

EXPERT WITNESS REPORT
OF
ALLAN E. PARKER, JR.
Report for
Efficiency Interveners

I. Experience and Qualification

1. My name is Allan E. Parker, Jr. I am currently the President of The Justice Foundation, head-quartered in San Antonio, Texas, however, I am making this expert witness report as a private individual.
2. I attended the University of Oklahoma from 1970 to 1974 and graduated with a Bachelor of Arts in Economics with Honors. I was also Phi Beta Kappa and the recipient of the Rita H. Lottinville Prize for Men. I co-edited a high school debate sourcebook called "*The Price of Knowledge: Financing Public Education*" during that time.
3. I attended the University of Texas Law School from 1976 to 1979. I graduated from the University of Texas Law School with Honors. I was also an Associate Editor of the Texas Law Review, Order of the Coif, and Order of Barristers. I graduated number one in my class, Summer 1979.
4. After graduation from law school, I was employed by the law firm of Gary, Thomasson, Hall, and Marks in Corpus Christi, Texas, between the years 1979 and 1987. I started as an associate and later became a partner with the law firm. During that time I and our firm represented numerous Texas public

school districts in the Corpus Christi area, including Corpus Christi ISD, Robstown ISD, Beeville ISD, Sinton ISD, and Gregory-Portland ISD. I was involved in personnel terminations, due process hearings under the new Education for Handicapped Children Act and Student Discipline cases. I participated in numerous cases before the Commissioner of Education during that time. I have participated in numerous school law seminars, sometimes as a speaker, sometimes as a participant.

5. From Fall 1987 to Summer 1993, I was a Professor of Law at St. Mary's University School of Law in San Antonio, Texas. I mainly taught Texas Civil Procedure, but at various times I also taught Education Law. I was also instrumental in conducting at least one Education Law Symposium with students while I was a professor at the University.
6. In the year 2000, I was designated a "Hero for Children" by the State Board of Education "In recognition of the significant contributions to public school education in Texas and for outstanding contributions to the success of the Texas public education system."
7. After the 1995 Legislature created open enrollment charter schools, I was selected by the State Board of Education to be part of the open enrollment charter school evaluation team. I have assisted various legislators over the years to help craft educational reform legislation. Because of my experience, The Justice Foundation was at one time an approved provider of the required School Board member training.
8. From 1993 to the present, I have been the President of The Justice

Foundation, formerly the Texas Justice Foundation. During those years the Foundation has advocated for parents' rights. I have written numerous articles on education in Texas, and my other articles that I can remember are:

- ***“Public Free Schools”***, Allan E. Parker, 45 Southwestern Law Journal, pp. 825 (1991)
- ***“Litigating Edgewood: Constitutional Standards and Application to Educational Choice”***, Allan E. Parker, Jr. and Michael David Weiss, 10 THE REVIEW OF LITIGATION pp. 599-976, 1991.
- ***“Hostility or Neutrality? Faith-Based Schools and Tax-Funded Tuition: A GI Bill For Kids”***, Allan E. Parker, Jr. and R. Clayton Trotter, George Mason University Civil Rights Law Journal, Volume 10, Number 1, Winter 1999/Spring 2000, pp. 83-106.
- ***“Hostility or Neutrality? The Constitutional Case for Faith-Based Private Vouchers”***, Allan Parker and R. Clayton Trotter, Texas Education Review, Volume 1, Number 1, Spring 2000, pp. 47-55.
- ***“Paying for Public High School Education Twice: Remediation in Texas Public Higher Education”***, Allan E. Parker, Jr. and Stephen Ratliff, A Texas Public Policy Foundation Report, May 1997.
- ***“From the Wake of Gonzales v. Carhart,”*** Allan E. Parker, Jr., Vermont Law Review, Volume 32, Number 3, Spring 2008, pp. 657-661.

