

No. 14-0776

**In the Supreme Court of Texas**

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MICHAEL WILLIAMS, COMMISSIONER OF EDUCATION,  
IN HIS OFFICIAL CAPACITY, *ET AL.*,  
*Appellants/Cross-Appellees.*

v.

CALHOUN COUNTY INDEPENDENT SCHOOL DISTRICT, *ET AL.*,  
*Appellees/Cross-Appellants/Cross-Appellees,*

v.

TEXAS CHARTER SCHOOLS ASSOCIATION, *ET AL.*; AND  
JOYCE COLEMAN, *ET AL.*,  
*Appellees/Cross-Appellants,*

v.

THE TEXAS TAXPAYER AND STUDENT FAIRNESS COALITION, *ET AL.*;  
EDGEWOOD INDEPENDENT SCHOOL DISTRICT, *ET AL.*; AND  
FORT BEND INDEPENDENT SCHOOL DISTRICT, *ET AL.*,  
*Appellees/Cross-Appellees.*

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On Direct Appeal from the  
200th Judicial District Court, Travis County, Texas  
No. D-1-GN-11-003130

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**BRIEF OF TEXAS CHARTER SCHOOLS ASSOCIATION, *ET AL.***

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ORAL ARGUMENT REQUESTED

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School District, Splendora Independent  
School District, Sudan Independent School  
District, Weatherford Independent School  
District, Pine Tree Independent School  
District, Troup Independent School District,  
and Kerrville Independent School District

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## STATEMENT OF THE CASE

Nature of the Case: The charter school plaintiffs challenge the constitutionality of the school finance system under Article VII, Section 1 of the Texas Constitution.

Trial Court: The Honorable John K. Dietz  
200th Judicial District Court, Travis County

Trial Court Disposition: The trial court ruled for the charter school plaintiffs on their claim that the current school finance system is unconstitutionally inadequate on a system-wide basis—that is, as applied to both charter schools and other public schools alike.

But the court ruled against the charter school plaintiffs on their other claims, including their claim that charter schools are uniquely harmed under the current school finance system—despite the fact that it is undisputed that charter schools receive at least \$1,000 less per student than other public schools, under this Court’s established weighted student analysis.

The trial court also declined to award attorney’s fees to the charter school plaintiffs.

## STATEMENT REGARDING ORAL ARGUMENT

The Court should grant oral argument in this case. The charter school plaintiffs recognize that there are a large number of parties in this case, and do not wish to overburden the Court. The claims presented by the charter school plaintiffs are relatively simple and should not require an extensive amount of time to present.

After all, there are two key fact questions in any school finance case—and both happen to be undisputed here. First, it is undisputed that charter schools receive at least \$1,000 less per student than other public schools. This is well below the constitutional minimum calculated by the trial court (and notably, the State did not present an alternative legal minimum funding level). Second, it is undisputed that charter student performance suffers as a result—notwithstanding the best efforts of charter schools, which have massive waitlists because they are so popular with parents.

## **ISSUE PRESENTED**

Two key facts are undisputed in this case. First, charter schools receive at least \$1,000 less per student than school districts, under this Court’s established weighted student analysis. Charter schools thus receive substantially less than the constitutional minimum recognized by the trial court—moreover, the State did not present an alternative legal minimum funding level. Second, as a result—and despite the best efforts of charter schools, which have waitlists because of their popularity—charter student performance has indisputably suffered.

Based on these undisputed facts, does the school finance system violate the rights of students and parents of charter schools under the Texas Constitution?

## INTRODUCTION

The students and parents of charter schools are entitled to and deserve the same legal protections under the Texas Constitution as the students and parents of other public schools. Indeed, even Judge Dietz did not dispute this basic, common-sense principle—to the contrary, he granted the charter school plaintiffs relief on some of their constitutional claims. The charter school plaintiffs nevertheless appeal, because Judge Dietz should have ruled for the charter school plaintiffs on all of their funding claims.

The charter school plaintiffs believe that, as a system-wide matter, the current school finance system provides constitutionally inadequate funding for school districts as well as charter schools. But make no mistake: If *anyone* is entitled to relief in this case, it is the charter school plaintiffs.

After all, it is undisputed that charter schools receive on average at least \$1,000 less per student than other public schools, under this Court's established weighted student analysis—well less than the legal minimum as recognized by the trial court (and notably, the state did not offer an alternative minimum funding level). Moreover, consider the largest and most dramatic contributor to this gap: Charter schools receive no money for facilities—zero. No school can possibly educate children adequately and efficiently without proper facilities. *See Neeley v. West Orange-Cove Consol. Indep. Sch. Dist. (WOC II)*, 176 S.W.3d 746, 790 (Tex.



2005) (“An efficient system of public education requires not only classroom instruction, but also the classrooms where that instruction is to take place.”).

