

NO. 04-1144

In the Supreme Court of Texas

**SHIRLEY NEELEY, IN HER OFFICIAL CAPACITY AS
THE COMMISSIONER OF EDUCATION, ET AL.,
Appellants,**

V.

**WEST ORANGE-COVE CONSOLIDATED I.S.D., ET AL.,
Appellees.**

AMICUS CURIAE BRIEF

**The Earl Carl Institute for Legal and Social Policy, Inc.
Texas Southern University
Thurgood Marshall School of Law**

**Professor Marcia Johnson
SBOT No. 10769700**

**Professor Carroll G. Robinson
SBOT No. 17086900**

**Professor Kimberly M. James
SBOT No. 00793396**

**Jennifer M. Hahn
Law Student**

**3100 Cleburne, Office 108
Houston, Texas 77004
Telephone: (713) 313-1139
Telecopier: (713) 313-1153**

IDENTITY OF PARTIES AND COUNSEL

I. Defendants/Appellants:

Shirley Neeley in her official capacity as the Commissioner of Education, the Texas Education Agency, Carol Keeton Strayhorn in her official capacity as Texas Comptroller of Public Accounts, and the Texas State Board of Education (collectively, the “State”)

II. Counsel for Defendants/Appellants (Trial and/or Appellate):

Greg Abbott, Attorney General for the State of Texas
Barry R. McBee, First Assistant Attorney General
Edward D. Burbach, Deputy Attorney General for Litigation
R. Ted Cruz, Solicitor General
Jeff L. Rose, Assistant Attorney General, Chief, General Litigation Division
Amy Wan, Assistant Solicitor General
Danica L. Milios, Assistant Solicitor General
Joseph D. Hughes, Assistant Solicitor General
Merle Hoffman Dover, Assistant Attorney General
Shelley Dahlberg, Assistant Attorney General

OFFICE OF THE ATTORNEY GENERAL FOR THE STATE OF TEXAS

Post Office Box 12548, Capital Station
Austin, Texas 787 11-2548

III. West Orange-Cove Plaintiffs/Appellees:

West Orange-Cove Consolidated Independent School District (“CISD”), Coppell Independent School District (“ISD”), La Porte ISD, Port Neches-Groves ISD, Dallas ISD, Austin ISD, Houston ISD, Alamo Heights ISD, Allen ISD, Argyle ISD, Beckville ISD, Carrollton-Fanners Branch ISD, Carthage ISD, College Station ISD, Cypress-Fairbanks ISD, Danouzet ISD, Deer Park ISD, Fairfield ISD, Graford ISD, Grapevine-Colleyville ISD, Hallsville ISD, Highland Park ISD, Humble ISD, Katy ISD, Kaufman ISD, Lake Travis ISD, Lewisville ISD, Lubbock ISD, Marble Falls ISD, McCamey ISD, Miami ISD, Northeast ISD, Northside ISD, Northwest ISD, Palo Pinto ISD, Pearland ISD, Plano ISD, Pringle Morse Consolidated ISD, Richardson ISD, Round Rock ISD, Round Top Cannine ISD, Spring Branch ISD, Spring ISD, Stafford Municipal ISD, Sweeny ISD, Tenell ISD, Texas City ISD (collectively, the “West Orange-Cove Plaintiffs”)

IV. Counsel West Orange-Cove Plaintiffs/Appellees (Trial and/or Appellate):

George W. Bramblett, Jr.
Nina Cortell
Charles G. On
Haynes & Boone, L.L.P.
901 Main Street, Suite 3100
Dallas, Texas 75202-3789

Mark R. Trachtenberg
Kirk Worley
Haynes & Boone, L.L.P.
1221 McKinney, Suite 2100
Houston, Texas 77010

J. David Thompson, III
Warren Harris
Philip Fraissinet
Bracewell & Guillian, L.L.P.
711 Louisiana Street, Suite 2300
Houston, Texas 77002-2770

