

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

J. and R. DOE AS GUARDIAN AD  
LITEM FOR I. ROE, J. D. DOE,  
E. DOE, D. DOE and O. DOE;  
J. and E. ROE AS GUARDIAN AD  
LITEM FOR O. ROE, F. ROE, and  
N. ROE; F. BOE AS GUARDIAN AD  
LITEM FOR Z. BOE, S. BOE and  
X. BOE; H. and J. LOE AS  
GUARDIAN AD LITEM FOR A. LOE,  
L. LOE, M. LOE, G. LOE and  
R. LOE; ON BEHALF OF THEM-  
SELVES AND OTHERS SIMILARLY  
SITUATED,

PLAINTIFFS,

VS.

JAMES PLYLER, SUPERINTENDENT OF  
THE TYLER INDEPENDENT SCHOOL  
DISTRICT, IN HIS OFFICIAL  
CAPACITY; ROBERT DOBBS, CHARLES  
CHILDERS, CARL ROSS, MARTIN  
EDWARDS, VERNON GOSS, MICHAEL  
BREEDLOVE and ROBERT RANDALL  
IN THEIR OFFICIAL CAPACITY AS  
MEMBERS OF THE BOARD OF  
TRUSTEES OF THE TYLER INDEPEN-  
DENT SCHOOL DISTRICT, THE STATE  
OF TEXAS, DOLPH BRISCOE, IN  
HIS OFFICIAL CAPACITY AS  
GOVERNOR OF THE STATE OF TEXAS;  
MARLIN BROCKETTE, IN HIS  
CAPACITY AS COMMISSIONER OF  
EDUCATION OF THE STATE OF TEXAS,

DEFENDANTS.

**FILED**  
U. S. DISTRICT COURT  
EASTERN DISTRICT OF TEXAS

**JAN 5 1978**

MURRAY L. HARRIS, CLERK  
BY DEPUTY Marya Barton

CIVIL ACTION NO. TY-77-261-CA

A M E N D E D C O M P L A I N T

TO THE HONORABLE JUDGE OF SAID COURT:

STATEMENT OF THE CASE

This is a suit brought for preliminary and permanent injunc-  
tive relief and declaratory relief to declare unconstitutional  
Section 21.031 of the Texas Education Code and policies promulga-  
ted pursuant to Section 21.031 by the Tyler Independent School

District and to find that these policies are in violation of 42 U.S.C. Section 2000(d).

THE PLAINTIFFS

1. I. Doe, J. D. Doe, E. Doe, D. Doe and O. Doe are sibling minors, suing through their parents, J. and R. Doe, their guardian ad litem. The entire Doe family resides in the City of Tyler, Smith County, Texas, within the boundaries of the Tyler Independent School District (hereinafter the TISD). J. Doe, the father, has lived in Smith County since 1968. He is employed and pays state and federal taxes. J. and R. Doe own a home and pay the required property taxes on their property. I. Doe is thirteen (13) years old and has attended the Tyler public schools for six (6) years. J. D. Doe is twelve (12) years old and has attended the Tyler public schools for five (5) years. E. Doe is eleven (11) years old and has attended the Tyler public schools for five (5) years. D. Doe is ten (10) years old and has attended the Tyler public schools for four (4) years. O. Doe is eight (8) years old and has attended the Tyler public schools for three (3) years. A younger sibling, born in this country, is an American citizen. But for the acts of the defendants, as more fully described herein, I. Doe, J. D. Doe, E. Doe, D. Doe and O. Doe would be presently attending the public schools of the Tyler I.S.D.

2. A. Roe, F. Roe and N. Roe are sibling minors, suing through their parents J. and E. Roe, their guardian ad litem. The entire Roe family resides in the City of Tyler, Smith County, Texas, within the boundaries of the Tyler I.S.D.. A Roe, the father, has been employed in Smith County continuously since 1972 and pays state and federal taxes. A. Roe is ten (10) years old and has attended the Tyler public schools for one (1) year. F. Roe is nine (9) years old and has attended the Tyler public schools for one (1) year. N. Roe is six (6) years old and has



completed the Tyler Head Start Program preparatory to entering the first grade. A younger sibling, born in this country, is an American citizen. But for the acts of the defendants, as more fully described herein, A. Roe, F. Roe and N. Roe would be presently attending the public schools of the Tyler I.S.D..

3. Z. Boe, S. Boe and X. Boe are sibling minors suing through their mother, F. Boe, their guardian ad litem. The entire Boe family resides in the City of Tyler, Smith County, Texas, within the boundaries of the Tyler I.S.D.. F. Boe has lived in Smith County since 1964. Z. Boe is twelve (12) years old and has attended the Tyler public schools for three (3) years. S. Boe is thirteen (13) years old and has attended the Tyler public schools for three (3) years. X. Boe is eight (8) years old and has attended the Tyler public schools for three (3) years. Two younger siblings, born in this country, are American citizens. But for the acts of the defendants, as more fully described herein, Z. Boe, S. Boe and X. Boe would be presently attending the public schools of the Tyler I.S.D..