II. Expert Opinion

9. The Texas Constitution requires that the legislature establish a suitable and efficient system of public free schools. Based on the last 33 years of my personal and professional experience representing parents, students, and public schools, my years of study on the issue, and in my personal expert opinion, I believe that the Texas System of Public Free Schools is constitutionally inefficient as a matter of fact.

10. The major evidence that the current system is inefficient as a matter of fact is that it is not ‘productive of results’. The facts are:

- a. Texas public schools are not graduating sufficient numbers of students who are prepared for college.¹
- b. The problem is not a lack of funding. Funding between 1998 and 2010 increased by \$62 billion over and above inflation and enrollment growth.²
- c. Spending per student has increased 63% over the past decade.³
- d. Funding has increased five times faster than student growth over the last decade.⁴
- e. Bureaucratic administration has grown much faster than either student or teacher growth over the past decade.⁵
- f. Drop-out rates are unacceptably high,⁶ and have been for a long time.⁷

Therefore, in my opinion the system is not “productive of results with little waste” as required for a constitutional system.

11. I use the term ‘efficiency’ throughout this report in the sense of “. . . conveys the meaning of effective or productive of results and connotes the use of resources so as to produce results with little waste.” *Edgewood I*, 777 S.W. 2d

¹ “Taking into account all students who enroll in a Texas institution of higher education, nearly 40 percent aren’t prepared for some aspect of college-level work.” *Austin American Statesman –PolitiFact 2011*

² See attached chart by Chairman Rob Eissler Appendix A

³ *2010 FAST Report*, Susan Combs, Comptroller of Public Accounts, Executive Summary p.10

⁴ “In the last decade, total spending rose nearly five times as fast as enrollment (95.3 percent versus 19.7 percent).” *2010 FAST Report*, Susan Combs, Comptroller of Public Accounts

⁵ “From 1998-99 to 2008-09, the number of teachers in Texas rose from 256,276 to 325,809, a 27.1 percent increase. During the same period, the number of administrators rose from 18,531 to 25,130, a 35.6 percent increase (Exhibit 14). Texas would have to eliminate 1,571 administrative positions to reach the 1998-99 ratio again.” *2010 FAST Report*, Susan Combs, Comptroller of Public Accounts

⁶ “Texas public schools are losing one out of four students.” <http://www.idra.org/Research/Attrition/>

⁷ This problem is especially clear when measured by the failure of ninth graders to finish high school, rather than ‘official’ drop-out rates, which often under report the drop-out problem.

at 395. The huge cost of remediation, and the large number of students who enroll in college but who require remediation in basic math and science is clear evidence of structural inefficiency.⁸ An efficient system which had as its goal preparing children with a general diffusion of knowledge sufficient for college or career training would not require such massive remediation.

12. More evidence that the system is constitutionally inefficient, and must be corrected by the judicial branch of government properly declaring the current system “inefficient” under the Constitution, is the fact that the current system has become a politically controlled, top-down, centrally bureaucratized system totally inconsistent with efficiency. It is particularly damaging to students, parents and especially low-income families, unlike a private monopoly which can perhaps be avoided by consumers, the current system compels forced attendance by law for most students. Over the years with compulsory attendance laws and growing state control, the system has devolved into a system which responds to adult political stakeholders such as superintendents, teacher associations, school board organizations and representatives, etc., rather than to the consumers of education - the children and parents of school age children. *Love v. City of Dallas* 120 Tex. 351, 40 S.W.2d 20 (1931) holds that education funds in Texas are held in trust “for the benefit of the students.” That is why we call a governing board of a school district a board of trustees, not a board of directors. Yet, in practice and reality, the only groups with enough political power to make the current⁸ system respond to their needs are

⁸ According to Alliance for Excellent Education *Policy Brief May 2011*, p. 9, Texas could save almost \$300 million by solving the college remediation problem.

the adult education stakeholders.⁹ Further evidence of inefficiency is that entry into the public free school system is entirely limited to government schools, the consumers do not have efficient control nor choice. Even the few suppliers in the current system are bound by intensely centralized, extensive rules and regulations designed to provide a one size fits all school model thereby creating a system which is inherently and structurally inefficient.

