

[T]he Efficiency Intervenors request that the Court render judgment declaring that the current system of public free schools violates Article VII, Section I of the Texas Constitution in that it is not efficient in providing for the general diffusion of knowledge in order to preserve the liberties and rights of the people. The evidence will show that the system fails the qualitative efficiency test.

Seeming to recognize that their earlier pleadings went too far in asking the Court to declare particular elements of the school funding system unconstitutional, the Efficiency Intervenors appear to have modified their claims and cast them as similar in nature to the efficiency claims of the other Plaintiff groups in the case, *i.e.* that the *system* of public free schools in Texas fails to meet the constitutional efficiency standard.

However, this assertion of the Efficiency Intervenors is completely undermined by the very next sentence in their Brief:

Because Texas Education Code, Chapter 21 impairs efficiency, the Efficiency Intervenors further request a declaration that the statute is unconstitutional, in violation of Article VII, Section 1 of the Texas Constitution.

By claiming the unconstitutionality of a small portion of the Texas Education Code, Chapter 21, the Efficiency Intervenors are still asking this Court to abandon the task of systemic review in favor of a more piecemeal approach. In other words, the Efficiency Intervenors are expressly inviting this Court to substitute its views for those of the Legislature. In making such a request, the Efficiency Intervenors are asserting two mutually exclusive arguments.

Chapter 21 of the Education Code is the statutory embodiment of the Legislative policy developed to manage public school districts in Texas. For example:

- Texas Educ. Code § 21.002 requires teacher employment contracts. Since this requirement is part of Chapter 21, the Efficiency Intervenors are asking that a court of

law declare to the Texas Legislature that educator employment contracts are unconstitutional. The Efficiency Intervenors have yet to explain how making educators at-will employees who could walk off the job at any time of the year would be efficient.

- Texas Educ. Code § 21.003 and all of Subchapter B require educator certification, and create the statutory procedures governing the credentialing authority. Educator certification is required by state law for public school teachers in every state in the union. Requiring those individuals to whom we entrust our children's education to demonstrate some degree of knowledge or competence creates efficiency in the classroom, not the opposite.
- Texas Educ. Code §§ 21.006 and 21.007 require that educator misconduct must be reported and appropriately disclosed to the State's licensing authority. It appears that the Efficiency Intervenors find the requirement to report educators who are suspected of illegal or immoral conduct in order to protect the school children of the state to be an unconstitutional burden. Section 21.058 requires the revocation of an educator's certification and termination of the educator's employment if the educator is convicted of certain egregious crimes. The Efficiency Intervenors have not explained how such a statute is unconstitutionally inefficient.
- Texas Educ. Code Chapter 21, Subchapters C, D, and E describe the types of contracts under which educators may be hired by local school districts, and provide procedures for the termination of those contracts. It is axiomatic that consistency in the classroom is a major factor of efficiency. Without a system to prevent educators from leaving in the middle of the school year, local school districts would frequently have to fill positions with substitute teachers, creating a situation in which new teachers must get up to speed

and students must acclimate themselves to new teachers. Once a contract is created by a governmental entity, the government may not terminate that contract without providing due process. Subchapters C, D, and F create a very manageable system for providing contracted educators with due process. In fact, without such an administrative process, educators would revert to federal courts for their due process protections, which would seem to be much less efficient.

The foregoing provisions are just a few examples. If Chapter 21 is unconstitutional, it would seem that the Efficiency Intervenors would ask the Court to review each and every chapter of the Education Code that relates to public education in the K-12 realm. The Texas Education Code is filled with provisions that require the expenditure of local funds to ensure compliance. Once this Court opens that Pandora's box, this Court (and probably many others) can look forward to a never-ending cycle of reviewing every new statutory provision in order to determine whether it is efficient.

In *Edgewood Independent School District v. Meno*, (*Edgewood IV*), 917 S.W.2d 717 (Tex. 1995) the Texas Supreme Court ruled “. . . we have consistently refrained from prescribing the means which the Legislature must employ in fulfilling its duty, [W]e do not prescribe the structure for "an efficient system of public free schools. The duty to establish and provide for such a system is committed by the Constitution to the Legislature. Our role is only to determine whether the Legislature has complied with the Constitution” [Citations omitted]. This Court should follow clearly established precedent and forego the invitation of the Efficiency Intervenors to engage in a piecemeal review of select provisions related to the public school educational system.

Respectfully Submitted,



JOEY MOORE

General Counsel and Director of Legal Services

Texas State Teachers Association

316 W. 12th Street

Austin, Texas 78701

State Bar No. 24027523

Attorney for *Amicus Curiae*

Texas State Teachers Association

Unofficial copy Travis Co. District Clerk Valerie Price

CERTIFICATE OF SERVICE

I also certify that on August 3, 2012, I served the foregoing document via facsimile to Intervenor and to the other parties listed below:

GREG ABBOTT

Attorney General of Texas

DANIEL T. HODGE

First Assistant Attorney General

DAVID C. MATTAX

Deputy Attorney General for Defense Litigation

ROBERT B. O'KEEFE

Chief, General Litigation Division

SHELLEY N. DAHLBERG

Assistant Attorney General Texas

Texas Attorney General's Office

General Litigation Division

P.O. Box 12548, Capitol Station Fax:

Austin, Texas 78711

Fax: (512) 320-0667

Attorneys for Defendants

Mark R. Trachtenberg

HAYNES AND BOONE, LLP

1 Houston Center

1221 McKinney St., Suite 2100

Houston, Texas 77010

Fax: (713) 547-2600

John W. Turner

HAYES AND BOONE, LLP

2323 Victory Avenue, Suite 700

Dallas, Texas 75219

Fax: (214) 651-5940

Attorneys for Plaintiffs, Calhoun County ISD, et al.

J. Christopher Diamond

The Diamond Law Firm, P.C.

17484 Northwest Freeway

Ste. 150

Houston, Texas 77040

Fax: (832) 201-9262

Richard Gray

Toni Hunter

GRAY & BECKER, P.C.

900 West Ave.

Austin, Texas 78701

Fax: (512) 482-0924

Randall B. Wood

Doug W. Ray

RAY & WOOD

2700 Bee Caves Road #200

Austin, Texas 78746

(512) 323-1156

Attorneys for Plaintiffs, Texas Taxpayer & Student Fairness Coalition, et al.

J. David Thompson, III

Philip Fraissinet

THOMPSON & HORTON, LLP

Phoenix Tower, Suite 2000

3200 Southwest Freeway

Houston, Texas 77027

Fax: (713) 583-9668

Attorneys for Plaintiffs, Fort Bend ISD

Craig T. Enoch

Melissa A. Lorber

Enoch Kever PLLC

600 Congress, Ste. 2800

Austin, Texas 78701

Fax: (512) 615-1198

Attorneys for Intervenor, Joyce Coleman, et al.

Lonnie P. Hollingsworth
Paige Bruton
TEXAS CLASSROOM TEACHERS
ASSOCIATION
P.O. Box 1489
Austin, Texas 78767
Facsimile: (512) 469-9527

Attorneys for Amicus Curiae - TCTA



By: _____
Joey Moore

Unofficial copy Travis Co. District Clerk Verla L. Price