

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*

**AMICUS BRIEF OF DR. RONALD JOHNSON,
EDUCATOR, IN SUPPORT OF TEXANS FOR REAL EQUITY AND
EFFICIENCY IN EDUCATION ET AL,
“EFFICIENCY INTERVENORS”**

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Pro Se

IDENTITY OF PARTIES AND COUNSEL

Pursuant to TEX. R. APP. P. 9.7, *Amicus* herein incorporates by reference the identity of parties z

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Interest of *AMICUS*¹

¹ DISCLOSURE OF FEES: No fee has been paid or is to be paid for the preparation of this brief.

Dr. Ronald Johnson, a graduate of a rural Texas high school, went on to earn three degrees, (B.A., M. Ed., Ed. S) at The University of Arizona, and an LI. D. from Louisiana Baptist University, and C. Ph. D (Doctorate of Christian Philosophy) from the International Institute. He taught in public schools in Arizona and Texas. He was a Ford Foundation Fellow in recognition of his educational achievements with migrant minority children. He conducted or engaged in graduate studies at the University of Arizona, University of Illinois, and Southwest Texas State University. He is a certified public school administrator. He served on textbook selection panels in Arizona and Texas. The Center for Educational Reform recognized Dr. Johnson as a Texas Education Entrepreneur Hero because of his innovative charter school concepts. *USA Today* newspaper recognized Dr. and Mrs. Johnson for their achievements with at-risk, fatherless teenagers in a public school contract campus. He received a million dollar grant to fund development of Paradigm Alternative Center, Inc. to provide an individualized learning environment and curriculum for recovering academically underperforming teenagers.

As an author whose works have appeared in newspapers, professional journals, and books, he is respected worldwide for his innovative learning concepts, including application of online courses, QR-Codes, and curriculum downloads to smartphones and tablets that enable students to complete courses anywhere, anytime with minimum dependence on proctors. He has testified numerous times before the Texas legislature

and State Board of Education on issues pertaining to education reform. Moreover, he has visited more than two dozen charter schools in Texas and Arizona. He and his wife founded one of the first contract campuses authorized by the Texas legislature in 1993, and operated four charter schools for at risk teenagers, in Texas rural communities.

SUMMARY OF ARGUMENT

THE TEXAS EDUCATION SYSTEM IS CONSTITUTIONALLY INEFFICIENT

The Texas Education System is Constitutionally Inefficient because:

1. Its Basic Template is Forced Collectivism
2. Monopolies are Contrary to the Genius of a Free People § 26, Texas Constitution, Bill of Rights
3. An Overemphasis on Financial Equity And Fairness for Schools *Alone* Produces Waste and Massive Failure
4. A One Size Fits All Mentality Produces Waste and Failure
5. A Wide Variety of Alternative Schools Are Needed to Promote Efficient Use of Resources

I. ITS BASIC TEMPLATE IS FORCED COLLECTIVISM

A major contributor to waste, constitutional inefficiency, and lack of student equal access to quality education programs, is the prevailing application of a collectivist mentality propagated by such progressives as Horace Mann and John Dewey. These collectivist ideas lured legislatures in the 20th century to restructure

America's schools from individualized learning based on demonstration of academic competencies to lock-step programs that classify students according to age-based, graded classrooms operating much like "cattle car" processing institutions. Most students in the 21st century still earn promotion to higher grade levels by sitting in desks along with peers for about 180 "school days" per year for twelve years.

The collectivist educational formula promoted by Dewey and Mann was presented as a more efficient means of educating the masses. The basic justification for the "cattle car" formula was that it was more efficient financially and convenient administratively for teachers and communities. It was, indeed, an administratively convenient way to classify and process students through public schools. The downside of the collectivist approach is that it disregards individualism – allowing little room for students to exercise their personal talents, interests, learning styles, and aspirations to contribute to the American free-enterprise economic system. Current public school focus is forcing students to conform and embrace a collectivistic system that is convenient to school administrators and state legislatures, but does not promote a general diffusion of knowledge sufficient to preserve liberty, which is the purpose of our educational system.

