



## Richard C. Trotter's Expert Report for School Finance Litigation

by The Honorable  
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### Key Points

- The current monopolistic system is inherently inefficient and is run for the benefit of the system's stakeholders rather than consumers.
- Trotter's experience as a school board member and parent lead him to the conclusion that Texas schools are monopolistic and that local control is a myth.
- If the classical legal tests of monopoly were applied to the Texas school system, they would reveal that the government holds monopolistic control.

*In 2013, Travis County District Court Judge John Dietz began to hear yet another case about public school finance. This follows in a long line of lawsuits from the late 1980s where school districts and other plaintiffs have sought a declaration that the Texas system of public schools is unconstitutional because the state doesn't allocate money equitably, or spend enough on public education. The Texas Supreme Court has issued six rulings on school finance in these cases determining whether the state satisfies Article 7 of Texas' Constitution, which requires the state "to establish and make suitable provision for the support and maintenance of an efficient system of public free schools."<sup>1</sup>*

*In each of these cases, the focus has been on the money spent on public education. However, the current case has the potential to change this trend. For the first time, a party in the lawsuit (The Efficiency Intervenors) began advancing the argument that the real problem is that Texas public schools allocate the money they have inefficiently, at least in part because they lack competition.<sup>2</sup> Numerous experts submitted expert reports to the court supporting this argument; the Foundation is publishing a series of summaries of these reports. Below is the summary of the expert report filed by Richard Clayton Trotter:*

*"The current system is constitutionally inefficient as a matter of fact," Richard Clayton Trotter writes, "because the current system is a government-controlled monopoly and monopolies are inherently inefficient and run for the benefits of the monopolies stakeholders rather than the consumer." In order to demonstrate that the Texas K-12 school market is monopolistic, Trotter applies a classic test of market concentration: the Herfindahl-Hirschman Index (HHI). This index is "a measure of the size of firms in relation to the industry and as an indicator of the amount of competition among them." It can range from 0 to 1: a higher number indicates the presence of a monopoly. He explains, "the public schools control 95 percent of the students in Texas."<sup>3</sup> Therefore, their HHI is .905.<sup>4</sup> This indicates a highly concentrated monopoly market.<sup>5</sup>*

Grants of monopolies by Texas government are prohibited in the Texas Constitution. The Constitution states, "Perpetuities and monopolies are contrary to the genius of a free government, and shall never be allowed, nor shall the law of primogeniture or entailments ever be in force in this State." All Texans are required to pay for education services through school property taxes, which establish the government's dominance of the market and makes the purchase of education services from other sources prohibitively expensive. The government education systems, Trotter concludes, "are a monopoly which cannot be prosecuted under the antitrust laws, because they are shrouded with governmental authority, but they are a monopoly nonetheless."

As a school board member in Blanco, Texas, Trotter became familiar with the degree of centralization present in the Texas school system. He describes what it was like to become a school board member: "I was given a four volume set of the state 'regulations and guidelines' of the Texas Education Code and Regulations. Each volume was 3-4 inches thick." The amount of state regulations meant that the most significant independent action taken by the board was to determine the rate at which the citizens of Blanco would be taxed by the school. Trotter was never able to make progress on increasing the pay of good teachers, or of using attractive salaries to recruit well-qualified new teachers. Instead, he found that "the state salary schedule and state imposed teacher pay raises

made effective resource allocation a local impossibility?” State-level regulations meant that the local school board, which is elected by citizens, was not allowed to make changes in the schools they were elected to manage. Local control of Texas’ public schools is a myth, he concluded. He recalls, “As one who has attended Texas Association of School Board meetings and watched the members of that organization voting in unison for policies that benefit the educational hierarchy often at the expense of students, the reality of the educational monopoly in Texas could not be more apparent.”

The presence of a monopoly in K-12 schooling does not serve the children of Texas. Trotter writes, “The sum total of the legal structure is to produce unnecessary middlemen who dictate not only the price of education to the public through taxation, they monopolize who can and cannot teach, monopolize the product through regulation and provide a poor end product for the ‘monopoly profits’ they obtain. By any measure the present system is inefficient except at one thing—producing enormous insider profits for those participating in the system above the level of the individual teacher.” In support of his statement, Trotter provides the salaries of 20 highest paid superintendents in the 2010-11 school year, who earn an average salary of \$295,104.<sup>6</sup> When considering the average salary of public school teachers in the state, Trotter concludes that “teachers are also victims of the educational monopoly in the state of Texas.”<sup>7</sup> ★

View the full report by Dr. Richard Trotter [here](#).

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<sup>1</sup> *Edgewood I, II, III, & IV; West Orange Cove I, West Orange Cove II.*

<sup>2</sup> *Texas Taxpayers and Student Fairness, et. al. v. Michael Williams*, Plea of Intervention by the Efficiency Intervenors.

<sup>3</sup> According to the National Center for Education Statistics, there were 5,000,470 students enrolled in the K-12 Texas school system in fall 2011. See Table 203.20. There were 285,320 students enrolled in private K-12 schools. See Table 205.80. Accordingly, the government educated 94.3% of K-12 students.

<sup>4</sup> HHI is calculated by squaring market share then adding the square of all competitor’s market share. In this case,  $(.95 \times .95) + (.05 \times .05) = .905$ .

<sup>5</sup> The HHI is commonly used to legally determine violations of antitrust laws as they exist today. Using that metric, the Texas public education system would be considered a monopoly and fail the legal test if existing antitrust laws were applicable.

<sup>6</sup> “Interactive: How Much Does Your Superintendent Make?” *The Texas Tribune* (2 May 2012).

<sup>7</sup> The average Texas public school teacher’s salary in 2011 was \$49,178. See *Digest of Education Statistics*, Table 211.60.

