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April 10, 2012

Via efile

The Honorable John K. Dietz
Travis County Courthouse
1000 Guadalupe, 3rd Floor
Austin, Texas 78701

RE: Cause No. D-1-GN-11-003130, *The Texas Taxpayer & Student Fairness Coalition v. Scott*, In the 250th Judicial District Court, Travis County, Texas

Dear Judge Dietz:

At the pre-trial conference held on March 28, 2012, Your Honor set a follow-up status conference for April 16, 2012 at 3:30 p.m. This conference was for any issues taken up in the pre-trial conference that could not be resolved by agreement. An issue came up after the pre-trial conference regarding consolidation that will require the court's attention on April 16.

At the March 28 pre-trial conference, the parties brought up consolidation of the cases. Your Honor indicated the court would consolidate the cases into one cause number. Toward the end of the hearing, Justice Enoch clarified that it was a consolidation "for all purposes." Counsel Toni Hunter offered to present the court with an order consolidating the cases.

On April 3, the parties had a telephone conference regarding scheduling order matters. In that telephone conference, it was learned that an order had already been submitted to the court and signed the day before. A copy of that order had not been served on the Intervenor. The order contained an additional paragraph regarding severance of the case in the event of a plea to the jurisdiction being taken up on appeal. Moreover, the order was entitled "agreed and unopposed," yet the Intervenor was never presented with the order to enter such an agreement. In fact, if they had been, the additional language would have been opposed.

Counsel contacted Toni Hunter regarding this issue to seek a resolution. We were told that we needed to take this issue up with David Hinojosa as the severance language was his addition. The undersigned spoke with Mr. Hinojosa who confirmed that he would not have agreed to the consolidation without the inclusion of the severance language.

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Interestingly, when Justice Enoch clarified the nature of the consolidation as “for all purposes,” no mention was made of a severance.

In summary, the Intervenors agree with the consolidation of the cases for all purposes. However, the Intervenors never entered any agreement regarding the severance of the case, and will request the court to strike the April 2, 2012 order. We will be ready to discuss this matter with the court on April 16, 2012 at 3:30 p.m.

Respectfully submitted,

/s/

J. Christopher Diamond

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cc: *via email*

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