4. A. Loe, L. Loe, M. Loe, G. Loe and R. Loe are sibling minors, suing through their parents H. and J. Loe, their guardian ad litem. The entire Loe family resides in the City of Tyler, Smith County, within the boundaries of the Tyler I.S.D.. H. Loe, their father, has lived in Smith County since 1974. He is employed and pays state and federal taxes. A. Loe is eleven (11) years old, L. Loe is ten (10) years old, M. Loe is eight (8) years old and G. Loe is six (6) years old. All these children have attended the Tyler public schools for one (1) year. R. Loe is five (5) years old and has completed the Tyler Head Start Program preparatory to entering the first grade. A younger sibling, born in this country, is an American citizen. But for the acts of the defendants, as more fully described herein, A. Loe, L. Loe, M. Loe, G. Loe, and R. Loe would be presently

attending the public schools of the Tyler I.S.D..

5. The named plaintiffs are suing herein under pseudonyms because they fear that they may subject themselves by being clearly identified, to being reported to the U.S. Immigration Service for possible deportation or other legal proceedings being brought against them or their families.

6. The named plaintiffs sue herein on behalf of themselves and on behalf of the class of individuals similarly situated.

#### THE DEFENDANTS

7. James Plyler is the superintendent of the Tyler I.S.D.. He is charged with the duty to implement on a day to day basis the policies enacted by the Board of Trustees. He is sued in his official capacity.

8. Robert Dobbs, Charles Childers, Carl Ross, Martin Edwards, Vernon Goss, Michael Breedlove and Robert Randall are the duly elected members of the Board of Trustees of the Tyler I.S.D., a public school district. In such capacity they are charged with the development and implementation of policies concerning the Tyler I.S.D.. They are responsible for the development and implementation of admission policies within the parameters of the law. They are sued in the official capacities.

9. Dolph Briscoe is the Governor of the State of Texas and in such capacity is charged with enforcement of its laws. Marlin Brockett is the Commissioner of Education for the State of Texas and in such capacity is charged with the enforcement of all laws relating to education.

#### JURISDICTION

10. This suit is brought pursuant to 42 U.S.C. Section 1983, 42 U.S.C. Section 2000(d), and the Fourteenth Amendment to the United States Constitution. As such, jurisdiction is properly predicated upon 28 U.S.C. Section 1343(3) and (4).



Further, federal question jurisdiction under 28 U.S.C. Section 1331 is present since this case involves the violation of federal law and the Constitution and an amount in excess of Ten Thousand (\$10,000.00) Dollars is involved.

VENUE

11. Venue is proper pursuant to 28 U.S.C. Section 1391

THE FACTS

12. The Tyler I.S.D. is a public school district receiving federal funding thereby making it subject to the provisions of 42 U.S.C. Section 2000(d), Title VI of the Civil Rights Act of 1964.

13. Effective September 1, 1975, Section 21.031 Texas Education Code provides for the admission of students into the school districts in the State of Texas. Such statute provided as follows:

(a) All children who are citizens of the United States or legally admitted aliens and who are over the age of five years and under the age of 21 years on the first day of September of any scholastic year shall be entitled to the benefits of the Available School Fund for that year.

(b) Every child in this state who is a citizen of the United States or a legally admitted alien and who is over the age of five years and not over the age of 21 years on the first day of September of the year in which admission is sought shall be permitted to attend the public free schools of the district in which he resides or in which his parent, guardian, or the person having lawful control of him resides at the time he applies for admission.

(c) The board of trustees of any public free school district of this state shall admit into the public free schools of the district free of tuition all persons who are either citizens of the United States or legally admitted aliens and who are over five and not over 21 years of age at the beginning of the scholastic year if such person or his parent, guardian or person having lawful control resides within the school district.

14. Defendants Briscoe and Brockett in their official capacities have been and continue to enforce the terms of Section 21.031.

15. Pursuant to Section 21.031, the defendant members of the Tyler I.S.D. Board of Trustees, on or about July 15, 1977, promulgated the following policy regarding the admission of students into the Tyler I.S.D.:

POLICY OF ILLEGAL ALIEN SCHOOL AGE CHILDREN

POLICY

The Tyler Independent School District shall enroll all qualified students who are citizens of the United States or legally admitted aliens, and who are residents of this school district, free of tuition charge. Illegal alien children may enroll and attend schools in the Tyler Independent School District by payment of the full tuition fee.

A legally admitted alien is one who has documentation that he or she is legal in the United States, or a person who is in the process of securing documentation from the United States Immigration Service, and the Service will state that the person is being processed and will be admitted with proper documentation.

16. Each of the representative plaintiffs made efforts to register or enroll in the Tyler I.S.D. and was informed by officials of the Tyler I.S.D. that documentation of their legal admittance to the U.S., an American passport or an American birth certificate would be necessary in order to attend the public schools without payment of tuition. None of the named plaintiffs was able to present the necessary documents to the officials of the Tyler I.S.D..

17. Pursuant to the policy described in paragraph 15, above, each of the named plaintiffs was denied admission to the schools of the Tyler I.S.D. unless he or she paid tuition in the amount of One Thousand (\$1,000.00) Dollars per year. None of the said named plaintiffs is attending school since his or her parents are unable to afford the cost of tuition.

