

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

TEXAS TAXPAYER & STUDENT	§	IN THE DISTRICT COURT OF
FAIRNESS COALITION, et al.,	§	
	§	
Plaintiffs,	§	
	§	
VS.	§	TRAVIS COUNTY, TEXAS
	§	
MICHAEL WILLIAMS, Commissioner of	§	
Education, et al.,	§	
	§	
Defendants.	§	200 TH JUDICIAL DISTRICT

ISD PLAINTIFFS’ RESPONSE TO INTERVENORS’ BRIEF REGARDING PROPOSED FINDINGS OF FACT AND INTERVENORS’ PROPOSED FINAL JUDGMENT

The Calhoun County ISD Plaintiffs, the TTSFC Plaintiffs, the Fort Bend ISD Plaintiffs, and the Edgewood ISD Plaintiffs¹ (the “ISD Plaintiffs”) file this response to (1) the Intervenor’s March 22 brief relating to the ISD Plaintiffs’ proposed findings of fact and (2) their March 12 filing relating to their proposed form of final judgment.

ARGUMENT AND AUTHORITIES

I. The Intervenor’s pled only a “qualitative efficiency” claim, a claim that has never previously been addressed by the Texas Supreme Court and which is distinct (as framed) from the other Article VII, Section 1 claims.

Despite the Intervenor’s efforts – both in their March 22 brief and their proposed final judgment – to shoehorn their “qualitative efficiency” claim into an adequacy claim, they cannot do so for two principal reasons.

First, the Intervenor’s never pled an adequacy claim. Their pleadings make clear that their sole claim was a “qualitative efficiency” claim, which *they explicitly recognized* (1) was distinct from the other Article VII, Section 1 claims in the case, and (2) had never before been adjudicated in Texas. *See* Third Amended Plea in Intervention, filed 10/15/12, at ¶ 4 (“While the

¹ It should be noted that the Edgewood ISD Plaintiffs include school districts, parents, and school children.

above-styled consolidated lawsuit challenges, *inter alia*, adequacy, suitability and financial efficiency of the current system of school finance, the Efficiency Intervenors' claims regarding lack of *qualitative* efficiency of the system of public free schools would be prejudiced if this litigation were to proceed without their involvement."); at ¶ 8 ("And yet once again, even though repeatedly requested by Texas' highest court, the issue of *qualitative* efficiency is absent from those pleadings"); at ¶ 9 ("The Court further recognized that the issue of efficiency, as defined traditionally, has not been litigated"); at ¶ 24 (seeking a declaration that the system of public free schools "is not efficient" because the "evidence will show that the system fails the qualitative efficiency test."); at ¶ 25 ("The Intervenors seek a judgment that [various sections of the Education Code are] not efficient as required by article VII, sec. 1 of the Texas Constitution").

Second, the Intervenors' argument that adequacy, efficiency, and suitability are merely "descriptive, not severable independent claims" (Intervenors' Brief at 2) – is belied by a plain reading of *West Orange-Cove II*. The Texas Supreme Court made clear in that case that Article VII, Section 1 sets out three separate constitutional standards: efficiency, adequacy, and suitability. *West Orange-Cove II*, 176 S.W.3d 746, 752-53 (Tex. 2005). The "efficiency" clause requires that "[c]hildren who live in poor districts and children who live in rich districts [are] afforded a substantially equal opportunity to have access to educational funds." *Id.* at 753 (citation omitted). The "general diffusion of knowledge" clause – which the *Supreme Court* labeled as "adequacy," raises the question of "whether public education is achieving the general diffusion of knowledge the Constitution requires." *Id.* The Court explained that districts satisfy this constitutional obligation when they are reasonably able to "provide all of their students with a *meaningful opportunity* to acquire the essential knowledge and skills reflected in . . .

curriculum requirements . . . such that upon graduation, students are prepared to continue to learn in postsecondary educational, training, or employment settings.” *Id.* at 787 (citations omitted). Finally, the “**suitability**” clause “requires that the public school system be structured, operated, and funded so that it can accomplish its purpose for all Texas children.” *Id.* at 753.

