NO. 02-0427

In the Supreme Court of Texas

WEST ORANGE-COVE CONSOLIDATED I.S.D., ET AL.,

Petitioners,

v.

FELIPE ALANIS, IN HIS OFFICIAL CAPACITY AS THE COMMISSIONER OF EDUCATION, ET AL.,

Respondents.

PETITIONERS' REPLY TO RESPONDENTS' RESPONSES TO PETITION FOR REVIEW

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ARGUMENT AND AUTHORITIES

I. *Edgewood IV* contemplated and allowed for Petitioners' claims.

The question before the Court is whether the issues presented are important to the jurisprudence of the State. All parties agree that issues relating to the constitutionality of the public school finance system easily satisfy this standard. Respondents nevertheless argue that Supreme Court review is not necessary because *Edgewood Independent School District v. Meno*, 917 S.W.2d 717 (Tex. 1995) (*Edgewood IV*), is conclusive. That argument is wrong.

First, Respondents ignore *Edgewood IV's* declaration that the "general diffusion of knowledge" standard was not static but could change over time. The Court expressly cautioned that what the Legislature then considered "supplementation may tomorrow become necessary to satisfy the constitutional mandate for a general diffusion of knowledge." *Edgewood IV*, 917 S.W.2d at 732. The Court explained that "[t]his is simply another way of saying that the State's provision for a general diffusion of knowledge *must reflect changing times, needs, and public expectations*." *Id.* at 732 n.14 (emphasis added).

In other words, *Edgewood IV* expressly contemplated a challenge like the one Petitioners have brought in this case. Petitioners' claim, that the State's accreditation requirements have not kept up with changing times, needs and public expectations, and that the Petitioners lack meaningful discretion to drop below this adjusted "floor," is

actionable under *Edgewood IV* and should be evaluated after discovery and development of the record, not at the pleading stage.[1]

Second, Respondents ignore *Edgewood IV*'s statement that any linkage between the general diffusion of knowledge requirement and accreditation standards *is subject to judicial review*. The Court observed that:

> the Legislature may [not] define what constitutes a general diffusion of knowledge so low as to avoid its obligation to make suitable provision imposed by Article VII, section 1. While the Legislature certainly has broad discretion to make the myriad policy decisions concerning education, *that discretion is not without bounds.*

917 S.W.2d at 730 n.8 (emphasis added).

Despite *Edgewood IV*'s explicit endorsement of judicial review in the education context, Respondents assert that the legislative determination is constitutionally conclusive and that the judiciary has no role in the debate. Some of the Respondents go even further, suggesting that Petitioners ask this Court to set accreditation standards and

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[1] The New York experience is instructive. In *Campaign for Fiscal Equity v. State*, 665 N.E.2d 661, 666 (N.Y. 1995), New York's highest court considered plaintiffs' appeal from an order dismissing on the pleadings their cause of action under the state constitution's education clause. The court reinstated the case but, given the procedural posture of the case, declined to demarcate the contours of what a "sound basic education" entails. Instead, the court observed: "Only after discovery and the development of a factual record can this issue be fully evaluated and resolved." *Id.*

After remand and an extensive trial, the district court held that the state had failed to assure that New York city's public schools received adequate funding to afford their students a "sound basic education." *Campaign for Fiscal Equity v. State*, 719 N.Y.S.2d 475, 484 (N.Y. Sup. Ct. 2001). Petitioners cited this case in their Petition for Review for the proposition that legislative or administrative academic standards are not necessarily coterminous with constitutional requirements under a state's education clause. (Pet. for Review at 12 n.13.) After the Petition was filed, the district court opinion was reversed by an intermediate court on the ground that the district court set the bar too high on the "sound basic education standard." *See Campaign for Fiscal Equity v. State*, 744 N.Y.S.2d 130 (N.Y. App. Div. June 25, 2002). Petitioners anticipate that this holding again will be appealed to New York's highest court.