Consider also that, unlike school districts, charter schools cannot exist unless parents affirmatively choose to send their children there. Yet parents do so (indeed, there are thousands of students on charter school waitlists, CR 12 at 560, FOF 1472), because charter schools find a way to do more with less—even as they attempt to educate the most disadvantaged students, who seek out charter schools in disproportionately high rates. But even so—despite the best efforts of these innovative institutions of public education—standardized tests document, and no one disputes, that charter students suffer from the uniquely insufficient funding granted by the state to charter schools. Accordingly, the district court should have granted relief to the charter plaintiffs *before* any other plaintiff.

What’s more, the district court added insult to injury when it did not even grant the charter school plaintiffs the same system-wide relief that it granted to the other public school plaintiffs. Even the other plaintiffs acknowledged below that the charter school plaintiffs should have received the same relief that they received (RR 42 at 36:8-12). The district court thus erred in this additional respect as well.

Accordingly, the charter school plaintiffs are entitled to declaratory and injunctive relief, based on both system-wide defects in school finance, and the unique funding disparities suffered by charter schools in particular.

## STATEMENT OF FACTS

Texas charter schools educate about two hundred thousand students each year. RR 290 at 1168, Ex. 9071 at 6.<sup>1</sup> That number will only grow over time, as charter schools continue to succeed. CR 12 at 567, FOF 1507 (“[C]harter schools have experienced exponential growth in Texas since 1996.”).

Like other public schools, charter schools “have the primary responsibility for implementing the state’s system of public education and ensuring student performance.” TEX. EDUC. CODE § 11.002.

The Texas Charter Schools Association is a non-profit association that represents the interests of numerous charter schools across the state. Joining the Association as a plaintiff in this matter are the parents of charter students, who sue in both their individual capacities and as next friends of their children. CR 12 at 242, FOF 7.

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<sup>1</sup> For purposes of this brief, “RR [volume number] at [page number]” refers to the Reporter’s Record and uses the page number of the pdf because the Reporter’s Record is not continuously paginated within a volume. “CR [volume number] at [page number] refers to the Clerk’s Record. “FOF” and “COL” refer to the district court’s findings of fact and conclusions of law, which can be found at Tab 3 of the appendix to this brief.

**I. The Legislature Established Charter Schools, In Addition To School Districts, To Provide More Choices For A Quality Public Education—But Neglected To Fund Them Sufficiently.**

Charter schools have been improving public education in a variety of ways since their creation in 1995. RR 61 at 120:5-6. The Legislature designed charter schools to:

- (1) improve student learning;
- (2) increase the choice of learning opportunities within the public school system;
- (3) create professional opportunities that will attract new teachers to the public school system;
- (4) establish a new form of accountability for public schools; and
- (5) encourage different and innovative learning methods.

TEX. EDUC. CODE § 12.001(a). Charter schools operate outside of traditional school districts. In so doing, they provide “an opportunity for a group of educators . . . to come together and provide innovative learning possibilities for students.” CR 12 at 564, FOF 1490.<sup>2</sup>

To achieve these laudable goals, however, charter schools must receive sufficient funding, as guaranteed under the Texas Constitution and this Court’s numerous precedents. After all, as this Court has recognized, “[t]he amount of

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<sup>2</sup> This brief uses “charter school” to refer to both open-enrollment charter schools and university charter schools—both of which are funded directly by the State of Texas. There are two other types of charter schools—home-rule school district charter schools and campus charter schools—which are funded through local school districts, and are not at issue in this case. See TEX. EDUC. CODE § 12.002.

money spent on a student’s education has a real and meaningful impact on the educational opportunity offered that student.” *Edgewood Indep. Sch. Dist. v. Kirby* (*Edgewood I*), 777 S.W.2d 391, 393 (Tex. 1989). *See also WOC II*, 176 S.W.3d at 788; CR 12 at 400-01, FOF 641-647.

Under the current system of school finance, charter schools are subject to the same funding formulas as school districts—known as the Foundation School Program (“FSP”). But there are two important exceptions. And both exceptions play a critical role in this litigation.

First, charter schools are categorically ineligible for facilities funding. CR 12 at 566, FOF 1503. Notably, the Legislature originally provided for at least some facilities funding when it first authorized charter schools in 1995. *See* TEX. EDUC. CODE § 12.106(b) (1996); *id.* § 42.251(a) (1996). But the current system provides none.

Second, unlike district funding, charter funding does not account for the particular characteristics of each charter school (*i.e.*, the cost of education and the size and sparsity of the local population). Instead, the funding formulas for charter schools rely on state-wide averages of each of these factors—even though each factor varies widely across the State of Texas. TEX. EDUC. CODE § 12.106(a-1)-(a-2). In other words, rather than assess the cost of education for any particular charter school, the state assumes that each and every charter school has the same

cost of education, size, and sparsity as the state-wide average school district. CR 12 at 566, FOF 1499. As a result, many charter schools—particularly those serving high-cost communities—receive even less funding than they need.

