 5412, slide 32; Whitehurst 12/6/12 testimony.

[35] Hanushek reports, Exhibits 1001 and 8001, and 1/16/13 testimony; McAdams report, Exhibit 1013 and 1/17/13 testimony.

[36] McAdams report, Exhibit 1013 and 1/17/13 testimony; Hill report, Exhibit 1341 and 1/15/13 testimony; Hanushek reports, Exhibits 1001 and 8001, and 1/16/13 testimony.

[37] Hanushek reports, Exhibits 1001 and 8001, and 1/16/13 testimony; Deposition Robert Scott, Exhibit 5630, p. 22, l. 1-5; Podgursky 12/13/12 testimony; Whitehurst 12/6/13 testimony; Vigdor report, Exhibit 1122, p. 6; Vigdor Powerpoint, Exhibit 5412, slide 32.

[38] Hanushek reports, Exhibits 1001 and 8001, and 1/16/13 testimony; McAdams report, Exhibit 1013 and 1/17/13 testimony.

[39] Deposition Robert Scott, Exhibit 5630, p. 412, l. 21-23; H.D.Chambers, 10/31/12, p. 158, l. 19 - p. 159, l. 1; Meria Carstarphen 11/26/12 testimony.

[40] Hanushek reports, Exhibits 1001 and 8001, and 1/16/13 testimony.

49. Texas teachers are paid based on their years of experience. School districts are not required to measure teacher performance or to pay based on performance.[41]

50. Length of teacher service after the first five years does not correlate with additional student achievement, yet Texas teachers are paid based on years of service, not student achievement.[42]

51. The Texas School District System pays poor and mediocre teachers the same as great, good, and average teachers who have the same tenure. The System's design promotes teacher job guarantee not student achievement. It promotes education stagnation.[43]

52. Education achievement would improve if teachers were rewarded for performance, rather than tenure and degree levels.[44]

53. The Texas School District System's minimum salary schedule encourages across-the-board pay expectations. The construct across the system is annual, across-the-board, step-ups in pay based principally on tenure.[45]

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[41] Sconzo 10/23/12 and 10/24/12 testimony; Antonio Limon 10/24/12 testimony; Waggoner, 10/25/12, p. 75, l. 6-16 and p. 113, l. L13 to p. 115, l. 25; Tracey Hoake, 11/06/12, p. 87, l. 15 to p. 88, l. 9; H.D. Chambers 10/31/12 testimony, p. 79, line 17-25; Billy Wiggins 11/7/12 testimony, p. 37, line 10-18; Nabor Cortez 11/20/12 testimony, p. 89, lines 11-19; Reece Blincoe 11/20/12 testimony, p. 206, lines 12-22; Heath Burns 11/26/12 testimony, p. 67, lines 9-13; Michael French 11/27/12 testimony, p. 111, lines 3-9; *see also* the testimony and depositions of *every* other superintendent who testified at trial or whose deposition has been admitted as an exhibit.

[42] Deposition Gonzalo Salazar, Exhibit 3207, p. 191, lines 5-11; Hanushek reports, Exhibits 1001 and 8001, and 1/16/13 testimony.

[43] Hanushek reports, Exhibits 1001 and 8001, and 1/16/13 testimony; Hill report, Exhibit 1341 and 1/15/13 testimony.

[44] Heath Burns 11/26/12 testimony, p. 67, line 24 - p. 68, line 4; Deposition Robert Scott, Exhibit 5630, p. 440, l 21-25; Jacob Vigdor 12/3/12 testimony; Vigdor supplemental report, Exhibit 5400, p. 9, Hanushek reports, Exhibits 1001 and 8001, and 1/16/13 testimony; Hill report, Exhibit 1341 and 1/15/13 testimony; McAdams report, Exhibit 1013 and 1/17/13 testimony.

[45] McAdams report, Exhibit 1013 and 1/17/13 testimony; Deposition Robert Scott, Exhibit 5630, p. 437, l. 20 to p. 438, l. 9; Randy Pittenger, 10/31/12, p. 89, l. 25 to p. 90, l. 13; Rod Schroder 11/29/12 testimony, p. 74, lines 15-21.

54. The minimum salary schedule has a negative influence on productivity, provides disincentives to high-performing teachers, contributes to the best teachers leaving after three or four years, and causes school districts to overpay long-serving teachers who are no longer performing well.[46]

55. Some school district boards and superintendents want to pay teachers based on their merit, but are hampered from doing so because of the System's across-the-board minimum salary directive.[47]

56. Based on pressure from teacher groups, which have a vested communal interest in their pay, the Texas School District System does not change the step pay-scale schedule to adopt teacher performance as the principle factor determining pay.[48]

57. The Texas School District System has not conducted any studies regarding the relationship between the minimum salary schedule and the cost of providing a highly qualified teacher in the classroom. In fact, the Texas School District System has an incentive to keep the salaries artificially low in order to understate what it would cost to provide an effective teacher.[49]

58. Texas School District System mandates pay increases that require every teacher to get a raise, irrespective of performance, do not improve instruction and dose not efficiently produce educational results.[50]

59. Texas teachers in hard to fill positions, such as high school math and science, are paid the same as teachers of the same tenure in easy to fill positions, such as kindergarten through third grade.[51]

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[46] McAdams report, Exhibit 1013 and 1/17/13 testimony.

[47] Deposition Charles Dupre, Exhibit 3204, p. 153, l. 20-25.

[48] Deposition Robert Scott, Exhibit 5630, p. 441, 8-19; Deposition Charles Dupre, Exhibit 3204, p. 227, l. 22 to p. 229, l. 14 and p. 231, l. 22 to p. 233, l. 16.

[49] Moak 10/29/12 testimony, p. 142, lines 7-19.

[50]Deposition Charles Dupre, Exhibit 3204, p. 424, l. 13 to. P. 425, l. 10; Moak 10/29/12 testimony, p. 141, l. 2-25; Moak 10/30/12 testimony, p. 79, l. 2-23; Guy Sconzo 10/23/12 testimony, p. 233, l. 11-16; Deposition Charles Dupre, Exhibit 3204, p. 271, l. 22 to p. 272, l. 23 and p. 282, l. 10 to p. 283, l. 5.

[51] Billy Wiggins 11/07/12 testimony, p. 37, l. 10-21; Tracey Hoake 11/06/12 testimony, p. 91, l. 11-18 and p. 92, l. 17-23 and p. 93, l. 4 to p. 94, l. 4; Sconzo 10/23/12 testimony, p. 206, l. 10-13; Deposition Charles Dupre, Exhibit 3204, p. 139, l. 17 to p. 140, l. 1-2.

60. Teacher shortages are acute in certain subject areas, including math and science. Because the step pay-scale compensation system does not allow the Texas School District System to pay qualified teachers in these areas competitive market rates, it often hires unqualified or less-qualified teachers for these positions.[52]

61. The average Texas public school student can expect to spend two years instructed by science teachers who lack demonstrated education and skills to teach that subject and an additional one or two years instructed by a similarly unqualified math teacher.[53]

62. No scholarly study has shown that providing additional compensation to teachers with advanced degrees improves student performance. Many districts nonetheless pay stipends for master's degrees.[54]

63. No scholarly study has shown that "certified" teachers are more effective or produce better student achievement than noncertified teachers.[55]

64. Individuals hired through Teach for America, who are not certified teachers, produce student achievement as good or better than certified teachers.[56]

65. Teach for America teachers are easy to identify as exceptional. They have a high level of engagement, high level of understanding of content matter, and the ability to communicate well with students.[57]

66. The teacher appraisal system needs a major overhaul.[58]

67. Under the current teacher appraisal system, more than 98% of teachers are considered proficient, even in schools where students are not learning.[59]

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[52] Vigdor Report, p. 14; Salazar depo., p. 60, l. 9-10 and p. 61, l. 13-19; Blincoe, 11/20 and depo; Cortez, 11/20/12.