V. Alvarado Plaintiffs-Intervenors/Appellees and Cross-Appellants:

Abbott ISD, Academy CISD, Aldine ISD, Alpine ISD, Alvarado ISD, Amarillo ISD, Anna ISD, Anthony ISD, Aspermont ISD, Athens ISD, Aubrey ISD, Avalon ISD, Avery ISD, Axtell ISD, Balmorhea ISD, Bangs ISD, Beeville ISD, Bells ISD, Belton ISD, Big Sandy ISD, Blanket ISD, Blooming Grove ISD, Boles ISD, Boling ISD, Bonham ISD, Booker ISD, Borger ISD, Bowie ISD, Brock ISD, Brownfield ISD, Bruceville-Eddy ISD, Bryson ISD, Buckholts ISD, Burkburnett ISD, Burkeville ISD, Cameron ISD, Campbell ISD, Canton ISD, Canutillo ISD, Canyon ISD, Central Heights ISD, Central ISD, Chapel Hill ISD, Childress ISD, China Spring ISD, Chireno ISD, Cisco ISD, City View ISD, Cleburne ISD, Clint ISD, Coleman ISD, Collinsville ISD, Commerce ISD, Community ISD, Como Pickton ISD, Connally ISD, Cooper ISD, Copperas Cove ISD, Corpus Christi ISD, Cotton Center ISD, Covington ISD, Crandall ISD, Crawford ISD, Crosby ISD, Dalhart ISD, Desoto ISD, Detroit ISD, Diboll ISD, Dickinson ISD, Dilley ISD, Dime Box ISD, Dimmitt ISD, Dodd City ISD, Douglass ISD, Driscoll ISD, Early ISD, Ector ISD, El Paso ISD, Electra ISD, Elkhart ISD, Elysian Fields ISD, Ennis ISD, Era CISD, Etoile ISD, Evannan ISD, Falls City ISD, Fannindel ISD, Ferris ISD, Forney ISD, Fort Davis ISD, Fort Worth ISD, Frost ISD, Gainesville ISD, Ganado ISD, Garrison ISD, Gilmer ISD, Godley ISD, Grandview ISD, Gregory Portland ISD, Gunter ISD, Hale Center ISD, Hamlin ISD, Harleton ISD, Hart ISD, Haskell CISD, Hawley ISD, Hearne ISD, Hemphill ISD, Hereford ISD, Hico ISD, Hidalgo ISD, High Island ISD, Holland ISD, Honey Grove ISD, Hubbard ISD, Hudson ISD, Huffman ISD, Huntington ISD, Hutto ISD, Itasca ISD, Jacksboro ISD, Jasper ISD, Joaquin ISD, Karnes City ISD, Kermit ISD, Kirbyville ISD, Knox City-O'Brien CISD, Kountze ISD, Kress ISD, Krum ISD, La Joya ISD, LaPryor ISD, Lake Worth ISD, Lamesa ISD, Lasara ISD, Latexo ISD, Leverett's Chapel ISD, Linden-Kildare CISD, Lingleville ISD, Lipan ISD, Lockhart ISD, Lorena ISD, Louise ISD, Lyford ISD, Lytle ISD, Mabank ISD, Magnolia ISD, Martinsville ISD, McGregor ISD, Meadow ISD, Megargel ISD, Mercedes ISD, Meridian ISD, Merkel ISD, Mesquite ISD, Mildred ISD, Millsap ISD, Mission CISD, Montague ISD, Morton ISD, Motley County ISD, Muenster ISD, Nederland ISD, New Boston ISD, New Castle ISD, New Home ISD, New Summerfield ISD, Newton ISD, Nocona ISD, Nueces Canyon CISD, Olfen ISD, Olton ISD, Orange Grove ISD, Paint Creek ISD, Pampa ISD, Panhandle ISD, Paradise ISD, Paris ISD, Penin-Whitt CISD, Petersburg ISD, Pflugerville ISD, Poteet ISD, Pottsboro ISD, Prairiland ISD, Premont ISD, Presidio ISD, Princeton ISD, Quanah ISD, Ranger ISD, Redwater ISD, Ricardo ISD, Rice CISD, Rice ISD, Rio Vista ISD, Rivercrest ISD, Robinson ISD, Robstown ISD, Roby CISD,

Rochester County Line ISD, Rocksprings ISD, Rogers ISD, Roosevelt ISD, Rosebud-Lott ISD, Rusk ISD, Sam Rayburn ISD, Samnorwood ISD, San Augustine ISD, San Perlita ISD, Sands CISD, Sanford ISD, Santa Anna ISD, Santa Fe ISD, Santa Maria ISD, Seagraves ISD, Seguin ISD, Seymour ISD, Shallowater ISD, Shelbyville ISD, Shepard ISD, Shiner ISD, Sierra Blanca ISD, Sinton ISD, Slaton ISD, Smyer ISD, Socorro ISD, Southside ISD, Splendora ISD, Springtown ISD, Spur ISD, Stamford ISD, Sulphur Bluff ISD, Sulphur Springs ISD, Sunray ISD, Tahoka ISD, Taylor ISD, Tenaha ISD, Texline ISD, Thorndale ISD, Throckmorton ISD, Timpson ISD, Tolar ISD, Tornillo ISD, Trenton ISD, Trinidad ISD, Troup ISD, Troy ISD, Tulia ISD, Uvalde CISD, Valley View ISD, Van Alstyne ISD, Van ISD, Venus ISD, Vernon ISD, Warren ISD, Weatherford ISD, Wellman-Union ISD, Wells ISD, West Hardin County CISD, White Oak ISD and Whitesboro ISD (collectively, the “Alvarado Plaintiffs/Intervenors” or “Alvarado Intervenors”).

VI. Counsel for Alvarado Plaintiffs-Intervenors/Appellees and Cross-Appellants (Trial and Appellate):

Randall B. Wood
Doug W. Ray
Ray, Wood, Fine & Bonilla, L.L.P.
2700 Bee Caves Road
Austin, Texas 78746

VII. Edgewood Intervenors/Appellees and Cross-Appellants:

Edgewood ISD, Ysleta ISD, Laredo ISD, San Elizario ISD, Socorro ISD, South San Antonio ISD; La Vega ISD, Kenedy ISD, Harlandale ISD, Brownsville ISD, Pharr-San Juan-Alamo ISD, Sharyland ISD, Monte Alto ISD, Edcouch-Elsa ISD, Los Fresnos ISD, Raymondville ISD, Harlingen CISD, Jim Hogg County ISD, LaFeria ISD, Roma ISD, San Benito ISD, and United ISD (collectively, the “Edgewood Intervenors”).

