

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

TEXAS TAXPAYER & STUDENT
FAIRNESS COALITION, et al.,

Plaintiffs,

VS.

MICHAEL WILLIAMS, Commissioner of
Education, et al.,

Defendants.

Consolidated Case:

CALHOUN COUNTY INDEPENDENT
SCHOOL DISTRICT, et al.,
Plaintiffs,

VS.

MICHAEL WILLIAMS, Commissioner of
Education, et al.,

Defendants.

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

200TH JUDICIAL DISTRICT

**CALHOUN COUNTY ISD PLAINTIFFS’
REPLY TO STATE DEFENDANTS’ SUPPLEMENTAL RESPONSE TO
PLAINTIFFS’ AND INTERVENORS’ APPLICATION FOR ATTORNEYS’ FEES**

The Calhoun County ISD Plaintiffs file this Reply to State Defendants’ Supplemental Response to Plaintiffs’ and Intervenors’ Application for Attorneys’ Fees.

INTRODUCTION

The Court should exercise its discretion to award the full amount of fees requested by the Calhoun County ISD Plaintiffs. The Calhoun County ISD Plaintiffs have shown through the affidavits of two attorneys’ fees experts that their requested fees were both reasonable and necessary, and the State has not produced any contrary testimony on the issue on attorneys’ fees. The Calhoun County ISD Plaintiffs’ request for attorneys’ fees does not include any fees for the

first or second phases of trial that the Court previously indicated would not be allowed. The Calhoun County ISD Plaintiffs have further reduced their request for fees by five percent to account for any fees the Court may find to be unrecoverable. Therefore, the amount of fees requested by the Calhoun County ISD Plaintiffs is already conservative. Nevertheless, the State has specifically objected to the Calhoun County ISD Plaintiffs' request for fees from the second phase of trial on five separate grounds. The State asserted four of these five objections after the first phase of trial, and the Court rejected them.

The Calhoun County ISD Plaintiffs have already responded to the objections the State asserted to their fee request after the first phase of trial, and they incorporate herein by reference their earlier briefing.¹ The Calhoun County ISD Plaintiffs file this reply to address the State's specific objections to their request for fees from the second phase of trial.

ARGUMENT AND AUTHORITIES

The question of whether it is equitable and just to award any or all of the Calhoun County ISD Plaintiffs' reasonable and necessary attorneys' fees is within the trial court's sound discretion.² The Calhoun County ISD Plaintiffs have established the reasonableness and necessity of their requested fees through two affidavits,³ and the State has failed to provide any contrary testimony or evidence. The Court is well within its discretion to award the Calhoun County ISD Plaintiffs the full amount of attorneys' fees requested.

¹ See generally ISD Plaintiffs' Joint Reply to Defendants' Second Amended Response to Plaintiffs' and Intervenors' Requests for Attorneys' Fees and Objections to Defendants' Request for Attorneys' Fees ("First Reply to Defendants' Fee Response").

² See *Ridge Oil Co., Inc. v. Guinn Investments*, 148 S.W.3d 143, 162 (Tex. 2004); *Save Our Springs Alliance, Inc. v. City of Dripping Springs*, 304 S.W.3d 871, 891 (Tex. App.—Austin 2010, pet. denied).

³ See generally Second Affidavit of George W. Bramblett ("Bramblett Aff.") and Second Affidavit of John W. Turner ("Turner Aff."), included as Attachments 1 and 2 to Calhoun County ISD Plaintiffs' Notice of Filing of Second Affidavits in Support of Attorneys' Fees.

A. The Calhoun County ISD Plaintiffs have already reduced the amount of their requested fees.

The Calhoun County ISD Plaintiffs have already reduced their requested fees in two significant ways. First, their fee request does not include fees that the Court indicated would not be recoverable. Second, they conservatively reduced their total fee request by an additional five percent.

1. The Calhoun County ISD Plaintiffs reduced their requested fees to account for the Court's proposed ruling on their original fee request.

