

No. 14-0776

In The Supreme Court of Texas

**MICHAEL WILLIAMS, COMMISSIONER OF EDUCATION, IN HIS
OFFICIAL CAPACITY, ET AL.**

Appellants/Cross-Appellees

v.

**THE TEXAS TAXPAYER & STUDENT FAIRNESS COALITION, ET AL.;
CALHOUN COUNTY ISD, ET AL.; EDGEWOOD ISD, ET AL.; FORT
BEND ISD, ET AL.; TEXAS CHARTER SCHOOL ASSOCIATION, ET AL.;
AND JOYCE COLEMAN, ET AL.**

Appellants/Appellees/Cross-Appellants

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

BRIEF OF AMERICANS FOR PROSPERITY AS *AMICI CURIAE* IN SUPPORT OF APPELLANTS/CROSS- APPELLEES

ROGER B. BORGELT
State Bar No. 02667960
Borgelt Law
614 S. Capital of Texas Hwy.
Austin, Texas 78746
(512) 600-3467 (Tel.)
roger@borgeltlaw.com

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Statement of Interest of *Amici Curiae*

Americans for Prosperity is an organization of over two million citizen activists across the country with over 120,000 citizen activists in Texas. It focuses on educating and engaging citizens on public policy issues. Americans for Prosperity's mission is to mobilize citizens to advocate for policies that cut red tape and increase opportunity, put the brakes on government overspending, and get the economy working for hard workers— not special interests. It is a tax exempt, non-profit educational organization operating under Section 501(c)(4) of the Internal Revenue Code. The litigation at issue in Texas affects not only the adequacy and equity of school finance, but also the efficiency issue. It is important that these issues are being litigated in this current school finance lawsuit.

Americans for Prosperity has a strong interest in seeing that education dollars are being spent efficiently and that children are getting their billions worth of education out of the taxpayers' dime.

Americans for Prosperity will not incur attorneys' fees for the preparation of this *amicus* brief.

SUMMARY OF THE ARGUMENT

In the 2005 school funding lawsuits, Americans for Prosperity filed an amicus brief asking that the court consider not only the adequacy and equity of school finance, but also the efficiency issue. It is important that this issue is being litigated in this current school finance lawsuit and we commend the Texans for Real Efficiency and Equity in Education for leading this effort.

Education is big business in Texas. The Lone Star State has over 5 million students K-12 students in 1,029 public schools districts which spend approximately \$60 billion. Are those dollars being spent efficiently and are kids getting billions worth of education out of the taxpayers' dime? Spending more on education only works when the money targets strategies and programs proven to produce results in a system structured to allow the maximization of efficiency and productivity. .

It is our assertion that we don't need more dollars for education, but more education for our dollars.

We contend that public education funding is adequate, but misplaced spending priorities are prohibiting more of the funds to be directed to instruction. We will also make the case that increasing spending will not result in improved student performance and that spending more on education only works when the money targets strategies and programs proven to produce

results.

Texans want and expect a quality education for our state's children.

More of our tax dollars are spent on education than any other item in the state budget. But while education spending has grown exponentially, the majority of those dollars are not being directed to the classroom and are often diverted to wasteful spending projects and to unnecessary overhead.

The issues addressed in this amicus brief are:

Issue 1: Spending growth is excessive relative to student population increase.

Issue 2: Resources are not efficiently directed toward education.

Issue 3: Tenure and Labor Laws waste resources and reduce efficiency.

Issue 4: Individual ISD funding and spending does not correlate with student achievement.

Issue 5: School finance lawsuits are reducing efficiency.

Issue 6: Remedial Education efforts show that the existing system is inefficient.

Issue 7: High ISD debt results in inefficient use of state resources.

Issue 8: Public school fund balances are too high.

Issue 9: Superintendent Salaries are too high.

Issue 10: Consolidation of administration could result in savings.

Issue 11: Using public education/tax dollars to lobby is inefficient.

Issue 12: Using education dollars for PR is inefficient.

ARGUMENT

Under President Ronald Reagan, the groundbreaking study “A Nation at Risk” was conceived. The study provided the first wake-up call that the US education system was not producing the results Americans had expected and that we had fallen behind other industrialized countries in student performance. That study found that dollars do not equate to improved student outcomes and launched a national dialogue, which continues today.¹

AFP created the Red Apple Project to provide parents and taxpayers with more information and increase transparency and hears first-hand how grassroots Texans feel about the inefficiency of our education system and understands their desire for reform and enhanced efficiency.

According to the most recent Texas Education Agency’s *2014 Snapshot*, here are the highlights on how Texas public schools are doing.²

- Out of the **64.5%** of students that took the ACT/SAT, only **25.3%** met criterion

- Staffing in traditional public schools is a 1 to 1 teacher to non-teacher ratio

¹ *A Nation At Risk: The Imperative for Educational Reform*, National Commission on Excellence in Education, 1983; <http://www2.ed.gov/pubs/NatAtRisk/index.html>

² *Snapshot 2014, School District Profiles*; Texas Education Agency 2014; <http://ritter.tea.state.tx.us/perfreport/snapshot/2014/>

- The students per total staff ratio is 7.8 to 1 and the students per teacher ratio is 15.3 to 1
- Teachers make an average of \$8,859 less than school support staff (that does not include administrators)
- Less than half of the total revenue (\$50,087,166,792) is spent on instruction (\$24,068,480,503)
- Texas ISD's have a fund balance of \$9,539,106,246

Issue 1: Spending growth is excessive relative to student population increase.