13. As an observer and as a participant in the political process, I have seen the power of the school establishment to protect its turf over and over again.¹⁰ As I remember, in one session 154 lobbyists were hired by various parts of the school system in Texas to protect its interests. These lobbyists were paid for primarily directly or indirectly with tax dollars which are not spent on instruction. Even groups with apparently parent-friendly names like Parent PAC and the PTA are essentially controlled by the educational establishment.
14. Rather than focusing on basic service to the consumers, such as teaching children to read, write, and do math sufficiently that they would be well-prepared for college after more than 12 years in the system, (including Kindergarten and Pre-K), the system instead focuses primarily on the political needs of political controllers. These controllers may constitute a majority faction of a school board, a strong superintendent who wants to place his stamp on a district, a governor, or commissioner of education who wants to

⁹ Moe, Terry *Special Interest: Teachers Unions and America's Public Schools* Brookings Institution Press

¹⁰ In fact, there's evidence of that in this case. Both the Texas Classroom Teachers Association and the Texas State Teachers Association, two of the adult stakeholder groups, filed amicus curae briefs in support of dismissing the Efficiency Intervenor's claims. The "turf" they are attempting to defend are the many provisions in the Texas Education Code that provide protection to teachers, but have little or no benefit to children.

place his stamp on the politically controlled education system, or other dominant political forces such as union power, which may vary over time and circumstances. This produces a series of fads and cyclical “innovations” which seldom achieve desired results, and then are abandoned for the fad of the next political controller driven by adult stakeholder interest. The phenomenon often occurs when a new superintendent takes over the reins. Particularly in urban districts, the new boss may have been hired to fix particular problems. Unfortunately, when he or she leaves for a better superintendent job, the student performance problems usually still exist. Rank and file teachers everywhere are very familiar with the changes that are forced on the system and are abandoned or changed when the dominant political force changes.

15. More evidence of constitutional inefficiency requiring the judicial branch of government to force correction is that low-income students and parents are the most ill-served by the current constitutionally inefficient system. Low-income students and parents are structurally unable to correct the system, having the least amount of political power and the least capacity to organize politically to correct the system. As a result of this structural inequality, they will always suffer in ways for which simply pouring more money into the system cannot adequately compensate. In my opinion, low-income students and parents receive the worst teachers and education in general. Also, they are unable to participate as effectively other interests in the current politically, controlled inefficient model. Just as judicial intervention was required to solve racial

inequity, re: *Brown v Board of Education*, (especially since the inequality was judicially sanctioned in *Plessy vs. Ferguson*) the constitutional “efficiency” standard for education may never be met for low-income students unless the courts require such constitutional efficiency. We have three branches of government each pledged to protect the constitutional “rights and liberties of the people.” These students must be protected.

16. The structural system of being required by law to attend a particular school disadvantages low-income students and parents the most. The well-to-do are able to “choose” better schools by buying more expensive homes in more affluent neighborhoods. These schools are not actually more “efficient” in many cases, but because of the barriers to entry and intense desire of parents who do place a high value on education, the students at these schools actually may be better academically than students in other schools, but more of this achievement is due to parents than the education system.
17. Significant evidence exists supporting the fact that consumer choice could be of significant benefit to low-income students. The attached papers on school choice, are a further basis of my opinion, and demonstrate based on experiments done in other states that school choice improves academic results for minority students. The most striking example of this is Florida. “*The Greenfield School Revolution and School Choice*,” June 2012, by Greg Forster, Ph.D. and James L. Woodworth, M.Ed.. “*Lessons for Ohio from Florida’s K-12 Education Revolution*,” October 2011, by Matthew Ladner,

Ph.D.. *“The Fiscal Effects of School Choice Programs on Public School Districts,”* March 2012, by Benjamin Scafidi, Ph.D.

