

No. 14-0776

In The Supreme Court of Texas

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

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

**FIRST AMENDED AMICUS CURIAE BRIEF OF:
JAMES WINDHAM AND
TEXAS INSTITUTE FOR EDUCATION REFORM**

**IN SUPPORT OF:
APPELLANTS TEXANS FOR REAL EQUITY AND EFFICIENCY IN
EDUCATION AND TEXAS ASSOCIATION OF BUSINESS, ET AL.
("EFFICIENCY INTERVENORS")**

Filed on behalf of Amici by: Warren V. Norred, of Norred Law, PLLC
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I. Identity of Parties and Counsel

1. Pursuant to TEX. R. APP. P. 9.7, Amici herein incorporate by reference the identity of parties and their counsel presented in the Brief of Appellants Texans for Real Equity and Efficiency in Education and Texas Association of Business, *et al.* (“Efficiency Intervenors”) filed on April 13, 2015.

II. Rule 11 Amicus Curiae Brief Required Disclosure

2. This brief was prepared on behalf of James Windham and the Texas Institute for Education Reform by Warren V. Norred, at 200 E. Abram, Suite 300; Arlington, TX 76010, at no cost, and in support of Appellants.

III. Identification of Amici

3. James Windham has demonstrated outstanding civic commitment and an abiding interest in public education. He is the Founder and Chairman of Texas Institute for Education Reform, 2006 to present. He has been a commercial banker for 18 years, Chairman and CEO of one of 10 the largest banks in Houston, and founded and managed an investment banking firm for 13 years. Mr. Windham is a past member of the Board of Regents for Stephen F. Austin University; past Chairman of the Texas Association of Business; and past Chairman of the Texas Lyceum Association. He also served in an official capacity as a member for the

State Board for Educator Certification (SBEC) 2000-05, and member of the Texas High School Completion and Success Initiatives Council, 2007-08.

4. Mr. Windham's business experience and role in education oversight as a member of the State Board for Educator Certification (SBEC) and extensive experience in the education reform arena demonstrates his knowledge of the education industry, and reasoned support of the claims of the Efficiency Intervenors (Texans for Real Efficiency & Equity), specifically their claims regarding teacher certification, labor laws, and Chapter 21 of the Texas Education Code (TEC) and related regulations.

5. The Texas Institute for Education Reform (TIER) is a nonprofit, nonpartisan organization founded in 2006 and committed to improving public education for each and every Texas student. Through its leaders and advisors, TIER has access to the nation's leading education policy expertise, the best minds in the country, and will use these resources to bring to bear on the Texas reform effort the best available research-based strategies, benchmarked practices, and policy innovations.

IV. Argument - The current system is constitutionally inefficient because statewide mandates inhibit local flexibility.

6. Due to firsthand experience in overseeing the education profession as a member of the State Board of Educator Certification and other extensive experience in the education reform arena, Amici can show that state laws regarding teacher certification, labor laws, and Chapter 21 of the Texas Education Code (TEC) cause gross inefficiencies in the allocation of education resources, particularly in the inefficient management of human resources, resulting in waste which is forced on every school district in the state directly as a result of the micromanagement of state mandates.

7. Billions of taxpayer dollars are wasted each year in large part due to these unnecessary mandates which actually inhibit productivity. These mandates are promoted by special interests and are designed almost exclusively to protect adult stakeholders. Many of the provisions of Chapter 21 harm Texas schoolchildren, are costly to taxpayers, and make the entire system of public free schools inefficient. An efficient system would allow wide-ranging authority at the district level, with deregulation of human resource management under the long-standing principle of authority commensurate with responsibility for results.

8. TIER's 2011 paper, "Local Control with Accountability for Results: Flexible Workforce Management for Performance and Productivity," authored by Donald R. McAdams, Chairman Emeritus of the Center for the Reform of School Systems,

is already in the documentation before the Court. In his trial testimony, Dr. McAdams testified as follows:

Well, they [the statutes] impede the flexibility of school districts to make personnel decisions in a timely way in the best interest of students and, in fact, require school districts to make personnel decisions based on the best—the perceived best interest of the teachers. That is, it seems pretty clear to me that most of chapter 21 and the specific examples in this document were not passed by the legislature for the purposes of creating a more efficient system. They were passed by the legislature for the purposes of guaranteeing teacher rights in response to pressure from the teacher organizations.

9. Clearly, the current system is designed for the benefit of adults, when it should be driven by the enhancement of student achievement. There are three major causes of inefficiency in Chapter 21: teacher certification, teacher evaluation, and teacher compensation. Each is addressed in turn:

A. Teacher Certification

10. Most policy decisions by the SBEC show influence by adult interest groups, primarily teacher unions and colleges of education. But those who supported innovative changes to improve teacher quality—such as the authorization of the provisional two-year Temporary Teacher Certificate to attract more aspiring teachers into the profession and transfer certification and training responsibilities to school districts; the authorization of the acclaimed American Board for Certification of Teacher Excellence to inspire a career-changers into the classroom;

and the addition of student achievement to the criteria for accreditation of educator preparation programs—were thwarted by these interest groups.