According to the National Center for Education Statistics (NCES), funding for public schools in Texas grew from \$39,033,235,000 to \$41,067,619 in 2011-12.³

Certainly, the Texas student population grew far more rapidly than the national average.⁴ In 2007, Texas had 4,674,832 students enrolled in K-12 schools. In 2012, that number had grown to 5,077,659. Texas experienced an 8.6 percent growth in enrollment while the national average was 1 percent, according to NCES data.

³ National Center for Education Statistics;
https://nces.ed.gov/programs/digest/d14/tables/dt14_236.25.asp

⁴ National Center for Education Statistics;
https://nces.ed.gov/programs/digest/d14/tables/dt14_203.20.asp

And while we can expect spending to grow as our student population increases, we looked at spending relative to student population increases and found some startling statistics.

From FY 1992 to FY 2009, Texas' student population increased 37 percent and the change in school district administrators and other non-teaching staff grew an astounding 172 percent. The national average was 17 percent and 46 percent.⁵

Public schools in Texas would have saved almost \$6.4 billion if they had not increased the employment of administrators and other non-teaching staff more so than their increase in students. Texas public schools hired 159,228 additional non-teaching personnel, above and beyond its growth in student enrollment during FY 1992 to FY 2009.⁶

Issue 2: Resources are not efficiently directed toward education

An efficient system of public schools would focus most of the resources on their primary mission. A simplistic method of determining the amount of money that actually goes into the classroom is using the most current data is from the TEA and the ISD snapshots and doing a simple calculation.

In 2014, total revenue per pupil was \$9,903; operating expenditures per pupil were \$8,327 and of the operating expenditures, 57.2% was spent on

⁵ US Dept of Education, NCES statistics, 1994 Digest of Education Statistics, tables 40 and 85; 2010 Digest of Education Statistics, tables 36 and 87

⁶ *The School Staffing Surge*, Benjamin Scafidi, 2012; <http://files.eric.ed.gov/fulltext/ED536674.pdf>

"instruction" (down from 57.8% in 2013). That "instruction" category includes things that we might not consider instruction and this is all self-reporting through the PEIMS (Public Education Information Management System) reporting system.

Line 82 of the Snapshot provides the percentage of expenditures used for “Instructional” purposes and that is defined on the TEA website as item descriptions:

82. Expenditure % Instructional: The percentage of total actual expenditures for instruction in the district. Instructional expenditures include all activities dealing directly with the interaction between teachers and students, including instruction aided with computers; and, expenditures to provide resources for juvenile justice alternative education programs (JJAEPs).⁷

That may be a generous definition, but an interesting approach to determine the cost of a classroom would be to take the total per pupil revenue (\$9,903) and multiply it by 22 (preferred number of students for elementary classrooms). This calculation reveals that we send \$217,866 per classroom. The average teacher salary in the traditional public school is almost one-third that -- \$49,912 -- revealing that Texas schools spend \$167,954 above the teacher salary per class. That is a generous calculation as in Texas, according to TEA’s ISD 2014 Snapshot, the number of students per teacher is

⁷ *Snapshot 2014*; Texas Education Agency, 2014;
<http://ritter.tea.state.tx.us/perfreport/snapshot/2014/itemdef.html>

actually 15.3 – not 22 - in Texas’ 7,986 traditional public schools.

Issue 3: Tenure and Labor Laws waste resources and reduce efficiency.

In addition to all the other waste identified by this brief, unnecessary labor laws drive huge waste throughout the system. Taxpayers allocate about \$60 billion annually for public education, and 80 percent of that money is spent on labor.⁸ Even a California Court threw out labor and tenure laws as being inefficient and contrary to the interests of students and taxpayers.

Tenure and labor laws in Texas apply not only to teachers but also to school administrators and superintendents. Schools are required to allocate resources in inefficient manners due to these tenure and labor laws. They must spend months building a file for potential termination and potentially allocate significant legal costs.

However, the effect of these labor laws is that year after year, marginal educators are left on the job due to the difficulty of removing them. Even if none of the other waste existed, this element alone represents waste throughout the \$60 billion system and could render the entire system unconstitutionally inefficient.

Issue 4: Individual ISD funding and spending does not correlate with student achievement.

How much does it cost to educate a student? When then-House Public

⁸ Dr. Don McAdams trial testimony at Volume 38, page 58.

Education Chairman Kent Grusendorf asked that question of an education lobbyist, he was told “There will never be enough money.” That was a disturbing statement to taxpayers across the state.

Legislators are told session after session that additional spending will improve student outcomes. Legislators have continued to direct the lion’s share of the state budget to education, often to the detriment of other state funding areas. Education has consistently been a state funding priority. Yet assessing how ISD’s not only spend their dollars but on student outcomes is important to this debate. We at Americans for Prosperity and specifically at the Red Apple Project have studied ISD spending and have found little to no correlation between spending and performance, but some schools definitely are more efficient in spending while also achieving higher student progress.

In 2009, the 81st Texas Legislature charged the Comptroller’s Office with studying efficiency in public schools and that has resulted in the Comptroller’s Financial Allocation Study for Texas (FAST) that examines resource allocation in both academic progress and spending at Texas’ school districts and individual school campuses.

Each district and campus is assigned a FAST rating of one to five stars, indicating its success in combining cost-effective spending with the achievement of measurable student academic progress. Five stars reflects the strongest relative progress combined with the lowest relative spending.

The latest ratings were in December 2014 and FAST identified districts that have improved student achievement while keeping expenditures relatively low.

There are 46 five-star charter and public school districts in 2014. Of the 46 five-star districts, 26 held that rank last year, and 4 of those districts have achieved five-star ratings all five years of FAST⁹.

