

Cause No. _____

MARIO FLORES, Individually and as	§	IN THE DISTRICT COURT
Next Friend of His Minor Child	§	
AIDEN FLORES; CHRISTOPHER BAERGA,	§	
Individually and as Next Friend of His Minor	§	
Child ABBY BAERGA; DANA ALLEN,	§	
Individually and as Next Friend of Her Minor	§	
Child TEAL EVELYN ALLEN; JASON AND	§	
SARAH CHRISTENSEN, Individually and as	§	
Next Friends of Their Minor Children LUKE	§	
and GRACE CHRISTENSEN;	§	
BROOKS FLEMISTER, Individually and as	§	
Next Friend of His Minor Child	§	
ULRIC FLEMISTER and	§	
TEXAS CHARTER SCHOOL ASSOCIATION	§	
	§	
<i>Plaintiffs,</i>	§	TRAVIS COUNTY, TEXAS
	§	
vs.	§	
	§	
ROBERT SCOTT, in his Official Capacity	§	
As the COMMISSIONER OF EDUCATION;	§	
TEXAS EDUCATION AGENCY;	§	
TEXAS STATE BOARD OF EDUCATION;	§	
and SUSAN COMBS, in her Official Capacity	§	
as the TEXAS COMPTROLLER OF PUBLIC	§	
ACCOUNTS	§	
	§	
	§	
<i>Defendants.</i>	§	___ JUDICIAL DISTRICT

**PLAINTIFFS' ORIGINAL PETITION AND
REQUEST FOR DECLARATORY JUDGMENT**

Now come Plaintiffs Mario Flores individually and as next friend of Aidan Flores; Christopher Baerga individually and as next friend of Abby Baerga; Dana Allen individually as next friend of Teal Evelyn Allen; Jason and Sarah Christensen individually and as next friends of their children Luke and Grace Christensen; Brooks Flemister individually and as next friend of Ulric Flemister; and Texas Charter School Association (hereafter "Plaintiffs") in the above styled action, and bring this Original Petition and Request for Declaratory Judgment against Defendants

Robert Scott, in his official capacity as Commissioner of Education; the Texas Education Agency; the Texas State Board of Education; and Susan Combs, in her official capacity as the Texas Comptroller of Public Accounts (collectively hereafter “Defendants”), challenging the constitutionality of the Texas public school finance system, and in support, Plaintiffs would respectfully show the Court as follows:

I. DISCOVERY

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

II. OVERVIEW

2. Open-enrollment charter schools (“charter schools”) achieve better educational outcomes for less money, which in turn provides precisely the kind of educational efficiency envisioned by our Constitution. Yet, Texas law does not facilitate this efficiency.

3. Facilities funding is recognized to be an essential component of a constitutionally valid public school funding mechanism. Charter schools are categorically denied any measure of school facilities funding. While recent Texas Supreme Court rulings have made clear that the State enjoys a degree of flexibility and discretion in determining school funding, the Court has also reaffirmed that profoundly inadequate funding remains judicially actionable. The court has not previously addressed Plaintiffs’ constitutional claims concerning the denial of facility funding to charter schools.

4. Charter schools face a second constitutional violation as Texas law caps the number of charter schools the State may authorize. This cap operates as an arbitrary and unjustified barrier to the very efficiency that charter schools were intended to and are known to deliver, achieving better outcomes for children at lower costs to the State. If our State public

school system is to reach the level of efficiency required by the Texas Constitution—this cap on charter school growth must be set aside.

III. PARTIES

A. Plaintiffs

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

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

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

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

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

10. Plaintiff Texas Charter Schools Association is a Texas non-profit corporation composed of charter holder members educating over 110,000 students in more than 460 charter school campuses. Texas charter school members are directly affected by the Texas school finance system

B. Defendants

11. Defendant Robert Scott is the Texas Commissioner of Education, and is sued in his official capacity. He is the chief executive of the Texas Education Agency (the “TEA”), which oversees the State’s public school system and public schools. Defendant TEA is a governmental agency organization under the laws of the State of Texas. Defendant Robert Scott and the TEA may both be served with process at 1701 North Congress Avenue, Austin, Texas 78701.

12. Defendant Susan Combs is the Texas Comptroller of Public Accounts, and is sued in her official capacity. She is chief steward of the State’s finances, acting as tax collector, chief accountant, chief revenue estimator and chief treasurer for all state government. Defendant Susan Combs may be served at 111 East 17th Street, Austin, Texas 78774.

13. Defendant Texas State Board of Education is an elected 15-member board which, together with the Commissioner of Education, oversees the public school system of Texas and has specific authority over open-enrollment charter schools pursuant to the Texas Education Code. The Texas State Board of Education is a governmental agency under the laws of the

State of Texas, and may be served with process through its Chairwoman, Barbara Cargill, at 1701 North Congress Avenue, Austin, Texas 78701.