[53] Vigdor report, Exhibit 1122, p. 14-15.

[54] Jerilyn Pfeifer 10/29/12 testimony, p. 41, l. 21 to p. 42, l. 8.

[55] Deposition Robert Scott, Exhibit 5630, p. 436, l. 9-17; Whitehurst 12/6/12 testimony; Deposition Charles Dupre, Exhibit 3204, p. 249, l. 24 to p. 250, l. 12; Vigdor report, Exhibit 1122, p. 6.

[56] Deposition Robert Scott, Exhibit 5630, p. 437, l. 17-18.

[57] Deposition Robert Scott, Exhibit 5630, p. 435, l. 3-12.

[58] McAdams report, Exhibit 1013 and 1/17/13 testimony; Deposition Robert Scott, Exhibit 5630, p. 303, l. 20 to p. 313, l. 9.

[59] McAdams report, Exhibit 1013 and 1/17/13 testimony; Exhibit 8091

68. School districts spend a significant amount of time and money conducting teacher appraisals each year, but student educational improvement is not a part of those evaluations, thus the appraisals are meaningless and irrelevant.[60]

69. The teacher appraisal system would be improved if student achievement was a component of a teacher's evaluation.[61]

70. Under the current teacher appraisal system, parents are deprived of critical information when determining who should teach their child because they cannot be informed of a teacher's appraisal results.[62]

71. The Texas School District System deprives Texas school children of an adequate, suitable, and efficient system of public free schools because its design assures low-income Texas students receive the worst teachers and education in general.[63]

72. There are online learning programs that are high-quality and, for certain subjects, superior to face-to-face instruction with a teacher.[64]

73. Texas public schools would benefit from using online learning programs and other technology-based teaching tools.[65]

74. School districts would benefit from making tradeoffs between the use of live teachers and on-line resources.[66]

75. Learning how to use technology effectively to teach students is essential. Just buying laptops or iPads for students misses the point entirely.[67]

**Suitability**

76. Fine tuning the current structure of the public Texas School District System has taken us as far as it can. Redesign is now an imperative.[68]

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[60] McAdams report, Exhibit 1013 and 1/17/13 testimony.

[61] McAdams report, Exhibit 1013 and 1/17/13 testimony; Deposition Robert Scott, Exhibit 5630, p. 303, l. 20 to p. 313, l. 9.

[62] Deposition Robert Scott, Exhibit 5630, p. 410, l. 12 to p. 412, l. 4.

[63] Bast reports, Exhibits 8068 and 8069, and 1/22/13 trial testimony; Cortez testimony and report, Exhibit 4000.

[64] McAdams report, Exhibit 1013 and 1/17/13 testimony, Exhibit 1013 and 1/17/13 testimony; Hill report, Exhibit 1341 and 1/15/13 testimony; H.D. Chambers 10/31/12 testimony; Deposition H.D. Chambers, Exhibit 3205.

[65] McAdams report, Exhibit 1013 and 1/17/13 testimony; Deposition Robert Scott, Exhibit 5630, p. 279, l. 4 to p. 280, l. 10.

[66] Hill report, Exhibit 1341 and 1/15/13 testimony.

[67] McAdams report, Exhibit 1013 and 1/17/13 testimony.

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77. Teacher salaries are the biggest cost-drivers in Texas public education. The largest part of a school district's budget is salaries and teachers are the largest portion of that.[69]

78. Different or better methods of education should be considered to improve the Texas School District System, not just adding more money. Innovation is essential.[70]

79. How money is spent is much more important that how *much* is spent.[71]

80. Being oblivious to efficiency is deeply engrained in the way the Texas School District System governs, finances, and assesses public education today. There is extreme resistance within the Texas School District System to changing how it uses time, people, and money.[72]

81. Continuous improvement requires levels of flexibility that the Texas School District System resists.[73]

82. While schools could accomplish some minor innovations under the current regulatory structure for the Texas School District System, that regulatory structure prevents schools from accomplishing any major innovation.[74]

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[68] McAdams report, Exhibit 1013 and 1/17/13 testimony; Hill report, Exhibit 1341 and 1/15/13 testimony; Hanushek reports, Exhibits 1001 and 8001, and 1/16/13 testimony; Bast reports, Exhibits 8068 and 8069, and 1/22/13 trial testimony; Vigdor 12/4/12 testimony.

[69] Deposition Robert Scott, Exhibit 5630, p. 452, l. 14-16; Kay Waggoner 10/25/12 testimony, p. 72, l. 13-1; Tracey Hoake 11/06/12 testimony, p. 119, l. 2-18; H.D. Chambers 10/31/12 testimony, p. 146, l. 14-16; Jerilyn Pfeifer 10/29/12 testimony, p. 127, l. 19-22; Guy Sconzo 10/23/12 testimony, p. 205, l. 5-8.

[70] Deposition Robert Scott, Exhibit 5630, p. 276, l. 9-13 to p.277, l. 7; p. 280, l. 11-23; McAdams report, Exhibit 1013 and 1/17/13 testimony; Hill report, Exhibit 1341 and 1/15/13 testimony; Hanushek reports, Exhibits 1001 and 8001, and 1/16/13 testimony; Bast reports, Exhibits 8068 and 8069, and 1/22/13 trial testimony; Vigdor 12/4/12 testimony. *See e.g. West Orange-Cove II*, at p. 754, where the Court recognized that "[s]ecuring more money into the system may forestall those challenges, but only for a time. They will repeat until the system is overhauled."

[71] McAdams report, Exhibit 1013 and 1/17/13 testimony; Hill report, Exhibit 1341 and 1/15/13 testimony; Hanushek reports, Exhibits 1001 and 8001, and 1/16/13 testimony; Bast reports, Exhibits 8068 and 8069, and 1/22/13 trial testimony; Vigdor 12/4/12 testimony.

[72] McAdams reports, Exhibit 1013 and 1017, and 1/17/13 testimony; Hill report, Exhibit 1341 and 1/15/13 testimony; Hanushek reports, Exhibits 1001 and 8001, and 1/16/13 testimony.

[73] McAdams report, Exhibit 1013 and 1/17/13 testimony; Hill report, Exhibit 1341 and 1/15/13 testimony.

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83. The political control of The Texas School District System is designed to favor the interests of government educators, and not the interests of school children.[75]

84. The current Texas School District System is a centrally controlled, top-down, bureaucratized system that is inconsistent with the original intent of the Texas Constitution.[76]

85. The first schools set up under the Constitution were consumer-driven and consumer choice was the norm.[77]

86. The Texas School District System is a near monopoly.[78]

87. Monopolies are inherently wasteful.[79]

88. Parents must pay school taxes benefiting their local school district, even if their children do not attend school in the Texas School District System.[80]

89. The current system does not allow tax dollars to follow students to the school of the parents' choice.[81]

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[74] McAdams report, Exhibit 1013 and 1/17/13 testimony; Hill report, Exhibit 1341 and 1/15/13 testimony; Hanushek reports, Exhibits 1001 and 8001, and 1/16/13 testimony; Bast reports, Exhibits 8068 and 8069, and 1/22/13 trial testimony.

[75] McAdams report, Exhibit 1013 and 1/17/13 testimony; Hill report, Exhibit 1341 and 1/15/13 testimony; Hanushek reports, Exhibits 1001 and 8001, and 1/16/13 testimony; Robyn Wolters 1/22/13 testimony; Deposition H.D. Chambers, Exhibit 3205, pp. 314-315.

[76] Efficiency Intervenors' Trial Brief on the Standard Governing Constitutional Claims Asserted Under Article VII, sec. 1 of the Texas Constitution.

[77] *Id.*

[78] McAdams report, Exhibit 1013 and 1/17/13 testimony; Hill report, Exhibit 1341 and 1/15/13 testimony; Hanushek reports, Exhibits 1001 and 8001, and 1/16/13 testimony; Podgursky 12/12/12 testimony; Vigdor 12/3/12 testimony and supplemental report, Exhibit 5400; Whitehurst 12/6/12 testimony.