The fact that only 46 ISD's charter and public school districts received this rating out of the 1,882 school districts and charter schools in Texas is alarming. And though charter schools total only around 600 of the 8,574 schools in Texas, 18 of those 46 five-star FAST ratings went to charter schools. And while some schools rank high in academic progress and low on the spending index, others rank low in academic progress and high on spending.

However, spending relative to student progress or performance is not a definitive indicator of efficiency. According to Education Resource Group (ERG) Analytics, some ISD's have both good financial performance and student performance but just how credible is the reporting done by ISD's? At the time the school finance lawsuit was filed, El Paso ISD is listed as "Recognized" by TEA standards and with 64,000 students, spending was listed as \$10,143 per pupil, and \$5,475 was spent on instruction per pupil. Subsequently, El Paso ISD was found to be rife with problems.

⁹FAST Results 2014, Texas Comptroller of Public Accounts; <http://fastexas.org/results/>

In December 2012, Texas Education Commissioner Michael Williams announced that he was stripping the trustees of the El Paso Independent School District of their authority and appointed a five-member board of managers to oversee the district.¹⁰

The move came in the wake of accusations that the trustees failed to catch a scheme tied to former Superintendent Lorenzo Garcia that either removed or advanced students who were not passing. At the time, Garcia was in federal prison serving a three-and-a-half-year term related to the scandal.

Federal prosecutors charged Garcia with carrying out measures to inflate test scores so that the district could collect annual bonus funds for goals under the No Child Left Behind Act. Williams says that in the wake of the scandal, members of the El Paso school board did not do enough to address what had happened, and had lost the trust of the community. It would be difficult to claim that El Paso ISD operated in an efficient manner.

Issue 5: School finance lawsuits are reducing efficiency.

It seems that when it comes to school district lawsuits, some district officials are eager to file suits, while others are reluctant. But even those

¹⁰ Texas Association of School Boards, 2013; <https://www.tasb.org/Services/Legal-Services/Docket/Spring-2013/New-Approvals/Appointment-of-a-Board-of-Managers.aspx>

officials in relatively conservative areas of the state – like Midland ISD and Ector County ISD – districts which didn't originally plan to enter the lawsuits, were convinced to enter. News stories reported that each of those districts first reported they would not enter into the lawsuits, but after the school boards met with attorneys who flew in to encourage their participation, both districts joined the lawsuit. The school districts were assured that the funds they pay to enter the lawsuit will be reimbursed to them by the state when the school districts win their lawsuit. What should be going into the classroom is going toward costly litigation.

The last Texas school finance lawsuit cost taxpayers millions of dollars. That represents a tremendous waste of education dollars, which could be spent in the classroom, but instead ended up paying lawyers for suing taxpayers for more taxpayer dollars. That represents inefficiency for ISD's expending resources intended to fund education being used to sue the state for more funding.

Issue 6: Remedial Education efforts show that the existing system is inefficient

If the money spent on K-12 education produces a significant percentage of graduates prepared to go to college and succeed there, that would be considered a success. In 2006, the Texas Public Policy Foundation produced a paper, which pointed out that 38% of the students graduating from high school

needed remedial education for college. In 2006-07, that cost for remediation was over \$206 million¹¹ not including the economic costs to the state of an underprepared workforce. Figures we have from the Texas Higher Education Coordinating Board (THECB) show a biennial cost of \$162,193,942 to the state alone (this does not include other sources of revenue for this activity including grants, tuition, federal funding, etc.)

For the cost savings to students, a 2013 estimate from the Alliance for Excellent Education claims that common-sense reforms to remedial education in Texas would save the state's students \$462 million in the first year of implementation (but not necessarily annually after that).¹² This includes \$298 million in direct savings to students, plus \$164 million in additional earnings. (The information can be found in Appendix A of the linked report.)

THECB issued a report – The 2012-2017 Developmental Education Report - that the revealed Texas invests between \$5-10 million annually to explore methods for reducing the cost of and need for remedial education. While this investment promises to reduce the overall cost of remedial education for Texas in the long-run, for now it can be appropriately considered among the costs of remedial education.

¹¹ *The Cost of Developmental Education in Texas*, Legislative Budget Board, 2007; http://www.lbb.state.tx.us/Higher_Education/The%20Cost%20of%20Developmental%20Education%20in%20Texas.pdf

¹² *Saving Now and Saving Later*, Alliance for Excellent Education, 2011; <http://all4ed.org/reports-factsheets/saving-now-and-saving-later-how-high-school-reform-can-reduce-the-nations-wasted-remediation-dollars/>

Keeping in mind that the best available data are either old numbers or rough estimates, remedial education’s combined cost to Texas and to students can reasonably be estimated to run approximately \$670 million annually. Taxpayers consider this paying twice for the same thing and tremendously inefficient.

Issue 7: High ISD debt results in inefficient use of state resources.

Texas Comptroller Susan Combs issued a series of reports on spending and debt in Texas. In the report titled “Public School Construction Costs” issued in 2012, the report sounded an alarm regarding K-12 debt: “The share of all public and charter school expenditures spent on debt repayment — largely for construction — has grown from 7.6 percent in the 2002-03 school year to 10.8 percent in 2012-13. During the same period, the TEA data show debt service spending rose by **103 percent**, while enrollment grew only **19 percent**.”¹³

According to the Texas Bond Review Board, as of August 2014, Texas taxpayers are \$312.6 billion in debt (principal plus interest), second only to California¹⁴. The largest portion of that debt is school district debt. ISD’s across the state have put taxpayers \$111,488,042,611 in debt. While most of

¹³*Texas Public School Construction Costs*, Texas Transparency, Texas Comptroller of Public Accounts, 2013;

http://www.texas Transparency.org/Special_Features/Reports/School_Construction/

¹⁴ Texas Bond Review Board, 2014 Annual Report

<http://www.brb.state.tx.us/agency/publications.aspx>

this is taxpayer-approved, few taxpayers know how much debt their own ISD is carrying. Even some elected school board members don't know. One Round Rock ISD School Board member admitted not knowing how much debt her own school district was carrying. (It was over \$1.1 billion – principal plus interest.)

