

# No. 14-0776

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## *In The Supreme Court of Texas*

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**MICHAEL WILLIAMS, COMMISSIONER OF EDUCATION,  
IN HIS OFFICIAL CAPACITY, *ET AL.*,**  
*Appellants/Cross-Appellees,*

v.

**CALHOUN COUNTY INDEPENDENT SCHOOL DISTRICT, *ET. AL.*,**  
*Appellees/Cross-Appellants/Cross-Appellees,*

v.

**TEXAS CHARTER SCHOOLS ASSOCIATION, *ET. AL.*, AND  
JOYCE COLEMAN, *ET AL.*,**  
*Appellees/Cross-Appellants*

v.

**THE TEXAS TAXPAYER & STUDENT FAIRNESS COALITION, *ET. AL.*;  
EDGEWOOD INDEPENDENT SCHOOL DISTRICT, *ET. AL.*; AND  
FORT BEND INDEPENDENT SCHOOL DISTRICT, *ET. AL.*,**  
*Appellees/Cross-Appellees*

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*On Direct Appeal from the 200th Judicial District Court,  
Travis County, Texas No. D-1-GN-11-003130*

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***First Amended* AMICUS CURIAE BRIEF OF:  
ROBERT M. SCHOOLFIELD  
TEXANS FOR PARENTAL CHOICE IN EDUCATION  
PAMELA FRANCIS-BENSON  
TEXAS COALITION FOR PARENTAL CHOICE IN EDUCATION  
MATT PREWETT  
TEXAS PARENTS UNION**

**IN SUPPORT OF:**

**APPELLANTS TEXANS FOR REAL EQUITY AND EFFICIENCY IN  
EDUCATION AND TEXAS ASSOCIATION OF BUSINESS, ET AL.  
("EFFICIENCY INTERVENORS")**

Filed on behalf of Amici by: Jodi Bender, Duffee + Eitzen, LLP  
4311 Oak Lawn Ave., Dallas, Texas 75219

**I. Identity of Parties and Counsel**

1. Pursuant to TEX. R. APP. P. 9.7, Amici herein incorporate by reference the identity of parties and their counsel presented in the Brief of Appellants Texans for Real Equity and Efficiency in Education and Texas Association of Business, *et al.* ("Efficiency Intervenors") filed on April 13, 2015.

**II. Rule 11 Amicus Curiae Brief Required Disclosure**

2. This brief was prepared on behalf of Robert M. Schoolfield and Texans for Parental Choice in Education, Pamela Francis-Benson and Texas Coalition for Parental Choice in Education, Matt Prewett and Texas Parents Union by Jodi Bender, 4311 Oak Lawn Ave., Suite 600, Dallas, Texas 75219, at no cost, and in support of Appellants.

**III. Identification of Amici**

3. Robert M. Schoolfield has had a long, abiding interest in the education of all the students in Texas. He is the Founder and President of Texans for Parental

Choice in Education, 2008 to present. In 1991, he co-founded the Austin Children's Educational Opportunity Foundation, a portable-scholarship charity organized to help low-income K – 12 students attend the school of their parents' choice. Mr. Schoolfield also founded and chaired Legacy Oaks Christian School, a private K – 12 school, from 1994 – 2010. He has a Bachelor of Arts degree in Chemistry, a Master's degree in Agriculture, and a Ph.D. in Bioengineering. Mr. Schoolfield has used his education to teach various courses at the Legacy Oaks Christian School and served as a visiting professor in the Department of Industrial Engineering at Texas A&M University.

4. Texans for Parental Choice in Education is a nonprofit, bi-partisan organization founded in 2008 and committed to developing a volunteer-led, grassroots team throughout Texas to promote, pass, and defend universal educational choice legislation that meets the educational choice need of all Texas families.

5. Pamela Francis-Benson is a long-time supporter of school choice for parents. When her own children were very young, Ms. Benson helped organize the Texas Coalition for Parental Choice in Education. Throughout her time with the organization, she served as a guest speaker at numerous events, as well as for T.V. and radio interviews. Ms. Benson has also helped develop legislation to support

school choice for parents and lobbied the legislature in support of school choice legislation.

6. Texas Coalition for Parental Choice in Education is a non-profit organization that represents the rights of parents to select the school of their choice for their children.

7. Matt Prewett is the son of a retired public school teacher and was educated in the Texas public school system. He became interested in the issue of school choice while struggling to find a good solution for educating his oldest son, who was several grade levels ahead academically than other students his age. The school district in which he resides did not offer any specialized schools or programs that could meet the needs of his son. Ultimately, Mr. Prewett founded the organization Texas Parents Union, which advocates for parent/student choice in public education. He has also continued to organize parents in his home school district to advocate for options for above-grade-level students.

8. Texas Parents Union (TXPU) is a grassroots organization that represents parents and children across Texas in public education policy decisions. The TXPU provides parents and guardians with resources and support necessary to effectively advocate for the educational rights of their children – from the Federal level all the way down to the public schools. TXPU collaborates with parents, students, and

education advocates across the country to advance education reform. It is committed to promoting effective teaching and support of student achievement.

