

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

THE TEXAS TAXPAYER & STUDENT
FAIRNESS COALITION; ALIEF I.S.D.,
CANUTILLO I.S.D., ELGIN I.S.D.,
GREENVILLE I.S.D.,
HILLSBORO, I.S.D., HUTTO I.S.D.,
LAKE WORTH I.S.D., LITTLE ELM I.S.D.,
NACOGDOCHES I.S.D.,
PARIS I.S.D., PFLUGERVILLE I.S.D.,
QUINLAN I.S.D., SAN ANTONIO I.S.D.,
STAMFORD I.S.D., TAYLOR I.S.D.,
VAN I.S.D.; RANDY PITTENGER;
CHIP LANGSTON; NORMAN BAKER;
BRAD KING; and SHELBY DAVIDSON,
as Next Friend of CORTLAND,
CARLI AND CASI DAVIDSON,

Plaintiffs

vs.

ROBERT SCOTT, COMMISSIONER
OF EDUCATION, IN HIS OFFICIAL
CAPACITY; SUSAN COMBS,
TEXAS COMPTROLLER OF PUBLIC
ACCOUNTS, IN HER OFFICIAL
CAPACITY; TEXAS STATE BOARD
OF EDUCATION,

Defendants.

IN THE DISTRICT COURT

200TH JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

AGREED AND UNOPPOSED MOTION TO CONSOLIDATE FOR FILING PURPOSES,

DISCOVERY, AND TRIAL

Plaintiffs in this case, THE TEXAS TAXPAYER & STUDENT FAIRNESS COALITION, et al., and the plaintiffs in CALHOUN COUNTY I.S.D., et al., EDGEWOOD I.S.D., et al., and FORT BEND I.S.D., et al., whose cause numbers are listed below and pursuant to TRCP 40 make this Agreed Motion to Consolidate Cause Nos. D-1-GV-11-001917, D-1-GV-11-001972, and D-1-GV-11-002028 with this case. Plaintiffs would show as follows:

1. On October 10, 2011, Plaintiffs, The Texas Taxpayer & Student Coalition, et al. filed suit challenging the constitutionality of the Texas public school finance system. That suit is Cause No. D-1-GN-11-003130. This suit alleges that the Texas public school finance system violates art. VII § 1 of the Texas Constitution because it is inefficient in that school districts do not have substantially equal access to necessary funds to provide a general diffusion of knowledge to their students; because it is unsuitable for its purpose; because it is inadequately funded; because taxpayers who are willing to shoulder similar tax burdens do not have access to similar revenues for education; and because it fails to provide equal protection to students in low wealth districts. Additionally, these Plaintiffs allege that the system is in violation of art. VIII, § 1-e of the Texas Constitution because it imposes a state ad valorem tax. The Texas Taxpayer and Student Coalition represents 407 school districts, educating 1.3 million students, several property owners who pay taxes to support the public school finance system and several school age children appearing through their parents as next friend.

2. Calhoun County, I.S.D., et al. filed their suit in Travis County district court on December 9, 2011. That suit is Cause No. D-1-GV-11-001917. The Calhoun County suit alleges that the Texas school finance system violates art. VII, section 1 of the Texas Constitution because it does not make sufficient funds available to districts to provide a general diffusion of knowledge. It also alleges that districts do not have meaningful discretion to set their property taxes at a level that allows local enrichment, and therefore the taxing system has become a state ad valorem tax in violation of art. VIII, § 1-e of the Texas Constitution.

3. Edgewood I.S.D., et al. filed their suit on December 13, 2011, in Travis County District Court. Their suit is Cause No. D-1-GV-11-001972. The Edgewood plaintiffs also challenge the constitutionality of the Texas public school finance system. More specifically, the Edgewood Plaintiffs allege that the public school finance system violates the Texas

Constitution's efficiency provision because the gap in funding and tax rates required to provide a general diffusion of knowledge between low wealth school districts, including Plaintiff districts and those districts in which individual Plaintiffs reside, and high wealth school districts, and because it arbitrarily and inadequately funds a general diffusion of knowledge for low income and English language learners. The Edgewood Plaintiffs also alleges that the insufficient funding for lower-wealth school districts has stripped Plaintiff school districts from exercising meaningful local control, forcing them to make unnecessary cuts to their education program and tax at or near the \$1.17 cap simply to satisfy State mandates thereby constituting an unconstitutional state *ad valorem* tax under art. VIII of the Texas Constitution. The Edgewood Plaintiffs further request a declaration that, insofar as Defendants continue to rely on disparate property values and accompanying taxes to fund public schools, equalization provisions such as recapture and a cap on maximum tax rates, remain essential for an efficient public school system under Art. VII, § 1 of the Texas Constitution.