Principal alone, Texas school districts debt increased 12.8 percent from 2010 to 2014 – from \$60.23 billion to 67.96 billion. The ISD debt – principal and interest-- puts taxpayers' burden at over \$111 billion. Over the past five fiscal years school district debt issuance has grown by 69.3 percent (\$3.72 billion) from \$5.37 billion in fiscal 2010 to \$9.09 billion in fiscal 2014 (*Table 3.4*). The state's population grew by 8.8 percent (2.2 million) during the same time period.¹⁵

We at Americans for Prosperity have found that ISDs have not been prudent in issuing debt or in how that money is spent. In Leander ISD, two new schools – a middle school and an elementary school – sat empty because the school district could not afford to staff the schools.¹⁶ Leander ISD owes more in interest than in principal. The Texas Bond Review Board reports that Leander owes \$1,088,319.288 in principal, and more than twice that -

¹⁵ *ibid* – page 35

¹⁶ Lubbock Avalanche – Journal, August 20, 2011; <http://m.lubbockonline.com/filed-online/2011-08-20/texas-school-cuts-be-felt-ways-big-and-small-following-cuts-4-billion>

\$2,369,444,925 - in interest for a total debt of \$3,457,764,213.¹⁷ The interest owed represents 72.2% of the principal. That is result of using capital appreciation bonds (CABs) to finance debt.¹⁸

According to the Texas Bond Review Board's 2014 report, over the past five years School District CAB issuances have increased by 239.5 percent from \$139.0 million in FY 2010 to \$471.9 million in FY 2014. During fiscal 2014 CAB issuances were 5.2 percent (\$471.9 million) of the total par amount of school district debt issued. And while Leander ISD's debt is among the highest per student at \$32,200, Frisco ISD's per pupil debt is \$34,307.¹⁹ From 2010-2014, Dallas ISD debt grew 49.8% while average daily attendance (ADA) grew only 32.6%.

Some ISDs are growing their debt faster than student enrollment growth. Most of the school district debt is for facilities. Jason Moore from Odessa owns a masonry business. He testified several years ago before the House Public Education Committee that he has recommend cost-savings to the Ector County ISD facilities coordinator only to hear "we got the funding approved from the taxpayers – we are going to build the school according to how it has been designed." Students do not learn any better in schools with curved brick

¹⁷ Texas Bond Review Board, 2014 Annual Report
<http://www.brb.state.tx.us/agency/publications.aspx>

¹⁸ ibid, pg 39

¹⁹ ibid pg 37

archway entrances to Taj Mahal facilities.

While the ISD bond initiatives are often sold to the public as being for the children, the debt represents today's leaders placing a large financial burden on tomorrow's taxpayers. And the trend is to continue to issue debt, making it more challenging for tomorrow's taxpayers to have the opportunity to enjoy the American dream.

The state's average voter-approved debt per student has increased 16.2 percent (\$2,062) per student since FY 2010 and 87.7 percent (\$6,899) since FY 2005.²⁰ If that trend continues, the American dream may be out of reach for many of today's students. And while the focus may be on facilities, the benefits and cost need to be weighed. Buildings don't teach students. Teachers do.

We are leaving our children a legacy of debt, not the legacy most of us want to leave, and not an efficient means to deliver public education as today's students will be tomorrow's debt-laden taxpayers.

Issue 8: Public school fund balances are too high

Many in the Texas education bureaucracy and public school proponents have called for increased state funding for public schools. Little focus has been given to the fund balances which Texas ISDs carry.

²⁰ Ibid pg 44

According to the 2014 TEA Snapshots, created with data provided by the Districts, Texas public schools carry a fund balance of \$9,539,106,246. In 2001, the fund balance average for ISDs in the Lone Star State was 14%. In 2003, it was 20%. The fund balance represents “money in the bank” or off-budget, surplus funds.

Advocates for increased funding for public schools have represented a need for a fund balance to cover costs the first of the school year before funding from the state arrives, but since the state currently covers only about half the ISD M&O costs that does not make sense. While advocates for increasing education funding have pushed the legislators to empty the state “rainy day” budget stabilization fund for education, it is ironic that ISDs generally have a much greater percentage of their annual budget in a reserve fund than does the state – or most taxpayers have in the bank, for that matter.

Issue 9: Superintendent Salaries are too high.

Good leadership is important. But we might note that according to information on the TEA website, over 200 ISD Superintendents earn as much as the Governor of the Lone Star State and their salary is only a fraction of what they cost Texas taxpayers. Many have automobiles, home offices, electronics, life insurance, enormous bonuses and certainly life-long pensions in those contracts. The contracts are often driven by the Texas Association of School Boards or the Texas Association of School Administrators as the contracts are

often relatively standard in their extravagance.

Some superintendent contracts make for interesting reading – if you do so with your calculator. The Lewisville ISD superintendent contract is not unique. It provides for the superintendent to draw a salary while engaged in consulting services. The Lewisville’s superintendent contract makes clear the superintendent has plenty of time for consulting and “double dipping” as the Super receives 10 vacation days in addition to the number of personal and local leave days per year as are afforded to other professional employees of the district.

