



## **JURISDICTION**

2. This Court has jurisdiction of this cause pursuant to Article 5, Section 8 of the Texas Constitution, §§24.007-.008 of the Texas Government Code, and §§37.003 and 65.021 of the Civil Practice and Remedies Code.

3. Venue is proper in Travis County pursuant to Tex. Civ. Prac. & Rem. Code §15.002(a)(1) and (2).

## **PARTIES**

4. Plaintiff Texas State Teachers Association (“TSTA”) is a non-profit corporation with its principal business office in Austin, Travis County, Texas.

5. Defendant Robert Scott is the Commissioner of Education for the State of Texas. He may be served with a copy of this Petition at his place of business, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas, 78701.

6. Defendant Christian Fellowship of San Antonio is a nonprofit corporation and a church. It may be served through its registered agent, Mary Susan Brandt, at 9566 Wicklow, San Antonio, Texas 78250.

7. Defendant Community in Action, Inc. of Hays, Caldwell & Blanco Counties is a nonprofit corporation. It may be served through its registered agent, Carole Belver, at 101 Uhland Rd., Suite 107, San Marcos, Texas 78667.

8. Defendant Healy-Murphy Center, Inc. is a nonprofit corporation and a private school. It may be served through its registered agent, Douglas J. Watson, at 618 Live Oak Street, San Antonio, Texas 78202.

## **FACTS**

9. Plaintiff TSTA is a state-wide, professional association whose members are employed

by the public schools of this State, and is affiliated with the National Education Association. It exists to further the interests of public education by strengthening, promoting, and protecting the rights and privileges of employees of public education. To carry out its mission, TSTA has some 400 local affiliates throughout the state which are made up of members in various school districts and counties across the state. The interests of its members which TSTA seeks to protect are germane to its purpose as a non-profit organization of school district employees. Participation of individual members of TSTA is not required with respect to the claims asserted or the relief requested herein. The interests of TSTA members, all of whom are classroom teachers, administrators, and paraprofessionals in the public schools of this State, will be affected by the diversion of public funds to private entities.

10. The Texas Education Agency (“TEA”) is an administrative agency of the State of Texas, established by law (Chapter 7.001, et. seq., Texas Education Code) and is charged with administering and monitoring compliance with educational programs in the Texas public school districts. Defendant Scott, as Commissioner of Education, is the executive officer of TEA.

11. In May 2007, the Texas Legislature passed House Bill 2237, a 43-page bi-partisan bill aimed at increasing the management and funding of high school dropout prevention programs. HB 2237 impacts several different portions of the Texas Education Code. Significantly, HB 2237 creates the High School Completion and Success Initiative by adding Texas Education Code Chapter 39, Subchapter L. Section 39.351 creates the High School Completion and Success Initiative Council (hereafter, the council).

12. A new provision was added to the Texas Education Code charging the Commissioner of Education to study and report on the best practices of campuses and school districts in dropout prevention. His report must be delivered to the Legislature by December 1, 2008. TEX. EDUC. CODE § 7.031 (West 2008).

13. Beyond charging the Commissioner with the task of studying and reporting dropout prevention practices, HB 2237 also creates a variety of funding provisions in the Texas Education Code for the Commissioner of Education to use to decrease the dropout rate. Some of these are restricted to funding for staff training and facility improvements, and are summarized as follows:

- §7.062 - Allows the Commissioner of Education to provide competitive grants to school districts for the purpose of constructing or renovating high school science laboratories.
- §21.4511 - Allows the Commissioner of Education to develop and award grants to school districts, regional service centers, nonprofit organizations, and higher education institutions for staff development training of public school teachers and administrators.
- §21.4541 - Establishes a pilot program for school districts to receive grants for math teacher training at the middle school, junior high, and high school levels.
- §§21.4551 and 21.462 - Provides funding for teacher academies for teacher training in the subjects of reading, math, science, and technology.