[79] *Id.*

[80] Sconzo 10/23/12 testimony; Pittenger, 10/31/12, p.72, l. 23 to p.73, l. 2; Baker, 10/31/21, p. 59, l. 24 to p.60 l. 4; Langston, 10/31/21, p. 17, l. 18-22; King, 10/31/21, p.44, l. 20-23.

[81] Pittenger, 10/31/12, p.72, l. 23 to p.73, l. 2; Baker, 10/31/21, p. 59, l. 24 to p.60 l. 4; Langston, 10/31/21, p. 17, l. 18-22.

90. Businesses in the private sector receive pressure from the marketplace that increases their accountability and drives decisions that increase productivity. Because the Texas public Texas School District System is a monopoly, public schools do not receive this marketplace pressure, which fosters inefficiency.[82]

91. When charter schools are available and parents have choice over where their children attend school, this adds marketplace pressure on traditional public schools and improves their efficiency.[83]

92. The Texas School District System would benefit from applying the experience of business to the challenge of improving productivity.[84]

93. The Texas School District System has power over consumers in the market for education and also power over teachers in the labor market—a classic form of a product producer with monopsony power.[85]

94. Many decisions affecting the structure, operation and funding of the Texas School District System are designed to satisfy the demands of special interest groups that have little or no correlation to student educational outcomes.[86]

95. Chapter 21 of the Texas Education Code was enacted in response to the demands of teacher organizations with no showing of any correlation to improved student achievement.[87]

96. An efficient system requires that the Legislature resist the pressure of public interest groups when they are not in the best interest of school children.[88]

97. Some Texas schools are more productive of results than others.[89]

98. Financial accountability processes for the Texas School District School System is not robust and rigorous.[90]

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[82] Bast reports, Exhibits 8068 and 8069, and 1/22/13 trial testimony; Hill report, Exhibit 1341 and 1/15/13 testimony.

[83] McAdams report, Exhibit 1013 and 1/17/13 testimony; Hill report, Exhibit 1341 and 1/15/13 testimony.

[84] *Id.*

[85] Vigdor supplemental report, Exhibit 5400; Bast report, Exhibit 8069, and 1/22/13 testimony.

[86] Hill report, Exhibit 1341 and 1/15/13 testimony; Deposition Robert Scott, Exhibit 5630, p. 299, l. 4 to p. 301, l. 18.

[87] McAdams report, Exhibit 1013 and 1/17/13 testimony.

[88] *Id.*

[89] Deposition Robert Scott, Exhibit 5630, p. 138, l. 14-18.

[90] Deposition Robert Scott, Exhibit 5630, p. 111, l. 18 to p. 112, l. 14, and p. 418, l. 8-23.

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99. Financial accountability measures for the Texas School District System should be understandable to the average citizen.[91]

100. The financial data gathered and reported by the Texas School District System is complex, hard to identify, and difficult to understand.[92]

101. Because of the way school districts maintain records, it is nearly impossible to link specific expenditures with specific outputs. For example, 56% of school district budgets are tracked under the category "instruction."[93]

102. Educational data is collected for reporting purposes, but is insufficient for the purpose of giving educational administrators the management tools to conduct a cost-benefit analysis and drive productivity improvements.[94]

103. Enabling schools to track costs and associated benefits is one of the most important factors in improving the efficiency of the Texas School District System.[95]

104. The Texas School District System does not calculate how much it costs its accreditation standards or to operate specific educational programs.[96]

105. Most school district superintendents recognize it is important to do a cost-benefit analysis to determine how to best use limited funds, but most do not conduct or report this analysis.[97]

106. Value-added is the best way to measure effectiveness of resource allocations.[98]

107. There is insufficient information being maintained and reported by the Texas School District System to calculate whether it is operating efficiently.[99]

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[91] Deposition Robert Scott, Exhibit 5630, p. 418, l. 8-23.

[92] Deposition Robert Scott, Exhibit 5630, p. 419, l. 17 to p. 421, l. 18; Deposition Mark Hurley, Exhibit 8143 and Report, Exhibit 1; Exhibit 8000.

[93] Hill report, Exhibit 1341 and 1/15/13 testimony; McAdams report, Exhibit 1013 and 1/17/13 testimony.

[94] Hill report, Exhibit 1341 and 1/15/13 testimony; McAdams report, Exhibit 1013 and 1/17/13 testimony.

[95] McAdams report, Exhibit 1013 and 1/17/13 testimony.

[96] McAdams report, Exhibit 1013 and 1/17/13 testimony; Moak 10/30/12 testimony, p. 199, l. 14-20.

[97] Schanzenbach 11/8/12 testimony, p. 151, l. 23 to p. 152, l. 5; Waggoner 10/25/12 testimony, p.70, l. 11-15.

[98] Podgursky 12/12/12 testimony.

[99] McAdams report, Exhibit 1013 and 1/17/13 testimony; Hill report, Exhibit 1341 and 1/15/13 testimony; Deposition Charles Dupre, Exhibit 3204, p. 241, l. 14-25.

108. In an efficient system, financial data would be maintained in a manner that would allow the Texas School District System to link expenditures to education outputs of particular schools and particular programs.[100]

109. In an efficient system, schools would be held accountable for how much students learned per dollar spent.[101]

110. In an efficient system, data files would be available that allow tracking of how money was spent on each student's education and each student's annual learning.[102]

111. Teacher groups have pressured policymakers not to authorize data reports that link particular teachers to specific students.[103]

112. In an efficient system, financial accountability data would be shared with parents and the public. Pressure from communities and families would improve the efficiency of school districts.[104]

113. The current funding system that gives different weights to different student populations and different district types is outdated and inaccurate and wastes resources.[105]

114. The weights in the funding formulas are based largely on 1980's data and do not reflect the needs of students and schools in the current era.[106]

115. Texas has seen significant demographic and economic changes since 1990.[107]

116. The Cost of Education Index, which has not been updated since 1991, fails to reflect the economic and demographic changes occurring over the past two decades.[108]

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[100] McAdams report, Exhibit 1013 and 1/17/13 testimony.

[101] Hill report, Exhibit 1341 and 1/15/13 testimony.

[102] Hill report, Exhibit 1341 and 1/15/13 testimony; McAdams report, Exhibit 1013 and 1/17/13 testimony.

[103] McAdams report, Exhibit 1013 and 1/17/13 testimony.

[104] McAdams report, Exhibit 1013 and 1/17/13 testimony; Deposition Mark Hurley, Exhibit 8145 and Report, Exhibit 1.

[105] Wayne Pierce 11/5/12 testimony, p. 86, l. 11-15 and p. 129, l. 2 to p. 130, l. 6; Dan Casey 11/5/12 testimony.

[106] Bruce Baker 11/15/12 testimony.

[107] Stephen Murdock 10/23/12 testimony.

[108] Dan Casey 11/5/12 testimony, p. 157, l. 12 to p. 158, l. 17; Moak 10/29/12 testimony, p. 209, l. 25 to p. 210, l. 2.

117. The Cost of Education Index results in an inefficient allocation of resources.[109]

118. The transportation allotment, bilingual adjustment, special education adjustment, and compensatory education allotment have not been adjusted since 1984, 1984, 1995, and 1984, respectively.[110]

119. Michael Podgursky is Professor of Economics at the University of Missouri –Columbia and his research and scholarly writings focus on the economics of education.[111]

120. In Mr. Podgursky's opinion, the best way to achieve perfect equity is to give every child a $9,000 voucher.[112]

**Efficiency**

121. The Texas School District System is not productive of results.[113]

122. Consumers of the Texas School District System do not have effective control or choice over where children attend school.[114]

123. The demand for charter schools in Texas far outpaces the supply.[115]

124. Over 101,000 students are on waiting lists for charter schools across the state, and the Texas Charter School Association who compiles this list ensures there are no duplicates on this list.[116]

125. School choice could be a significant benefit to low-income students.[117]

126. There are significant barriers to entry into the market by providers, which causes inefficiencies to continue to exist.[118]

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[109] Dan Casey 11/5/12 testimony, p. 157, l. 12 to p. 158, l. 17; Moak, 10/29/12 testimony, p. 211, l. 10 to p. 212, l. 23.

