

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

FILED  
DISTRICT COURT  
EASTERN DISTRICT OF TEXAS

MAR 13 1978

MURRAY L. HARRIS, CLERK

By

Deputy

*Louise Carroll*

J. AND R. DOE, et al.,  
Plaintiffs,  
V.  
JAMES PLYLER, et al.,  
Defendants.

Civil Action No. TY-77-261-CA

PLAINTIFF'S OPPOSITION TO MOTION FOR RECONSIDERATION  
AND MOTION TO PRESENT ADDITIONAL EVIDENCE

There has never been a lawyer who did not look back at a completed trial and think of issues he wished he had raised, or facts he wished he had presented. Likewise, there has never been a lawyer who upon assuming responsibility for a previously tried case could not think of something he would have done differently.

The present motion by the State of Texas, made three (3) months after trial, is an effort to circumvent the rule that all trials must end. In reliance upon an unrelated development, the amendment of the Complaint to conform to the proof, the State of Texas seeks to reopen the trial. Because the two matters are unrelated, and because this Court has already gone to great lengths to assure the State a full opportunity to present their case, the motion should be summarily rejected.

This Court has gone to extraordinary lengths to protect the rights of the State to fully participate in this case. The State was informed immediately upon the filing of the case that it had the opportunity to participate. The State took the lead from

that date in presenting testimony. The State had three (3) months between the preliminary injunction and trial to prepare its case. No extension of the trial was ever requested. At the trial itself, the Court agreed not to compel the State to present its testimony at the end of the Plaintiffs' case, although a significant portion of an afternoon remained. The State thus had three (3) complete days after the Plaintiffs rested to prepare their case. The Court asked counsel on the second day of trial if they would need additional days. The State of Texas represented that it could complete its case within the second day and it did so. Finally, the Court agreed to allow the parties to reopen the trial within seven (7) days of the submission of the United States. The State of Texas did not make a request to reopen within that time period.

The purported justification for the State's request is the addition of the Governor and Commissioner of Education as parties Defendant. The State asserts that the Attorney General does not represent these persons, that service upon the Attorney General is thus not adequate service, and that somehow this justifies reopening the case.<sup>1/</sup> If this set of facts has any

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<sup>1/</sup> The justifications advanced are generally unrelated to the request or defy reason. It is asserted that the Attorney General could not get cooperation from others because the case was perceived as a local case. The fact that the State of Texas intervened as a party Defendant at the earliest possible moment and took the lead in the defense of the suit should have been persuasive on this point. In addition, the widespread publicity that the preliminary injunction received manifests a recognition by all who have even cursorily thought about this case that it has not only statewide, but nationwide ramifications. Plaintiff's attorneys, who are always scratching for funds, further find difficult to comprehend the claim of poverty asserted by the Attorney General of the State of Texas.

legal significance it would mean that injunctive relief could not run against these two individuals.<sup>2/</sup> If this Court rules in favor of the Plaintiffs in the instant case, these two individuals might, at a later date, allege that they cannot be held in contempt for failure to abide by the order. The Plaintiffs believe that given the nature of this litigation, the Commissioner and certainly the Governor cannot separate themselves from the State of Texas and that such an effort must fail. Whatever the merits, this set of facts presented by the State does not justify reopening the trial, nor do they justify a vacation of this Court's order permitting the Amendment.

For the above stated reasons the Plaintiffs respectfully request the Court to deny that "Motion for Reconsideration and Motion to Present Additional Evidence."

Respectfully submitted,

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<sup>2/</sup> The State of Texas clearly is a properly served party Defendant.



PROOF OF SERVICE BY MAIL

I, the undersigned, declare: I am a citizen of the United States and am employed in the County of San Francisco, State of California. I am over the age of 18 years and not a party to the within entitled action. My business address is 28 Geary Street, 6th Floor, San Francisco, California 94108. I am employed in the office of a member of the bar of this Court, at whose direction this service was made. On the date set forth below, I served a true copy of the following document(s):

Plaintiff's Opposition to Motion For Reconsideration and Motion to Present Additional Evidence.

on each of the following parties to this action by placing same in envelopes which were then sealed and addressed as follows:

John Hill  
Susan Cardwell  
Rick Arnett  
Post Office Box 12548  
Capitol Station  
Austin, Texas 78711

John Hardy  
200 Peoples Bank Building, South  
Tyler, Texas 75702

Michael Wise  
Department of Justice  
Washington, D.C. 20530

Said envelopes were than stamped with the proper First Class postage and deposited in the United States mail at San Francisco, California.

Executed at San Francisco, California, this 9th day of March, 1978.

Christine Pollard  
Christine Pollard