

## School Finance Case Supreme Court Ruling Summary and Notes

The State of Texas has been tied up in school finance litigation seven times since the late 1980's. On Friday, May 13, 2016, the Texas Supreme Court announced their ruling on the latest school finance case. 600 school districts, including Houston ISD, sued the state after the Legislature cut \$5.4 billion out of public education in the 2011 legislative session. We were among many plaintiffs in this historic case.

Travis County District Court Judge John Dietz heard and ruled on the case before retiring from the bench. Judge Dietz agreed with the school districts' arguments and declared the current system "unconstitutional" in August of 2014. Judge Dietz wrote a 400-page opinion stating the state's school finance system is unconstitutional not only because of "inadequate funding and flaws in the way it distributes money to districts, but also because it imposes a statewide property tax." Immediately after Dietz issued his opinion, former Texas Attorney General now Governor Greg Abbott filed a direct appeal to the Texas Supreme Court, a far-right leaning body of nine justices.

When the 2015 legislative session began in January, the case had not been heard by the State's Highest Court. Many legislators felt it prudent to wait on the Supreme Court ruling before entertaining a school finance bill or making adjustments. As a result, legislators authorized a "conservative" \$1.5 billion increase in public education funding and appropriated \$118 million for a statewide Pre-K grant program. Education advocates certainly desired more. The 2015 session ended in June with school districts still hoping for a positive ruling from the Supreme Court that would provide financial relief. In contrast, some legislators believed their recent funding decisions to add and restore public education dollars would help the state win the school finance case pending before the Supreme Court.

On September 1, 2015 – the first day of the Court's judicial year—nine Supreme Court justices heard the biggest school finance case in Texas History. The justices listened to the oral arguments of the state's attorneys, the Texas Education Agency, four ISD plaintiff groups, charter schools and the intervenors (which included students). The ISD Plaintiffs argued the system was inadequate, inequitable, and unsuitable and imposed a statewide property tax. Importantly, school districts argued the system did not provide enough funding for economically disadvantaged children and non-English speakers. The ISD plaintiffs also argued the system imposed a statewide property tax. During oral arguments, the justices seemed alarmed about the "antiquated" school finance system we have now and were shocked that the weights and CEI, for example, hadn't been updated in decades. The justices also expressed some disagreement with arguments made by the state's attorneys. The ISD Plaintiffs thought, at the very least, we'd get a fair ruling on one or more of the arguments we made.

Experts close to the case predicted the Supreme Court ruling would come out around late March or April, after the March primaries. In the end, nine months after the Court heard oral arguments, the justices announced their ruling, along with two concurring opinions. No dissenting opinions were filed. The Court's ruling declared the current system "*constitutional*," thus meeting "*minimum requirements*." The Court admitted that the current system needs vast improvements beyond "*Band-Aid on top of Band-Aid*," but overall it was getting by. The Court sees the "*general diffusion of knowledge*" as a "*minimum standard*" in the Texas Constitution. The Court says their ruling was in no way an endorsement of the current system, nor a cap on expectations. The Court said Texas students deserve a 21<sup>st</sup> century school finance system. They said the system needs "*transformational, top-to-bottom reforms*." But the Court was still "*very deferential*" to the Texas Legislature and ruled it was the Legislature's duty to fix it. The Court ultimately left the system in the Legislature's hands. The Court leaned on previous school finance rulings and the Texas Constitution to rule on this case. Judge Dietz's ruling was "*affirmed in part, reversed in part*." Part of the case, concerning attorneys' fees, was remanded back to the lower court. Overall, the verdict was a big disappointment to public schools and their stakeholder groups.