The current, inefficient lock-step approach enables legislatures to establish complicated funding formulas by which the historic local community schools (see TEA PEIMS Accountability System) are herded into districts that receive public

money based on per-pupil attendance, absences, and disabilities. It produces rigidity and inefficiency, but not sufficient student achievement to achieve a “general diffusion of knowledge.” Grade level classrooms are then mandated to use state-adopted curriculum and textbooks with which teachers strive to facilitate learning of academics required by the state. Such a collectivist system stifles individualism, a primary component of the American free-enterprise economic system that encourages application of personal talents, creativity, resources, and initiative to live “outside the box” of a collective mentality. Therefore, this court should declare and require the legislature to correct the constitutionally inefficient monopoly system of perpetuating a collectivistic educational system. After all his years as an educator, Dr. Johnson is convinced that it is essential for this Court to enforce the constitutional test of efficiency and require the legislature to design a more efficient method of providing revenue that enables educators and families to access academic programs of general knowledge based on their individual needs, choices, learning styles and the preservation of their liberty and rights.

It is interesting to note that the current system was sold to the public by Dewey and Mann on the basis that this cattle car approach was more efficient. Of course this was prior to the fall of the USSR, and the Berlin Wall so the evidence regarding the inefficiencies of collectivism were not as obvious as it is today. Today we know such

systems are inherently inefficient. *See* Frederick Eby, Ph. D., *The Development of Education in Texas* (1925).

II. MONOPOLIES ARE CONTRARY TO THE GENIUS OF A FREE PEOPLE § 26, TEXAS CONSTITUTION, BILL OF RIGHTS

Our Founding Fathers embraced capitalism and the free-market system by which entrepreneurs could speculate, take risks to invest, and develop products and services to be sold for profits. Profits would then create a means by which state revenue could be collected as taxes from businesses and individuals to support public services, protection, and construction of roadways and canals (later railroads, utilities, and communication networks).

The Texas and American Founding Fathers never anticipated that government entities would finance today's one-size-fits-all collectivist, monopolistic, educational system propped up with exorbitant taxes and state bureaucracies. The current public school funding mechanism for the Texas collectivist-based educational system contradicts the original intent of our state's and nation's commitment to free enterprise. The Education Clause echoes this with emphasis on freedom, in its statement of purpose that "A general diffusion of knowledge being essential to the preservation of liberty." Texas Constitution, Art. VII, § 1. In addition, Texas Constitution, Article 1, Bill of Rights Section 26, Perpetuities and Monopolies:

"Perpetuities and monopolies are contrary to the genius of a free people, and shall never be allowed ..."

One cannot perpetuate freedom, liberty and rights of capitalism through a collectivist educational system. It is a contradiction of principles.

Ironically, the Texas legislature has mandated that all public schools devote several weeks every September to teach about America's Founding Fathers, free enterprise, and capitalism. Tex. Ed. Code § 28.002(a)(1)(D). Yet, it attempts to do this via a public school system based on a government monopoly over education that excludes competition in an open market. The intended good of the September focus on free-enterprise is negated in practice by implementation through an educational system that disparages competition and free enterprise. The proper judicial remedy must, of necessity, be to declare the government monopoly system constitutionally inefficient, and command the legislature to produce efficiency through the only system known to man to do so. The legislature will produce "efficiency" if commanded to do so. Open market operations and real consumer choice in the Texas educational arena are the only ways to produce an "efficient" education system. The exact details can be crafted by the legislature.

Oddly, although the very purpose of Article VII, Section 1 is the "preservation of the liberties and rights" of the people, the very taxpayers and citizens who pay for education are denied the freedom to select the education of their choice unless they are willing to pay twice: once in taxes; once in tuition. Such a practice is a clear contradiction to the Texas and American values embedded in the *Texas Constitution*.

The current public school monopoly is not unlike industrial conditions at the turn of the twentieth century, when anti-trust laws were implemented to minimize industrial corruption and social injustice against consumers and employees. The drawback of monopolies is that the only real check-and-balance against waste, opportunism, and fraud is the hope that school officials will operate ethically and fairly. Unfortunately, that is not always the case in Texas schools today.

Lack of competition among schools encourages inflated prices and corrupt procurement practices for instructional supplies, athletic equipment, curriculum, and testing instruments. Monopolies create channels by which opportunists within the system can be influenced by contractors and providers who negotiate for large purchases at inflated prices. Moreover, providers of academic assessments and adopted textbooks do usually bid on curriculum, testing instruments, and grading services; however, the pool of available providers is so small that only a handful of Texas companies can meet criteria established by state education officials. Consequently, prices are basically “fixed” by a relatively small pool of potential providers who constitute a quasi-monopoly that excludes real competition that could result in more efficient means of educating Texas students.