18. But for the inability to present the required documents each of the named plaintiffs would be eligible to attend school in the Tyler I.S.D. without the payment of tuition fees.



19. All the representative plaintiffs are of Mexican ancestry. Plaintiffs allege on information and belief that only those school-age children bearing Spanish-surnames or being of Mexican ancestry have been required to produce documentation of their immigrant status.

#### CLASS ACTION ALLEGATIONS

20. The named plaintiffs bring this action on their own behalf and on behalf of all others similarly situated. In this regard, the plaintiffs allege on information and belief that the class of persons affected by Section 21.031 and the policies of the Tyler I.S.D. are so numerous as to make joinder of all the members of the class impracticable. There are questions of law or fact common to the entire class. The named plaintiffs will fairly and adequately protect the interests of the class and plaintiffs' attorneys are competent to represent the interests of the class. The defendants have acted or refused to act on grounds generally applicable to the class thereby making appropriate injunctive relief and corresponding declaratory relief with respect to the class as a whole.

#### FIRST CAUSE OF ACTION

21. Plaintiffs reallege Paragraphs 1 through 20, above.

22. The implementing of the policy in question requiring only children of Spanish surnames or apparent Mexican ancestry to produce documentation of U.S. citizenship or legal status invidiously discriminates against each of said children on the basis of their national origin and is in violation of 42 U.S.C. Section 1983, 42 U.S.C. Section 2000(d), the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

#### SECOND CAUSE OF ACTION

23. Plaintiffs reallege Paragraphs 1 through 20, above.

24. Defendants have failed to provide plaintiffs and the

class a legally sufficient opportunity to contest the imposition of tuition; as such the defendants deny to the plaintiffs the procedural due process guarantees of the Fourteenth Amendment to the United States Constitution.

#### THIRD CAUSE OF ACTION

25. Plaintiffs reallege Paragraphs 1 through 20, above.

26. The imposition of tuition as a prerequisite for attendance upon those children who are unable to document their U.S. citizenship or legal status discriminates against such children in violation of the Equal Protection guarantees of the Fourteenth Amendment of the United States Constitution and 42 U.S.C. Section 1983.

#### FOURTH CAUSE OF ACTION

27. Plaintiffs reallege Paragraphs 1 through 20, above.

28. The combined effect of requiring only children with Spanish-surnames or of Mexican ancestry to produce documentation and their resultant exclusion from a tuition-free education results in a national origin discrimination in violation of 42 U.S.C. Section 2000(d).

#### FIFTH CAUSE OF ACTION

29. Plaintiffs reallege Paragraphs 1 through 20, above.

30. The actions of the defendants in allocating educational benefits on the basis of legal status invade the exclusive jurisdiction of the United States to regulate immigration and naturalization.

WHEREFORE, PREMISES CONSIDERED, plaintiffs pray for the following relief:

(1) That the defendants be cited to appear herein.

(2) That this Court set this matter down for an immediate hearing on a preliminary injunction and order that the policy of the defendants is of no force and effect, is in violation of 42



U.S.C. Section 1983, 42 U.S.C. Section 2000(d) and the Fourteenth Amendment to the United States Constitution and order that defendants immediately register and enroll the plaintiffs and all others similarly situated in the Tyler I.S.D. without the necessity of producing any documentation of U.S. citizenship or legal status and without the payment of tuition fees.

(3) That this Court issue a permanent injunction enjoining defendants, their agents, officers and employees from requiring documentation of U.S. citizenship or legal status or the payment of tuition fees as a prerequisite to admission of school-age children to a tuition free education in the schools of the Tyler I.S.D..

(4) That this Court declare that the policy of the Tyler I.S.D. and Section 21.031 of the Texas Education Code are unconstitutional on their face or in the alternative, in violation of 42 U.S.C. Section 2000(d).

(5) That the State of Texas, defendant Briscoe and defendant Brockette, be enjoined from the enforcement of Section 21.031 and that they be ordered to reimburse local school districts for the education of undocumented alien children on the same basis as all other children.

(6) That plaintiffs be awarded attorneys fees pursuant to 42 U.S.C. Section 1988.

(7) That plaintiffs be awarded costs of court and such other and further relief as the Court may deem just and proper.

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  
SAN FRANCISCO, CALIFORNIA 94108  
(415) 981-5800

BY: Peter D. Roos  
PETER ROOS



CERTIFICATE OF SERVICE

I, PETER D. ROOS, hereby certify that a true and correct copy of the foregoing has been deposited in the U.S. Mail, postage prepaid, to MR. JOHN C. HARDY, Wilson, Miller, Spivey, Sheehy, Knowles & Hardy, 200 Peoples Bank Bldg. South, Tyler, TX 75702; SUSAN CARDWELL, Asst. Attorney General, P.O. Box 12548, Austin, TX 78711; and MR. MICHAEL WISE, U.S. Department of Justice, Washington, D.C. 20530, on January 3, 1978.



---

PETER D. ROOS