### **Summary of the Majority Opinion (Ruling) – Written by Justice Willett**

- The Court’s majority opinion (or ruling) was written by Justice Willett.
- The 100-page opinion declares the current school finance system is “*constitutional*” and meets “*minimum requirements*” that achieve a “*general diffusion of knowledge.*”
- The overall tone of the ruling is “*very deferential*” to the Texas Legislature as the body authorized by the Constitution to write education policy and maintain a reasonable school finance system.
- They say “*Courts should not sit as a super-legislature. Nor should they assume the role of super-laboratory.*”
- They believe the Legislature should most definitely repair the current school finance system.
- However, they believe it’s not their job to “*second-guess or micromanage Texas education policy or to issue edicts from on high increasing financial inputs in hopes of increasing educational outputs.*”
- Their role as justices is “*limited.*”
- The Court’s job, as they understand it, is to defer to the Legislature and intervene only when the Legislature is being “*arbitrary*” or “*unreasonable*” when determining how to fund public schools.
- The Court does not believe the Legislature has been arbitrary or unreasonable in this case.
- In fact, the Court cites the funding improvements the Legislature made in the 2013 and 2015 sessions to increase public education funding and restore the 2011 cuts.
- The Court rejected the trial court’s (or lower court) opinion that the system was unconstitutional and overturned Judge Dietz’s arguments that the system was unconstitutional and imposed a statewide property tax.
- The Court asserts: the Plaintiffs were unable to prove the system is inadequate, inefficient, and unsuitable and imposed a statewide property tax.
- Justice Willet states: “*Despite the imperfections of the current school funding regime, it meets minimum constitutional requirements.*”
- Justice Willet continues: “*Imperfection, however, does not mean imperfectible. Texas’s more than five million school children deserve better than serial litigation over an increasingly Daedalean ‘system.’ They deserve transformational, top-to-bottom reforms that amount to more than Band-Aid on top of Band-Aid. They deserve a revamped, nonsclerotic system fit for the 21st century.*”
- The Court admits that the “*Plaintiffs have standing.*” The Court states plaintiffs lack standing if the “*requested injunctive relief could not possibly remedy his situation.*” The Court also highlights the fact that each time the Supreme Court declared the system unconstitutional, the Legislature took action. Again, the Plaintiffs have standing. (pages 27-28)
- The Court also rejected some of the State’s arguments, particularly the State’s argument that the Plaintiffs’ state property tax claim is not a “*ripe*” argument because “*school financing has changed over time.*”
- But the Court believes the lower court relied too heavily on experts’ numbers used to support the Plaintiffs’ arguments. (Lynn Moak, Allan Odden, etc.)
- Plus, the Court believes that there’s no clear evidence that shows spending more money leads to better student outcomes. And the Plaintiffs did not prove that more money for poor students will “*eliminate or significantly reduce*” the achievement gap.

- Court believes Article VII, Section I of the Texas Constitution says it's all about the “*general diffusion of knowledge*” not individual subgroups (Economically disadvantaged or English Language Learners). The Court believes “*if we start down that path, there's no end in sight.*”
- The Court argues that the Plaintiffs’ focus on achievement gaps was used to argue for additional funding for the subgroups. The lower court’s ruling affirmed this but, the Court believes, “*differences in achievement among subgroups do not necessarily establish a failure of the school system in its allocation of resources.*”
- The Court firmly believes that: “*More money does not guarantee better schools or more educated students [among ‘favored and disfavored subgroups’].*”
- The justices relied heavily on the precedent of previous court decisions on school finance when determining their opinion of this case.
- The Court doesn't want to mandate (or tell the Legislature to appropriate) specific dollar amounts to achieve a greater general diffusion of knowledge.
- The expert witnesses on the Plaintiffs’ side suggested specific dollar amounts or weight adjustments during oral arguments and the Court found this part of the presentation didn’t help the plaintiffs’ case.
- The Court believes the Plaintiffs would have had a better argument if they said ‘ELLs and Economically disadvantaged students performed better on tests for each dollar of additional spending than other groups see.’ However, the Court says the Plaintiffs “*failed to make this argument.*”
- The Court asserts that the comp and bilingual education weights and Cost of Education Index being old or “*outdated*” proves little...
- Another quote that stands out in the ruling: “*Equality in student achievement may not be possible, plus it's not a constitutional requirement.*”
- The Court firmly believes the Plaintiffs failed to prove the system as a whole is inadequate.
- The Court disagrees with the Plaintiffs that schools are “*NOT accomplishing a general diffusion of knowledge due to inadequate funding.*”
- On suitability, the lower court ruled and the plaintiffs argued the system was unsuitable because it was underfunded. The Court rejected this claim.
- Unlike the Plaintiff’s arguments on inefficiency, the Court believes the current system is “*financially efficient*” because recapture better equalizes funding between property rich and poor districts.
- Also, over time in between lawsuits, the Court says efficiency ratios have improved and become more equal between property rich districts and other school districts (Chapter 41 and 42 districts).
- The Court argues that “*the ratios in today's case are in the range of those from prior cases where we found the system constitutionally efficient and well below ratios where we found the system constitutionally inefficient.*”
- The Court cites various testing data that show an improvement in student performance over the years under different testing systems including STAAR. NAEP results were mixed.
- The Court pointed out graduation rates are up and dropout rates are down. The Court says Texas’ graduation rate is impressive compared to other states. We rank second, third or fourth in the nation in the data the Court used. Dropout rates are down, too. One of the previous school finance lawsuits raised awareness on the high dropout rate across Texas at the time. The Court is pleased these rates are trending in the right direction.