[110] Moak 10/29/12 testimony, p. 214, l. 20 to p. 215, l. 1-22; p. 217, l. 5-13.

[111] Podgursky 12/13/12 testimony;

[112] *Id.*

[113] *See* Footnote 33.

[114] Danessa Bolling 1/23/13 testimony; Andrea Smedshammer 1/15/13 testimony; Statewide Charter Waiting List Exhibit 8110; Dunn 1/30/13 testimony and deposition, Pierce 1/28/13 testimony and deposition.

[115] Statewide Charter Waiting List Exhibit 8110; Dunn 1/30/13 testimony and deposition, Pierce 1/28/13 testimony and deposition; Deposition Robert Scott, Exhibit 5630, p. 163, l. 18-24.

[116] Statewide Charter Waiting List Exhibit 8110; Dunn 1/30/13 testimony and deposition, Pierce 1/28/13 testimony and deposition.

[117] Bast reports, Exhibits 8068 and 8069, and 1/22/13 trial testimony; Mark DiBella 1/28/13 testimony.

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127. These barriers include the cap on the numbers of charter schools allowed and Texas School District System funding policies that place charters at an economic disadvantage related to school districts.[119]

128. The statutory cap on the number of charter schools causes inefficiency because it does not allow the market to determine how many charter schools consumers demand.[120]

129. Former Texas Education Commissioner Robert Scott has been a proponent of lifting the charter cap.[121]

130. Removal of the barriers to entry into the market would encourage school choice by allowing a proliferation of new alternatives to traditional public schools.[122]

131. Adding charter schools would increase the efficiency of the Texas School District System.[123]

132. Some Texas charter schools have had great success. For example, IDEA Prep Academy and YES Prep have produced phenomenal results with low-income students, achieving 100% college acceptance rates.[124]

133. Overall, Texas charter schools meet the same suitability standard as school districts.[125]

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[118] Statewide Charter Waiting List Exhibit 8110; Dunn 1/30/13 testimony and deposition, Pierce 1/28/13 testimony and deposition; Bast reports, Exhibits 8068 and 8069, and 1/22/13 trial testimony; Mark DiBella 1/28/13 testimony.

[119] Statewide Charter Waiting List Exhibit 8110; Dunn 1/30/13 testimony and deposition, Pierce 1/28/13 testimony and deposition; Bast reports, Exhibits 8068 and 8069, and 1/22/13 trial testimony; Mark DiBella 1/28/13 testimony; Matt Abbott 1/39/13 testimony.

[120] Statewide Charter Waiting List Exhibit 8110; Dunn 1/30/13 testimony and deposition, Pierce 1/28/13 testimony and deposition; Deposition Robert Scott, Exhibit 5630, p. 269, l. 11-18.

[121] Deposition Robert Scott, Exhibit 5630, p. 285, l. 10-16.

[122] Deposition Robert Scott, Exhibit 5630, p. 286, l. 2-6.

[123] Deposition Robert Scott, Exhibit 5630, p. 266, l. 2-21; McAdams report, Exhibit 1013 and 1/17/13 testimony; Hill report, Exhibit 1341 and 1/15/13 testimony; Hanushek reports, Exhibits 1001 and 8001.

[124] Deposition Robert Scott, Exhibit 5630, p. 206, l. 15 - p. 207, l. 16; Mark DiBella 1/28/13 testimony.

[125] Deposition Robert Scott, Exhibit 5630, p. 283, l. 20 - p. 285, l. 1.

134. A study by Texas A&M University, funded by TEA, found few differences in outcomes of charters and traditional schools, while charter schools spent 12% less money.[126]

135. On average, charter schools are more cost-effective than traditional public schools.[127]

136. Legislative mandates imposed on the Texas School District System erode local discretion, stifle innovation, and cause waste and inefficiency.[128]

137. Charter schools operate under far fewer statutory and regulatory burdens than do traditional public schools. For example, charter schools are exempt from teacher labor protections and class size mandates.[129]

138. Traditional public schools could realize savings if they were allowed to operate under the same rules as charter schools.[130]

139. A school's single most important resource is its teachers.[131]

140. Legislative and Texas Education Agency mandates and "guides" on how teachers are to be hired, paid, and promoted restrict the Texas School District System's ability to make decisions about the best use of that resource, which causes waste and promotes inefficiency.[132]

141. No other profession in Texas is afforded the same high level of labor protections as teachers.[133]

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[126] Evaluation of Texas Charter Schools, Lori Taylor, Ph.D., Exhibit 8005; Deposition Robert Scott, Exhibit 5630, p. 288, l. 11 - p. 293, l. 3; Bruce Baker testimony.

[127] Deposition Robert Scott, Exhibit 5630, p. 288, l. 11 to p. 293, l. 3.

[128] McAdams report, Exhibit 1013 and 1/17/13 testimony; Lynn Moak 10/30/12 testimony, p. 144, l. 1-5 and p. 144, l. 1-5; Deposition Robert Scott, Exhibit 5630, p. 277, l. 18 to p. 279, l. 2.

[129] Deposition Robert Scott, Exhibit 5630, p. 282, l. 6-17.

[130] Deposition Robert Scott, Exhibit 5630, p. 461, l. 19 to p. 462, l. 4; Schroder, 11/29/12.

[131] Hanushek reports, Exhibits 1001 and 8001, and 1/16/13 testimony; McAdams report, Exhibit 1013 and 1/17/13 testimony; Hill report, Exhibit 1341 and 1/15/13 testimony.

[132] McAdams report, Exhibit 1013 and 1/17/13 testimony; Hanushek Report; H.D.Chambers 10/31/12 testimony, p. 146, l. 25 to p. 147, l. 23.

[133] Deposition Robert Scott, Exhibit 5630, p. 444, l 5 to p. 445, l. 5.

142. The mandates and guides imposed on Texas School District System that drive inefficiencies include minimum salary schedules, across-the-board pay raises, teacher-student ratios, teacher certification requirements, inconsequential appraisal measures, a redundant multi-level appeal process for contract non-renewal decisions, and preference given to teacher seniority.[134]

143. Scholarly research does not show any statistically significant correlation between student performance and these mandates protecting teachers.[135]

144. Unless the Texas Legislature and TEA remove these mandates and redesign their regulations, the Texas School District System cannot implement programs shown to achieve educational results. Significant programmatic innovation will not be attempted nor any significant educational improvement achieved.[136]

145. The Texas legislative and TEA-imposed mandates, regulations and guidelines discourage experimentation with new methods of instruction and learning that are showing effective results. Thus, Texas education does not benefit from available ideas that show promise for effective results.[137]

146. Education is labor-intensive, and deploying and effectively using that workforce is a key productivity tool. To operate efficiently, superintendents need significantly more flexibility in the management of their professional employees.[138]

147. Superintendents cannot manage costs or quality if they cannot manage their teachers and other professional staff and how instruction is delivered.[139]

148. The state need not regulate the workforce of educators. Schools have the ability to do so and, because they would have to compete in the marketplace for teachers, they would have the incentive to do it well.[140]

149. Texas Education Code, Chapter 21 creates waste and imposes inefficiency in the Texas School District System.[141]

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[134] Hanushek reports, Exhibits 1001 and 8001, and 1/16/13 testimony; McAdams report, Exhibit 1013 and 1/17/13 testimony; Deposition Robert Scott, Exhibit 5630, p. 430, l. 7 p. 421 l. 17.

[135] Hanushek reports, Exhibits 1001 and 8001, and 1/16/13 testimony.