An open-market in the education arena with its natural efficiency would inspire creative entrepreneurs to provide products and services at affordable levels. Entrepreneurs would discover extensive opportunities for innovations to measure

student academic achievement and staff performance, while reducing waste and increasing efficiency. The current unconstitutionally inefficient, monopolistic arena of public schools protects underperforming campuses, shelters their wasteful practices, and cloaks their lack of efficiency. A viable remedy is to open the educational market to transparency, entrepreneurs, and school choice. Much like anti-trust laws did near the turn of the 20th century.

III. AN OVEREMPHASIS ON FINANCIAL EQUITY AND FAIRNESS FOR SCHOOLS *ALONE* PRODUCES WASTE AND MASSIVE FAILURE

The current educational funding formula is based on the erroneous focus that all aspects of public education must effectuate fairness and equity among school **districts** across Texas. Equity for schools does not produce equity for students. Aren't the constitutional guarantees in our Texas Constitution intended to be for the people, not government entities? The general diffusion of knowledge is a right of students and parents rather than a "right" for districts. Instead, diffusion of knowledge is a duty for districts and the legislature, of which their inefficiency has forced them to fail. Consequently, a recurring cycle of legislative budget debates and litigation occur as school administrators periodically, and predictably, fight for their "fair share" of public money. Thus, this court is again tasked to determine what is "fair and equitable", rather than what is needed to provide a truly "efficient" educational program without waste.

A major fallacy of the “fair share” motive is that it always escalates the cost of state-funded education, because school administrators and boards envy other school districts that have posh athletic stadiums, media facilities, staff benefits, technology, band uniforms, swimming pools, and event buses--items that give the false appearance of “fair and good education.” The purpose of the “efficiency” clause is surely not to guarantee that every district can afford a \$60 million dollar high school stadium, especially when it deteriorates two years later. Fox Sports Southwest, Feb. 27, 2014 at 6:01 p.m. Consequently, school districts perpetually inflate their annual budgets to access funds that match other districts. The downside of such a practice is that it creates a frenzy to grab as much tax money as possible, thus creating a tax-and- spend scenario that creates waste and inefficiency. Students are caught in the crunch of the “fair- share” conflict; youth emulate what adults practice. Thus, public school students are programmed to strive to gather their “fair share” of public money, rather than learning the value of personal initiative to practice entrepreneurship in an open market economy based on freedom and liberty, especially economic liberty.

The irony of schools scratching to get their “fair share” of public money in the current monopolistic educational system is that this establishes the illusion that a quality education is possible only when schools are equipped with trappings of affluence. However, private academies and charter schools housed in such basic facilities as renovated warehouses, vacated churches, abandoned supermarkets, and

mini-malls often out-perform more affluent-appearing public schools in the same neighborhoods. Students who graduate from even less expensive private facilities on limited budgets routinely do well in college and the workplace, unlike vast numbers of failing public school students. The current annual public school frenzy to get as much public money as possible to provide elaborate facilities and programs “like neighboring districts” encourages and produces massive waste and inefficiency.

Instead of focusing solely on providing fair and equitable public funding for districts, this Court has correctly and repeatedly called for more focus on the bigger perspective of eliminating the inefficiency (lack of production of results with little waste) enjoyed by the public school system. Waste and inefficiency will continue to burden taxpayers until the entire educational arena is declared inefficient and opened to competition among entrepreneurs who can devise efficient educational delivery and measurement systems at a fraction of the per-pupil cost currently experienced in Texas public schools that monopolize the educational arena.

IV. A ONE SIZE FITS ALL MENTALITY PRODUCES WASTE AND FAILURE

Another contradiction expressed in the Texas educational funding arena is the disparity between the objective of the legislature to equip students to compete in the global economy governed by free enterprise, and the manner in which the public school monopoly forces students to advance through school according to the collective-formatted grade level and age-determined promotion formula. Such an

antiquated lock-step means of progressing through the educational arena “processes” students based on seat-time, age, and the ability to pass academic assessments each spring. The one-size-fits-all system exploits and suppresses students’ talents, interests, dreams, and aspirations. Moreover, the lockstep system of forcing students to remain with their age-peers encourages extreme waste of students’ time and energy. In fact, the current classroom system based on students’ ages discourages innovation, initiative, and effort to apply individual students’ strengths to acquire a quality education that equips individuals to lead in the world’s economic arena.