14. HB 2237 also charges the Commissioner of Education to fund student improvement in a variety of ways. Most notably, the Commissioner of Education (and occasionally the Commissioner of Higher Education, together referred to as “the Commissioners” by HB 2237) has authority to award grants to fund the following initiatives, as specified by the following Texas Education Code provisions:

- §29.095 - student club activities;
- §29.096 (e) (8) - local, collaborative dropout prevention programs;
- §29.097 - tech-based English, math, science or social studies for students at-risk of dropping out;
- §29.098 - summer instruction to promote college readiness;
- §29.917 - college and workforce readiness, dropout prevention, and personal financial literacy;
- §29.919 - tech-based supplemental instruction for 6-12 grade students;

15. HB 2237 also creates Texas Education Code Chapter 39, Subchapter L, “High School

Completion and Success Initiative.” Section 39.352 creates the High School Completion and Success Initiative Council (“the council”). The council is composed of the Commissioner of Education, the Commissioner of Higher Education, and seven appointees of the Commissioner of Education (culled from multi-sourced nominations). The Commissioner of Education presides over the council. Pursuant to Chapter 39, Subchapter L, the council and/or the Commissioner of Education is charged, in part, with the following:

- §39.352 - To identify strategic priorities for and to make recommendations to improve the effectiveness, coordination, and alignment of high school completion and college workforce readiness efforts.
- §39.357(a) - To develop a strategic plan to:
  - (1) specify strategies to identify, support, and expand programs to improve high school completion rates and college and workforce readiness;
  - (2) establish specific goals with which to measure the success of the strategies identified under Subdivision (1) in improving high school completion rates and college and workforce readiness;
  - (3) identify strategies for alignment and coordination of federal and other funding sources that may be pursued for high school reform, dropout prevention, and preparation of students for postsecondary coursework or employment; and
  - (4) identify key objectives for appropriate research and program evaluation conducted as provided by this subchapter.
- §39.357(b) - The commissioners shall adopt rules as necessary to administer the strategic plan adopted by the council.
- §39.357(c) - The commissioners may not spend money, award a grant, or enter into a contract in connection with high school success and completion, in a manner inconsistent with the strategic plan.
- §39.361(a) - The council shall make recommendations to the Commissioner of Education based on the strategic plan, for the use of federal or state funds appropriated or received for high school reform, college readiness, or dropout prevention, including grants awarded under §§21.4511, 21.4541, 29.095 - 29.098; 29.917, 29.919, and 39.115.
- §39.361(c) - The Commissioner of Education or the commissioner of higher education shall consider the council’s recommendations and based on those recommendations may award

grants to school districts, charter schools, higher education institutions, regional education service centers, and nonprofit organizations to meet the goals of the council's strategic plan.

- §39.361(d) - The Commissioner of Education is not required to fund a program recommended by the council, but the Commissioner of Education may not fund a program that does not conform to the council's recommendation.
- §39.366 - The Commissioner of Education or the commissioner of higher education shall adopt rules necessary to administer this subchapter.

16. On March 11, 2008, per §39.357 (a), the council adopted the "strategic plan." (Attached in part at App. 1) Under the HB schematic, the strategic plan acts as the base or guide to the council's recommendations to the commissioners, and the commissioners "shall consider" the council's recommendations for funding decisions. TEX. EDUC. CODE § 39.361(c) (West 2008).

17. On June 6, 2008 Defendant Scott and/or the TEA issued a "Request for Application #701-08-116 Dropout Recovery Pilot Program," ("the RFA") in which the TEA sought grant applications from, among others, "nonprofit organizations," to provide "educational programs to students in any of grades K-12." (App. 2)

18. The Christian Fellowship of San Antonio is a nonprofit corporation. Its Articles of Incorporation specify that it is a church. The Fellowship operates the Faith Family Academy.