VIII. Counsel for Edgewood Intervenors/Appellees and Cross-Appellants (Trial and Appellate):

Nina Perales
David Hinojosa
Hector Villagra
Mexican American Legal Defense and Educational Fund, Inc.
140 E. Houston Street, Suite 300
San Antonio, Texas 78201

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ABBREVIATIONS

The following abbreviations will be used:

The Earl Carl Institute	ECI
Texas Essential Knowledge and Skills (state curriculum)	TEKS
Texas Assessment of Knowledge and Skills (state assessment test)	TAKS

STATEMENT OF THE CASE

The ECI adopts the statement of the case as articulated by the West Orange-Cove appellees in their reply brief concerning *West Orange-Cove Consol. I.S.D. v. Alanis*, 107 S.W.3d 558 (2003).

ISSUES PRESENTED

- I. The state's school finance system violates the Texas Constitution, the Texas Education Code and Texas Policy in that it fails to adequately educate students so that they can succeed academically in college after graduating from high school.
- II. The state's school finance system violates the Texas Constitution in that it fails to establish the support and maintenance of an adequate system of public free schools.
- III. The state's school finance system violates Texas policy in that it fails to ensure that all Texas children have access to a quality education that enables them to achieve their potential and fully participate in the social, economic, and educational opportunities in Texas and the nation.
 - A. Texas Policy
 - B. The State's Mandates
 - C. Texas School Funding
 - D. Equal Access
- IV. The state's school finance system violates the Texas Education Code in that it supports an education system that fails to adequately prepare and enable its students to continue to learn in post secondary educational institutions in Texas.
 - A. The Texas Education Code
 - B. Graduate Preparedness
 - C. The Impact of the Failure to Provide Adequate Education on Colleges and Universities
 - D. The Texas Remediation Problem

PRELIMINARY STATEMENT

In *Edgewood Indep. Sch. Dist. v. Meno*, 917 S.W.2d 717 (Tex. 1995), this Court declared the public school system of Texas constitutional. The Court found the school system only “minimally acceptable” and concluded: “Surely Texas can and must do better.” *Id.* at 726. Ten years later, Texas’s school system has run out of money and is near collapse. Over the last decade, there has been a growing disconnect between rising academic standards and the funds available to achieve those standards. The state has passed the cost of meeting heightened requirements onto local districts and onto the local property tax, reducing the state’s share of education spending to 38%, the lowest level since World War II. The local property tax can no longer bear this heavy burden. In fiscal year 2003-04, nearly half of the state’s school districts (representing 60% of the state’s public school students) were taxing at the \$1.50 statutory cap. Roughly two-thirds of the districts (with more than 80% of the student population) were taxing at or within five cents of the \$1.50 cap. School districts are slashing teaching positions and programs despite burgeoning enrollments and challenging demographic trends. They are left unable to meet the Legislature’s stated objective of ensuring that all Texas children have access to a quality education. TEX. EDUC. CODE § 4.001(a).

The trial court, which heard nearly six weeks of testimony and examined thousands of exhibits, issued comprehensive findings virtually ignored by the State. The State attempts to brush the findings aside, claiming that the trial court failed to give proper deference to the Legislature. But the court’s findings accord great deference to the Legislature and, in fact, incorporate the Legislature’s policy choices and objectives.

In any event, this Court has long recognized that it is ultimately the Court’s responsibility to determine whether the actions of the Legislature comport with the requirements of the Texas Constitution. For authority, the State invokes solo dissenting opinions in *Edgewood IV* and *West*

Orange-Cove I and goes so far as to invite the Court to turn back the clock to 1989 and overturn its *Edgewood* precedents – precedents that directly led to much of the academic improvement in the 1990s that the State touts in its brief. The Court should decline the State’s invitation to turn back the clock. The Court should instead affirm the trial court’s judgment, thereby ensuring the schoolchildren of Texas a school system that satisfies the standards that the people of Texas have themselves set in the Texas Constitution.

STATEMENT OF FACTS

The ECI adopts the facts as articulated in the lower court's opinion, *West Orange-Cove Consol. I.S.D.. v. Alanis*, 107 S.W.3d 558 (2003).

SUMMARY OF THE ARGUMENT

The Texas state legislature fails to meet its mandates in regards to making sure that every child receives an adequate education that will enable them to perform successfully after completing high school. Under the current school finance system, the requirement of providing an adequate education for every student cannot be achieved. Actually, the state's school finance system violates the Texas Constitution, the Texas Education Code, and Texas Policy in that it fails to provide an equal and adequate educational opportunity to all students. TEX. EDUC. CODE §§ 28.001, 42.001.

ARGUMENT AND AUTHORITIES

I. The State's school finance system violates the Texas Constitution, the Texas Education Code and Texas Policy in that it fails to adequately educate students so that they can succeed academically in college after graduating from high school.

Texas has failed to provide its public school students in grades K-12 with an adequate education. This failure significantly impacts the state's colleges and universities.¹ For instance, according to the Iowa Test of Basic Skills and the Stanford Nine, Texas students perform at levels ranging from one to three years below grade level.² The poorest performances are by African American and Hispanic students. In 2003, African American students needed three more years of schooling, while Hispanic students needed two more years to catch up to their Anglo counterparts.³

An alarming statistic that needs to be corrected is that only 58% of **all** high school students transition from Texas public schools into college, representing the **fifth lowest rate in the nation!**⁴ The transition rate for African American and Hispanic students is even lower,⁵ and with ethnic enrollment in public schools increasing,⁶ Texas needs to be prepared to provide an adequate education to all of its students.