18. The current statutory cap on the number of charter schools is further evidence of inefficiency in the system of public free schools. See TEX. EDUC. CODE §12.101(b). The cap of 215 prevents new charter operators from entering the Texas marketplace and providing students and parents more options. An estimated 56,000 students are on waiting lists across the state, showing there is more demand than supply for charter schools. It is probable that even more students would apply if they thought that they had a chance to win the attendance lottery for charter schools. Placing an arbitrary, artificial cap on charter schools reduces the potential for both charter school operators and students, thereby restricting both supply and demand, and is therefore inefficient. Current statutory restrictions on the number of charter schools restrict options for both providers and consumers thereby restricting the “liberties and rights of the people.” These restrictions violate both the “efficiency” requirement and the “liberty and rights” language, which is the explicit purpose of article VII, section 1 of the Texas Constitution.
19. Further evidence of structural constitutional inefficiency, in my opinion, can be found throughout Chapter 21 of the Texas Education Code. This chapter of the code drives gross inefficiencies in the system including but not limited to: teacher pay increases made and driven at the state level, entry restrictions, strict class size rules, and meaningless appraisal processes. In addition, the termination process is cumbersome and makes it very difficult to eliminate

inefficient and unproductive teachers.¹¹ As a public school attorney, one of my most disconcerting tasks was telling school administrators that they did not have enough “evidence” to terminate a teacher who was doing a poor job. A remediation plan had to be developed. It may or may not have resulted in a better teacher eventually, but it certainly resulted in an ineffective and inefficient teacher being forced upon students for at least another year, sometimes two or three. The losers were the student, parents and the general diffusion of knowledge.

20. Further evidence of the inefficient structure of the current public education system are the artificial limitations on the Public Education Grant Program (PEG). While some students are benefited, because these students in poorly performing public schools can be rejected by other public school districts which could receive these students, many students are trapped in failing schools. The choice is arbitrarily given to the receiving school district to reject students. Many, if not most public school districts do not want to receive poorly performing students. One of the common arguments against competition in the public school systems is that non-traditional schools would screen for the best students. However, the actual experience of open enrollment charter schools in Texas found that in fact the opposite was true. Public monopoly schools may and often do not want to take more difficult to teach students, such as students who have done poorly, or attended poorly performing schools for whatever reason. On the other hand, educators in a

¹¹ See *Managing the Public School Workplace, An Analysis of the Current Chapter 21, Texas Education Code*, 2011, TIER, by Blake Powell and William Bednar, pp .9-17 for an overview of procedural requirements which have not changed significantly since the code rewrite of 1995.

more efficient system would want to meet the needs of actual students, regardless of difficulty if funding follows the child. Therefore, constitutional inefficiency is increased because PEG grant students are not enabled to attend non-traditional schools when rejected by other public schools. New schools are often created by “educational champions” who have freedom of choice and a burning heart for the underserved student populations. In an efficient system, which allows for greater supply side change, a great part of the success of your school would entirely depend upon parents and students voluntarily choosing that school. An efficient system would force the schools to meet the needs of those students. The open enrollment charter school data shows that the students who attend charter schools were not the “cream of the crop.” Students who exercised choice were generally not doing as well academically in public schools, as others. This is exactly the poor performing student population that an efficient system would like to see get a better education. Having additional choices not tied to geography would also help the poor who more frequently have to change schools when they have to move because they can’t pay the rent. Finally, logic and experience dictate that the successfully performing, happy students never like to leave their friends and go to another school. Generally, only the unsatisfied students who are not doing well (too often their failure to achieve is for safety reasons in public schools today) are the ones who would leave a failing public school. This is especially true in middle schools. In reviewing official incident reports,

hundreds and hundreds of incidences of violence, sexual harassment and verbal assault per school occur in Texas middle schools each year.