[136] McAdams report, Exhibit 1013 and 1/17/13 testimony; Hanushek reports, Exhibits 1001 and 8001, and 1/16/13 testimony.

[137] Hill Report.

[138] McAdams report, Exhibit 1013 and 1/17/13 testimony.

[139] *Id.*

[140] *Id.*

150. Chapter 21 bestows benefits on the adults in the Texas School District System that have no correlation to student educational achievement, i.e. no benefit to the students.[142]

151. Chapter 21 imposes expense on the Texas School District System with no benefit to children. On the decision to non-renew a teacher, legal counsel must be retained. The cost can range from $5,000 to $90,000. It is a risky procedure fraught with technical procedural pitfalls that in no way relate to whether a teacher should be in the classroom. The expense affects decisions whether to non-renew a teacher, separate and apart from the facts surrounding the reasons for non-renewal. Along with the non-renewal procedure, teachers looking at being non-renewed often file grievances creating another layer of complexity on what should be a straightforward personnel decision. Schools are also burdened with the cost of a court reporter for every stage of the appellate procedure. Not only are low-performing teachers left in the classroom with students, the money and time spent on this process is taken away from educating these same children.[143]

152. School superintendents may hire teachers on probationary contracts, most of which take full advantage of this statutory provision. This allows them one to three years in which to verify the teacher is effective. If the teacher is not effective, their contracts can be non-renewed without the burden of an appeal. The teachers are still provided with "due process" and are treated fairly in this process. The fact that this procedure exists and is administrated fairly disproves the need for a redundant, state-administered, level of appeal.[144]

153. Districts generally do not make use of this process due to its expense, time factors and risk. The fact that it is not used a lot is not evidence that the procedure is not inefficient, it is evidence that Chapter 21 drives inefficient personnel management on a large scale.[145]

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[141] McAdams report, Exhibit 1013 and 1/17/13 testimony; Deposition Robert Scott, Exhibit 5630, p. 445, l. 6-20; Dupre depo., p. 218, l. 2-21.

[142] McAdams report, Exhibit 1013 and 1/17/13 testimony; Hill Report; Moe Report; Sconzo, 10/23/12, p. 212, l. 11-14; Deposition Charles Dupre, Exhibit 3204, p. 221, l. 24 to p. 222, l. 7; Deposition Gonzalo Salazar, Exhibit 3207, p. 189, l. 7 to p. 190, l. 6; Deposition Robert Scott, Exhibit 5630, p. 430, l. 7 p. 421, l. 17.

[143] McAdams report, Exhibit 1013 and 1/17/13 testimony; Robyn Wolters 1/22/13 testimony.

[144] McAdams report, Exhibit 1013 and 1/17/13 testimony; Wolters 1/22/13 testimony; Sconzo 10/23/12 testimony; Rick Reedy 1/24/13 testimony.

[145] McAdams report, Exhibit 1013 and 1/17/13 testimony; Wolters 1/22/13 testimony; Sconzo 10/23/12 testimony; Rick Reedy 1/24/13 testimony

154. Chapter 21 imposes waste and is not productive of educational results.[146]

155. Chapter 21 impairs workforce management.[147]

156. Chapter 21 impedes the school superintendents' ability to make timely personnel decisions for the best interest of students, and instead imposes costs that serve the personal interests of the teachers.[148]

157. Chapter 21 imposed problems occur across the state.[149] In some instances students are assigned to known underperforming teachers because of Chapter 21 teacher protections.[150]

158. Texas school superintendents have are required to employ all teachers for ten-month contracts. This requirement impairs efficient teacher resource management.[151]

159. So-called "term contracts" for teachers and other school district professionals are in effect permanent contracts with indefinite terms because school districts are required to renew the term contracts unless they can prove "good cause" for non-renewal. It is difficult to non-renew contracts for low-performing teachers and requires a lengthy and costly process.[152]

160. The difficulty in removing low-performing teachers and other school professionals erodes the culture in schools. Because non-renewal is so difficult, school districts often do not attempt to non-renew contracts for low-performing teachers, demonstrating a tolerance for poor performance and leading to less supervision and coaching for teachers.[153]

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[146] McAdams report, Exhibit 1013 and 1/17/13 testimony; Wolters 1/22/13 testimony.

[147] McAdams report, Exhibit 1013 and 1/17/13 testimony; Wolters 1/22/13 testimony.

[148] McAdams report, Exhibit 1013 and 1/17/13 testimony; Wolters 1/22/13 testimony.

[149] Wolters 1/22/13 testimony.

[150] McAdams report, Exhibit 1013 and 1/17/13 testimony; Wolters 1/22/13 testimony.

[151] Sconzo 10/23/12 testimony, p. 209, l. 7-9; Wolters 1/22/13 testimony.

[152] McAdams report, Exhibit 1013 and 1/17/13 testimony; Wolters 1/22/13 testimony.

[153] McAdams report, Exhibit 1013 and 1/17/13 testimony; Wolters 1/22/13 testimony.

161. The process to non-renew a teacher's contract for the following year is inefficient, time consuming, expensive, risky, adult-focused, and makes it very difficult to remove unproductive and poor performing teachers. The usually years-long process is devastating to students who are assigned to an underperforming teacher while the non-renewal process is taking place.[154]

162. For example, Austin ISD spends more than $80,000 to non-renew each poor performing teacher. Alief ISD spends half a million dollars per year to non-renew underperforming teachers due to state-mandated labor laws.[155]

163. The requirement that teachers must be notified of potential non-renewal while they are still in the classroom finishing the current school year does not improve instruction or student performance and is not efficient of producing educational results.[156]

164. Many school districts prefer to use probationary contracts when possible, since they allow school districts to more efficiently manage their workforce. But it is currently mandated that probationary contracts are limited to three years.[157]

165. Terminating a probationary contract is less costly and less time intensive than non-renewing a term contract.[158]

166. School districts treat teachers under less restrictive probationary contracts in a fair manner. Such probations reward good teachers with extensions.[159]

167. Online remediation programs can be less expensive than remediation courses taught in traditional classroom settings.[160]

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[154] Wolters 1/22/13 testimony; H.D. Chambers 10/31/12 testimony, p. 149, l. 9 to p. 160, l. 1; Kay Waggoner 10/25/12 testimony, p. 83, l 3-5; Sconzo 10/23/12 testimony, p. 210, l. 7 to p. 212, l. 4; Deposition Charles Dupre, Exhibit 3204, p. 286, l. 4-24; Deposition Rodney Schroder, Exhibit 6343, p. 146, l. 7 -16; Carstarphen 11/26/12 testimony.

[155] Carstarphen 11/26/12 testimony; H.D.Chambers 10/31/12 testimony, p. 161, l. 4 to p. 162, l. 21.

[156] Wolters 1/22/13 testimony; McAdams report, Exhibit 1013 and 1/17/13 testimony; H.D. Chambers 10/31/12 testimony, p. 148, l. 7 to p. 149, l. 8; Deposition Charles Dupre, Exhibit 3204, p. 220, l. 2-21.

[157] Sconzo, 10/23/12, p. 208, l. 20 to p. 209, l 13-21, Kay Waggoner, 10/25/12, p. 83, l. 3-5; Wolters; Texas Education Code, Chapter 21.

[158] Sconzo 10/23/12 testimony, p. 208, l. 20 to p. 209, l 13-21, Kay Waggoner 10/25/12 testimony, p. 83, l. 3-5.

[159] H.D.Chambers 10/31/12 testimony, p. 160, l. 2-25.