Education appears to be a strong indicator for increased earning power. For example, college educated workers earn more than 70% higher pay than high school graduates with similar

¹ "Today, just over fifty percent of college students graduate from two- and four-year colleges in Texas, a rate that places Texas at sixth lowest rate in the nation." See Chris Patterson, TX Pub. Policy Found., *Paying for Education* (2004) available at <http://www.TexasPolicy.com/pdf/2004-05-sf-payingforeduc.pdf> (citing *Measuring Up 2000: The State-By-State Report Card for Higher Education*).

² *Id.* (citing Chris Patterson, TX Pub. Policy Found., *From TAAS to TAKS, 2002*).

³ Educ. Watch, *Achievement Gap Summary Tables*, available at <http://www.edtrust.org>.

⁴ Patterson, *supra* note 1, at 18.

⁵ See *id.*

⁶ See TX Educ. Agency, *Enrollment in Texas Public Schools 2003-04* (2005) available at http://www.tea.state.tx.us/research/pdfs/enrollment_2003-04.pdf#xml=http://www.tea.state.tx.uswww.tea.state.tx.us/cgi/texis/webinator/search/xml.txt?query=enrollment+trends+for+2005&db=db&rorder=250&sufs=2&id=c8f058f8a8fc8890.

job experience.⁷ Moreover, the need for a college education is greater today and is expected to grow. While about 29% of jobs held by workers aged 30 to 59 require post secondary education – either skilled vocational training or a college degree in 2000 - that number is projected to rise to 42% by 2010.⁸ This could result in a shortage of college educated workers of more than twelve million people.⁹ Thus, the crisis presented by the failure to adequately educate minority students will result in a national crisis as American demographics shift toward a larger Hispanic and African American population.

Texas is projected to be populated by 40% Hispanic and 11% African American by 2008.¹⁰ Consequently, Texas cannot continue to deny an adequate education to its minority students without suffering severe economic hardships.¹¹ The effect on the Texas economy of an adequate public education followed by a college education is obviously significant. The Texas Comptroller of Public Accounts reports that higher education drastically impacts the Texas economy by nearly \$25 billion annually.¹² Aside from this incontrovertible evidence of the importance of an adequate education to the individual, state, and nation, Texas has failed to meet its constitutional mandates to educate all of its students.

II. The state's school finance system violates the Texas Constitution in that it fails to establish the support and maintenance of an adequate system of public free schools.

On September 15, 2004, District Court Judge Dietz declared the Texas school finance system unconstitutional. *West Orange-Cove Consol. I.S.D.*, 107 S.W.3d 558 (Tex. 2003). This ruling was essentially based on Article VII, § 1 of the Texas Constitution which provides that:

⁷ Patterson, *supra* note 1, at 19 (citing *Publicly Provided Education*, p. 2052).

⁸ Daniel E. Hecker, *Employment Outlook: 2000-10, Monthly Labor Review*, Nov. 2001 at 57, available at <http://www.bls.gov/opub/mlr/2001/11/art4full.pdf>.

⁹ Ctr. for the State Scholars Report, citing Bureau of Labor statistics, *Occupational Employment Projections 2010* (2002).

¹⁰ TX Higher Educ. Coordinating Bd., *The Texas Higher Education Plan*, available at <http://www.theccb.state.tx.us>.

¹¹ TX Higher Educ. Coordinating Bd., *Report on Effects of Hopwood on Minority Applications, Offers, and Enrollment at Public Institutions of Higher Education in Texas*, available at <http://www.theccb.state.tx.us>.

¹² Carole K. Strayhorn, *The Impact of the State Higher Education System on the Texas Economy* (2000).

A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish the support and maintenance of an efficient system of public free schools.

TEX. CONST. art. VII, § 1 (emphasis added). The challenge has been determining what the requirements are in order for the state to establish and maintain a public school system which results in a general diffusion of knowledge. More generally, the state must ensure that it provides an equal educational opportunity to all of its children. TEX. EDUC. CODE § 42.001 (emphasis added).

The state's failure is exhibited in the large academic performance disparity between ethnic and economic groups of children.¹³ This gap is generally coupled with a disparate learning environment, including, but not limited to facilities, supplies and materials, teachers, and achievements.¹⁴ Moreover, the gap has widened during the last year, ostensibly due to the use of a more accurate accountable measure.

III. The state's school finance system violates Texas policy in that it fails to ensure that all Texas children have access to a quality education that enables them to achieve their potential and fully participate in the social, economic, and educational opportunities in Texas and the nation.

A. Texas Policy

Educational excellence has been the stated goal of Texas policy makers for a long time. Texas governor, Rick Perry, proudly touts his education record as progressively making education the state's top budget priority.¹⁵ According to the governor, since 1998, total expenditures per Texas pupil increased 24.7%, and Texas now ranks third among 50 states in percentage of overall budget spent on education.¹⁶ Even if these representations are taken as true, they have been woefully

¹³ See Nat'l Assessment of Educ. Progress, *Mathematics*, 458-459 (2004).

¹⁴ *Id.*

¹⁵ See *The Perry Record, Governor Rick Perry Educational Excellence, Texas' Number One Funding*, available at <http://www.governor.state.tx.us/priorities/education/perryrecord>.

¹⁶ *Id.*

inadequate and have failed to meet the state mandates. (Recall that only 58% of high school graduates go on to pursue a college education – is this something that the state of Texas should be boasting about?)