The Calhoun County ISD Plaintiffs submitted a request for attorneys' fees after the first phase of trial (the "First Fee Request").⁴ The State objected to the fee request,⁵ and the Calhoun County ISD Plaintiffs filed a reply addressing the State's objections.⁶ In a draft final judgment sent to the parties on August 2, 2013, the Court indicated that it sustained certain of the State's objections to the Calhoun County ISD Plaintiffs' fee request totaling 53.3 hours of time, for a total reduction in the Calhoun County ISD Plaintiffs' fee request of \$20,379.20.⁷

The Calhoun County ISD Plaintiffs filed a second request for attorneys' fees after the second phase of trial (the "Second Fee Request").⁸ The Second Fee Request included a request for fees from both the first and second phases of trial. In light of the Court's draft ruling on the First Fee Request, the Calhoun County ISD Plaintiffs reduced their request for fees from the first phase of trial by \$20,379.20 – which is the full amount by which the Court indicated it would reduce the Calhoun County ISD Plaintiffs' First Fee Request. Thus, the fees requested in the Second Fee Request do not include any fees from the first phase of trial that the Court found to

⁴ See generally Calhoun County ISD Plaintiffs' Notice of Filing of Affidavits in Support of Attorneys' Fees.

⁵ See generally Defendants' Second Amended Response to Plaintiffs' and Intervenor's Requests for Attorneys' Fees.

⁶ See generally First Reply to Defendants' Fee Response.

⁷ See Turner Aff. at ¶ 4.

⁸ See generally Calhoun County ISD Plaintiffs' Notice of Filing of Second Affidavits in Support of Attorneys' Fees.

be unrecoverable. Furthermore, the Calhoun County ISD Plaintiffs did not request any of the types of fees from the second phase of trial that the Court's draft final judgment indicated would not be allowed.⁹ Thus, the fees reflected in the Second Fee Request do not include any fees from the first or second phase of trial that the Court has determined to be unrecoverable.

2. The Calhoun County ISD Plaintiffs reduced their total fee request by five percent.

After reducing their total requested fees in the manner described above, the Calhoun County ISD Plaintiffs further reduced the total amount of fees requested by five percent (or \$137,106) to account for any additional fees the Court might consider to be unrecoverable.¹⁰ In ruling on the State's objections to the Calhoun County ISD Plaintiffs' Second Fee Request, the Court should take into account that they have already conservatively reduced the total amount of their fee request.

B. The State's objections to the Calhoun County ISD Plaintiffs' fee request for phase two are without merit.

The State's objections to the Calhoun County ISD Plaintiffs' request for fees from the second phase of trial fall into five primary categories, each of which is addressed below. The State asserted four of these five objections in response to the First Fee Request, and the Court's draft final judgment indicated that the Court would not sustain any of these four objections.

1. The Calhoun County ISD Plaintiffs reasonably incurred fees in connection with their application for attorneys' fees.

Without citing any authority, the State objects that all time spent on a request for attorneys' fees is unreasonable. Whether fees are reasonable is a question of fact.¹¹ The

⁹ See Turner Aff. at ¶ 14.

¹⁰ Turner Aff. at ¶ 12; First Fee Spreadsheet at 1, attached as Ex. B to Bramblett Aff.; Second Fee Spreadsheet at 1, attached as Ex. C to Bramblett Aff.

¹¹ *Ridge Oil Co., Inc.*, 148 S.W.3d at 161.

Calhoun County ISD Plaintiffs have provided evidence in the form of affidavits that the fees they seek are reasonable,¹² and the State has failed to offer any evidence to the contrary. Courts have found sufficient evidence that fees were reasonably incurred based on evidence similar to that included in the Calhoun County ISD Plaintiffs' attorneys' fee affidavits.¹³ The Court should therefore find that the Calhoun County ISD Plaintiffs' fees related to their fee requests are reasonable.