168. The Texas Virtual School Network is an educational efficient and effective program.[161]

169. In an efficient system, labor decisions should be made based on keeping quality teachers in the classroom for students.[162]

170. Policies requiring small class sizes impose great expense with minimal impact on student outcomes.[163]

171. Class-size regulations above the early years only encourages hiring more adults, rather than encouraging schools to provide better, more efficient teaching.[164]

172. Allowing class size flexibility permits superintendents to manage their budgets more efficiently.[165]

173. Allowing flexibility in how students are grouped and taught is a reform that could provide significant increases in productivity, significant cost savings, and significant improvements in learning.[166]

174. School productivity would benefit from exploring whether some courses are better taught to larger or smaller groups than the current regulated class size. School productivity would also benefit from exploring how some students could be taught with longer or shorter courses than the current mandated semester system.[167]

175. The cost savings by raising the current class-size average of 19.3 students to 22 students would be $558 million statewide.[168]

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[160] Deposition Robert Scott, Exhibit 5630, p. 124, l. 4-22.

[161] Deposition Robert Scott, Exhibit 5630, p. 24, l. 4-13.

[162] McAdams report, Exhibit 1013 and 1/17/13 testimony; Wolters 1/22/13 testimony; Deposition Charles Dupre, Exhibit 3204, p. 221, l. 16-23.

[163] McAdams report, Exhibit 1013 and 1/17/13 testimony; Wolters 1/22/13 testimony.

[164] McAdams report, Exhibit 1013 and 1/17/13 testimony; Wolters 1/22/13 testimony.

[165] Deposition Robert Scott, Exhibit 5630, p. 456, l. 11-18; McAdams report, Exhibit 1013 and 1/17/13 testimony; Wolters 1/22/13 testimony.

[166] McAdams report, Exhibit 1013 and 1/17/13 testimony; Hill report, Exhibit 1341 and 1/15/13 testimony; H.D. Chambers 10/31/12 testimony, pp. 170-174.

[167] McAdams report, Exhibit 1013 and 1/17/13 testimony; H.D. Chambers 10/31/12 testimony, pp. 170-174; Diane Schantzenbach 11/8/12 testimony, pp. 150-151.

[168] Deposition Robert Scott, Exhibit 5630, p. 454, l. 18 to p. 455, l. 3; FAST Executive Summary, Exhibit 951.

176. Studies from other countries like Singapore find larger class sizes can produce student performance exceeding United States schools' performances with smaller class sizes.[169]

177. Online remediation programs can be less expensive than remediation courses taught in traditional classroom settings.[170]

178. The Texas Virtual School Network is an educational efficient and effective program.[171]

***Efficiency Experts***

179. Dr. Paul Hill has worked in education policy for over forty years. He has numerous publications, including scholarly, peer-reviewed articles and books, all on the topic of education policy, particularly in the area of productivity of school districts.[172]

180. Dr. Hill is currently associated with the Hoover Institution, the Koret Task Force, the Institute for Public School Initiatives (a Texas-specific organization), and the Center on Reinventing Public Education.[173]

181. Dr. Hill was the founder of the Center on Reinventing Public Education. Through this organization he has studied and consulted with school districts on productivity issues across the United States, including several districts in Texas. In this work, he and his team would forensically rebuild financial data systems to better pinpoint, if possible, how and on what money is being spent.[174]

182. Dr. Hill is an expert on education policy, including specific work in Texas, and his opinions were instructive and helpful to the Court on the issues of efficiency and productivity.[175]

183. The Efficiency Intervenor's case is the first time in Texas in the last thirty years of litigation on school finance that the issues of efficiency have been included in the debate. Texas is not alone, and past education policy debates across the country have ignored the issue of efficiency.[176]

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[169] Deposition Robert Scott, Exhibit 5630, p.199, l. 7-13.

[170] Deposition Robert Scott, Exhibit 5630, p. 124, l. 4-22.

[171] Deposition Robert Scott, Exhibit 5630, p. 24, l. 4-13.

[172] Hill 1/15/13 testimony, direct examination; Hill report, Exhibit 1341.

[173] *Id.*

[174] *Id.*

[175] *Id.*

[176] *Id.*

184. Dr. Hill's definition of efficiency includes "optimum resources usage" and the relationship between inputs into the system divided by outputs from the system. While Dr. Hill has no opinion as to the adequacy of funding in Texas, he does believe that money cannot continue to be poured into the system without making changes to the system. This is particularly important because the available resources for the Texas School District System are finite.[177]

185. In Texas there are three barriers to efficiency: (1) the costs are unknown and hidden; (2) schools are forced to do many things that detract from their main work and tie up resources that could be used more aggressively; and, (3) there are many barriers to experimentation with new ideas and transfers of funds from less- to more-efficient schools and programs.[178]

186. The Texas School District System does not permit schools to count the cost of what they do. Every School superintendent is required to follow the Texas Education Agency's Financial Accountability System Resources Guide. The requirements under this "guide" are included in over 2,000 pages of detailed instruction. Superintendents must dedicate entire staffs to the task of following this guide and do not have any practical ability to create a proper system that could count the costs of what they do.[179]

187. The universal inability of superintendents in Texas to know how much it costs to educate a child in their schools is a direct result of the incorrect Texas Education Agency accounting requirements.[180]

188. School superintendents do not track how much is spent at the school level or on centrally-administered programs and services in a detailed manner that would allow them to make meaningful efficiency/productivity calculations. The superintendents do track helpful campus level data, but there is no linkage between inputs and outputs such that productivity calculations can be made.[181]

189. For superintendents to assess the efficiency of a school or instructional program, they must know what is spent on it, as well as its outcomes. It is also necessary to follow expenditures to the child level and have that data merged with outcomes data in the same school year the data were generated. This is not currently being done in Texas. The lack of such a system allows only crude measurements of productivity, but not the type necessary to operate the schools efficiently.[182]

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[177] *Id.*
[178] *Id.*
[179] *Id.*
[180] *Id.*
[181] *Id.*
[182] *Id.*

190. Dr. Hill reviewed Exhibit 1, Mark Hurley's report "No Financial Accountability in Texas." Dr. Hill opined it was actually a benefit that Mr. Hurley is not an "education" expert, and that his financial expertise outside of education, as applied to education, was helpful to the credibility of the report.[183]

191. Dr. Hill agreed with Mr. Hurley's report. As Dr. Hill did for the Houston and Austin Independent School Districts, Mr. Hurley stated in his report that the Texas School District Systems financial processes would have to be forensically rebuilt, from the receipt level up to make any relevant productivity assessments.[184]

192. Dr. Hill's second barrier to efficiency is that, in general, schools are required to do things that have been mandated without any consideration for the cost or consequence to school performance. Nobody would seriously argue that all these mandates were put in place to make schools more effective or efficient. These mandates were passed piecemeal over time, and were not coordinated in a way to emphasize educational productivity or efficiency.[185]

193. Mandates include things that are required not only by statute or regulation, but by bureaucratic culture—an "everyone-does-it-this-way" mentality. An example of this type of mandate is Texas' minimum salary schedule, which, although not required, creates a template that all districts end up following to avoid criticism as an outlier, and that leads to vast inefficiencies in the Texas School District System.[186]

194. These mandates include, but are not limited to: automatic raises linked to seniority, not performance, in a system where payroll is the largest cost-driver; paying for masters degrees which have never been shown as linked to increased student performance; and onerous appeals for the termination of staff contracts, and statewide, across-the-board pay raises not linked in any way to performance. These mandates, while individually may not affect productivity, when taken together, with dozens of others in the system, cause the system to be not efficient of producing educational results.[187]

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183 *Id.*
184 *Id.*
185 *Id.*
186 *Id.*
187 *Id.*

195. Dr. Hill's third barrier is related to the second in that mandates by the state interfere with districts' ability or motivation to innovate. In conventional public education, there are many barriers preventing the trial and use of ideas from educational research. Though school superintendents might adopt some ideas for special courses or extracurricular supplementation, they are extremely resistant to changing the ways they use time, people, and money. This means that externally derived innovations are normally kept on the margins and not allowed to test what conventional educators consider the "core" of their work.[188]