11. The entire teacher certification process is in need of total repair. As with other labor laws, certification has more to do with what adults want than what children need. Teacher groups and the colleges of education constantly fight efforts to expand alternative certification although evidence suggests that truly alternatively certified teachers perform at least as well as traditionally certified teachers. The ultimate effect of state certification laws is to limit local control of human resources, and thereby often eliminating the most effective individuals for a particular job.

B. Teacher Evaluation

12. No business could survive in a competitive environment if it had to operate under the same constraints forced upon our schools. School districts must operate under arbitrary and inefficient labor laws. For example:

- a. TEX. EDUC. CODE § 21.206 requires schools to notify a teacher during the school year if the district intends to “non-renew” a teacher’s contract. This illogical rule serves no rational educational purpose. Instead, it only exists due to adult political pressure for the protection of adults, not students. This is grossly inefficient.

- b. The state teacher appraisal system in Texas is virtually worthless. The vast majority of Texas school districts use the Professional Development and Appraisal System (PDAS), even though they are permitted to adopt their own system. And, based on data and analysis from the Texas Education Agency (TEA), the state system does a poor job of differentiating between effective and ineffective teachers. In fact, according to a study by the Texas Association of School Boards, less than 4% of the state's teachers are rated less than "proficient" by the PDAS.¹ Few are ever given poor appraisals because no measure of meaningful productivity is used to evaluate our teachers. This lack of objectivity is a great disservice and constitutes great opportunity cost to Texas students.
- c. Teacher evaluations are deemed confidential so consumers can never know how the teachers are graded. Yet, if the teacher is uncertified, the parents must be notified. So if a teacher is failing to educate a child, the parents may never know, just so long as they are certified, when we know that certification is not correlated with effectiveness. This is irrational, arbitrary, and inefficient.

¹ Texas Association of School Boards, "The Ratings Game: Can We Fix Texas' Broken Teacher Evaluation System?" *HR Exchange*, September 2011. For further discussion, see TIER's policy paper, "Effective Educators for Texas", 2014, available at www.texaseducationreform.org.

- d. Even the Teacher Education Agency recognizes that the current appraisal system is dysfunctional. Texas Commissioner of Education Michael Williams has stated in TEA news releases, “We have heard from Texas teachers that the current evaluation system used by 86 percent of our school districts is outdated and provides little value in regard to meaningful professional feedback and growth.”²

C. Teacher Compensation

13. Although teachers are district employees rather than state employees, the state mandates drive teacher compensation in an inefficient and unproductive manner. According to the most recent TEA report, payroll is by far the largest portion of a school district budget, accounting for 70% of expenditures. Although salary costs differ significantly throughout the state, the state imposes many restrictions on teacher pay which force districts to spend scarce dollars inefficiently. For example:

- a. The state minimum salary schedule acts as a template for most salary decisions. Since it has an automatic salary step increase each year, regardless of performance, most districts also have local salary schedules which just mirror the state template at higher rates for each year of service regardless of performance levels.

² TEA News Release, May 5, 2014, last viewed on August 3, 2015, located at <http://tea.texas.gov/index4.aspx?id=25769811000>.

- b. Due to the fact previously noted that over 95% of teachers are appraised as proficient or better and the fact that the state salary schedule is the compensation template, in most districts there is no differentiation based on effectiveness in terms of value-added to student performance. Consequently, ineffective teachers are paid the same as productive teachers with the same years of service and education level. No enterprise could totally ignore performance in this manner and remain productive and competitive, yet we expect school leadership to do so.
- c. In recent years the state has mandated across-the-board pay raises determined at the state level. These raises have applied to every teacher in the state, even those with unacceptable performance ratings. Such mandates are clearly inefficient and counter-productive.

V. CONCLUSION

14. Teacher certification, teacher evaluation, and teacher compensation should consist of policies that lead to better outcomes, greater professionalism, and greater discretion in district spending. It is evident that is not the case today.

15. Amici request that the Court declare the Texas School System unconstitutional and direct the Legislature to comply with the explicit qualitative efficiency standard mandated by the Texas Constitution.

Respectfully submitted on behalf of James Windham and Texas Institute for Education Reform on this August 10, 2015,

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CERTIFICATE OF COMPLIANCE - Relying on the word count function in the word processing software used to produce this document, I certify that this Brief contains 1912 words.

/s/Warren V. Norred/
Warren V. Norred

CERTIFICATE OF SERVICE - I hereby certify that on August 10, 2015, the foregoing *Amended* Brief was served via the Court's electronic service to all attorneys as listed on Appellants' Brief, p.55-57.

/s/Warren V. Norred/
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