B. The State's Mandates

The State must:¹⁷

1. establish a funding plan that supports and maintains efficient public schools;
2. require that all students in its public schools demonstrate essential knowledge and skills;
3. prepare and enable all students to be academically prepared to compete in post secondary education; and
4. ensure that all Texas children have access to a quality of education that ensures their competitiveness to the benefit of the state and nation.

Texas has failed to meet each of these mandates, and under Texas' current school finance system, the state **cannot** meet these requirements.¹⁸

C. Texas School Funding

The state's school finance system is designed to force property-rich districts to redistribute its "excess"¹⁹ funding to property-poor districts. While in theory this system may be facially fair, since its inception, it has made no significant changes in the funding gap. It is this quagmire that defines the legislature's challenge; developing an effective and equitable public school funding device.

Thus, for the Texas funding system to comply with the Texas Constitution, it must be adequate to support a public school system that produces well educated students, not for some of its students, but for all of its students. The state's own costing study revealed the failure of the financing system to meet this mandate.²⁰ Moreover, the Texas study revealed that on average, less than 15%

¹⁷ TEX. CONST. art. VII, § 1 and TEX. EDUC. CODE § 28.001.

¹⁸ See *Infra*, ECI Amicus Curiae.

¹⁹ This term is based on a base funding amount only. Texas's low ranking among American public schools in performance standards as well as funding challenges the notion that any Texas public school has "excess" funds.

²⁰ Timothy J. Gransberg et al., Texas A&M University, *School Outcomes and School Costs: The Cost Function Approach*, Mar. 2004, available at <http://www.schoolfunding.info/states/tx/march4%20cost%20study.pdf>.

of Texas high school graduates exceeded the criterion for the SAT/ACT.²¹ A public education funding system that supports preparation for less than 15% of its high school students to compete in post secondary education is inadequate and violates the Texas Constitution.

D. Equal Access

A significant reason that African American and Hispanic students are unprepared for college is that they have been denied equal access to a quality education. African American students are most disadvantaged by state assessments because they generally attend schools that "teach to the test." As a result, many African American students in Texas' public schools are only taught that small portion of state curriculum standards measured by the test. They are further limited by the low level academic proficiency needed to pass the test.²²

According to the January 2004 report from the Center for State Scholars, the single most important measure predicting student success and college readiness is course of study in high school.²³ The more rigorous the course of study, the more prepared the students are for college.²⁴ Increasing the rigor should also help bridge the disparity in graduation rates between races. Another study, reported by the Center, revealed that a majority of Texas students, regardless of ethnicity or race, are capable of completing the rigorous coursework.²⁵ In fact, African Americans who completed the more rigorous coursework enjoyed an increased graduation rate of 27.5%, Hispanics' graduation rate increased by 18.5%, and Anglos' graduation rate increased by 10.4%.²⁶ In the face

²¹ *Id.* The SAT and ACT are two national standardized tests designed to measure likely ability to succeed in college. Ctr. for State Scholars, *Prepared High School Students Needed to Head Off Looming Skill and Labor Shortage* (2004).

²² Chris Patterson, *What Testing and Assessment Reveals about Classroom Instruction of African-Americans in Texas Public Schools* (2002) available at <http://www.TexasPolicy.com>.

²³ Ctr. for State Scholars Report, *supra* note 9, at 5, relying on a report by researchers from the U.S. Dept. of Educ. and citing Clifford Adleman, *Answers in the Tool Box*.

²⁴ Five areas of study were identified as requirements to meet the minimum acceptable rigor. The course of study requires three math credits (Algebra I and II and Geometry), three basic lab sciences (Biology, Chemistry and Physics), four English credits, 3½ Social Studies (U.S. and World History, Geography, Economics or Government) and two credits in non-English language.

²⁵ Ctr. for State Scholars Report, *supra* note 9.

²⁶ *Id.*

of such astounding statistics, the state's refusal or failure to make such courses accessible to all of its students violates the Texas Constitution.

While Texas is only one of a few states to have instituted a college preparatory/work preparedness curriculum, there are two basic problems that directly affect equal access. First, Texas provides an "opt-out" alternative that permits students and their parents to elect not to participate in the curriculum; an option not permitted for the standard curriculum. The evidence shows that African American students elect to take fewer and less advanced academic courses than taken by Anglo and Hispanic students in Texas public schools.²⁷

Second, the courses are inconsistent in content, even where consistent in course title.²⁸ Classroom instruction for African American students is different from instruction offered in classrooms predominantly populated by Anglo students.²⁹ Various reports exist of students who completed and passed algebra, geometry, algebra II, and pre-calculus in high school, but needed remedial math courses in college.³⁰ According to the Texas Higher Education Board, half of the beginning students at Texas public higher education institutions need remedial classes, but changes to the curriculum will not be enough.³¹

Aside from an enhanced curriculum, Texas must employ certified teachers to teach the courses at all of its schools. Texas must also ensure, for example, that the technology and facilities needed to ensure equal access and opportunity exists at all of its schools. In order for the state to fulfill its duty to provide a quality education to all students, it must ensure that all courses cover the same material in a consistent manner. It must also ensure that its curriculum not be selectively

²⁷ See Chris Patterson, *Academic Equity: African-American Youth in Texas Public Schools* (2002), available at <http://www.texaspolicy.com/pdf/2002-02-09-education-equity.pdf>.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Jason Spencer, *Two-thirds of Community College Freshmen Need Remedial Courses*, HOUSTON CHRON., Sept. 24, 2004 available at <http://www.freerepublic.com/focus/f-news/1227567/posts>.

