

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

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

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IN THE DISTRICT COURT

vs.

200th JUDICIAL DISTRICT

**ROBERT SCOTT, COMMISSIONER
OF EDUCATION, IN HIS OFFICIAL
CAPACITY, et al.**
Defendants.

TRAVIS COUNTY, TEXAS

**EFFICIENCY INTERVENORS' NOTICE OF JOINDER
IN STATE OF TEXAS' MOTION TO RECUSE**

The central basis of the State of Texas' Motion to Recuse is a series of communications between the trial court and counsel for only four of the six plaintiff groups (the counsel representing school districts), between March 19, 2014 and May 14, 2014. The Efficiency Intervenors, additional plaintiffs, were likewise not included in these communications.¹

The trial court pronounced his rulings on the merits on February 4, 2013, ruling in favor of the school districts, refusing to rule on the Efficiency Intervenors' claims, and ruling against the Charter Schools plaintiff group and the State. Not only has no written judgment been entered, but when the Texas Legislature enacted changes during the 2013 Legislative session that addressed, and mooted, every material claim of the school districts, the court expressly authorized pleadings to be amended, reopened evidence, and held another trial during January and February 2014.

¹ As well, the Charter School plaintiff group was excluded.

As the emails between March 19, 2014 and May 14, 2014 demonstrate, the trial court has been actively coaching his select plaintiff groups. In particular, these emails disclose that the trial court has expressly recommended how the school districts should draft their proposed findings of fact and conclusions of law, some of which materially address, both in favor and against, the claims brought by Efficiency Intervenors.

It appears that some attempt to excuse this activity under the rubric of “judicial privilege.” Judicial privilege is not an exception to the prohibition of *ex parte* communications. A court, operating in its judicial role, is not subject to open records demands, and to that extent its notes and work product are not subject to a demand for public disclosure. It is a different thing to claim through judicial privilege the right to negotiate privately with one set of parties over how to prepare their case, present their facts, or draft their proposed findings of fact or conclusions of law, and then as a *fete-a-compli* deliver the results to the excluded parties.

The prohibition against *ex parte* communications has nothing to do with judicial privilege, it has everything to do with a fair trial—a fair opportunity to be heard before the tribunal makes up his mind. Here the Efficiency Intervenors were excluded from the opportunity to offer input, arguments, or objections though the Court was indisputably deciding what its findings and conclusions would be, and consulting with certain plaintiffs on how they should draft them.

If the court was not, in fact, deciding important issues while communicating *ex parte*, its actions, in any event, strongly create the

appearance of bias. Thus, the Efficiency Intervenors join in the State of Texas' Motion to Recuse. That motion is incorporated by reference, along with all exhibits that will be produced *in camera*.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of June, 2014, the foregoing document was served via electronic service and/or email on the following:

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