21. More evidence of the constitutional inefficiency is the arbitrary and capricious limitations on any public school district who voluntarily chooses to become a home rule charter district. Home rule charter school districts were intended in theory to allow public schools to function under true local control, much like the community school system which existed in the years following the adoption of the *1876 Constitution*.¹² However, the restrictions on home rule charter school districts are so onerous that there is little incentive for any school district to become one.¹³
22. More evidence that this current system is structurally inefficient is there is no incentive to make the painful changes necessary for innovation. Real change is usually difficult in any institution. The current inefficient system continues to exist whether its students do poorly or well. Since there are complete and total barriers to entry, the inefficiencies continue to exist beyond remedy. The absence of practical alternatives for consumers allows current suppliers to fail to respond to consumers' needs. The producers in the current system never face the long term inevitable consequences of failure to meet student needs; the schools are not allowed to fail; only the students fail in reality, though they often receive inflated grades to cover up the systems failure. The Court must

¹² “The method of school organization adopted in the new law [of 1876] was as simple and as loose as it could possibly be. . . . (1) It gave to parents the greatest latitude in determining for themselves the kind of education they desired for their children and the character of teacher they wished to employ. (2) There was no restriction to the number of children necessary to constitute a school community. . . . (3) The parents could enjoy the use of the state school fund, together with the minimum of state interference. Moreover, it lodged the responsibility of educating the children upon the parents, where, as they believed, it belonged . . .” Eby, *The development of Education in Texas*, 1925, P.171

¹³ See TEX. EDUC. CODE § 12.013(b)(3)(F)-(S).

make a determination that the current system is constitutionally inefficient. It produces a general diffusion of dropouts and student failure.

23. In my opinion, further evidence that the system is inherently inefficient as a matter of fact is because the current system is a government-controlled monopoly and monopolies are inherently inefficient and run for the benefit of the monopoly rather than the consumer. This opinion is based on my training as an economist and the practical observance of economic systems in the United States and throughout the world over the last thirty-three years, including the failures of government run, command economies around the world. It is also based on a study of Texas' economics professors entitled "Efficiency of the Texas Public School Delivery System," a copy of which is attached in support of my opinion. The major conclusions of that study, with which I agree, are as follows:
- a. Less than four percent of Texas economics professors consider the Texas education delivery system to be efficient.
 - b. Eighty-three percent of the professors surveyed believed that the public delivery system for grades K through 12 is not efficient or not as efficient as it could be.
 - c. An overwhelming majority of these professors believe providing consumer choice will enhance efficiency of the system.
 - d. Most economic professors think that our schools are not delivering the results needed by society. Only 2.8% felt our children are well prepared for college.

- e. Less than 6% thought Texas public schools are doing a good job in providing a general diffusion of knowledge to Texas students.

24. In my opinion, and the opinion of these experts, lack of competition and market forces produces inefficiency. While the referenced survey of economists was conducted some time ago, there have been no changes in the structure of the public education system which I believe would change the results of this survey. The system still does not produce a “general diffusion of knowledge” sufficient to preserve liberties. The system does not protect the ‘rights and liberties’ of the people.
25. History proves the opinions of these economists to be correct. For example, when Wisconsin adopted school choice in Milwaukee, the Milwaukee public schools responded on their own with the Milwaukee public school guarantee. If your child was not reading on grade level by grade three, you got a tutor. This was a market driven response to competition, not a top down solution. Contrary to cries that choice would ‘harm’ public schools, economic evidence and history prove exactly the opposite. In one study Harvard economist Carolyn Hoxby found; “In every subject, achievement grew most in the [public] school that faced the most voucher competition”¹⁴ Therefore, in my opinion our system of public free schools would be more efficient if we move back to a system which allows for greater local control, parental choice, and supply side change.
26. More evidence that the system is constitutionally inefficient is that freedom of entry into the market by providers, and choice by consumers, is not allowed to

¹⁴ Herb Walberg, *School Choice, the findings*, Cato Institute 2007, pp.58-59

act as a permanent catalyst for change to promote efficiency from the bottom up. Inertia in markets keeps most people in place which provides stability, but as 1-5 percent of the most informed consumers begin to complain or move to a better situation, remaining management is forced to respond to the felt need of consumers. Thus, if bullying is a problem at a local campus, an anti-bullying strategy would be found and adopted because of local choices. An efficient system would not need to wait for improvement before a statewide, top-down strategy is developed. Many best practices which succeed in a local situation when developed and supported locally do not in fact transfer well when imposed from the top down on an unwilling workforce, thus creating many inefficiencies in the current system.