³¹ See University of Houston, *UH-Top Education Stories Need for Remedial CollegeWork Rises*, www.uh.edu/ednews/200/fwst/200411/2004113 visited 5/10/05.

rejected by some students and parents.

Texas must also accurately measure student performance in assessing letter grades in establishing minimum passing scores for standardized testing. Texas' history of manipulating test scores is the fodder of legends. Walt Haney exposed in a report how Texas officials manipulated the testing system to support its claim that it had bridged the academic performance gap between minorities and white students.³² Haney reported that the bridge was built on a system that among other things reduced passing scores and exempted students whose indicators projected failure.³³ While TAAS has been replaced with the TAKS test, first indications are that the ghosts of TAAS continue to loom. First, to pass the TAKS test, students need only score 45%; even with this minimum passing score, at best, 61% of Texas' juniors passed.³⁴ In Houston alone, about 12,000 juniors who should have taken the test did not pass.³⁵ Skewed tests and manufactured test scores are further exacerbated by inflated class grades.³⁶

The state's failure to meet its constitutional mandate to provide an efficient system of public free schools that generally diffuses knowledge has crippling long term effects on the state's and country's economic health. The effect of the statistics is untenable.

Since 1999, enrollment in Texas public schools has increased from 4,002,227 students in academic year 1999-2000 to 4,400,664 students in academic year 2004-2005.³⁷ However, during that same period, there occurred an annual drop in enrollment between the ninth and twelfth

³² Walt Haney, *The Myth of the Texas Miracle in Education*, Educ. Policy Analysis Archives, Vol. 8, No. 41, Aug. 19, 2000, available at <http://epaa.asu.edu/epaa/v8n41/>.

³³ See generally *id.* where author identifies various reasons for the "apparent" bridge including missing students, exclusion of students from testing, and doubtful validity of TAAS scoring.

³⁴ Rick Casey, *TAKS Scores and the Drunk*, HOUSTON CHRON., May 28, 2004.

³⁵ *Id.* Where author points to a more alarming number that suggests that there should have been 19,386 juniors to take the test in the HISD system instead of the mere 7,840 who actually took the test. After the smoke clears that means less than 25% of juniors passed the TAKS test in 2004.

³⁶ See Fredreka Schouten, *Study: Stellar High School Performers Failing College*, ITHICA JOURNAL, available at <http://www.theithacajournal.com/news/stories/20040614/localnews/641484.html> and see Fredreka Schouten, *Students Unprepared for Rigorous College*, citing *Grades Inflation As A Primary Factor*, www.detnews.com/2003/schools visited 4/25/2005.

³⁷ TX Educ. Agency Div. of Performance, *2003-2004 Texas Public School Statistics*, available at <http://www.tea.state.tx.us/perfreport/pocked/2004/pocked0304.pdf>.

grades. In other words, by the time the freshman class of 2000 graduated in the class 2003, their numbers had declined by 35%. The freshman class of 2000 had lost 120,793 students by senior year. The freshman 2001 class lost 117,554 members by senior year, a 33% loss. The freshman 2002 class lost 32% of its class, a total of 117,127 students by graduation in 2005. [See chart below.]

STUDENT ENROLLMENT FIGURES: GRADES 9-12³⁸

	9 th	10 th	11 th	12 th
1999 – 2000	359,492	275,373	243,738	217,977
[4,002,227]				
2000 – 2001				
[4,071,433]	360,857	287,472	248,692	220,324
2001 – 2002	364,441	292,352	260,228	226,177
[4,160,868]				
2003 – 2004	375,358	309,187	267,682	243,303
[4,328,028]				
2004 – 2005	383,447	311,091	274,896	247,314
[4,400,644]				

One-third of Texas public school children enrolled in the ninth grade are not graduating with their high school class. These facts alone constitute a failure by the state to ensure an adequate education to all its students. However, the failure does not end there. During the last three years, graduating classes 2003, 2004, and 2005, (**355,474** students who started as freshmen in 1999, 2000, and 2001), did not graduate with their classes. On average, 40% of the African American freshmen, 42% of Hispanic freshmen, 28% of Native American freshmen, 6% of Asian freshmen, and 23% of

³⁸ TX Educ. Agency, *supra* note 6.

Anglo freshmen, failed to graduate with their classes.³⁹ The impact on college readiness statistics is apparent and profoundly decreases the number and percentage of college-ready students the Texas public school system produces.

Moreover, even when the students do attend college, national figures indicate that less than 40% of African American students will graduate compared to 60% for Anglo students.⁴⁰ The Texas graduation rates are on average 33% and 56% respectively.⁴¹

Even if the court accepts the stereotype that the most at-risk students are the ones who the system cannot help, it would be insufficient to support the state's claim that they have not failed because the state is compelled to provide "all Texas children . . . access to a quality education"⁴² by providing students with a meaningful opportunity to acquire essential knowledge and skills required to be successful after graduation. TEX. EDUC. CODE § 4.001(a) (emphasis added). As long as the state accepts the myth of the intellectual inferiority of children of color, it will be unable to meet its constitutional mandate.