Previous generations educated in frugally-equipped community schools were able to lead the world in the diffusion of general knowledge, the pursuit of freedom, economic opportunity, and exercise of personal responsibility. Those qualities are not current adjectives applied to large numbers of graduates of well-funded Texas public schools. In fact, the record below shows that Texas students in both urban and rural public schools are performing at an embarrassingly low level in spite of record levels of spending. Monopolies like the Texas education produce stagnation, mediocrity and waste on a massive scale. An efficient system based on freedom and liberty would encourage a variety of styles, methods and curriculums to meet the needs and learning styles of individual student consumers.

The current constitutionally inefficient education system based on lockstep classrooms, age groups, and teachers, who specialize in academic content delivered

during lectures that follow scope-and-sequences of hardback, state-adopted textbooks, is blatantly inefficient for Texas public school students. The current “cattle car” approach allows thousands (perhaps millions) of students (especially fatherless, at-risk youth) to fall through the system to unemployable conditions. See Record below. Those youth have been disenfranchised from effective participation in free-enterprise markets. They are effectively barred from participating in the race to the top in a technologically-driven culture. That is wasteful, unjust, and grossly inefficient. *Amicus* Dr. Johnson has watched in aching despair as the monopoly fails large masses of children, though he has also pioneered techniques which recover failing students on an individual basis.

The trickle-down effect of the current monopolistic educational system is that the Texas economy is saddled with a huge, ill-prepared workforce that is destined to depend on other people for financial support. Moreover, state industry is deprived of creative employees capable of solving industrial challenges and generating taxable wages, services, and products needed to support quality educational institutions. Thus it is very appropriate for the Texas Association of Business to participate as one of the Efficiency Intervenors.

The bottom line is that public education will continue to be inefficient and wasteful until the Texas Supreme Court requires the education system to be efficient. Students and taxpayers deserve the constitutional opportunity to participate effectively

in public-funded educational arenas provided through creative, efficient alternatives to the present lockstep educational system delivered in classrooms at excessive per-pupil costs to taxpayers and the state economy. Consumer choice forces improvement even by persons and agencies that would otherwise just do nothing in a monopoly.

The ready availability of technology today dissolves the necessity of processing students according to age groups and grade levels primarily in classrooms equipped with rows of desks and hardback textbooks. Consequently, the funding formula for education should change so that public money follows the student in educational systems that enable youth to exercise personal initiative, interests, and academic competencies advancing at their own pace and according to their unique needs. Efficient systems infused with freedom respond to individual needs, rather than subordinating the individual to what is best for the group. Individualized learning grants to every student the ‘liberty and right’ to a quality education while also assuring taxpayers an ‘efficient’ system as required by law.

Open, efficient alternative educational systems will likely utilize academic-delivery methods that include blended learning composed of smartphones, tablets, workstations, learning centers, and on-line courses that are not teacher-dependent, peer-based, or tied to adopted textbooks designed for lock-step classrooms. But consumer choice, which is the only means of producing real efficiency, is necessary to protect students from ill-conceived reform efforts. Such an alternative educational

option will enhance graduation of individuals capable of not only participating in the traditional free market economic system, but who will likely be active and effective participants in the global economy. The current inefficient public school monopoly is enmeshed in the past. Efficient individualized learning systems produce innovation and excellence, at the least cost.

Moreover, the availability of alternative educational systems based on an open-market concept will establish a strong safety net for recovering underserved and underperforming students who have minimal opportunity to make up failed courses or to exercise personal initiative to pursue their aspirations without being locked into peer schedules. Schools that operate on a free enterprise funding formula will create a means by which traditional public schools can redeem unacceptable ratings, wastefulness, and inefficiency by attracting underperforming and underserved students out of regular classrooms in preference to learning centers equipped with technology and flexible schedules that encourage use of smartphones, tablets, online delivery systems, and individualized learning programs anywhere, anytime.