14. The Honorable Greg Abbott, Attorney General of Texas, has been served with notice in accordance with Section 37.006(b) of the Texas Civil Practice and Remedies Code. Attorney General Abbott may be served with appropriate notice at the Texas Supreme Court Building, 209 West 14th Street, Austin, Texas 78701.

IV. JURISDICTION AND VENUE

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

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

V. BACKGROUND

17. The Texas Legislature (the “Legislature”) created charter schools in 1995 as “part of the public school system of this state.” Tex. Educ. Code § 12.105. Charter schools, together with traditional public schools, “have the primary responsibility for implementing the state’s system of public education.” *Id.* § 11.002.

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

19. In the over two decades of Texas school finance litigation, the Legislature and the Texas Supreme Court have examined this State’s school finance system from the school districts’ perspective only. But the Legislature’s duty to make suitable provision for public schools includes charter schools, the rights of those charter schools, the rights of taxpayers, and the rights of parents and those students attending charter schools. These rights have yet to be considered by the court.

20. Charter schools were created to provide the very kind of educational efficiency envisioned by the Texas Constitution. Though charged with implementing the State’s public education system, these public schools and their students are not suitably treated under current law. While the State enjoys some degree of discretion in determining school funding, the Texas Supreme Court has previously held that arbitrary and inequitable laws, such as those to be examined by this court, are unconstitutional. Here, the State has systematically and intentionally denied facility funding to charter schools, even though facility funding is held to be an essential

component of a constitutionally valid funding system. This unconstitutional deprivation of funds has required charter schools to use funds earmarked for instruction and operations to pay mortgages, leases, or rents.

21. Further, Plaintiffs address a constitutional violation in an arbitrary cap placed on the number of charter schools the State Board of Education may authorize. This cap operates as an artificial and unjustifiable barrier to the very efficiency in public education required by the Texas Constitution.

22. By denying charter schools facility support, and in placing an arbitrary cap on the proliferation of open-enrollment charter schools, the Texas Legislature has failed to make suitable provision for the support and maintenance of an efficient system of public free schools.

VI. PLAINTIFFS' CLAIMS

A. Charter Schools Achieve Better Educational Outcomes For Less Cost Per Pupil

23. In years 2010 and 2011 the Texas Comptroller issued and updated her landmark report, the Financial Allocation Study for Texas ("FAST"), which measured academic progress and financial efficiency in Texas' public schools. The FAST report was created at the specific direction of the Texas Legislature in 2009. The FAST report assigned rankings to the approximately 1,237 Texas school districts and charter schools.

24. Using a variety of the most recent data indicators such as dropout rates, transportation spending, state accountability ratings and math scores, FAST identified, in each year, a list of "Five-Star Schools." School districts and charter schools in the top 20% of rated academic progress, and among the lower 20% of all fiscally comparable systems, received a Five-Star rating. Of the 43 public school systems identified as Five-Star systems in 2010, and

the 46 identified in 2011, 11 were open-enrollment charter schools, comprising approximately 25% of all Five-Star schools.

25. Over half of all charter school campuses are located in the metropolitan areas of Houston, Dallas, and San Antonio, resulting in a disproportionate minority and economically disadvantaged charter school student population. For example, in 2010, 58.7% of the students served by all Texas public schools were economically disadvantaged, 14% were African American, and 48% were Hispanic. Whereas that same year, Texas open-enrollment charter schools served 70.6% economically disadvantaged, 26% African American and 53% Hispanic. But within these disproportionate urban minority and economically disadvantaged student populations, standard accountability charter schools outperformed school districts.

B. If Anyone Suffers From Unconstitutionally Inadequate Levels of Funding, It Is Students Attending Charter Schools—Which Receive Zero Funding for Educational Facilities

26. Plaintiffs would agree that the current public school funding formulas, claimed unconstitutional by the school districts in the ongoing litigation (*i.e.*, *The Texas Taxpayer & Student Fairness Coalition, et al. v. Robert Scott, et al.* (Cause No. D-1-GN-11-003130)), are in fact unconstitutional. However, charter schools face an even greater unconstitutional and arbitrary denial of funding.

27. Unlike school districts, which have a local tax base and receive State aid for facilities, charter schools have neither a local tax base nor receive direct State aid for instructional facilities. Consequently, charter schools are forced to spend operating dollars to support the cost of instructional facilities. An efficient system of public education requires not only classroom instruction, but also the classrooms where that instruction will occur. These two components of an efficient system—instruction and facilities—are inseparable. The current

system forces charter schools to deplete funding which would otherwise be available for operational and instructional supports.