There is no excuse for Texas' failure to adequately educate its students. As stated earlier, Governor Perry increased the overall Texas budget for education, so why are students in Texas still lagging behind the nation?

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Kayin Darby, Earl Carl Inst., *Analysis of the Disparity in College Graduation Rates Between Black Students and White Students at Institutions of Higher Education in Texas (Part I)*, Work in Progress (2005).

⁴² In the 2005-2006 school years, Texas districts will begin collecting information in accordance with new dropout definitions. The new definition is a student who is enrolled in Texas public school in grades 7-12, does not return to Texas public school the following fall, is not expelled, and does not graduate, receive a GED, continue high school outside the Texas public school system or begin college, or die, using the Nat'l Ctr. for Educ. Statistics dropout definition for Texas Leaver Reporting 2005.

IV. The state's school finance system violates the Texas Education Code in that it supports an education system that fails to adequately prepare and enable its students to continue to learn in post secondary educational institutions in Texas.

A. The Texas Education Code

The Texas Education Code addresses the state legislature's duties. The Code provides in pertinent part that:

It is the intent of the legislature that . . . all students shall be required to demonstrate the knowledge and skills necessary to read, write, compute, problem-solve, and communicate across all subject areas. The essential knowledge and skills shall also prepare and enable **all** students to continue to learn in post secondary educational...settings.

TEX. EDUC. CODE § 28.001 (emphasis added). Further, the state legislature has stated that its public education mission is "to ensure that all Texas Children have access to a quality education that enables them to achieve their potential and fully participate now and in the future in the social, economic, and educational opportunities of our state and nation." *Id.*

B. Graduate Preparedness

In less than five years, employment in occupations requiring a bachelor's degree is expected to increase almost 22%.⁴³ Over the same period, jobs requiring at least an associate's degree will increase by 32%.⁴⁴ By 2004, forty of the top fifty fastest growing occupations already required its employees to have attained post high school education. These and other facts place an increasing burden on America's public school systems to produce a well prepared graduate.⁴⁵

A recent study in Texas revealed that Texans who have earned a bachelor's degree had mean annual salaries more than twice as high as Texans who only had a high school diploma.⁴⁶ The study

⁴³ U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupation Outlook Survey* 2002-2003.

⁴⁴ *Id.*

⁴⁵ Ctr. for the State Scholars Report, *supra* note 9, citing *A National Association of Manufacturer's Survey* reports that 80% of business respondents indicated that they are facing a "moderate to serious" shortage of qualified job candidates.

⁴⁶ TX Comp. of Pub. Accts. 2000.

also found that productivity in Texas increases significantly from a higher educated workforce. The annual economic gain Texas realizes from higher education is about \$17.8 billion.⁴⁷ The urgency for producing graduates who can succeed in post secondary educational pursuits is clear. It is beneficial to the wealth of the state, but more importantly, to the wealth of the student.

African American and Hispanic students in Texas are more likely than Anglo and Asian students to drop out of high school without ever receiving a high school diploma. They are less likely than Anglos and Asians to enroll in college, and when they do, they are more likely to be unprepared for the college workload. As a result, college graduation often eludes the few African American and Hispanic students who attend. In fact, Texas ranks 37 out of 51 ‘states’ (including the District of Columbia) in graduation rates.⁴⁸ The national graduation average is 70%; Texas’ rate is 67%. The Texas graduation rates for each racial group were 62% (African American), 57% (Hispanic), 83% (Asian), and 61% (Native-American).⁴⁹ While Texas exceeds the national average in each racial category, it falls below the overall national average graduation rate. Moreover, except for Anglos and Asian students, Texas graduation rates range from failing (Hispanics) to very low pass (African Americans and Native Americans).⁵⁰

The state’s college readiness statistics are even more staggering. Of Texas’ Native American graduates, only 33% are college ready, Asians 56%, Hispanics 34%, African Americans 34%, and Anglos 52%.⁵¹ Only 43% of high school graduates in Texas are prepared for college. That means that 57% of Texas’ high school graduates are unprepared for college.⁵²

⁴⁷ *Id.*

⁴⁸ Jay P. Greene & Greg Forster, Ctr. for Civic Innovation at the Manhattan Inst., *Public High School Graduation and College Readiness Rates in the United States*, Education Working Paper, No.3, Sept. 2003.

⁴⁹ *Id.* at 17.

⁵⁰ *Id.* at 18.

⁵¹ *Id.* at 21.

⁵² *Id.* at 21.

Racial Disparities		
Race	Graduation	College Readiness
African Americans	-15	-18
Hispanics	-20	-18
Asians	+16	+4
Native Americans	-16	-19
Anglos [Base Line]	77%	52%

There is only one possible conclusion that can be reached. Texas has failed to meet its constitutional and statutory mandates to establish a finance system that supports and maintains public school system that prepares, enables, and produces all of its students to compete in a post graduation world to the benefit of the state and the nation. Moreover, Texas has failed to ensure that all Texas children have access to a quality education that is required to meet its legislative mission.