In sum, charter schools are funded on the false (if not absurd) assumptions that (1) they have no need for facilities—but that (2) they otherwise have the same characteristics as an average school district across the state.

## **II. The Two Key Fact Questions In Any School Finance Case Are Undisputed Here—Charter Schools Receive Insufficient Funding (Indeed, At Least \$1,000 Less Per Student Than Other Public Schools), And Charter Student Performance Suffers As A Result**

Charter schools do not receive enough funding to accomplish a general diffusion of knowledge. Indeed, every single charter school in the state has received less funding than necessary.

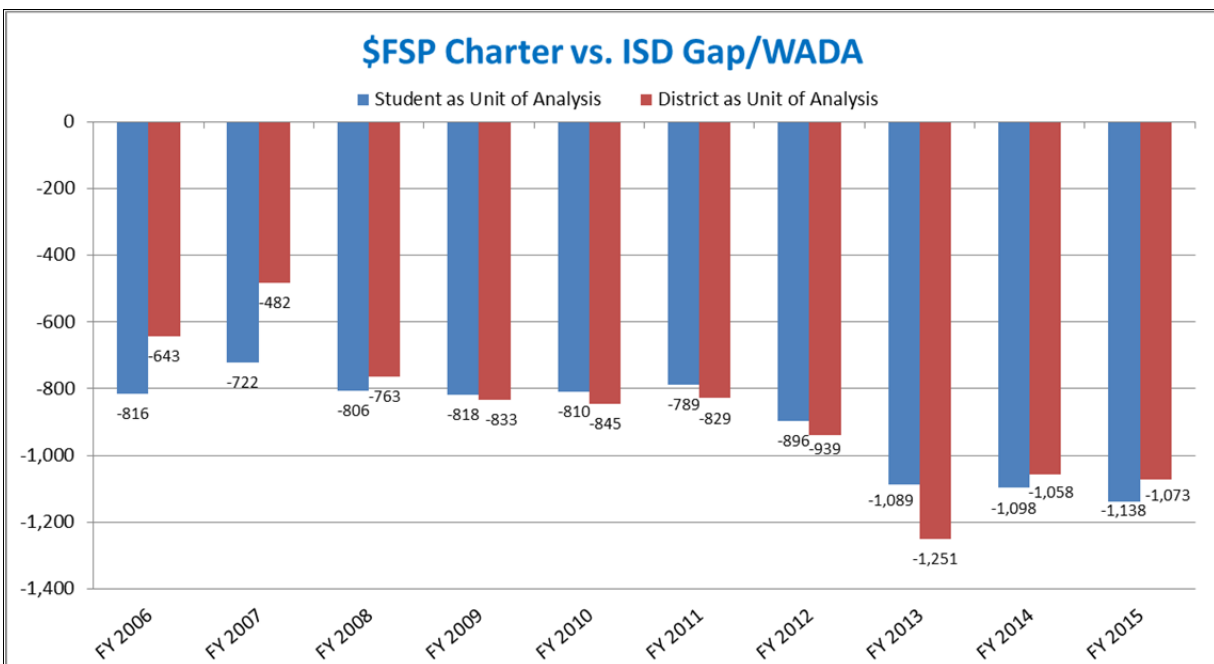
According to the trial court’s calculations, a general diffusion of knowledge required FSP funding of *at least* \$6,404 per weighted student during the 2013-2014 school year. CR 12 at 398, FOF 635. The trial court further noted that a “credible range” estimating the cost of adequacy in 2013-14 extended as high as \$6,818. CR 12 at 398-99, FOF 635-36; RR 289 at 1959, Ex. 6618 at 19. The State of Texas did not even bother to offer an alternative estimate. CR 12 at 295, FOF 626-27.

The average charter school received only \$5,400-\$5,500 during the 2013-14 school year—nearly \$1,000 less than minimally necessary. RR 290 at 1125, Ex. 9065. Indeed, the highest-funded charter school received only \$6,068. RR 290 at

1179, Ex. 9071 at 17. In short, every charter school in the state received less money than required to meet constitutional standards.