4. The Edgewood plaintiffs include five school districts educating more than 60,000 students and four parents who pay property taxes and whose minor children attend or will attend the Pasadena I.S.D. or Amarillo I.S.D.

5. Fort Bend I.S.D., et al. filed their Original Petition on December 22, 2011, in Travis County District Court under Cause No. D-1-GV-11-002028. The Fort Bend I.S.D. suit alleges that the Texas public school finance system is unconstitutional because it does not provide sufficient funding to allow school districts to meet increasing state standards and mandates and is therefore inadequate and unsuitable and fails to provide for a general diffusion of knowledge; because the dual system of "target revenue" and formula-based funding arbitrarily funds districts at different levels and is therefore inefficient and arbitrary; because the combination of underfunding, increasing standards, and the statutory cap on M&O tax rates

prevents districts from exercising “meaningful discretion” in setting their tax rates thereby creating a state ad valorem tax. The Fort Bend I.S.D. suit includes 79 districts educating 1.8 million Texas children.

6. Robert Scott, Texas Commissioner of Education, Susan Coombs, Texas Comptroller of Public Accounts and the Texas State Board of Education are defendants in all the above-mentioned suits. All defendants are represented by the Texas Attorney General.

7. The suits involve common issues of law and fact and relate substantially to the same subject matter. Similar evidence will be material, relevant and admissible in all suits.

8. Unless the State defendants file a plea to the jurisdiction as to the claims of any party and take an interlocutory appeal if they lose their plea, no party will be prejudiced as a result of consolidation. On the contrary, consolidation will result in judicial economy and uniform results for all parties.

9. State defendants will be able to more effectively and economically defend against the claims of unconstitutionality against the Texas public school finance system if all the claims are in one suit as opposed to four suits. At a meeting of the parties on March 2, 2012, Assistant Attorney General Robert O’Keefe indicated that the State defendant’s agreed with consolidation.

10. This suit was the first filed.

11. The parties wish to consolidate these cases for filing purposes, discovery, trial and judgment. Within the consolidated case, each party wishes to maintain its identity and control of its case. The parties do not intend for this motion or this requested consolidation to be construed as limiting the right of any party to present evidence or examine witnesses relevant to any issue in the consolidated cases.

12. If the Court denies any motion for summary judgment or a plea to the jurisdiction to any of the claims of any of the parties, including intervenors, filed by the State Defendants,

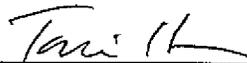
and that denial is subject to an interlocutory appeal and stay pursuant to Tex. Civ. Prac. & Rem. Code section 51.014(a)(8) or any other law, should the State Defendants appeal, the challenged claim shall be severed from the remaining claims, and the State Defendants and other parties unequivocally agree they will not seek to stay the consolidated proceedings, including discovery and trial.

13. This motion further does not constitute any of the above-named plaintiffs' waiver to challenge the present or future intervention of any party into any of the aforementioned lawsuits.

WHEREFORE, premises considered, Plaintiffs, the Texas Taxpayer and Student Coalition, et al. move that *Calhoun County I.S.D., et al. v. Robert Scott, et al.*, Cause No. D-1-GV-11-001917 in the 419th Judicial District of Travis County; that *Edgewood I.S.D., et al. v. Robert Scott, et al.*, Cause No. D-1-GV-11-001972, in the 345th Judicial District of Travis County; and that *Fort Bend I.S.D., et al. v. Robert Scott, et al.*, Cause No. D-1-GV-11-002028 in the 200th Judicial District of Travis County be consolidated with this cause of action, under this caption and cause number for filing purposes, discovery, and trial.

Respectfully submitted,

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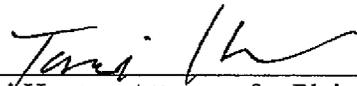
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ATTORNEYS FOR PLAINTIFFS,
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COALITION, et al.

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that she conferred with all the Plaintiff Attorneys, Mark R. Trachtenberg, David G. Hinojosa, and J. David Thompson, III by e-mail during the week of March 19, 2012, and with Shelly Dahlberg, attorney for State Defendants, on March 27, 2012, and they all agree to the foregoing motion.



Toni Hunter, Attorney for Plaintiff
The Texas Taxpayer and Student Coalition

CERTIFICATE OF SERVICE

The undersigned certifies that on March 27, 2012, a true and correct copy of the foregoing was served upon the following counsel of record in accordance with the Texas Rules of Civil Procedure and the Texas Local Rules:

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