

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

JAN 5 1978

MURRAY L. HARRIS, CLERK
BY DEPUTY Marya Barton

J. and R. DOE, ET AL,
PLAINTIFFS,
VS.
JAMES PLYLER, ET AL,
DEFENDANTS.

X
X
X
X
X
X
X
X
X
X
X

CIVIL ACTION NO. TY-77-261-CA

MEMORANDUM IN SUPPORT OF MOTION
TO AMEND COMPLAINT TO CONFORM TO EVIDENCE

TO THE HONORABLE JUDGE OF SAID COURT:

Rule 15(b) of the Federal Rules of Civil Procedure permits the amendment of pleadings to conform to the evidence. Such an amendment is permissible even after judgement.

On September 9, 1977, the State of Texas moved to intervene as a party defendant. That motion was granted (Transcript of Hearings, September 9, 1977, at p. 63). On or about December 12, 1977, the State of Texas filed an answer denying the material allegations of the complaint. At the hearing on the preliminary injunction and at the trial on the permanent injunction the State of Texas participated fully; indeed it has carried the primary burden of this litigation.

The amendment to the complaint merely seeks to provide a complaint to match the answer which is already on file in this litigation. The only "substantive" change in the complaint is the allegation that the State through the Governor and Commissioner of Education are enforcing the law in question in this litigation. That allegation only conforms to the proof.

No changes are made in the class allegations for such are not

necessary. An injunction against the State and its officers can be obtained by an individual with standing or a class that encompasses less than all of those children affected. The plaintiffs thus do not request amendments in the class order.

For the above stated reasons the plaintiffs request the Court to order that the Plaintiffs First Amended Complaint be filed.

Respectfully submitted,

LAW OFFICE OF LARRY DAVES
POST OFFICE BOX 1115
TYLER, TEXAS 75701
(214) 593-0184

VILMA MARTINEZ
LINDA HANTEN
PETER ROOS
MEXICAN-AMERICAN LEGAL DEFENSE
AND EDUCATIONAL FUND
28 GEARY STREET - 6TH FLOOR
SAN FRANCISCO, CALIFORNIA 94108
(415) 981-5800

BY:



PETER ROOS