19. Community in Action, Inc. of Hays, Caldwell and Blanco Counties ("CIA") is a nonprofit corporation. CIA provides adult education, but will provide services to students as young as 16 and 17 years old in certain circumstances.

20. The Healy-Murphy Center, Inc. is a nonprofit corporation and also private school accredited by the Texas Private School Accreditation Commission. The Center operates a high school and child development center.

21. On August 4, 2008, the TEA and/or Scott announced that the above-named nonprofit corporations had been preliminarily selected to receive a grant for the Dropout Recovery Pilot

Program. (App. 3). On August 15, 2008, the selected grant recipients will be authorized to spend money for which they will then be reimbursed under the terms of the grant.

22. Defendants Scott and TEA do not have authority to grant public money to “nonprofit organizations” to provide direct student services.

## **FIRST CAUSE OF ACTION**

### **Declaratory Judgment**

23. The Administrative Procedure and Practice Act provides minimum standards of uniform practice and procedures for state agencies. See §2001.001, et. seq., Texas Government Code (“APA”). An agency and its head are only semi-autonomous. The legislature may delegate its powers to an administrative agency, but a state agency only has the power and authority granted to it by the legislature. Rules and regulations that an agency or agency head imposes must be in harmony with the authorizing legislation. Texas Munic. Power Agency v. Public Utility Comm’n, 100 S.W.3d 510 (Tex. App. - Austin 2003, pet. denied). Defendant Scott exceeded his authority when he awarded public money to a private, nonprofit organization or entity to provide “educational programs to students in any of grades K-12.” Plaintiff requests such a declaration by this Court.

24. The Texas Education Code as amended by HB 2237 does not authorize the Commissioner to award public money to a private, nonprofit organization or entity to provide “educational programs to students in any of grades K-12.” There is no specific authority and no implied authority. Some legislators who voted for HB 2237 and some members of the council have misgivings about Defendant Scott using public money to fund private education and ostensibly using HB 2237 to create a quasi-voucher scheme, further proving that there was no such legislative intent. Plaintiff requests such a declaration by this Court. (*The Quorum Report*, App. 4).

25. The RFA was produced and criteria were determined before Scott and the TEA

properly adopted rules for such purposes in compliance with the APA. Alternatively, the RFA is a set of rules that was adopted without heeding the provisions of §2001.001, et. seq., Texas Government Code (“APA”). Plaintiff requests such a declaration by this Court.

26. Per Section §39.361(c), the council ostensibly gave Defendant Scott a recommendation for funding a private, nonprofit organization or entity to provide “educational programs to students in any of grades K-12.” Defendant Scott was required to consider the council’s recommendations before awarding grants. TEX. EDUC. CODE § 39.361(c) (West 2008). The council’s recommendation had to be founded and based upon the strategic plan. TEX. EDUC. CODE § 39.361(a) (West 2008). The council is a state agency pursuant to Texas Gov’t Code §2001.003 (7), because it is a “board, [or] commission ... with state-wide jurisdiction that makes rules.” (App. 5). Thus, the strategic plan and the council’s recommendations to Defendant Scott were made in violation of the provisions of §2001.001, et. seq., Texas Government Code (“APA”), and are invalid, rendering Scott’s and the TEA’s funding decision appurtenant thereto invalid and unlawful. Plaintiff requests such a declaration by this Court.

27. To the degree that any of the grant money is used to fund private or nonpublic organizations, or in the event that Texas Education Code §21.4511, §29.917, or §39.361(c) is determined to authorize such funding, such funding and said statutes violate Article VII, Section 1 of the Texas Constitution, which states “... it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.” (emphasis added). Plaintiff requests such a declaration by this Court.

28. To the degree that any of the grant money is used to fund private or nonpublic organizations, or in the event that Texas Education Code §21.4511, §29.917, or §39.361(c) is determined to authorize such funding, such funding and said statutes violate Article VII, Section 3 of

the Texas Constitution, which provides that tax dollars shall be used to support the “public free schools.” Plaintiff requests such a declaration by this Court.