The Texas Education Agency lists the superintendent salaries for the state on their website, but the Texas Tribune has done an excellent job providing some perspective for taxpayers. This is from their website:

“During the 2011 legislative session, amid a heated conversation among state lawmakers about whether Texas public schools spent too much on administration, The Texas Tribune published a salary database of the state’s highest-paid school administrators: superintendents.

After a year and a \$5.4 billion reduction in state funding for public education, schools are under scrutiny for how they have — or haven’t — trimmed their budgets to absorb the cuts. So we’ve added an

interactive with the 2012 figures released by the Texas Education Agency in March. (Compare with the 2011 database [here](#).)

Here's a rundown of some highlights:

The average salary for the 10 highest-paid school chiefs is down from \$312,993 to \$297,039 — just over \$15,000 from last year. There has been some movement in the 10 highest-paid superintendents since then, too. Beaumont ISD's Carrol Thomas still tops the list at a base salary of \$347,834. Katy ISD, Garland ISD and Coppell ISD have pushed the Fort Worth, Northside and Alief districts off the list. (If you break the list down by per-student pay, Jeffrey Turner of Coppell ISD makes the most per student in that category at \$27.60 to Thomas' \$17.49.)

With a new person in the top post at Alief, that district, whose superintendent used to be the second highest paid in the state, has dropped to 22nd on the list.

The former third and fourth top-paying districts, Dallas and Fort Worth, have both installed new chiefs at lower salaries than their predecessors, leaving Spring Branch's Duncan Klussmann in the second spot at \$309,400". -

<http://www.texastribune.org/library/data/texas-superintendent-salaries-2011/>

But DISD got more attention in June 2012 with news of the salaries for staff surrounding the Superintendent. This came from the Dallas Morning-News:

“...the district disclosed salaries for Mike Miles’ incoming “cabinet” staff that set new records for top administrative posts. Those four top-level positions will earn salaries ranging from \$182,000, for a newly created “chief of talent and innovation,” to \$225,000 for Alan King, the DISD chief financial officer who is being promoted to chief of staff for the new regime.

“A lot of the holy-moly astonishment went to the \$185,000 per annum earmarked for the new Chief of Communications, a 31-year-old who earned less than half that amount working for Miles in a similar post in Colorado.

“She’ll make more than the chief media honchos for the city of Dallas and the Fort Worth ISD, and the chief spokesman for the White House. She’ll also make more than the ordinarily taciturn Police Chief Brown, which may account for his frank surprise...”²¹

²¹Dallas Morning News, June 8, 2012;
<http://www.dallasnews.com/news/columnists/jacquielynn-floyd/20120607-well-paid-disd-administrators-better-be-top-performers.ece>

Many in the public expressed outrage at the salaries²², which minus support staff, totaled over \$850,000. Public trust in the public schools erodes when salaries which exceed the White House press secretary and exceed the local police chief are given to staffers who don't appear to be at that salary level and are doing jobs which are less demanding and substantive.

Issue 10: Consolidation of administration could result in savings.

Texas has over 1,000 school districts and particularly in urban areas, one could ask why so many independent school districts? -

<http://wgisprd.tea.state.tx.us/sdl/MapMode.aspx>

- In McLennan Co, there are 18 ISDs and portions of two others -

<http://wgisprd.tea.state.tx.us/sdl/MapMode.aspx>

- In Travis Co, there are 7 and portions of 8 ISDs
- El Paso Co has 9 ISDs
- There are 19 ISDs in Harris County
- Tarrant County has 16 ISDs and portions of 2 others
- Bexar County has 16 ISDs and portions of 3 others

²² Dallas Morning News, May 31, 2013;
<http://letterstotheeditorblog.dallasnews.com/archives/dallas-isd/>

- Dallas County has 15 ISDs and portions of 2 others

Some consolidation has taken place.

Since FY2006, Megargel ISD consolidated with Olney ISD;

Wilmer-Hutchins ISD consolidated with Dallas ISD; Spade ISD

consolidated with Olton ISD, and Marietta ISD consolidated with Pewitt CISD;

Kendleton consolidated with Lamar CSD.

Consolidation could limit the number of high-salaried administrators, allow the cream of the crop to perform the administrative oversight for more schools, realize economies in scale in purchasing, ultimately providing opportunity for more education dollars to be directed to the classrooms.

Issue 11: Using public education/tax dollars to lobby is inefficient.

When Thomas Jefferson wrote: “To compel a man to furnish funds for the propagation of ideas he disbelieves and abhors is sinful and tyrannical,” he likely had no idea that the practice would become commonplace in capitols across the country.

One of the most egregious uses of tax dollars intended for education is to lobby – usually for more tax dollars. Several years ago, Americans for Prosperity did a review of all taxpayer-funded lobbying and found that well over \$50 million was spent on lobbying by Texas taxing entities. While the state has a prohibition against lobbying the state with public money, the practice continues.

While some ISDs have hired their own registered lobbyists, almost all ISDs join associations that lobby. The Texas School Alliance has registered lobbyists, using the services of Moak, Casey, and Associates and Hillco Partners. Local governments like the Dallas Independent School District pay membership dues to belong to the association.²³

According to the Texas Ethics Commission filings, Dallas ISD also has eight registered lobbyists for 2015 making as much as \$120,000. Many ISDs – like Northside ISD in San Antonio – put their legislative priorities online. Those priorities have nothing to do with educating children, but everything to do with maintaining the status quo system and increasing funding for their ISD.²⁴ Their legislative agenda includes opposing funding going to charter school facilities and to school vouchers, both of which provide education to children.