One of the primary driving components that supports the current wasteful and constitutionally inefficient lock-step “cattle car” public educational system is the textbook adoption factor. Most textbooks adopted by the Texas State Board of Education and Texas Education Agency are designed to perpetuate the lock-step method of educating students according to age groups and grade levels. The

prevailing liability of an educational system based on grade-level adopted textbooks is that it forces/encourages schools to lock students into classrooms led by teachers trained to use a comparatively small inventory of instructional materials. Assessment instruments are built to measure students' body of knowledge, ostensibly provided through state-adopted textbooks. That formula creates an untenable situation for thousands of underserved and underperforming students who face the almost impossible challenge to make up previous grade level failures in order to graduate with peers (as required by law). Of even more consequence is the fact that grade-level adopted textbooks stifle individual student initiative to achieve at levels equal with or beyond peers.

Campuses are provided with "free" textbooks worth millions of dollars. Sadly, in practice, most campuses stockpile those expensive hard-back adopted books in book rooms. In place of adopted texts, teachers are forced to print reams of worksheets processed through copy machines in teacher-preparation rooms. Such a wasteful practice is necessary because of the wide disparity among student competencies in classrooms based on age groups. So many students are either below or above their classroom peers that use of adopted textbooks, designed for students who are ostensibly at the same academic competency level, are inadequate for addressing individual student needs in the modern age.

The result is that the top-down state textbook adoption concept perpetuates wastefulness and inefficiency. Schools must be encouraged through an entirely new educational funding mechanism to acquire and apply instructional materials that facilitate learning, rather than modifying the current funding formula to prop up lockstep instruction based on the inefficient John Dewey and Horace Mann one size “cattle car” classroom template.

V. A WIDE VARIETY OF ALTERNATIVE SCHOOLS ARE NEEDED TO PROMOTE EFFICIENT USE OF RESOURCES

The vast diversity of student population cohorts represented by ethnic disparity and economic status variations in rural and urban settings demand alternative educational choices in order to prepare students for success in careers, colleges, and domestic responsibilities. The current system fails to accommodate this reality and thus is structurally and constitutionally inefficient. The pressure of the current system and its incentives make it incredibly difficult to avoid an inefficient one size fits all mindset. Reform efforts across the country are based on recognizing this reality and mandating school variety rather than uniformity. But resistance by existing uniformity structures is massive.

At present, some forms of educational packages are available to Texans with and without application of public revenue: public school campuses with traditional lock-step, grade-level, classrooms for students in cohorts Pre-K through 12; charter campuses with specified grade levels and/or individualized learning centers, virtual

distance-learning programs via public and contractual arrangements; alternative disciplinary campuses; contract campuses; magnet schools; school-within-a-school; private academies, homeschool, General Education Diplomas (GED), and correction facilities. The above general venues serve a spectrum of students, ranging from accelerated to at-risk learners, but are extremely limited.

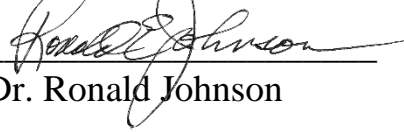
The obvious point is that school options are currently accessed by some students who do not participate in traditional public school programs. However, high-performing, non-punitive alternative options are available only to families which have financial resources to engage available alternative educational programs. Parents who do not have financial resources to exercise educational options outside of those provided by public schools are basically disenfranchised from accessing school choice options. Consequently, millions of students have been shunted through the Texas educational system without receiving a suitable and efficient education which produces a general diffusion of knowledge.

This inefficiency creates a financial burden on the Texas economy. After many, many years of experience, *Amicus* Dr. Johnson is convinced that the state simply can no longer endure an illiterate, untrained, cohort of adults who are ill-equipped to generate salaries sufficient to contribute significantly to the Texas tax base.

XVII. Prayer

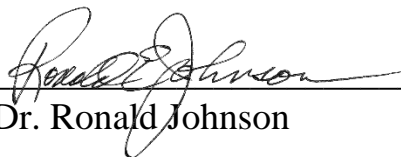
Amici prays that the prayer and relief sought by Appellant Efficiency Intervenors be granted.

Respectfully,



Dr. Ronald Johnson

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 3,832 words.



Dr. Ronald Johnson

CERTIFICATE OF SERVICE - I hereby certify that on August 25, 2015, the foregoing Brief was served via the Court's electronic service to all attorneys as listed on Appellants' Brief, p.55-57.