The Supreme Court separately considered each of these claims in *West Orange-Cove II*, addressing the adequacy claims in Part III.B, the efficiency claims in Part III.C, and the suitability claims in Part III.D of its opinion. *Id.* at 785-94. In addition, the Texas Supreme Court previously analyzed financial efficiency (equity) claims in *Edgewood I* and *Edgewood II* without addressing adequacy and suitability claims, which were not raised in those cases. *See Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391, 397 (Tex. 1989) (*Edgewood I*); *Edgewood Indep. Sch. Dist. v. Kirby*, 804 S.W.2d 491, 496 (Tex. 1991) (*Edgewood II*). Further, numerous courts across the country have treated equity claims (focused on disparities of funding among districts) and adequacy claims (focused on the overall levels of funding of districts) as distinct claims and have adjudicated them independently. The Texas Supreme Court’s framing of the efficiency and adequacy claims in prior litigation should be viewed in context of these other decisions.

II. Intervenor’s fail to respond meaningfully to this Court’s February 4 ruling that their claims are non-justiciable.

On February 4, 2013, at the conclusion of trial, this Court declined to rule for the Intervenor on their Article VII, Section 1 claim, instead “declar[ing] that the issues raised by the Efficiency Intervenor clearly reflect policy decisions within the sound discretion of the Legislature in shaping the public school system.” (2/4 Tr. at 163.) The proposed findings and final judgment submitted by the ISD Plaintiffs are consistent with that ruling.

The Intervenors continue to dance around the question of how the Legislature could remedy a “qualitative efficiency” violation. For example, in their Proposed Findings of Fact, the Intervenors seek the following findings:

142. The mandates and guides imposed on Texas School District System that drive inefficiencies include minimum salary schedules, across-the-board pay raises, teacher-student ratios, teacher certification requirements, inconsequential appraisal measures, a redundant multi-level appeal process for contract non-renewal decisions, and preference given to teacher seniority.

.....

144. Unless the Texas Legislature and TEA remove these mandates and redesign their regulations, the Texas School District System cannot implement programs shown to achieve educational results. Significant programmatic innovation will not be attempted nor any significant educational improvement achieved.

Intervenors’ Proposed Findings of Fact at p. 21.

In essence, they are asking the judiciary to tell the Legislature that it must eliminate the minimum salary schedules, forego across-the-board pay raises, eliminate mandated teacher-student ratios, eliminate teacher certification requirements, modify teacher appraisal measures, and modify or eliminate the process for teacher contract non-renewal decisions (among other things), in order to remedy a constitutional violation. As this Court properly found, however, such a request violates the Texas Supreme Court’s repeated admonition that the judiciary’s role “is limited to ensuring that the constitutional standards are met,” not “prescrib[ing] *how* the standards should be met.” *WOC II*, 176 S.W.3d at 753. Recognizing that “much of the design of an adequate public education system cannot be judicially prescribed,” (*id.* at 779), the Texas Supreme Court has held that it is the Legislature that has the right to determine the “‘methods, restrictions, and regulation’” of the educational system. *Edgewood IV*, 917 S.W.2d at 736 (quoting *Mumme v. Marrs*, 40 S.W.2d 31, 36 (Tex. 1931)). The Texas Supreme Court has stated unequivocally that, in discharging its review of Article VII claims, it will “not dictate to the

Legislature how to discharge its duty . . . [nor will it] judge the wisdom of the policy choices of the Legislature, or . . . impose a different policy of our own choosing.” *Id.* at 726.

In contrast, the ISD Plaintiffs’ adequacy and equity claims do not require this Court to delve into the minutia of education policy. With respect to the adequacy claims, the Court simply has to decide whether the school finance system affords districts the amount of resources needed to reasonably provide all of their students a meaningful opportunity to acquire the essential knowledge and skills reflected in the state curriculum such that upon graduation, students are prepared to continue to learn in postsecondary educational, training, or employment settings. With respect to the equity claim, the Court simply has to decide whether the school finance system provides districts substantially equal access to revenues necessary to provide a general diffusion of knowledge at similar tax effort. In other words, the ISD Plaintiffs are asking the Court to determine only if “the constitutional standards are met,” not to “prescribe *how* the standards should be met.” *WOC II*, 176 S.W.3d at 753. The Legislature can remedy these violations through changes to the finance system without wading into the intricacies of education policy.