28. Charter schools suffer other unique funding inequities. The current public school funding formulas for school districts utilizes weighted criteria relevant to the uniqueness of each school district (*i.e.*, Cost of Education Adjustment, Small and Midsized District Adjustments, and the Sparsity Adjustment) as well as a district's entitlements to added revenue from local property taxes. Charter school funding varies significantly from the school districts in that the charter school formulas are based on a state-wide average and do not adjust for individual school's geographic location, purpose or populations. The school districts assert that their formulas are unconstitutionally arbitrary, including that current costs of education are not reflected by these formulas. Charter schools, which receive no measure of facility support, and only receive a one-size-fits-all averaged adjustment, suffer even greater harm because the cost of education formulas do not contemplate charter schools, let alone their individualized needs and circumstances.

29. Inadequate and arbitrary funding adjustments depleting revenues destined for instruction, and the total deprivation of facility funding for charter schools offends the Texas Supreme Court's pronouncements on constitutionally required "efficiency."

C. The Statutory Cap On Charter Schools Is An Unconstitutionally Arbitrary Obstacle To the Ability of the State Commissioner of Education To Achieve Greater Efficiency In Education

30. The Legislature has imposed an arbitrary cap on the growth of charter schools. The cap limits the number of charters that can be authorized to 215. This presents an arbitrary obstacle to the State's ability to achieve constitutional efficiency and stymies the very efficiency

charter schools were intended to promote. Over 56,000 students are now on waiting lists for limited charter school seats.

31. The cap is as an arbitrary barrier to efficiency and if our State public school system is to reach the level of efficiency required by the Texas Constitution, this cap on charter school growth must be set aside. The educational reform mission of charter schools is far too important to the current public school system's success than any justification for a cap on charter school growth.

VII. CONCLUSION

32. Charter schools provide choice and innovation in the public school system and are an example of how our public school system may one day function more efficiently, meeting the Texas Supreme Court's expectations for public education efficiency.

33. However, charter schools, parents and students continue to be shortchanged. The current school finance system provides traditional school districts with two types of funding: operations and facilities funding. Charter school students generate, on average, less instructional funding per pupil than their traditional school district peers, and their schools receive no facilities funding. The arbitrary denial of facilities funding, a necessary component for suitability and efficiency, combined with the arbitrary cap on charter school growth, impedes the progress toward an efficient system of public schools. Removing these arbitrary limitations on charter schools is not only constitutionally compliant, it continues the charter schools' impressive start toward the achievement of an efficient state school system and a brighter educational future for the school children of our State.

VIII. CAUSES OF ACTION

34. The above factual allegations, arguments and authorities are incorporated herein by reference as though set forth in full.

35. Plaintiffs bring the following claims under the Uniform Declaratory Judgment Act, Tex. Civ. Pract. & Rem. Code § 37.001 *et seq.*

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

37. Plaintiffs ask the Court to declare that the cap on open-enrollment charter schools violates Article VII, Section 1 of the Texas Constitution, in that it is arbitrary and prohibits efficiency in the system of public schools.

38. Pursuant to Section 37.009 of the Texas Civil Practices and Remedies Code, Plaintiffs seek from Defendants their reasonable attorneys’ fees and costs.

IX. PRAYER

39. WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request that the Court grant the declaratory relief sought herein;

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

- b. that the Court grant Plaintiffs declaratory relief pursuant to the Texas Uniform Declaratory Judgments Act, in order to settle and to receive relief from uncertainty and insecurity with respect to their rights, status, and other legal relations under the Texas public school finance system under Article VII, section 1 of the Texas Constitution and other law;
- c. that the Court grant a permanent injunction prohibiting Defendants from giving any force and effect to the unconstitutional sections of the Texas Education Code relating to the financing of open-enrollment charters schools until the constitutional violation is remedied;
- d. that the Court retain continuing jurisdiction over this matter until the Court has determined that the Defendants have fully and properly complied with its orders;
- e. that the Court find that the constitutional requirements upon the Legislature for a suitable and efficient free public school system to provide general diffusion of knowledge requires facility funding for open-enrollment charter schools;
- f. that the Court find that the charter school cap in Section 12.101(b) of the Education Code is arbitrary and inefficient within the meaning of Article VII, section 1 of the Texas Constitution;
- g. that the Court grant Plaintiffs recovery of reasonable attorneys' fees and costs as allowed by Chapter 37.009 of the Texas Civil Practice and Remedies Code and as otherwise provided by law; and
- h. that the Court grant Plaintiffs such other and further relief, general and special, at law and in equity, to which they may be justly entitled.

Respectfully submitted,

SCHULMAN, LOPEZ & HOFFER, L.L.P.

A handwritten signature in black ink, appearing to read 'Robert A. Schulman', is written over a horizontal line. The signature is somewhat stylized and loops back.

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