

GV-100528

WEST ORANGE-COVE CONSOLIDATED
INDEPENDENT SCHOOL DISTRICT;
COPELL INDEPENDENT SCHOOL
DISTRICT; LA PORTE INDEPENDENT
SCHOOL DISTRICT; PORT NECHES-
GROVES INDEPENDENT SCHOOL
DISTRICT, DALLAS INDEPENDENT
SCHOOL DISTRICT, AUSTIN
INDEPENDENT SCHOOL DISTRICT,
HOUSTON INDEPENDENT SCHOOL
DISTRICT, *et al.*

Plaintiffs,

VS.

SHIRLEY NEELEY, TEXAS
COMMISSIONER OF EDUCATION;
TEXAS EDUCATION AGENCY; CAROL
KEETON STRAYHORN, TEXAS
COMPROLLER OF PUBLIC
ACCOUNTS; and TEXAS STATE BOARD
OF EDUCATION,

Defendants.

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

250TH JUDICIAL DISTRICT

Filed in The District Court
of Travis County, Texas

MAY 25 2006
At 2:16 P.M.
Amalia Rodriguez-Mendoza, Clerk

**WOC PLAINTIFFS' RESPONSE TO THE STATE DEFENDANTS'
MOTION TO CONFIRM AUTOMATIC DISSOLUTION OF INJUNCTION**

The West Orange-Cove Plaintiffs (the "WOC Plaintiffs") file this response to the State Defendants' Motion to Confirm Automatic Dissolution of Injunction.

I.

The WOC Plaintiffs do not oppose the State's motion to confirm the automatic dissolution of this Court's injunction in light of the passage of HB1 and HB3 in special session concluded last week. The WOC Plaintiffs agree that the Legislature, by providing some additional financial capacity, a teacher pay raise, and an additional high school allotment, has given Texas school districts some critical financial "breathing room" in the coming school year.

In light of the Legislature's good faith effort to begin to address the school finance crisis, the WOC Plaintiffs will not seek to enforce this Court's November 30, 2004 injunction at this time.

However, the WOC Plaintiffs' non-opposition to the State's motion should not be construed as a wholehearted endorsement of the legislation or an admission that the school finance system is on firm constitutional footing going forward. On the contrary, the WOC Plaintiffs have serious concerns. The primary focus of the legislation was property tax relief, not putting the school finance system on firm financial footing. No new long-term, stable revenue source was created for public education. Instead, all of the new revenue sources were dedicated solely to property tax relief.

Further, the Legislature placed a potentially expensive and onerous election requirement on districts that, in practical terms, may prevent many of them from accessing significant additional financial capacity or exercising discretion. For the 2006-2007 school year, the State will reduce local school district maintenance and operations tax rates by approximately 17 cents to \$1.33, or somewhat lower or higher for districts that are not currently taxing at \$1.50. Districts will have access to approximately 4 cents of enrichment without an election. Thus, out of \$1.37 of local taxing authority that will be available without an election, the State will control and use \$1.33 of that local authority, or 97 percent, as if it were state revenue. In future years, it is projected that the State will reduce M&O tax rates to \$1.00, with districts still having access only to the same 4 cents without an election. Thus, out of \$1.04 of local taxing authority available without an election, the State will control and use \$1.00 of that authority, or 96 percent, as if it were state revenue. Therefore, the fundamental structural problem with the current system that gave rise to the state property tax issue – the State's reliance on, control over, and

use of local school taxing authority as if it were state revenue – has not yet been corrected and will require additional action in future years.


Finally, if the Legislature does not maintain an adequate level of funding for tier 1 and tier 2 of the Foundation School Program, districts may be forced to use their enrichment pennies to make up for this underfunding, impairing or even eliminating any discretion they might have. Both this Court and the Texas Supreme Court already have found that, for the WOC Plaintiff districts and for the state system as a whole, in the 2003-2004 school year, it took all of the revenue that districts could generate at M&O tax rates of \$1.50 to meet requirements directly or indirectly established by the State. Since that time, the State has not substantially increased revenue available per weighted student to fund its requirements, nor has the State even funded the cost of inflation. The method used by the State in HB 1 to reduce local school property taxes simply will give districts access in the 2006-2007 school year to the same revenue at \$1.33 tax rates that the districts would have had access to at \$1.50 tax rates, with some minor exceptions. In future years, the method used by the State will give districts access to the same revenue at \$1.00 tax rates that they would have had access to at \$1.50 tax rates. It should be presumed that all of the revenue available to districts at \$1.33 tax rates in the 2006-2007 school year, and at \$1.00 tax rates in future years, is necessary to fund direct and indirect state requirements that existed in the 2003-2004 school year, and may even underfund the costs of these requirements because of inflation. Therefore, any additional state requirements must be fully funded by the State from state revenues; otherwise, districts will be forced to use some or all of their “enrichment” discretionary revenue to pay for these new state requirements. If the State were to establish any new direct or indirect requirements that are not fully funded by the State, the

districts' discretion would be impaired or even eliminated, and the State school finance system once again would function as if it were being supported by an unconstitutional state property tax.


For these reasons, the WOC Plaintiffs will wait and assess the practical impact of the new legislation on Texas school districts and will carefully monitor the decisions made by the Legislature in the next regular session.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing instrument has been sent to the following counsel of record by electronic mail on May 25, 2006:

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