Moreover, it is undisputed that charter schools today receive at least \$1,000 less per weighted student than what school districts receive. RR 290 at 1125, Ex. 9065.

| FSP/WADA                     |             |             |             |             |             |             |             |               |               |               |
|------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|---------------|---------------|---------------|
| Student as Unit of Analysis  | FY 2006     | FY 2007     | FY 2008     | FY 2009     | FY 2010     | FY 2011     | FY 2012     | FY 2013       | FY 2014       | FY 2015       |
| Charters                     | 4,520       | 5,162       | 5,382       | 5,511       | 5,728       | 5,754       | 5,761       | 5,388         | 5,467         | 5,607         |
| ISDs                         | 5,336       | 5,884       | 6,188       | 6,329       | 6,538       | 6,543       | 6,657       | 6,478         | 6,565         | 6,745         |
| <b>Gap</b>                   | <b>-816</b> | <b>-722</b> | <b>-806</b> | <b>-818</b> | <b>-810</b> | <b>-789</b> | <b>-896</b> | <b>-1,089</b> | <b>-1,098</b> | <b>-1,138</b> |
| District as Unit of Analysis | FY 2006     | FY 2007     | FY 2008     | FY 2009     | FY 2010     | FY 2011     | FY 2012     | FY 2013       | FY 2014       | FY 2015       |
| Charters                     | 4,497       | 5,154       | 5,397       | 5,511       | 5,716       | 5,749       | 5,754       | 5,394         | 5,480         | 5,615         |
| ISDs                         | 5,141       | 5,636       | 6,161       | 6,344       | 6,561       | 6,578       | 6,693       | 6,645         | 6,538         | 6,688         |
| <b>Gap</b>                   | <b>-643</b> | <b>-482</b> | <b>-763</b> | <b>-833</b> | <b>-845</b> | <b>-829</b> | <b>-939</b> | <b>-1,251</b> | <b>-1,058</b> | <b>-1,073</b> |



RR 290 at 1125, Ex. 9065. In fiscal year 2013, for example, school districts received \$6,478 compared to charter schools' \$5,388.<sup>3</sup> That gap of \$1,089 has only grown over time—reaching \$1,098 in 2014, and \$1,138 in 2015.

This undisputed evidence represents the most meaningful way to assess the constitutionality of charter school funding. First, this Court has focused on FSP funding because it includes 95 percent of state and local funding for education. *See WOC II*, 176 S.W.3d at 764. Second, this Court has traditionally compared schools on the basis of weighted average daily attendance (“WADA”)—rather than unweighted students. *See, e.g., id.* at 762 (describing the funding necessary for an adequate education in terms of dollars per WADA); *Edgewood Indep. Sch. Dist. v. Meno (Edgewood IV)*, 917 S.W.2d 717, 731 (Tex. 1995) (comparing revenue per weighted student).

This Court has focused on weighted students because weighting captures student characteristics that are crucial to understanding the true cost of education. The structure of the school finance system itself reflects this importance. “Because certain pupils . . . are more expensive to educate than others, most educational

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<sup>3</sup> This example uses the student as the unit of analysis. The exhibit presents the state’s data using a different methodology as well: using the district as the unit of analysis. Using the student as the unit of analysis compares total charter funding per weighted student and total district funding per weighted student. RR 61 at 34:21-35:3. Using the district as the unit of analysis compares funding for the average charter school and the average district. This analysis averages the FSP funding per weighted student for each charter school and compares that number to the average of the FSP funding per weighted student for each district. RR 61 at 35:4-37:5. Under either analysis, charter schools receive substantially less funding.

revenue is distributed according to complex formulas that assign ‘weights’ to students with different needs.” *Edgewood Indep. Sch. Dist. v. Kirby (Edgewood II)*, 804 S.W.2d 491, 495 n.9 (Tex. 1991); *see also* CR 12 at 361, 387FOF 467, 597.<sup>4</sup>

As a result, charter schools, despite their best efforts, are unable to provide every child with an adequate education. Indeed, the relevant underlying data is undisputed in this regard as well. CR 12 at 195, Final Judgment at 8 (“All performance measures considered at trial, including STAAR tests, EOC exams, SATs, the ACTs, performance gaps, graduation rates, and dropout rates among others, demonstrated that Texas public schools are not accomplishing a general diffusion of knowledge due to inadequate funding.”).

At least six witnesses testified explicitly that charter schools are not achieving a general diffusion of knowledge, including school finance experts Dr. Anthony Rolle, Dr. R. Craig Wood, and Mr. Lynn Moak.<sup>5</sup> The charter school plaintiffs also introduced historical data showing that from school years 2006

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<sup>4</sup> Judge Dietz’s findings do not contradict these facts. His findings regarding funding per *unweighted* student, CR 12 at 566, FOF 1505, are not relevant to the type of comparison that this Court has required. Indeed, Judge Dietz himself relied on FSP funding per weighted students, elsewhere in his findings. *See, e.g.*, CR 12 at 398, FOF 635 (describing the cost of an adequate education).

<sup>5</sup> *See* RR 44 at 61; RR 44 at 93-99; RR 7 at 70:1-72:15; RR 54 at 161-162; RR 61 at 31-33. *See also* RR 43: 109-110; RR 42 at 192 (testimony of charter school operators). Notably, Dr. Wood testified for the state in *WOC II*.