196. Dr. Eric A. Hanushek is Paul and Jean Hanna Senior Fellow at the Hoover Institution of Stanford University and is a member of the Koret Task Force on K-12 Education, a research associate of the National Bureau of Economic Research and chairman of the Executive Committee for the Texas Schools Project at the University of Texas at Dallas. He is a Research Professor at the Ifo Institute for Economic Research (University of Munich) and Area coordinator for the Economics of Education under the CESifo Research Network. He has been appointed to a variety of federal and state advisory boards including being a Presidential appointment to the Board of Directors of the National Board for Education Sciences, which he chaired in 2009-2010. In 2011, he became a commissioner on the Equity and Excellence Commission of the U.S. Department of Education. At the state level, he was a member of the Governor's Advisory Committee on Education Excellence in California and the Governor's Commission for a College Ready Texas.[189]

197. Dr. Hanushek received his Ph.D. in economics from MIT and is a Distinguished Graduate of the United States Air Force Academy.[190]

198. Dr. Hanushek is a member of the National Academy of Education and a fellow of the International Academy of Education, of the Society of Labor Economists, and of the American Educational Research Association. He was awarded the Fordham Prize for Distinguished Scholarship in 2004. He served in the federal government as Deputy Director of the Congressional Budget Office, Senior Staff Economist at the Council of Economic Advisers, and Senior Economist at the Cost of Living Council. Previous academic appointments include the University of Rochester, Yale University, and the U.S. Air Force Academy.[191]

199. Dr. Hanushek is an expert in school finance education who specializes in the study of education on career readiness, and his opinions were instructive and helpful to the Court on the issues of economic efficiency in education.[192]

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[188] *Id.*

[189] Hanushek 1/16/13 testimony, direct examination; Hanushek reports, Exhibits 1001 and 8001.

[190] *Id.*

[191] *Id.*

[192] *Id.*

200. Dr. Hanushek opined that the amount of money alone does not prove educational efficiency, but rather the results of education determine its efficiency.[193]

201. The one-size-fits-all policies for schools in Texas based on legislative and regulatory directives are not examples of good management or illustrations of efficient education.[194]

202. Current state mandates reward inefficient policies of the Texas School District System as they relate to teacher resource management.[195]

203. The Texas School District System imposes significant expenses on personnel matters that make no difference to educational outcomes.[196]

204. If Texas replaced just the bottom 5% of teachers that rated below-average, Texas would see a significant increase in its general education success—an efficient outcome.[197]

205. A serious issue for the Texas School District System are evaluation measures that lack design and, thus, credibility for determining the quality of teachers.[198]

206. The absence of competition to the Texas School District System permits inefficient production of educational results because it is not fully accountable for failing to hire good teachers.[199]

207. Monopolies produce too few products at too high price.[200]

208. Charter schools are more efficient than school districts because, as recent studies show, they perform as well as school districts but at a lower cost. This is by definition more efficient.[201]

209. The inconsistency of financing and inconsistency of results experienced within the Texas School District System demonstrates inefficiency in the System.[202]

***Competition Promotes Efficiency***

210. The existence of competition would be a significant driver of efficiency in the system.[203]

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193 *Id.*
194 *Id.*
195 *Id.*
196 *Id.*
197 *Id.*
198 *Id.*
199 *Id.*
200 *Id.*
201 *Id.*
202 *Id.*

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211. Teachers working for a school would gain income and job security, depending on whether the school was so efficient that it could expand or make money selling its services to other schools; they could also lose out if their school was closed for low efficiency or abandoned by parents who found something better.[204]

212. Charter schools are centers of innovation. Artificial barriers on charters impede this. The cap of 215 charter licenses in Texas impairs innovation. There are in excess of 101,000 children on Charter School waiting lists. The application process for charters is expensive, and with only a few slots allowed, potential suppliers will be discouraged and the cost will remain artificially high.[205]

213. Texas needs student-based funding in which every student carries funds—actual dollars—to the schools and programs they attend. It is important for parents to be able to choose any school in the district or state. It is important for all schools to run under performance contracts. There must also be rigorous standards and state maintained data files that allow tracking of each student's annual learning and how money was spent on each student's education. The lack of these structural characteristics and measures leads to waste and impaired efficiency in the system in Texas School District System.[206]

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[203] *Id.*; Hill 1/15/13 testimony, direct examination; Hill report, Exhibit 1341, McAdams report, Exhibit 1013 and 1/17/13 testimony, and Bast reports, Exhibits 8068 and 8069, and 1/22/13 trial testimony.

[204] *Id.*; *see also* Hill 1/15/13 testimony, direct examination; Hill report, Exhibit 1341, McAdams report, Exhibit 1013 and 1/17/13 testimony, and Bast reports, Exhibits 8068 and 8069, and 1/22/13 trial testimony.

[205] Denise Pierce 1/28/13 testimony and deposition; David Dunn 1/30/13 testimony and deposition.

[206] *Id.; see also* Hill 1/15/13 testimony, direct examination; Hill report, Exhibit 1341, McAdams report, Exhibit 1013 and 1/17/13 testimony, and Bast reports, Exhibits 8068 and 8069, and 1/22/13 trial testimony.

214. School choice programs have, in Milwaukee in particular, but around the country benefited the local public schools. They benefit them by offering competition and choice to parents, which mobilizes and parents to get more involved in the education their children. It compels school districts to look for waste and get rid of it and create new programs that respond to parent demand. In the case of Milwaukee specifically, improvements in student achievement and graduation rates that are attributable to the presence of the Milwaukee parental choice program were tracked. Those benefits are taking place in the public schools with the kids and the parents and teachers who haven't chosen to participate in the program. One consequence of competition and choice is that it actually benefits those that don't participate in the choice program.[207]

215. Joseph Bast has conducted public policy research, including education issues for the past 29 years. For the past 15 years he has published "School Reform News" which is a national, monthly public policy newspaper sent to policy makers around the United States. He has co-authored four books and edited two dealing with education policy. He has conducted extensive research with Professor Herbert Walberg of the Koret Task Force, a leading education reform expert. Starting in 2011 he did a series of four policy studies that are specific to Texas. Those studies look at the taxpayer savings grant proposal and examines the budget impact of that program and also the impact of the school choice on teachers in Texas. He did a response to the Legislative Budget Board which had done an alternative analysis of the taxpayer savings grant plan and also published a response to someone else who had commented on our research on that.[208]

216. The policy briefs that make up Exhibits 8068 and 8069 were co-authored with John Merrifield, Ph.D., an economist at University of Texas at San Antonio.[209]

217. The Taxpayer Savings Grant is a legislative proposal that would have parents or guardians of school age children in Texas who are either entering kindergarten or are currently attending public schools, if they were enrolled in a private school, the state would refund the parents, either the amount of tuition for that private school or percent of what the state currently spends on management and operations or M&O spending, whichever is less.[210]

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[207] Bast reports, Exhibits 8068 and 8069, and 1/22/13 trial testimony.
[208] Bast reports, Exhibits 8068 and 8069, and 1/22/13 trial testimony; Bast CV, Exhibit 8070.
[209] Bast reports, Exhibits 8068 and 8069, and 1/22/13 trial testimony.
[210] *Id.*

218. Taxpayer Savings Grant would benefit low income families mostly, because they are the ones who currently have no choice but to let their children attend public school. The public schools that generally serve low income are also low-performing schools. Those with sufficient wealth can opt to take their children out of such a system. Low income families are trapped in the public system. [211]

219. Since the State of Texas funds education at the margin, every time a child leaves the system, State obligations are reduced by that $7,750 dollar figure and every time a child enters the system, it goes up by that amount.[212]

220. There is an extensive amount of research on private versus public provision of public services where agencies have contracted out or used tax or vouchers or outsourced entirely for providing services. Bast has done a lot of work over the years examining that literature and it shows that there's a typical savings of 25 percent to 50 percent, when outsourced it to a private source. That kind of savings is expected to take place in the education market as well.[213]