Furthermore, Texas law specifically allows for the recovery of attorneys' fees under the Uniform Declaratory Judgment Act ("UDJA").¹⁴ The evidence throughout trial showed that the school districts that brought this suit are already underfunded, and the ability to potentially recover the fees incurred in this lawsuit is significant for those school districts. It is not unreasonable for the Calhoun County ISD Plaintiffs to request the fees they incurred in an effort to recover the fees that are authorized under the UDJA.

2. Participation by more than one attorney at trial or in other important case events was reasonable and necessary.

The State has once again objected to any fees incurred when more than one attorney attended trial on the same day or participated in the same phone call or meeting.¹⁵ The Court rejected this objection in its final judgment and should do so again.

¹² See Bramblett Aff. at ¶ 20; see generally Turner Aff.

¹³ See *Tex. Commerce Bank v. New*, 3 S.W.3d 515, 517-18 (Tex. 1999) (affidavit testimony in support of attorneys' fees legally sufficient where attorney detailed the services rendered and testified he was a duly licensed attorney, he was familiar with the usual and customary attorneys' fees in locality, and fees sought were reasonable); *Save Our Springs Alliance, Inc.*, 304 S.W.3d at 891 (evidence was sufficient to show that attorneys' fees were reasonable and necessary when supported by affidavit that: (1) described the affiant's qualifications and experience; (2) stated that the fees incurred were comparable to those customarily charged; and (3) identified the attorneys who performed the work, the number of hours billed by each, their hourly rates, and a description of the tasks for which legal services were performed).

¹⁴ See TEX. CIV. PRAC. & REM. CODE § 37.009.

¹⁵ The Calhoun County ISD Plaintiffs refer the Court to their prior briefing on this subject. See First Reply to Defendants' Fee Response at 11-13, 17-18.

Each attorney representing the Calhoun County ISD Plaintiffs played a unique role in this litigation. Thus, their time is not duplicative even when they participated in the same event. Mark Trachtenberg served as lead counsel for the Calhoun County ISD Plaintiffs and is the only appellate attorney among the ISD Plaintiff groups.¹⁶ John Turner played a significant role as trial counsel in this case. Michelle Jacobs handled a number of depositions and witnesses on behalf of the Calhoun County ISD Plaintiffs and, as an associate, was able to do so at a lower rate than Mr. Trachtenberg or Mr. Turner.¹⁷ Thus, each attorney contributed to the case in unique ways, and it was sometime necessary for more than one attorney to participate in the evidentiary hearing or the same meeting to stay apprised of the case and to offer their specific knowledge to the hearing or meeting.

As an example, the State has objected to time entries in which appellate attorney Mark Trachtenberg and associate Michelle Jacobs both participated in the same phone call regarding findings of fact. As an appellate attorney and partner, Mr. Trachtenberg played a vital role in the overall strategy for the findings of fact.¹⁸ As an associate, Ms. Jacobs drafted a large portion of the findings and was able to do so at a lower rate than Mr. Trachtenberg.¹⁹ Thus, it was both reasonable and necessary for both attorneys to participate in those calls.

¹⁶ Turner Aff. at ¶ 13.

¹⁷ See generally First Fee Spreadsheet, attached as Ex. B to Bramblett Aff.; Second Fee Spreadsheet, attached as Ex. C to Bramblett Aff.

¹⁸ See Turner Aff. at ¶ 13.

¹⁹ See generally First Fee Spreadsheet, attached as Ex. B to Bramblett Aff.; Second Fee Spreadsheet, attached as Ex. C to Bramblett Aff.

3. Preparation outside of the scheduled hours for trial was reasonable and necessary.

The State again objects to any trial time beyond the time Court was actually in session.²⁰

The State argues that the Calhoun County ISD Plaintiffs should only recover for five hours of trial attendance per day for the second phase of trial. Time entries for the Calhoun County ISD Plaintiffs' attorneys reflect that their trial days involved significant amounts of preparation and strategy discussion beyond the five hours of actual trial time. Thus, the State's effort to limit the Calhoun County ISD Plaintiffs' recovery of fees to five hours per day on trial days should be rejected.