It is important to point out that citizens should not be paying for advocacy or lobbying. Often those lobbyists represent organizations which receive tax dollars. Here is an example of the Texas Association of School Board information available online:

Fiscal Year 2012, the TASB reported total revenue of \$49,885,079 and

²³*Texas School Alliance*, Ballotpedia;
http://sunshinereview.org/index.php/Texas_School_Alliance

²⁴*Legislative Priorities*, Northside Independent School District, 2011;
<http://www.nisd.net/board/docs/2011-legislative-priorities.pdf>

expenses were \$50,077,258 and salaries represented \$51.6 percent of those expenses.²⁵

According to the Texas Ethics Commission, TASB had 12 registered lobbyists making as much as \$645,000. That was likely up from the 2006 TASB 990 IRS filing which listed lobby expenses as \$402,348, but since Texas only required lobbyists to file a range for compensation, that data is not publicly available.

This is a well-funded organization which lobbies and reports spending almost a half million dollars doing it. This organization, funded with a combination of tax dollars and by contractors and businesses which make more money the more dollars are spent on education. Many of the lobby activities are focused on increasing funding and opposing parents having choices where their children go to school and taxpayer approval of tax increases.

TASB lists the following as “Cornerstone Principles guide TASB’s Advocacy Agenda. Those include “opposition to the use of public funds for vouchers, tax credits and other mechanisms to privatize public education.”²⁶

²⁵ *Texas Association of School Boards, Inc*, Pro Publica, 2015;
<https://projects.propublica.org/nonprofits/organizations/742275519>

²⁶ *TASB Advocacy Agenda Principles*, Texas Association of School Boards, 2015;
<https://www.tasb.org/Legislative/TASB-Advocacy-Agenda/2014-16-Agenda/Cornerstone-Principles.aspx>

Their 2011 priorities included support for a school finance system that “...gives school board access to more golden pennies and additional taxing authority without voter approval...” They also listed TASB’s opposition to the use of Permanent School Fund (PSF) for open enrollment charter school facilities.

While many citizen activists are advocating for more voter approval for increased funding and for public funding for charter schools, organizations supported by and designed to represent our schools are adopting policies to lobby against the very citizens who pay the lobby tab.

TASB is only one example of around 30 organizations that take dues directly from school districts (public dollars) and use those funds to lobby, often for more money and fewer opportunities for parents and citizens. Not only do school associations have advocacy agendas but school districts such as Richardson ISD provide their “Legislative Priorities” online. Those priorities include the following, taken directly from their website²⁷: “Oppose initiatives to divert public funds to privately run schools that are not held to the same accountability and transparency requirements as public schools. State voucher plans, tax credits, tuition reimbursements, or any program that diverts public

²⁷ *2015 Legislative Priorities*, Richardson Independent School District, 2015; http://www.risd.org/group/aboutrisd/AboutRISD_Docs/2015-RISD-Legislative-Priorities-Booklet.pdf

tax dollars to private entities with little or no academic or financial accountability to the state, taxpayers, or local communities is poor public policy.”

They are expressly advocating for defeat of legislation that provides parents with options such as school choice. We must challenge why any ISD believes they have the right to take public dollars and deny parents the opportunity to select the school which they believe would provide the greatest opportunity for their child to succeed. If ISDs take pride in the product they are providing, why should they fear a mass exodus of students were parents given the option to take their tax dollars elsewhere? It shows a tremendous lack of confidence in the product the public schools are delivering.

Issue 12: Using education dollars for PR is inefficient.

Some ISDs have used tax dollars to hire public relations firms.²⁸ Texas school districts may be laying off teachers and screaming at the state for cutting their cash, but at least one district has no problem coughing up \$100,000 for some professional public relations work.

According to the Fort Worth Star-Telegram, in May of 2012, the Arlington ISD school board approved a contract for up to \$100,000 with

²⁸ *Arlington ISD hires PR Firm*, Red Apple Project; 2012, <http://redappleproject.com/category/non-instructional-staff/page/3/>

BrandEra, a Fort Worth marketing firm operated by two Arlington natives, to collaborate with administrators and come up with a theme and supporting materials to tout the district's offerings and achievements. (The pay at Arlington for a starting teacher fresh out of school is [\\$45,876](#).)²⁹ This was done as citizens expressed concern that this was an inappropriate use of education dollars, particularly when the District claimed to be short on funds.

The Fort Worth Star-Telegram wrote:

Perhaps the biggest hurdle for the new branding campaign is convincing a skeptical public -- which has heard the complaints about deep cuts in educational funding -- that now is the time for spending money on a public relations contract. "I have great reservations," said Richard Weber, who has served on numerous school district committees. "I do not believe it is money well spent."³⁰

No wonder the public is skeptical and cynical about how ISD's spend education dollars

²⁹Fort Worth Star –Telegram, May 12, 2012; <http://www.star-telegram.com/2012/05/12/v-print/3956047/dfw-school-districts-hiring-firms.html>

³⁰ ibid

CONCLUSION

The bottom line is this: even discounting the waste, fraud and abuse of tax dollars, when only half of the education dollars are spent on instruction, it is difficult to make the case that education funds are spent efficiently. In July 2015, the Quorum Report featured an article on school districts representatives and status quo advocates concern regarding greater transparency, reporting and data dissemination. The article reads, in part:

School districts, and especially the *Fast-Growth School Coalition*, are far from eager to see new life for a data-driven financial accountability system once housed at the *Comptroller's Office* and now turned over to a conservative-leaning group.