27. The Texas Constitution guarantees an “efficient system of public free schools.” The Texas Supreme Court has stated: “While we considered the financial component of efficiency to be implicit in the Constitution's mandate, the qualitative component is explicit.” *Edgewood IV*, 917 S.W.2d at 729. That Court has also stated: “[A]lthough the issues brought before us in *Edgewood I*, *Edgewood II*, and . . . *Edgewood III*, have all been limited to the financing of the public schools, as opposed to other aspects of their operation, money is not the only issue, nor is more money the only solution.” *West Orange-Cove II*, 176 S.W.3d at 793 (emphasis added). Throughout the school finance cases, the Court, noting it only has the power to rule on issues brought before it by the parties, has routinely called on the Texas Legislature to consider more fundamental, structural change to the State’s primary education system.

Finally, the Court has written: “Perhaps . . . public education could benefit from more competition, but the parties have not raised this argument” *Id.* (emphasis added). The Efficiency Intervenors have now raised that argument in this case and it is my expert testimony that the system would be significantly more efficient with competition and ability for supply side change. The Texas school finance system has undergone recurring litigation based in part on article VII, section 1 of the Texas Constitution since the initial *Edgewood I* ruling in the 1980s. The Texas Supreme Court has consistently reiterated the explanation that “‘efficient’ conveys the meaning of effective or productive of results and connotes the use of resources so as to produce results with little waste.” *Edgewood I*, 777 S.W.2d at 395 (emphasis added).

28. Throughout the course of past school finance litigation, the Texas Supreme Court has consistently called for structural change in the system of public free schools:

- ***Edgewood I*** — The Court stated that “efficient” does not just mean equity as some may wish to contend. Instead, “[e]fficient’ conveys the meaning of **effective or productive of results** and connotes the use of resources so as to produce results with little waste; this meaning does not appear to have changed over time.” *Edgewood I*, 777 S.W.2d at 395 (emphasis added). The Court held that “the state’s school financing system is neither financially efficient nor efficient in the sense of providing for a ‘general diffusion of knowledge statewide’” *Id.* at 397.
- ***Edgewood III*** — Once again calling for structural change, the Court stated: “In *Edgewood I*, we stressed, ‘the system itself must be changed.’ . . . As long as our public school system consists of variations on the same theme, the problems inherent in the system cannot be expected to suddenly vanish.” *Edgewood III*, 826 S.W.2d at 524. The Court went on to explain, “We are constrained by the arguments raised by the parties to address only issues of school finance. We have not been called upon to consider, for

example, the improvements in education which could be realized by eliminating gross wastes in the bureaucratic administration of the system. The Legislature is not so restricted.” *Id.* (emphasis added).

- ***Edgewood IV*** — The Court stated that traditional “qualitative” efficiency is explicitly demanded by the Constitution: “While we considered the financial component of efficiency to be implicit in the Constitution’s mandate, the qualitative component is explicit.” *Edgewood IV*, 917 S.W.2d at 729 (emphasis added). The Court reiterated that although previous rulings focused on equity, the Constitutional standard is higher: “[A]t the time *Edgewood I* was decided, we did not then decide whether the State had satisfied its constitutional duty to suitably provide for a general diffusion of knowledge. We focused instead on the meaning of financial efficiency.” *Id.*
- ***West Orange-Cove II*** — Delivering the strongest call for traditional “qualitative” efficiency, the Court stated: “Efficiency implicates funding access issues, but it is certainly not limited to those issues.” *West Orange-Cove II*, 176 S.W. 3d at 793. Alluding to the risk of perpetual litigation without real structural reform, the Court recognized that “[p]ouring more money into the system may forestall those challenges, but only for a time. They will repeat until the system is overhauled.” *Id.* at 754. The Court referred to deep divisions in drafting of the Constitution: “The delegates to the Constitutional Convention of 1875 were deeply divided over how best to provide for a general diffusion of knowledge, finally adopting article VII, section 1 by a vote of 55 to 25. No subject was more controversial or more extensively debated.” *Id.* at 785. The Court agreed with the state regarding the focus on results: “The State defendants contend that the district court focused too much on ‘inputs’ to the public education system—that is, available resources. They argue that whether a general diffusion of knowledge has been accomplished depends entirely on ‘outputs’—the results of the educational process measured in student achievement. We agree that the constitutional standard is plainly result-oriented.” *Id.* at 788 (emphasis added).