4. The ISD Plaintiffs needed to be actively involved in the Intervenors' and Charter School Plaintiffs' claims in order to prosecute and defend their own claims.

The State has also re-asserted its objection to any time spent on the Intervenors' and Charter School Plaintiffs' cases. This objection should fail for the reasons outlined in the Calhoun County ISD Plaintiffs' earlier briefing.²¹ During the first phase of trial, the State repeatedly attempted to use the Intervenors' and Charter School Plaintiffs' witnesses to elicit testimony to support the State's defense and to attack the ISD Plaintiffs' claims.²² Thus, the Calhoun County ISD Plaintiffs reasonably incurred fees for their continued involvement in the Intervenors' and Charter School Plaintiffs' claims after the first phase of trial.

For example, the Calhoun County ISD Plaintiffs spent a modest amount of time to prepare for the deposition of John Merrifield, who was designated as an expert by the Intervenors. These fees were reasonable considering the State's efforts to elicit favorable

²⁰ For previous briefing on this subject, see First Reply to Defendants' Fee Response at 12-13.

²¹ See First Reply to Defendants' Fee Response at 13-14, 18-19.

²² See Turner Aff. at ¶ 12.

testimony from the Intervenor's experts during the first phase of trial. The State's objections to these fees should be overruled.

The State also objected to fees that the Calhoun County ISD Plaintiffs incurred to review and respond to a filing in which the Intervenor's sought to define adequacy and urged the Court not to enter the findings of fact and conclusions of law proposed by the ISD Plaintiffs.²³ The ISD Plaintiffs were required to analyze and respond to this filing in support of their claims.

The State has also objected to fees that were incurred to coordinate the preparation of findings of fact with counsel for the State and the Charter School Plaintiffs. The Court specifically directed the parties to prepare these findings, and the time spent by the Calhoun County ISD Plaintiffs to coordinate the omnibus set of findings was both reasonable and necessary.

Furthermore, the Calhoun County ISD Plaintiffs have already reduced their requested fees by five percent to account for any time the Court may find is not recoverable.²⁴ The State's objection to these fees should therefore be overruled.

5. Travel was necessary given the nature of the case.

The State has objected to any time spent travelling to and from Austin for trial and hearings.²⁵ Whether to reduce fees for travel, and if so by how much, is within the sound discretion of the court.²⁶ As the Calhoun County ISD Plaintiffs have previously explained, Austin was the only reasonable location to file suit.²⁷ The Calhoun County ISD Plaintiffs

²³ See generally Efficiency Intervenor's Response to the Texas School District System Plaintiffs' Proposed Findings of Fact and Conclusions of Law.

²⁴ *Id.* at ¶ 12.

²⁵ The Calhoun County ISD Plaintiffs previously addressed this issue in their First Reply to Defendants' Fee Response at 15-16, 19-20.

²⁶ See, e.g., *Watkins v. Fordice*, 7 F.3d 453, 459 (5th Cir. 1993) (abuse of discretion standard applied).

²⁷ See First Reply to Defendants' Fee Response at 15-16.

reasonably obtained counsel located in Houston and Dallas, considering the statewide nature of the claims and the experience of Mark Trachtenberg (who resides in Houston) in the prior school finance case.²⁸ The Court should exercise its discretion to award the full amount of travel fees requested.

CONCLUSION

For the reasons stated above, and in all other briefing filed by the Calhoun County ISD Plaintiffs related to their request for attorneys' fees, the Calhoun County ISD Plaintiffs respectfully request that the Court (1) grant the full amount of attorneys' fees requested by the Calhoun County ISD Plaintiffs and (2) grant any other appropriate relief.

²⁸ *See id.* at 19.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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