29. To the degree that any of the grant money is taken from the permanent school fund and is used to fund private or nonpublic organizations, or in the event that Texas Education Code §21.4511, §29.917, or §39.361(c) is determined to authorize such funding, such funding and said statutes violate Article VII, Section 5 of the Texas Constitution, which provides that “the available school fund shall be applied annually to the support of the public free schools.” Plaintiff requests such a declaration by this Court.

30. To the degree that any of the grant money is taken from the permanent school fund or Texas Treasury to fund private or nonpublic religious or sectarian organizations, or in the event that Texas Education Code §21.4511, §29.917, or §39.361(c) is determined to authorize such funding, such funding and said statutes violate Article I, Section 7 of the Texas Constitution which provides that “No money shall be appropriated, or drawn from the Treasury for the benefit of any sect, or religious society, theological or religious seminary; nor shall property belonging to the State be appropriated for any such purposes.” Plaintiff requests such a declaration by this Court.

## **SECOND CAUSE OF ACTION**

### **Injunctive Relief**

31. Unless this Honorable Court enjoins the Defendant, the Plaintiff and its members will suffer immediate and irreparable injury, for which there is no adequate remedy at law to give Plaintiff complete, final and equal relief. Once public money is granted to private organizations to provide educational services to students, it is irretrievable, and has depleted the limited and available resources used to support the public free schools, thus injuring Plaintiff and its public school employee members.

32. Moreover, “an act in violation of a statute may be enjoined without a showing that the

legal remedy is inadequate.” *Bexar County v. North East Independent School District*, 802 S.W.2d 854, 859 (Tex. App.-San Antonio 1990, writ denied).

### **BOND**

33. Plaintiff is willing to post a reasonable temporary injunction bond and requests the court to set such bond.

### **REMEDY**

34. Plaintiff has met its burden by establishing each element which must be present before injunctive relief can be granted by this court; therefore Plaintiff is entitled to the requested temporary injunction.

35. In order to preserve the *status quo* during the pendency of this action, Plaintiff requests that the Defendants be temporarily enjoined from granting any public money to a private organization.

36. On final trial on the merits, Plaintiff requests that the Court permanently enjoin Defendants.

### **ATTORNEY’S FEES**

37. Plaintiff seeks to recover its court costs and reasonable attorney fees pursuant to Tex. Civ. Prac. & Rem. Code, Section 37.009.

### **PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendant be cited to appear and answer herein, and that:

A. A temporary injunction hearing be set for the earliest practicable date; that an order setting such hearing be entered and served upon Defendants; and that, upon hearing of Plaintiff’s request for a temporary injunction, the Court issue a Temporary Injunction enjoining

and prohibiting Defendant TEA and Scott from granting public money to private entities to provide “educational programs to students in any of grades K-12.”

B. After trial on the merits, the Court:

1. Declare that the Commissioner’s and TEA’s actions described herein are void, without legal authority, and of no force and effect;
2. Issue a permanent injunction prohibiting Defendant from granting public money to private entities to provide “educational programs to students in any of grades K-12.”;
3. Award Plaintiffs their reasonable attorney fees and costs of court; and,
4. Grant Plaintiffs any other relief to which they may be justly entitled.

Respectfully Submitted,

By: \_\_\_\_\_

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**VERIFICATION**

STATE OF TEXAS

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COUNTY OF TRAVIS

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BEFORE ME, the undersigned authority, personally appeared RITA HAECKER, who, upon oath, stated that she is the president of the Texas State Teachers Association and that the factual statements made in the foregoing Plaintiff's Original Petition and Application for restraining Order and Temporary Injunction, are true and correct.

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Rita Haecker

SUBSCRIBED AND SWORN TO BEFORE ME on this the \_\_\_\_\_ day of July, 2008, to certify which witness my hand and seal of office.

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Notary Public, State of Texas