

MEMORANDUM

To: Texas School Coalition

From: Mark Trachtenberg and John Turner, Haynes and Boone LLP

Date: October 13, 2011

Subject: Representation of School Districts in Upcoming Texas School Finance Litigation

On October 1, 2011, the Texas School Coalition executive board passed a resolution endorsing their member districts' decision to hire Haynes and Boone to represent their interests in the anticipated school finance litigation. Our law firm represented many members of the Coalition – and many other districts – in the last round of successful school finance litigation in 2001-06. We are looking forward to the opportunity to do so again. At the request of the Coalition, this memorandum provides information about the litigation and the role we expect to play on behalf of the districts we represent.

The Claims In Play

The following four claims are likely to be asserted in the coming litigation by different groups of districts:

(1) State property tax claim: This claim will assert that districts lack meaningful discretion in setting their local M&O tax rate, such that the tax has become a de facto state property tax, which is prohibited under the Texas Constitution. This is the claim that succeeded during the last round of litigation.

(2) Adequacy claim: This claim will assert that districts lack sufficient funding under the current system to provide Texas schoolchildren with a constitutionally adequate education. The district court ruled in favor of this claim in the last round of litigation, but the Texas Supreme Court reversed. The Supreme Court noted, however, the State's "predicted drift" toward inadequacy and cautioned that the State must show forward progress in order to avoid an impending constitutional violation.

(3) Efficiency claim: This claim has not been brought in previous cases, but at least one group of school districts intends to assert it. As we understand it, this claim would assert that the current method of allocating State funds among districts (including use of the target revenue system) is "arbitrary"

and that districts should be funded based on a new, unified set of formulas that more accurately reflect differences in costs based on student population, district characteristics, etc.

(4) Equity claim: Several districts, in coordination with the Equity Center, have filed a lawsuit asserting that the current system of school funding is unconstitutionally inequitable because property-poor school districts do not have equal access to similar revenues per pupil at similar levels of tax effort in comparison to Chapter 41 districts or other districts funded under the target revenue system.

The Claims that Our Group Will Bring (and Not Bring)

Haynes and Boone will represent a group of school districts that wish to assert an adequacy claim and a state property tax claim, but not an “efficiency” claim or an “equity” claim

Successful prosecution of the adequacy and state property tax claims would benefit all Texas school districts. Victory on these claims would help assure that all school districts are adequately funded and that districts have available significant additional taxing capacity to provide enrichment programming desired by their constituents on a local basis.

The efficiency and equity claims, standing alone, implicate the manner in which funds are distributed, rather than the overall level of funding in the system. A finding that allocations among districts must be changed or restructured has the potential to favor some districts and disfavor others. Districts differ on the questions of precisely what the funding formulas should be, whether target revenue and hold harmless provisions should be abolished or altered (and if so, how), and other questions related to the allocation of funds among districts.

Our intended approach – bringing adequacy and state property tax claims but not efficiency or equity claims – is based on the belief that the best strategy is one that focuses on the State’s overall level of funding for schools. Indeed, success on these claims should benefit all districts in Texas. We believe the focus should be on the State’s severe reductions in funding for public education as a whole, and not on claims and issues that pit some school districts against others.

We will engage top-quality experts to help us make our case. We have already been in contact with Lynn Moak of Moak Casey, and will be reaching out to other recognized authorities in the fields of education and school finance in the months ahead.

Coordination with Other Groups on the Property Tax/Adequacy Claims

We intend to work closely with attorneys for other districts in the presentation of claims of common interest in the litigation. During the *West Orange Cove* litigation, we worked with David Thompson and Philip Fraissinet (now of the Thompson Horton firm) to successfully prosecute a state property tax claim on behalf of a broad coalition of school districts, and the lawyers from both firms have a very good working relationship.

The districts represented by Thompson Horton intend to assert adequacy, state property tax, and efficiency claims. Our group would coordinate with Thompson Horton and its clients in formulating, developing, and presenting evidence concerning the adequacy and state property tax claims. This coordination could include jointly retaining experts on matters relating to the common claims, the possibility of joint filings on matters of common interest, and the possibility of a joint and coordinated trial presentation on the adequacy and property tax claims.

Our Approach to the Efficiency and Equity Claims

Regarding the efficiency claims and equity claims that may be asserted by other groups, we intend to pursue the following approach:

- To review these claims once they are asserted and monitor how the State is defending them, so that we can make a determination during the course of the litigation regarding the best responsive strategy consistent with the interests of our clients;
- To refrain from tactics that, in our judgment, might adversely affect the chances for success on the adequacy or property tax claims; and
- To advocate wherever possible remedies and solutions that benefit all school districts in Texas.

We look forward to the opportunity to represent school districts in a matter of great importance to the children of Texas and the future of our State.

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