- Another topic the Court reviewed was *“meaningful discretion,”* which refers to a school district’s ability to have control over their local tax rate.
- The Court’s argument is that districts still have meaningful discretion over deciding their local tax rate under the current system, so the Plaintiffs lost this argument, as well.
- The Court points out that the Plaintiffs didn't show examples of districts taxing at \$1.17 (the maximum rate) not being able to meet obligations for additional enrichment programs within their district.
- In the last two pages of the 100-page opinion, the Court writes: *“Our Byzantine school funding ‘system’ is undeniably imperfect, with immense room for improvement. But it satisfies minimum constitutional requirements. Accordingly, we decline to usurp legislative authority by issuing reform diktats from on high, supplanting lawmakers’ policy wisdom with our own.”*
- On the last page of the ruling, the Court writes: *“We hope lawmakers will seize this urgent challenge and upend an ossified regime ill-suited for 21<sup>st</sup> century Texas.”*

### **Concurring Opinion #1 – Written Justice Guzman, joined by Justice Lehrmann**

- Interestingly enough, Justice Guzman’s concurrence opens with a quote from Frederick Douglass: *“It is easier to build strong children than to repair broken men.”*
- She writes: *“A strong public education system is fundamental to building strong children. Regrettably, this lawsuit -- the most recent salvo in a long-waged battle over public school funding signals widespread dissatisfaction with the current system for financing public education in Texas.”*
- She continues: *“Today, the Court holds Texas's school-finance system passes the threshold of constitutionality. But this is not an endorsement of the system; to the contrary, the Court calls for ‘transformational, top-to-bottom reforms.’”*
- *“I fully join the Court's opinion and write separately to further emphasize that there is much more work to be done, particularly with respect to the population that represents the majority of the student base – economically disadvantaged students.”*
- She points out poor kids have made academic gains, but still *“underperform academically in comparison to their more affluent peers.”*
- She says most of the kids in public schools are poor and that number is likely to grow.
- Therefore, the *“Legislature must continue to be strategic and flexible in its approach to supporting economically disadvantaged students.”*
- And *“while perfection is neither attainable nor constitutionally required, our Legislature can and should continue to strive for a better system for all Texas students.”*
- I found it interesting that she also cited the importance of Pre-K and how she thought it was good that the 84<sup>th</sup> Legislature approved grant funding in 2015.
- She also states: *“A more pressing concern is the risk that performance gains achieved over the last decade are eroding.”*
- Texas performance data shows we are in the middle compared to other states (not the best but also not the worst) and while *“it may be enough for now we should aspire to more than being solidly in the middle.”*
- *“Constitutionality is a minimum standard -- a guarantee-- not a cap on our expectations or our potential.”*

## Concurring Opinion #2— Written by Justice Boyd, joined by Justices Lehrmann and Devine

- The opening line of Justice Boyd's concurring opinion begins with, *"Our decision is this case will be no doubt a great disappointment to many, and perhaps a cause for celebration for others. In light of this Court's extensive and binding precedent, what is should not be is a surprise to anyone. And what it definitely is not is an expression of personal opinions on how Texas should fund and operate its public school system."*
- Here are some other key quotes from Justice Boyd's opinion:
- All court precedent points at one phrase in the Texas Constitution: *"it shall be the duty of the Legislature"*
- *"A 'general diffusion of knowledge' is a constitutional minimum requirement that is essential to preserving 'the liberties and rights of people.'"*
- *"The constitution does not define what a 'general diffusion of knowledge' is. Nor does it say what is suitable or efficient...The court could assign meaning to these terms, but constitutionally we cannot"*
- *"The 'Court can only intervene if the Legislature is being unreasonable or arbitrary in light of its duty to ensure a general diffusion of knowledge"*
- *"The Court has not previously concluded, and does not conclude today, that the Legislature's decisions in the school-finance arena have been wise or desirable. All the Court concluded today is that they have not been so arbitrary and unreasonable as to fall below the minimum constitutional standards."*
- *"Whether we believe the state should spend more or less on public education is irrelevant to the task before us. Whether we think the state should raise or lower accreditation standards, increase or decrease class sizes, or require more or less testing, is immaterial to the decision the Constitution and our precedent permit us to make today."*
- *"We may have our personal views on those issues, but when it comes to making those kinds of choices, '...it shall be the duty of the Legislature.'"*
- The very last line of Boyd's concurring opinion states: ***"For those who are disappointed, their remedy 'lies in the Legislature and thus in the privilege and duty that all Texans have to elect the legislators who will implement the policy choices they desire.'***