

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 <sup>TH</sup> JUDICIAL DISTRICT

**ISD PLAINTIFFS’ RESPONSE TO DEFENDANTS’ RENEWED MOTION TO ADMIT EXHIBITS AND MOTION TO ADMIT ADDITIONAL EXHIBITS**

The Calhoun County ISD Plaintiffs, Fort Bend ISD Plaintiffs, TTSCF Plaintiffs, and Edgewood Plaintiffs (together, the “ISD Plaintiffs”) file this Response to Defendants’ Renewed Motion to Admit Exhibits and Motion to Admit Additional Exhibits and would respectfully show as follows.

**BACKGROUND**

At the hearing on the State’s Motion to Recuse, the State moved for admission of Exhibits 0A-55. Judge Peeples admitted these exhibits for purposes of the recusal hearing only. A number of these exhibits were admitted under seal based on this Court’s instruction that the exhibits are the Court’s work product related to the findings of fact and conclusions of law and should be treated as privileged and confidential.

At the conclusion of the hearing on the Motion to Recuse, the State filed a Motion for Admission of Supplemental Exhibits, in which it moved for admission of Exhibits 56-59. These exhibits include additional communications related to the findings of fact and conclusions of law and an email to Judge Peeples and all parties in the case related to Motion to Recuse. Judge Peeples has not ruled on the State’s Motion for Admission of Supplemental Exhibits.

The State renumbered its recusal exhibits as Trial Exhibits 11490-11550 and has asked this Court to admit the exhibits *unsealed* as evidence in the underlying case. This Court should deny the request for the reasons set forth below.

### **ARGUMENT**

**A. The State’s exhibits do not constitute evidence in the underlying lawsuit.**

None of the State’s additional exhibits can be considered “evidence” pertaining to the constitutional issues before this Court. The State’s exhibits include:

- transcripts of closing arguments and other trial transcripts containing statements by the Court and the attorneys in this case;
- hearing transcripts;
- drafts of the Court’s findings of fact and conclusions of law;
- pleadings and Court orders; and
- communications from the Court discussing the findings of fact and conclusions of law.

In essence, the State’s exhibits consist of statements by the Court and the attorneys in this case – none of which is even evidence. Just as an attorney’s statements during opening or closing argument or on a motion pending before the Court are not considered evidence in the underlying case, statements by this Court and the attorneys which are found in the State’s exhibits are likewise not evidence. These exhibits may have been considered evidence in the hearing on the Motion to Recuse, but they are not evidence with respect to the constitutional claims before this Court.

**B. The State’s exhibits are irrelevant.**

Even if these exhibits could be considered “evidence,” they are not relevant to any matter in dispute in the underlying case. Evidence is only relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or

less probable than it would be without the evidence.” TEX. R. EVID. 401. The State’s exhibits, consisting largely of statements from the Court and attorneys, do not make any fact of consequence more or less probable. To the extent these exhibits are relevant to the State’s Motion to Recuse, Judge Peoples has already resolved that issue based on the exhibits in the record related to that motion. Thus, the State’s exhibits need not be admitted as Trial Exhibits in the underlying case to aid in the determination of the Motion to Recuse.

**C. The State’s exhibits are untimely because evidence is already closed.**

At the end of the second phase of trial, the Court announced a “soft close” of the evidence to allow the State to attempt to resolve objections to some of its exhibits before moving them into evidence. (2/7/14 Tr. at 72-75.) Counsel for one of the ISD Plaintiffs asked the Court to confirm that parties would no longer be allowed to offer new exhibits that were not offered at trial. (*Id.* at 74.) The Court confirmed, “There’s not going to be something that wasn’t proffered during trial. It’s an opportunity to clear up and make sure that we’ve got everything that was proffered during trial.” (*Id.*)

On June 25, 2014, the Court ruled on the admissibility of the few remaining exhibits that had been offered at trial. Evidence can now be considered closed, and the State cannot offer additional exhibits that were not offered at trial.

**D. Some of the State’s exhibits are subject to the Court’s orders regarding judicial work product.**

Recusal Exhibits 2-3, 9A, 11, 14-41, 47, 49, and 53-59 (renumbered as Trial Exhibits 11492-11493, 11500, 11502, 11505-11532, 11538, 11540, and 11544-11550) contain this Court’s work product and an email to Judge Peoples discussing the Court’s work product. The Court has previously indicated that materials like these are protected from disclosure under the judicial work product doctrine and are not to be considered “court records.” (*See, e.g.*, RR49:56-

58; RR50:5-6.) Admitting these documents unsealed, as the State has requested, would negate the Court's assertion of the judicial privilege.

### CONCLUSION

For the reasons stated above, the ISD Plaintiffs respectfully request that this Court (1) sustain the objections to Exhibits 0A-59 (renumbered by the State as Trial Exhibits 11490-11550), as stated above, and exclude these exhibits from the trial record, and (2) grant any other appropriate relief.

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**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing document has been served this 27th day of June, 2014 as provided below:

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**ORDER ON DEFENDANTS’ ADDITIONAL EXHIBITS**

On this day, the Court considered the Defendants’ Renewed Motion to Admit Exhibits and Motion to Admit Additional Exhibits, the ISD Plaintiffs’ response, and all other relevant briefing and argument. On June 25, 2014, this Court ruled on the admissibility of the exhibits that are the subject of the Defendants’ Renewed Motion to Admit Exhibits. The Court now rules on the admissibility of the exhibits that are the subject of the Defendants’ Motion to Admit Additional Exhibits (the “Motion to Admit Additional Exhibits”).

It is the opinion of the Court that the Motion to Admit Additional Exhibits is without merit and should be DENIED. It is therefore ORDERED that Defendants’ Exhibits 0A-59, which were renumbered as Exhibits 11490-11550, are NOT ADMITTED.

SIGNED this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
JUDGE PRESIDING