Texas continues to remain a state with one of the longest, and most comprehensive, histories of data collection. But as other states have begun to leverage data collection as a tool for school improvement, Texas has lagged behind, refusing to link teacher and student data and only sporadically considering data in policy decisions.

That's due, in part, to the conservative strategy of using data as a weapon or a label, rather than as a tool. It gets personal in fast-growth school districts,

which saw a lot of finger pointing about bond debt but little in the way of support or funding for growth.

It's hard to argue with data. It is imperative that policymakers, educators and the public have data and use it to make the best decisions possible for Texas students. It is a sad commentary that status quo advocates are often focused more on the education bureaucrats than on the kids. With a bureaucracy of more than 656,000 in Texas ISDs, along with their numerous associations focused on protecting those jobs and increasing their salaries, who is representing the kids?

Legislators are being bullied by superintendents and education associations. With their considerable voting strength, they make clear that they will work to defeat legislators who don't vote with them. They have organizations like the parent PAC we contend does not represent parents, but more-education-spending interests, and spend tens of thousands of dollars to fund candidates friendly to their positions. They oppose parental choice in education. Lost in the debate are the kids.

We have seen parents distraught that their children are in schools where the students are struggling. They are in school districts rated unsatisfactory but have no options. We have met with grandparents in Trinity, Texas, whose son died and they were raising his daughter. They made the heartbreaking decision

to send her to live with their other son because they refused to send their granddaughter to a failing school. These parents in Trinity are without options.

In legislative hearings, the sole focus is the education bureaucracy, and students are not even mentioned. Education should focus on the kids and while we recognize that good teachers in the classroom make a difference, education has not improved as we pour more money into the system and too small a portion of those education dollars make it to the classroom and into teacher salaries. Texans should be getting more education for our dollars, not simply throwing more dollars at education.

A NATION AT RISK was a stunning report, conceived, written, and focused on finding schools in poor areas where students were succeeding, and we did. But those were rare. The shocking aspect of that report was that the US was not the education leader most Americans thought we were. While we spend more on education than almost any other industrialized country³¹, our students are not performing to compete.

The report was frank in its assessment of American K-12 education and referred to it as “unilateral disarmament” and “if a foreign country had done to our education system what we have done to it, it would be considered an act of

³¹*US Education Spending, Literacy and Test Scores vs. Other Countries*, Truthful Politics, 2012; <http://www.truthfulpolitics.com/http://truthfulpolitics.com/comments/u-s-education-spending-literacy-test-scores-vs-other-countries/>

war.” According to the Pew Research Center, US students score in the middle of the pack on math but significantly lower (27th) in science.³² US students are falling even further behind other developed countries and are ill prepared to compete in a global marketplace.

According to the Texas Coordinating Board for Higher Education, we are spending millions of dollars a year on remedial education – teaching students in college what they should have learned before getting out of high school.

Almost 42 percent of students entering community colleges in Fall 2006 were underprepared in mathematics, and only 27 percent of those met Texas Success Initiatives within two years (by Summer 2008).³³

For over 30 years, as we continue to discuss reform, it is always in the context of rearranging the chairs on the Titanic and expecting the ship to stay afloat.

During the economic downturn, Texas ISD’s could have made cuts without impacting the classroom. After all, Texas ISD’s had one non-teacher for every teacher on staff and spent only half of the education dollars on

³²*US Students Improving – Slowly – in Math and Science, But Still Lagging Internationally*, Pew Research Center, 2015; <http://www.pewresearch.org/fact-tank/2015/02/02/u-s-students-improving-slowly-in-math-and-science-but-still-lagging-internationally/>

³³ *Rider 50 and 59 Reports*, Texas Higher Education Coordinating Board, 2011; <http://www.theccb.state.tx.us/files/dmfile/Rider50and59ReportFINAL.pdf>

instruction. While administrators made an average of \$41,000 more than teachers, employees in the “other professional staff” made an average of almost \$9,000 more than teachers make. It is clear school districts in Texas should reassess their priorities and put more of the education dollars into the classroom.³⁴

Schools today are attempting to be all things to the kids – we pick them up in the morning, start the day feeding them breakfast, we provide lunch, we often offer after-school care, and have nurses on staff during the day. We appear to be a comprehensive one-stop service provider, doing nothing very well.

In public schools today, we provide services far beyond the constitutional intent of a basic education. And in doing so, we risk not accomplishing the core mission very well. A recent report titled KIDS COUNT³⁵ shows Texas as having a 25% dropout rate, but pushes for still more money even as the additional funding appears to have little to no impact on the problems they articulate.

³⁴*Snapshot 2011 Summary Tables*, Texas Education Agency, 2011;
<http://ritter.tea.state.tx.us/perfreport/snapshot/2011/state.html>

³⁵ *The 2012 Kids Count Data Book*, The Annie E. Casey Foundation, 2012;
<http://datacenter.kidscount.org/DataBook/2012/OnlineBooks/KIDSCOUNT2012DataBookFullReport.pdf>

Teacher organizations do not appear to represent teachers. That may be because most of the organizations with the teacher label also representing various employees including janitors and bus drivers. Teachers are poorly represented and are reticent to speak out for fear of retaliation from administrators.

