

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

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

TYLER DIVISION

MAR 7 1978

J. AND R. DOE, ET AL
V.
JAMES PLYER, ET AL.

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X

CIVIL ACTION NO.
TY-77-261-CA

MURRAY L. HARRIS, CLERK
By Louise Carroll
Deputy

MOTION FOR RECONSIDERATION AND
MOTION TO PRESENT ADDITIONAL EVIDENCE

TO THE JUDGE OF SAID HONORABLE COURT:

I.

This Court sought to add parties to J. and R. Doe, et al by its order of January 5, 1978. Counsel at this time as a friend to the Court would point out that the Office of the Attorney General does not and has not represented those persons before this Court. To the knowledge of counsel these parties have never been served with citation. Counsel for the State of Texas would suggest that until service is had upon such persons they are not parties to this suit, and until requested to do so, the Office of Attorney General does not represent them in this suit nor has it. Counsel for the State would point out that if the preliminary injunction supposedly runs against the added parties, there are no findings of fact or conclusions of law to support same and those persons have no notice of same. Further, counsel has no idea what evidence these persons might have had or could have obtained to present in their behalf. Counsel would further point out that as the suit was originally brought, the only state agency involved was the Office of Attorney General whose funds are limited. If these added persons are to be parties that would certainly add financial resources to the preparation of a defense herein. That is particularly important in view of the statistical and expert data which could possibly be obtained with those resources.

On behalf of the State of Texas, if the Commissioner of Education is to be joined, the State of Texas, by and through

its counsel the Attorney General, will have available additional evidence which was not in existence or could not be obtained at the earlier proceeding, and in that regard counsel would show to the Court the following:

1. The Office of Attorney General sent out and worked up state-wide surveys and statistics on the numbers of illegal aliens in various school districts. However, this information was incomplete because of lack of cooperation of school districts. It was the position of many of the districts contacted that this suit only affected Tyler Independent School District. The Commissioner of Texas Education Agency was not being enjoined from enforcing 21.031, and the districts did not want to get involved. It was their position that they were guided by the Court of Civil Appeals decision of Texas state court in Hernandez v. Houston ISD.
2. Crucial to the State's case was the testimony of school officials in Border Districts. These officials were outside subpoena range. They refused to testify because the decision of the Court was only going to effect Tyle ISD. Some of the potential witnesses contacted have had unpleasant experiences in this Court previously and would not cooperate with the State or testify unless they knew they were going to be directly effected by what this Court did. The hands of the State were tied. It cannot force school districts to cooperate. Injunction state-wide was not sought. These people would not testify and the State had no means to force them to do so. If this case now involves injunction possibilities of state-wide ramification these people will testify.

WHEREFORE, PREMISES CONSIDERED, the State of Texas, respectfully prays that either upon reconsideration of Plaintiff's Motion to Amend Pleadings, this Court deny same; or in the alternative the State of Texas would seek

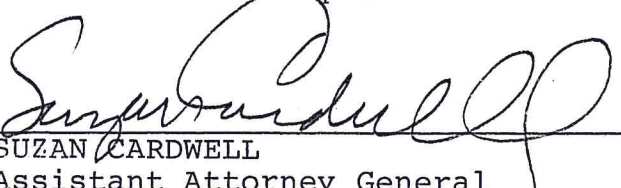
to reopen this case and present additional evidence as it appears from the order of this Court seeking to add persons (which are not as yet represented herein) that the Court may be pasturing this case in such a way as to make an order having state-wide effect. The State needs a minimum of six (6) weeks to prepare additional evidence.

Respectfully submitted,

JOHN L. HILL
Attorney General of Texas

DAVID M. KENDALL
First Assistant

STEVE BICKERSTAFF
Assistant Attorney General


SUZAN CARDWELL
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CERTIFICATE OF SERVICE

I, Suzan Cardwell, Assistant Attorney General of Texas hereby certify that a true and correct copy of the foregoing instrument has been deposited in the U.S. Mail, Certified, Return Receipt Requested, addressed to Mr. Larry Daves, P.O. Box 1115, Tyler, Texas 75701, Mr. Peter Roos, Mexican-American Legal Defense and Educational Fund, 28 Geary Street, San Francisco, California 94108 on this the 1st day of March, 1978.


SUZAN CARDWELL