221. Bast's study of the proposed Taxpayer Savings Grant conservatively showed that the state could have realized savings of $2 billion to $2.3 billion over two years. The failure of the Legislature to act on such a proposal, not necessarily this specific proposal, but something like this is itself evidence of an inefficient system. This was an opportunity to improve quality of schools and reduce public spending on. It was a win-win for the students, teachers and the taxpayers. To lay something like this out in front of the Legislature and say here's an opportunity to improve the efficiency of the system, improve the outputs and to have it rejected to me suggests that the system is not putting efficiency ahead other concerns or agendas.[214]

222. Teachers tend to be for various reasons, relatively immobile and when you have government running school districts, there's less competition and choice – competition for teachers and choice for teachers to pick schools to work for. There can be a single pay schedule or contract for teachers in the public schools in that district. Teachers often spouses of people who work so they're not able to freely move to find a better school. So they tend to be captive of a large monopoly employer like a public school district. That translates into lower pay and poorer working conditions for teachers in public freely move to find a better school. So they tend to be captive of a large monopoly employer like a public school district. That translates into lower pay and poorer working conditions for teachers in public schools. Many studies have been done on this, and it is mainstream economic thought.[215]

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[211] *Id.*
[212] *Id.*
[213] *Id.*
[214] *Id.*
[215] *Id.*

223. If the Texas Taxpayer Savings Grant was put in and we estimate that that would dramatic increase the number of schools competing for each teacher, with the result that the teacher in a metropolitan area like Houston could see an annual pay raise of $12,000 or more a result of that increased competition.[216]

224. Texas A&M researcher Lori Taylor found that an increase in competition would benefit 88% of teachers in the state.[217]

225. Pay is not the only increased benefit. Bast found that the working conditions of teachers, such as safety and job satisfaction would also increase. When you don't have to compete for a teacher workforce, you can afford to not be as responsive to job quality issues.[218]

226. Bureaucracy and waste flourish in institutions that don't have to compete for customers or for teachers or for funds. This kind of waste and inefficiency is not tolerated, the proliferation of private schools demonstrates education consumers with wealth walk out of the public system leaving only the poor and less financial support behind. But in a public school bureaucracy, there's no risk of losing much financing because of the power to tax nor, at least, losing all the poor as customers.[219]

227. Texas is a right to work state, so technically the teachers are not unionized, but they're organized very much the way that unions are organized and especially through collective bargaining, or what passes for collective bargaining in states that don't technically allow it. The unions tend to negotiate for collective terms and benefits that overcompensate under achievers and undercompensate over achievers. The terms of work and pay are much less beneficial to the teachers individually than it would be if they actually were independent professionals working in a different professional service model.[220]

228. The argument that more money will help teachers improve their situation without substantively changing the structure and operations of the Texas Public School System is false. Without the System having to compete for teachers, it will never be forced to treat teachers with the respect or put in place the competitive processes that demonstrate a teacher's full worth.[221]

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216 *Id.*
217 *Id.*
218 *Id.*
219 *Id.*
220 *Id.*
221 *Id.*

229. The Merrifield evaluation of the Edgewood Horizon Voucher Program looked specifically at the impact on teacher salaries. He found that teacher salaries increased faster in Edgewood in the public schools than in the control counties in at least two of the studies that looked at that question. Teachers benefited from the Edgewood school choice program.[222]

230. If administrative costs and overhead are reduced, if class sizes are altered, if steps are taken to economize on facilities, all of these things would reduce the cost of schools while freeing funds that go to teacher salaries.[223]

231. The Edgewood Horizon Voucher Program boasted a 92% college-bound rate for its students.[224]

232. In Texas, there are superintendents who have devoted their entire careers to getting to the position they currently have, whose compensation is based on number of schools, students and teachers they oversee. There are teachers who have worked for 20, 30 years in the classroom who are waiting for retirement benefits. To expect these people to agree to reform that dramatically opens up the system is unrealistic. They will object to it even if objective analysis shows that in the long-term, they will benefit, students would benefit, and taxpayers would benefit.[225]

233. There was a question on the ballot as part of the Republican primary elections in 2012 asking voters if they would approve something similar to the Taxpayer Savings Grant—85 percent said they would support it.[226]

234. The Legislative Budget Board studied the Taxpayer Savings Grant in light of Bast's study and concluded, like Bast, that the Texas School District System would indeed realize a savings.[227]

**Attorney's Fees**

235. Attorneys and paralegals representing the Efficiency Intervenors in this cause have incurred attorneys' fees totaling $1,402,898.[228]

236. The Efficiency Intervenors will incur attorneys' fees of $170,000 if the State Defendants seek and obtain direct review of this Court's Final Judgment to the Texas Supreme Court.[229]

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[222] *Id.*
[223] *Id.*
[224] *Id.*
[225] *Id.*
[226] *Id.*
[227] *Id.*
[228] Affidavit of J. Christopher Diamond; Affidavit of Craig T. Enoch.
[229] *Id.*

237. The Efficiency Intervenors will incur attorneys' fees of $130,000 if the State Defendants perfect an appeal from this Court's Final Judgment to the Court of Appeals, plus attorneys' fees of $100,000 if the State Defendants seek review of the Court of Appeals' judgment in the Texas Supreme Court.[230]

238. The incurred fees listed in Finding of Fact #235, 236, 237 were reasonable and necessary.[231]

239. There is good cause to award the Efficiency Intervenors the reasonable and necessary attorneys' fees they have incurred and will incur in connection with this cause, as specified in Findings of Fact #232, #234, and #235.[232]

**Expert Fees**

240. The Efficiency Intervenors' have incurred $99,168.02 in expert fees, costs and expenses.[233]

241. These expert fees were reasonable and necessary for the Efficiency Intervenors to be able to pursue their claim for a declaratory judgment.[234]

242. The experts hired by the Efficiency Intervenors made a substantial contribution to this case.[235]

243. The Efficiency Intervenors include families that could not afford to finance even a fraction of the costs in a lawsuit such as this one, and to require working families and single parents to shoulder the expenses would be inequitable and unjust.[236]

244. To require the payment of costs without the ability to recover those costs would stifle the voice of parents and children in cases involving the rights of parents and children.[237]

245. It is equitable and just to award the Efficiency Intervenors the reasonable and necessary expert fees they have incurred in connection with this cause, as specified in Finding of Fact #240.[238]

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[230] *Id.*
[231] *Id.*
[232] *Id.*
[233] *Id.*; *see also* Notice of Filing Affidavits and Motion for Award of Equitable and Just Attorney's Fees and Costs.

[234] *Id.*
[235] *Id.*
[236] *Id.*
[237] *Id.*
[238] *Id.*

## CERTIFICATE OF SERVICE

I hereby certify that, on March 12, 2013 a true and correct copy of the above has been served on the following via ProDoc eFile:

***Attorneys for Plaintiffs:***
Richard E. Gray, III.
Toni Hunter
Gray & Becker, P.C.
900 West Ave.
Austin, Texas 78701
512-482-0924 (fax)

***Attorneys for Plaintiffs:***
J. David Thompson, III
Philip Fraissinet
Thompson & Horton LLP
3200 Phoenix Tower, Suite 2000
Houston, Texas 77027
713-583-9668 (fax)

***Attorneys for Plaintiffs:***
David G. Hinojosa
Marisa Bono
Mexican American Legal Defense and Education Fund, Inc.
110 Broadway, Suite 300
San Antonio, Texas 78205
210-224-5382 (fax)

***Attorneys for Plaintiffs:***
Mark R. Trachtenberg
Haynes and Boone, LLP
1221 McKinney St., Suite 2100
Houston, Texas 77010
713-547-2600 (fax)

***Attorney for Defendants:***
Shelley N. Dahlberg
James "Beau" Eccles
Erika Kane
Texas Attorney General's Office
P.O. Box 12548, Capitol Station
Austin, Texas 78711

***Attorneys for Plaintiffs:***
Robert Schulman
Schulman, Lopez & Hoffer
517 Soledad St.
San Antonio, Texas 78205-1508

*s/ J. Christopher Diamond*
J. Christopher Diamond

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