While the education lobby pushes for the State to empty its rainy day fund (the Budget Stabilization Fund), the TEA reports in the Snapshot that independent school districts across the state have \$9,539,106,246 in fund balances. Over \$9 billion in the bank, and yet the ISDs are suing the state for more funding. Even while the legislature cuts other programs to provide still more funding for education, the education lobby claims the legislature hasn't funded student growth. But funding over a recent 10 years grew at a rate of five times faster than student enrollment and to continue that trend is simply unsustainable without adversely impacting other programs or significantly raising taxes.

It is clear indeed that there will never be enough money for the education lobby. We do not need to put more money in the education system, but we need to be getting more education for our money. The system is cumbersome and resistant to reform while woefully inefficient in delivering education and in serving Texas kids.

Greater efficiencies could be realized if we stopped funding the schools and started funding students. A more efficient system would provide funding portability and assign funding to the student to provide parents the opportunity to choose the education environment where they believe their child has the greatest opportunity to succeed.

PRAYER

For these reasons, we request that the Court:

- (1) reverse the trial court's judgment against the Efficiency Intervenors on their efficiency claim and render judgment for them on this claim; and
- (2) grant any other relief to which the Efficiency Intervenors may be entitled.

Respectfully submitted,

/s/Roger B. Borgelt
Roger B. Borgelt
State Bar No. 02667960
Borgelt Law
614 S. Capital of Texas
Hwy.
Austin, Texas 78746
(512) 600-3467 (Tel.)
roger@borgeltlaw.com
Counsel of Record

CERTIFICATE OF COMPLIANCE

Relying on the word count function in the word processing software used to produce this document, Petitioner certifies that this Amicus Brief is in compliance with Texas Rule of Appellate Procedure 9.4, and contains 7645 words.

/s/ Roger B. Borgelt
Roger B. Borgelt

CERTIFICATE OF SERVICE

I hereby certify that on August 21, 2015, the foregoing **BRIEF OF AMERICANS FOR PROSPERITY AS AMICI CURIAE IN SUPPORT OF APPELLANTS/CROSS-APPELLEES** was served via electronic service on the following:

Mark R. Trachtenberg
HAYNES AND BOONE, LLP
1 Houston Center
1221 McKinney St., Ste. 2100
Houston, Texas 77010
mark.trachtenberg@haynesboone.com

John W. Turner
HAYNES AND BOONE, LLP
2323 Victory Ave., Ste. 2100
Dallas, Texas 75219
john.turner@haynesboone.com

Attorneys for Calhoun County ISD, et al.

J. David Thompson, III
Philip Fraissinet
THOMPSON & HORTON LLP
3200 Southwest Freeway, #2000
Houston, Texas 77027
dthompson@thompsonhorton.com
pfraissinet@thompsonhorton.com

Holly G. McIntush
THOMPSON & HORTON LLP
Wells Fargo Tower
400 W. 15th St., Ste. 1430
Austin, Texas 78701
hmcintush@thompsonhorton.com

Attorneys for Fort Bend ISD, et al.

Marisa Bono
MEXICAN AMERICAN LEGAL DEFENSE AND
EDUCATION FUND, INC.
110 Broadway, Ste. 300
San Antonio, Texas 78205
dhinojosa@maldef.org
mbono@maldef.or

Roger L. Rice
MULTICULTURAL EDUCATION
TRAINING AND ADVOCACY, INC.
240A Elm St., Ste., 22
Somerville, Massachusetts 02144
rlr@shore.net

Attorneys for Edgewood ISD, et al.

Robert A. Schulman
Joseph E. Hoffer
Leonard J. Schwartz
SCHULMAN, LOPEZ & HOFFER, L.L.P.
517 Soledad St.
San Antonio, Texas 78205-1508
rschulman@slh-law.com
jhoffer@slh-law.com
lschwartz@slh-law.com

James C. Ho
GIBSON, DUNN & CRUTCHER LLP
2100 McKinney Avenue, Suite 1100
Dallas, Texas 75201-6912
jho@gibsondunn.com

Attorneys for Texas Charter School Association, et al.

Richard E. Gray, III
Toni Hunter
Richard E. Gray, IV
GRAY & BECKER, P.C.
900 West Ave.
Austin, Texas 78701
rick.gray@graybecker.com
toni.hunter@graybecker.com
richard.grayIV@graybecker.com

Randall B. Wood
Doug W. Ray
RAY & WOOD
2700 Bee Caves Rd., #200
Austin, Texas 78746
buckwood@raywoodlaw.com
dray@raywoodlaw.com

Attorneys for the Texas Taxpayer & Student Fairness Coalition, et al.

ENOCH KEVER PLLC

Craig T. Enoch
Melissa A. Lorber
Amy Leila Saberian
Shelby O'Brien
600 Congress Ave., Suite 2800
Austin, Texas 78701
512.615.1200 telephone
512.615.1198 facsimile

SPRAGUE, RUSTAM & DIAMOND, P.C.

J. Christopher Diamond
11111 Katy Freeway, Suite 300
Houston, Texas 77040
713.647.3130 telephone
713.647.3137 facsimile

Attorneys for the Efficiency Intervenors

Ken Paxton
Jonathan F. Mitchell
Rance Craft
Kristofer S. Monson
Beth Klusmann
Evan S. Greene
Shelley N. Dahlberg

OFFICE OF THE ATTORNEY GENERAL
P.O. Box 12548 (MC 059)
Austin, Texas 78711
rance.craft@texasattorneygeneral.gov

Charles E. Roy
James E. Davis

Attorneys for Michael Williams, Commissioner of Education, In His Official Capacity, Glenn Hegar, Texas Comptroller of Public Accounts, In His Official Capacity, the Texas State Board of Education, the Texas Education Agency

/s/ Roger B. Borgelt
Roger B. Borgelt