

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

TEXAS TAXPAYER & STUDENT
FAIRNESS COALITION, *et al.*,

Plaintiffs,

VS.

MICHAEL WILLIAMS, TEXAS
COMMISSIONER OF EDUCATION, *et al.*,

Defendants

IN THE DISTRICT COURT OF

Consolidated Case:

FORT BEND INDEPENDENT SCHOOL
DISTRICT, *et al.*,

Plaintiffs,

VS.

MICHAEL WILLIAMS, TEXAS
COMMISSIONER OF EDUCATION, *et al.*,

Defendants.

TRAVIS COUNTY, TEXAS

200TH JUDICIAL DISTRICT

**FORT BEND ISD PLAINTIFFS' RESPONSE IN SUPPORT OF
CALHOUN COUNTY ISD PLAINTIFFS' MOTION TO REOPEN THE EVIDENCE**

Although the Fort Bend ISD Plaintiffs do not join in the Calhoun County ISD Plaintiffs' Motion to Reopen the Evidence under Rule 270, the Fort Bend ISD Plaintiffs do support reopening the evidence for our own distinct reasons. The Fort Bend ISD Plaintiffs do not believe that the legislative changes, though significant, will or should change the ultimate conclusion that the school finance system is inadequate, inequitable, and unsuitable in violation of Article VII, Section 1 of the Texas Constitution and that it imposes a de facto state property tax in violation of Article VIII, Section 1-e. However, the Fort Bend ISD Plaintiffs believe that this Court should reopen the evidence and examine any impact (or lack thereof) on its conclusions of

law and its ruling, in order to avoid a probable remand by the Supreme Court and the resulting delay in relief that would be injurious to the plaintiff school districts.

I.

Standard for Granting a Rule 270 Motion

The trial court's discretion to reopen the evidence under Rule 270 "should be liberally exercised in the interest of permitting both sides to fully develop the case in the interest of justice." *In re A.F.*, 895 S.W.2d 481, 484 (Tex. App.—Austin 1995, no writ). When deciding whether such a motion is in the interest of justice, the Court should consider whether (1) the moving party showed due diligence in obtaining the evidence, (2) the proffered evidence is decisive, (3) receiving the evidence will cause undue delay, and (4) granting the motion will cause an injustice. *See, e.g., id.* (citing *Word of Faith World Outreach Ctr. Church v. Oechsner*, 669 S.W.2d 364, 367 (Tex. App.—Dallas 1984, no writ)); *In re Hawk*, 5 S.W.3d 874, 877 (Tex. App.—Houston [14th Dist.] 1999, no pet.).

II.

Calhoun County's Motion Should be Granted in the Interest of Justice and in Order to Avoid Undue and Injurious Delay to Plaintiff School Districts

Here, all parties have exercised due diligence in obtaining the evidence. The Fort Bend ISD plaintiffs do not believe that the evidence will prove to be decisive, in that it should not change the Court's conclusions of law or its ultimate ruling, as announced from the bench on February 2, 2013, that the school finance system is inadequate, inequitable, and unsuitable and that it levies a state property tax. The legislative changes do not create an entirely new school finance system, nor do they cure the constitutional deficiencies of that system. However, the legislative changes are significant enough that justice demands that the trial court examine them and their impact on its ruling. If this Court does not do so, the ruling will be left open to attack that the changes are decisive and that the case should be reversed and remanded or simply

declared moot. Indeed, the State Defendants have already previewed their appellate argument for just such a result when they stated, in the spreadsheet laying out each party's positions on the re-opening: "If the court enters judgment on laws that no longer exists as a result of the bills that repealed, replaced and amended existing school finance law and policy, the Court's opinion would be inappropriately advisory in nature." Should the State Defendants prevail on this argument on appeal, the resulting delay would cause significant injury to the Fort Bend ISD plaintiffs, as well as the other school districts in the state. In other words, while re-opening the evidence will not cause undue delay or work an injustice, denying the motion could do both.

III.

The Hearing on the New Evidence Must Allow All Sides to Fully Develop the Evidence Regarding Any Impact of the Legislation on the Parties' Claims

The Fort Bend ISD Plaintiffs agree with the Calhoun County ISD Plaintiffs that the Court should limit the topics to be addressed and the time and scope of discovery. However, it is important to note that "the trial court must allow both sides to fully develop the case if a reopening is allowed in the interest of justice." *In re Estate of Huff*, 15 S.W.3d 301, 309 (Tex. App.—Texarkana 2000, no pet.) (citing *In re Johnson*, 886 S.W.2d 869, 873 (Tex. App.—Beaumont 1994, no writ)). Therefore, if the evidence is re-opened, the Court should hold a hearing to allow all parties to present testimony and evidence regarding the impact of the hearing on the parties' claims. It would work an injustice, and be reversible error, if the State were allowed to introduce unanswered evidence regarding its view of "what the new legislation does." As the weeks of trial demonstrated, it is never that simple. A reading of the Calhoun County ISD Plaintiff's motion confirms that the parties will disagree on what the legislation does and how it impacts the claims at issue in trial. For example, while the Fort Bend ISD Plaintiffs agree with the Calhoun County ISD Plaintiffs that the changes to the school funding formulas do not change the ultimate conclusion that the system is inadequate and unsuitable, the Fort Bend ISD Plaintiffs

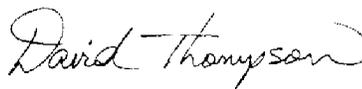
disagree about the impact of the changes on the efficiency/equity of the system. Unless every district has been leveled up at least to the general diffusion of knowledge, the system is not efficient, nor is it adequate or suitable. The only way for the Court to determine whether leveling up to general diffusion of knowledge/adequacy is something “the new legislation does” is to hear evidence from both sides; it cannot be determined by taking judicial notice of the legislation or reading a spreadsheet that shows the “gaps” in funding.

IV.
Conclusion

For the reasons state above, the Fort Bend ISD Plaintiffs respectfully request that the Court grant the Calhoun County ISD Plaintiffs’ Motion to Reopen the Evidence and award the relief it seeks.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document has been forwarded on this 18th day of June, 2013 to counsel of record in accordance with Rule 21a of the Texas Rules of Civil Procedure, as follows:

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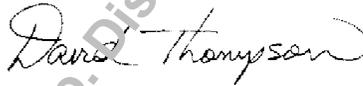
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