"to determine the precise dollar figure necessary to achieve these judicially-defined benchmarks." (Alvarado Respondents' Response at 6; *see also* Edgewood Respondents' Response at 5.) This is simply a scare tactic. Petitioners do not seek judicial entanglement in educational minutiae. Petitioners simply ask that the courts not abdicate their responsibility to determine whether the Legislature's actions comport with Texas's constitutional requirements. Courts can and should provide guidance as to the scope and parameters of these constitutional requirements without usurping any legislative function.[2]

In summary, *Edgewood IV* does not foreclose the question of whether Petitioners have lost all meaningful discretion in setting tax rates. In fact, it explicitly anticipated that this lawsuit would be filed if circumstances changed. *Edgewood IV*, at 731 n.10. ("[F]uture legal challenges may be brought if a general diffusion of knowledge can no longer be provided within the equalized system because of changed legal or factual circumstances."). Consideration of evidence in 2002, seven years after *Edgewood IV*, is appropriate for determining whether Petitioners' claims fall within the changed circumstances warning of *Edgewood IV*.

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[2] The Alvarado Respondents incorrectly claim that the case of *Mumme v. Marrs*, 40 S.W.2d 31 (Tex. 1931), obligates this Court to defer to the Legislature's accreditation standards unless these standards are "arbitrary." Arbitrariness is one of the tests used by Texas courts to determine whether legislation violates the equal protection clause of the Texas constitution, the claim that was at issue in *Mumme*. *See id.* at 36. As this case does not involve an equal protection challenge, *Mumme* is inapplicable. If the Alvarado Respondents were correct, one would have expected the Court in *Edgewood I* to judge the then-existing school finance system by whether it was constructed in an arbitrary manner, which it did not. *Edgewood I* also squarely rejected the notion that requirements articulated in the Texas Constitution's education clause (article VII, section 1) were "committed unconditionally to the legislature's discretion." *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391, 394 (Tex. 1989).

II. Petitioners have been wrongfully deprived of their day in court by a procedural "Catch-22."

The trial court dismissed Petitioners' claims on a special exception, on the grounds that a constitutionally insufficient number of districts were taxing exactly at the $1.50 cap statewide. For the purposes of its analysis, the trial court assumed that districts taxing at $1.50 were doing so to provide their students with a general diffusion of knowledge. Petitioners did not and could not re-plead under the trial court's standard because no re-pleading could cure the fact that less than 50% of the districts were taxing at the cap.

The court of appeals reversed course, affirming dismissal on an entirely different ground, but failed to give Petitioners an opportunity to re-plead. The court of appeals rejected the trial court's 50% threshold requirement, indicating that even a single district could state a claim. The court of appeals instead held that dismissal was proper on the ground that no district was forced to tax at the cap in order to meet accreditation standards, even though (1) Petitioners had not been allowed an opportunity to so plead and (2) Petitioners had not been allowed an opportunity to so prove. The significance of this error is compounded exponentially by the significance of the underlying issues presented by this case.[3]

Respondents answer this by saying that, even though there is no factual record in this case to support such a claim, it is somehow evident to all that Petitioners could not

[3] In support of their claim that Petitioners stood on their pleadings on the general diffusion of knowledge issue, the State Respondents cite a statement by Petitioners' counsel at a June 2001 hearing on the special exceptions, in which counsel argued that Petitioners had provided fair notice of their claims to the opposing parties. (State Respondents' Response at 2.) However, defending one's pleadings is not the equivalent of standing on those pleadings. Petitioners' argument that they satisfied that their pleading burden was not waiver of the right to amend should the special exception be granted.

re-plead to meet the court of appeals standard. But that is nothing more than empty rhetoric. The fact is, Petitioners should have been given an opportunity to re-plead and adduce evidence and the foreclosure of this opportunity is a flat-out denial of their due process rights.

CONCLUSION AND PRAYER

For the foregoing reasons, and for the reasons outlined in their Petition for Review, Petitioners ask this Court to grant their petition for review, reverse the judgment of the court of appeals and remand this case to the trial court for further proceedings. In the alternative, Petitioners ask that the Court remand to the court of appeals the issues not otherwise addressed by that court. Petitioners further ask for all such other relief to which they may be entitled.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the *Petitioners' Reply to Respondents' Responses to the Petition for Review* has been sent to the following counsel of record in accordance with the Texas Rules of Appellate Procedure on this 29th day of August, 2002:

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