The Texas Supreme Court repeatedly has found adequacy and equity claims to be justiciable. *See, e.g., Edgewood I*, 777 S.W.2d at 394; *Edgewood II*, 804 S.W.2d; *Edgewood Indep. Sch. Dist. v. Meno*, 917 S.W.2d 717 (Tex. 1995); *WOC II*, 176 S.W.3d at 776-81. So have the vast majority of other state supreme courts. *WOC II*, 176 S.W.3d at 780 n.183.² In contrast,

² The Texas Supreme Court cited: *Lake View Sch. Dist. No. 25 v. Huckabee*, 91 S.W.3d 472, 507 (Ark. 2002); *Idaho Schools for Equal Educ. Opportunity v. Evans*, 850 P.2d 724, 734-35 (Idaho 1993); *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 213-14 (Ky. 1989); *McDuffy v. Sec’y of the Executive Office of Educ.*, 615 N.E.2d 516, 554-55 (Mass. 1993); *Columbia Falls Elem. Sch. Dist. No. 6 v. State*, 109 P.3d 257, 260-61 (Mont. 2005); *Claremont Sch. Dist. v. Governor*, 635 A.2d 1375, 1381 (N.H. 1993); *Abbott v. Burke*, 693 A.2d 417, 428-29 (N.J. 1997); *Campaign for Fiscal Equity, Inc. v. State*, 655 N.E.2d 661, 666-68 (N.Y. 1995); *Leandro v. State*, 488 S.E.2d 249, 261 (N.C. 1997); *DeRolph v. State*, 677 N.E.2d 733, 737 (Ohio 1997); *Abbeville County Sch. Dist. v. State*, 515 S.E.2d 535, 540 (S.C. 1999); *Seattle Sch. Dist. No. 1 v. State*, 585 P.2d 71, 84-87 (Wash. 1978); *Pauley v. Kelly*, 255

Intervenors have not pointed to a single other court that has found a “qualitative efficiency” claim – or anything remotely similar – to be justiciable.

III. The Intervenors’ proposed form of judgment is flawed in other respects.

The ISD Plaintiffs object to two aspects of the Intervenors’ proposed form of judgment submitted on March 12. First, they object to the inclusion of the Intervenors as a prevailing party on the adequacy and suitability claims, for the reasons expressed above.

Second, the ISD Plaintiffs object to the Intervenors’ proposed language in Section V of the Proposed Final Judgment as incomplete. Their proposed language suggests that the Intervenors were only seeking a declaration of qualitative inefficiency with respect to Chapter 21 and sections 12.101(b), 12.013(b)(3)(F)-(S), 25.111-112, 29.203(d), 39.082, and 42.102 of the Education Code. However, their live pleadings were not limited to these Code provisions. For example, in Paragraph 12 of their live pleading, they state:

[T]he Efficiency Intervenors request the Court to rule that the entire system of public free schools is inefficient and therefore unconstitutional. . . . Intervenors will show that the system is unconstitutionally inefficient due to a number of current problems, considered individually or collectively. These problems include, but are not limited to, the following general and specific issues:

Third Amended Plea in Intervention, filed 10/15/12, at ¶ 12. Later, in the same pleading, they allege that: “[t]here are also inefficiencies in the system not tied directly to any specific statute or regulation.” *Id.* at ¶ 20. Thus, the ISD Plaintiffs suggest that the broader language used in their form of proposed judgment more accurately disposes of the Intervenors’ claims.

S.E.2d 859, 870 (W. Va. 1979); *Vincent v. Voight*, 614 N.W.2d 388, 396 n.2 (Wis. 2000); *State v. Campbell County Sch. Dist.*, 32 P.3d 325, 334-45 (Wyo. 2001).

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