Reform is required to fulfill the constitutional standards: “There is substantial evidence, which again the district court credited, that the public education system has reached the point where continued improvement will not be possible absent significant change, whether that change take the form of increased funding, ***improved efficiencies, or better methods of education.***” *Id.* at 790 (emphasis added).

This current system does not meet the standards previously enunciated by the Texas Supreme Court.

29. Over time the Texas public free school system has evolved from a locally-controlled consumer driven system into an educational system almost entirely dominated by adult stakeholder interests. Therefore, it is mandatory and essential that the judicial branch of government step in at this time. The judiciary must, of course, be deferential to the legislature, but the ultimate responsibility of an independent judiciary is to the *Constitution* itself. Real efficiency and real equity may never be restored to the system unless the current system is declared to be constitutionally inefficient. There is no single remedy by which the legislature must remedy the underlying structural cause of inefficiency. The legislature in theory could choose to introduce an incredible variety of competitive mechanisms including tax credits, increasing the number of charter schools, taxpayer savings grants, parent-trigger mechanisms, modified child-centered funding schemes, or more. All of which would increase efficiency of the system. I believe it is the duty of the court to declare the system unconstitutional and the duty of the legislature to come up with a remedy for the constitutional inefficiency.¹⁵
30. Further, I believe that the framers of our Constitution strongly believed that monopolies were inherently inefficient. For example, Section 26 of the Bill of Rights of the Texas Constitution says, “**Perpetuities and monopolies are contrary to the genius of a free government, and shall never be allowed.** . . .”[emphasis added]. Yet today we have in essence a government monopoly over education. A monopoly which like all monopolies drives great inefficiencies.

¹⁵ This is exactly what the court did in *Edgewood I*, *Edgewood II* and *Edgewood III*

31. Our current constitutional education provision's use of the word 'public' did not mean run by government, but merely open to the public in the sense of "public accommodation" as we say today. The people in Texas in 1876 were very fearful of top down bureaucratic state control, which they endured during Reconstruction¹⁶ and which unfortunately we have evolved back towards over the decades. The first schools set up under the *1876 Constitution* were consumer driven and consumer choice was the norm. They provided, enabled, even demanded local parental control and limited Reconstruction style centralized state control.¹⁷

In conclusion, food is more important to survival than education, yet we allow the free market to efficiently produce and distribute vast quantities of food throughout Texas, even to the poor. We provide food stamps to the poor, but we don't require anyone to eat in a particular restaurant or buy from a particular grocery store. We don't force people to buy from a particular grocery because we are afraid that grocery store or restaurant might shut down if people had a choice. We recognize that would be massively inefficient for adults, but because our children can't vote or organize, we trap them in a constitutionally inefficient system. For the sake of the children, it is time for change. After observing and participating in education as a school lawyer, law professor, and reformer for over 30 years, it is my absolute conviction that public education will never be improved absent systemic change. More money alone will not solve the problem.