C. The Impact of the Failure to Provide Adequate Education on Colleges and Universities

"The limited number of graduates from Texas public schools directly, strongly, and adversely affects higher education."⁵³ While African American and Hispanic students represent about 60% of Texas' public school enrollment, they trail behind Anglo students' college enrollment.⁵⁴ The Texas Higher Education Coordinating Board has targeted this population of students in its Higher Education Plan.⁵⁵ It reports that if the gaps in academic performance, including college graduation rates, are not closed, the state will suffer.⁵⁶ Aside from the shortfall in the number of degrees earned by Texas students, Texas will suffer from a less-educated workforce unable to support the state's growing economy.⁵⁷ In fact, if graduation rates from Texas colleges and universities remain low, the poverty rate in Texas will increase and the average household

⁵³ Patterson, *supra* note 1, at 18.

⁵⁴ TX Educ. Agency, *supra* note 6.

⁵⁵ TX Higher Educ. Coordinating Bd., *Closing the Gaps, The Texas Higher Education Plan* (2004) available at <http://www.thecb.state.tx.us>.

⁵⁶ *Id.*

⁵⁷ *Id.*

income will decline by the year 2030.⁵⁸ To thwart this downward spiral and close the college graduation gap between the state of Texas and other states, Texas will have to immediately enroll more than 500,000 students in post secondary institutions.⁵⁹

However, Texas can only attain this goal by inflating high school grades and test scores. For these students to graduate college, extensive remediation programs will need to be funded at the universities receiving these students. Universities with open admission standards already bear a significant burden of extended remediation programs while still being measured by the same standards of success as universities with more competitive admissions requirements. These standards include graduation rates measured over six year completion, lower national rankings which are in principal part based on admissions standards, SAT and ACT scores are the like.

D. The Texas Remediation Problem

African American and Hispanic students take fewer core classes than Anglo students while in high school resulting in poorer academic preparation for college. The lack of college preparedness substantially increases the students' likelihood of success and is compelling evidence that these students are unable to demonstrate the knowledge and skills necessary to read, write, compute, problem solve, and communicate across all subject areas. In fact, the evidence shows that the majority of Texas high school students lack the essential knowledge and skills that enable them to continue to learn in post secondary educational, training or employment settings. To prepare these students after they have left or graduated high school will generally require remediation in college. The results are staggering. First, taxpayers are paying twice for the same

⁵⁸ *Id.* quoting Steve Murdock, Chief Demographer, TX State Data Ctr.

⁵⁹ *Id.*, referring to Texas' national standing in graduation rates finding that only 5% of Texas' population was enrolled in higher education in recent years, compared to a national average of 5.4%. That 0.4% difference represents 76,000 students. Compared to the other 10 most populous states, the enrollment rate in Texas is below that of 4 states. California and Illinois enroll 6% of their state's population, Michigan enrolls 5.7% and New York enrolls 5.6%. *See also* Ben Feller, *Analysis Alleges Grad Rate Inflation*, HOUSTON CHRON. p. A5, June 24, 2005.

high school education. Second, the low graduation rates at Texas colleges and universities are attributed in large measure to students' lack of college readiness and need for remediation.

CONCLUSION AND PRAYER

Texas has failed to establish or make suitable provisions for a system that provides all its students with an adequate education that prepares them for post secondary studies in Texas institutions. As previously stated, the Texas Education Code provides that:

It is the intent of the legislature that . . . all students shall be required to demonstrate the knowledge and skills necessary to read, write, compute, problem-solve, and communicate across all subject areas. The essential knowledge and skills shall also prepare and enable all students to continue to learn in post secondary educational...settings.

TEX. EDUC. CODE § 28.001. It is the responsibility of this court, and every educator, to make sure that the laws of this state are enforced, ensuring that every student receives an adequate education.

Respectfully submitted,

The Earl Carl Institute for Legal and Social Policy, Inc.
Texas Southern University
Thurgood Marshall School of Law

(Original and all other hard copies signed)

Professor Carroll G. Robinson
SBOT No. 17086900

Professor Marcia Johnson
SBOT No. 10769700

Professor Kimberly M. James
SBOT No. 00793396

Jennifer M. Hahn
Law Student

3100 Cleburne, Office 108
Houston, Texas 77004
Telephone: (713) 313-1139
Telecopier: (713) 313-1153

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of The Earl Carl Institute for Legal and Social Policy, Amicus Curiae Brief has been sent to the following counsel of record in accordance with the Texas Rules of Appellate Procedure on this 29th day of June, 2005:

Attorneys for Shirley Neeley in Her Official Capacity as the Commissioner of Education, the Texas Education Agency, Carol Keeton Strayhorn in Her Official Capacity as Texas Comptroller of Public Accounts, and the Texas State Board of Education:

Ed Burbach
R. Ted Cruz
Jeff Rose
Amy Warr
Danica L. Milios
Joseph D. Hughes
Shelley Dahlberg
Office of the Attorney General
Post Office Box 12548 (MC 059), Capital Station
Austin, Texas 78711-2548

Via Certified Mail

Attorneys for the Alvarado Intervenors:

Randall B. Wood
Doug W. Ray
RAY, WOOD, FINE & BONILLA, LLP
2700 Bee Caves Road
Austin, Texas 78746

Via Certified Mail

Attorneys for the Edgewood Intervenors:

Nina Perales
David Hinojosa
MALDEF
140 E. Houston Street, Suite 300
San Antonio, Texas 78201

Via Certified Mail

CERTIFICATE OF COMPLIANCE

At the request of the Court, I certify that this submitted computer disk/CD rom (or email attachment) complies with the following requests of the Court:

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Kimberly M. James

(Printed Name)

The Earl Carl Institute for Legal and Social Policy, Inc.