9. Mr. Schoolfield, Ms. Benson, and Mr. Prewett's experience involvement in grassroots organizations promoting education reform demonstrates their knowledge of the education system, and their reasoned support of the claims of the Efficiency Intervenors (Texans for Real Efficiency & Equity), specifically their claims regarding the lack of competition in the education marketplace.

**IV. Argument - The current system of public education is constitutionally inefficient because it is a government-funded monopoly that cannot – and does not – effectively meet the individualized needs of the students it is designed to serve.**

10. A monopoly exists when one entity is the single supplier of a good or service, providing no room for other entities to supply the good or service. This lack of competition leaves consumers with little to no choice and creates inefficiencies in the system. This ultimate harm to consumers is the reason that we have both Federal and State anti-trust laws that are designed to ensure competition in the marketplace. In fact, monopolies are so harmful to the consumer that the Texas Constitution Article I, Section 26 provides that “[p]erpetuities and monopolies are contrary to the genius of a free government” and insists that they should “never be allowed . . . .”

11. These principles are no less relevant in the education marketplace. The current system of education in Texas is a government-funded monopoly, in which parents have very little or no choice in the educational services they consume. And yet, under state law, parents are meant to be “full partners” in creating and designing education programs for their children. *See* Tex. Educ. Code § 26.001. As parents are the ultimate authority in a child’s life, they should have the right to make educational decisions that are best for their child. Ideally, the education system should work in partnership with parents and give them the power to choose a school or program that best fits the individual needs of their child. The current system of assigning one ISD public school to each student, however, provides very little choice for parents. Although open enrollment public charter schools do provide some choice, the number of charter schools is limited by State law, and there are long waiting lists at most of these schools. Further, parents who choose to send their children to private schools are penalized by paying taxes to fund public education as well as private school tuition fees. Under the current government funding system, the only real choice of education providers most parents have is to buy a house in a neighborhood with a better performing school, get on a charter school waiting list, or pay private school tuition—which isn’t really a choice for many low income families.

12. This lack of competition in the education marketplace breeds inefficiency and waste. Because the legislature has constructed a government-funded monopoly, Texas public schools are controlled through a bureaucracy and managed by a system of complex regulations. These regulations stifle creativity and innovation and create a system that fails to meet the individual needs of students and respect the rights of parents to direct the education of their children.

13. The different types of educational needs of students in our public schools are as varied as the backgrounds of the students themselves. For example, there are children attending our public schools who: 1) speak English as their second language; 2) have dyslexia or other reading difficulties; 3) are “gifted and talented” or have above-grade –level academic skills; 4) suffer from attention deficit disorder, oppositional defiant disorder, or any number of other conditions affecting behavior; 5) are unwed teenage mothers; 6) work part-time jobs to help support their families; 7) have no father in the home to give them a positive male role model; 8) have an advanced ability to work with their hands; 9) are gifted with advanced musical or artistic skills; 10) have advanced singing, musical, or gymnastic abilities that require them to travel; 11) struggle with math, science, history, or other academic courses; 12) have autism; 13) have been diagnosed with depression, anxiety, or another other mental illness; and 14) have disabilities with severe medical needs requiring nursing care; 15) are wheelchair bound or have

other physical limitations. And this list is just a small sample of the individualized needs of the students in our schools. To effectively and efficiently address these types of needs requires a wide network of specialized schools working in partnership with the parents, who know the needs of their child better than anyone. This wide network of specialized schools is the antithesis of what we have in the current “one size fits all” public school system. To provide this needed system requires a network of competitive schools seeking a partnership with the parents.

14. There simply is no perfect school. Just like a shoe, the real question to be answered is – does it fit? Until we allow real choice in education, parents will be captive consumers of an inefficient public education system. Only competition will increase the public school system’s incentive to seek excellence in education and truly raise the standard of education for all children.

## **V. CONCLUSION**

15. Because there is no true competition in the education marketplace in Texas, the public school system is an inefficient government-funded monopoly that cannot – and does not – meet the widely – varied needs of individual students it is designed to serve.

16. Amici request that the Court declare the Texas School System unconstitutional and direct the Legislature to comply with the explicit qualitative efficiency standard mandated by the Texas Constitution.

Respectfully submitted on behalf of Robert M. Schoolfield and Texans for Parental Choice in Education, Pamela Francis-Benson and Texas Coalition for Parental Choice in Education, and Matt Prewett and Texas Parents Union on this August 21, 2015,

/s/Jodi Bender/  
Jodi Bender, State Bar No. 24073908  
jbender@duffee-eitzen.com  
4311 Oak Lawn Ave., Suite 600, Dallas, Texas 75219  
Duffee+Eitzen, LLP; O: 214-416-9010; F: 214-416-9005

CERTIFICATE OF COMPLIANCE - Relying on the word count function in the word processing software used to produce this document, I certify that this Brief contains 1793 words.

/s/Jodi Bender/  
Jodi Bender

CERTIFICATE OF SERVICE - I hereby certify that on August 21, 2015, the foregoing Brief was served via the Court's electronic service to all attorneys as listed on Appellants' Brief, p.55-57.

/s/Jodi Bender/  
Jodi Bender