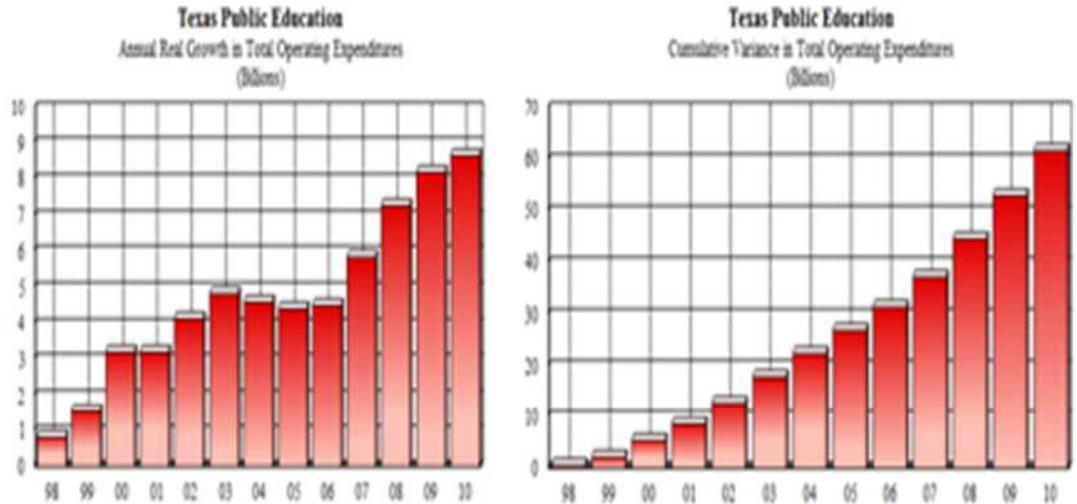
32.

¹⁶ "Concern for efficiency in the education article in the Texas Constitution arose from a basic Texan sense of frugality, distrust of opulence, and a fear of government overreaching and excessive spending." Billy D. Walker, *Intent of the Framers* at 665, *Edgewood III*

¹⁷ Eby, *The Development of Education in Texas* 1925, pp.171-172

Appendix A

Constant Dollar Growth in All Funds Operating Costs



	97-98	98-99	99-00	00-01	01-02	02-03	03-04	04-05	05-06	06-07	07-08	08-09	09-10
Enrollment Adjustment	1.64%	1.37%	1.17%	1.70%	2.14%	2.25%	1.69%	1.68%	2.75%	2.00%	1.22%	1.64%	2.05%
Inflation Adjustment	1.02%	1.14%	3.61%	4.29%	0.40%	3.30%	1.83%	3.02%	3.55%	0.79%	3.93%	0.50%	2.04%
Base (Billions)	19,452.7	20,009.8	20,538.2	21,562.7	22,907.3	23,565.2	24,976.9	25,925.8	27,250.2	29,083.5	29,931.2	31,513.0	32,279.4
Enrollment Adjustment	319.6	275.0	241.2	366.9	491.1	530.8	421.7	435.2	750.6	583.1	365.2	518.0	661.5
Inflation Adjustment	200.9	231.3	751.0	940.3	93.3	795.3	465.9	796.5	995.0	234.9	1,191.6	160.8	678.1
Student Mix Adjustment	36.6	22.1	32.4	37.3	73.5	86.4	61.1	92.9	87.8	29.7	25.0	87.5	133.3
Forecast (Billions)	20,009.8	20,538.2	21,562.7	22,907.3	23,565.2	24,976.9	25,925.8	27,250.2	29,083.5	29,931.2	31,513.0	32,279.4	33,752.2
Actual (Billions)	20,851.0	22,139.3	24,809.2	26,139.4	27,755.7	29,828.7	30,539.8	31,684.4	33,632.9	35,817.9	38,800.7	40,525.1	42,460.6
Variance - Annually	841.2	1,601.1	3,246.5	3,252.1	4,190.5	4,851.8	4,614.0	4,434.3	4,549.4	5,886.7	7,287.7	8,245.8	8,708.4
- Cumulative	841.2	2,442.3	5,688.8	8,940.9	13,131.4	17,983.2	22,597.2	27,031.4	31,580.8	37,467.5	44,755.2	53,001.0	61,709.4

Appendix B

FAST Executive Summary