

NO. 17-88761-85

IN THE DISTRICT COURT
TARRANT COUNTY, TX
17TH DISTRICT COURT

GARY W. LEEPER, AND WIFE,
CHERY LEEPER, IN BEHALF OF
THEMSELVES AND THEIR SCHOOL-
AGED CHILDREN, ET AL AND ALL
OTHERS SIMILARLY SITUATED

VS.

ARLINGTON INDEPENDENT SCHOOL
DISTRICT, ET AL, AND ALL
OTHER SCHOOL DISTRICTS AND
SCHOOL ATTENDANCE OFFICERS
IN THE STATE OF TEXAS

FINAL JUDGMENT

On the 5th day of January, 1987, this cause came on for trial pursuant to a special setting granted by the Court. GARY W. LEEPER and wife, CHERYL LEEPER, BRUCE SMYTHE and wife, PATRICIA SMYTHE, CALVIN E. MINKLER and wife, WANDA MINKLER, QUINTEN PARTEN, JR. and wife, SANDRA PARTEN, TONY MARTINEZ and wife, SUZANNE MARTINEZ, CHARLES KENT and wife, CORLEE KENT, JOHN W. JACKSON, JR. and wife, HELEN JACKSON, MICHAEL R. GALBRAITH and wife, SALLY K. GALBRAITH, and RICHARD WELLS and wife, KAY WELLS, appeared individually and in behalf of their school-age children, and in behalf of all others in the State of Texas who are similarly situated comprising the class of persons who either have enrolled their school-age children in private or parochial schools outside their homes receiving the curricula and instruction of these schools in their homes which includes in the course a study of good citizenship or have established a private school in their homes which also includes in its course a study of good citizenship, along with authorized representatives of CALVERT SCHOOL, INCORPORATED, FIRST BAPTIST ACADEMY OF DALLAS, and CHRISTIAN LIBERTY ACADEMY SATELLITE SCHOOLS, INCORPORATED, who appeared individually and in behalf of all others who are similarly situated comprising the class of persons who have established private or parochial schools where the students receive their curricula including a study of good citizenship and instruction in their homes in the State of Texas, along with authorized representatives of REFORM PUBLICATIONS, INC., d/b/a BASIC, EDUCATION and AMERICAN CHRISTIAN SCHOOLS, INCORPORATED, who appeared individually and in behalf of all others who are similarly situated comprising the class of persons who provide curricula including in their courses a study of good citizenship and instruction for private schools in homes in the State of Texas and an authorized representative of HOME SCHOOL LEGAL DEFENSE ASSOCIATION, Plaintiffs, and announced ready for trial through their counsel of record. ARLINGTON INDEPENDENT SCHOOL DISTRICT, its school attendance officer, MAX KIDD, KATY INDEPENDENT SCHOOL DISTRICT, its school attendance officer, HELENA BLACKSTOCK, and EL PASO INDEPENDENT SCHOOL DISTRICT, and its school attendance officer, CHARLES F. HART, appeared by authorized representatives and in person, respectively, individually and in behalf of the class of public school districts and their school attendance officers in the State of Texas, along with the TEXAS EDUCATION AGENCY, COMMISSIONER OF EDUCATION, W. N. KIRBY, and ASSISTANT GENERAL COUNSEL OF THE TEXAS EDUCATION AGENCY, F. PATRICK WHELAN, Defendants, and JIM MATTOX, ATTORNEY GENERAL OF TEXAS, and announced ready for trial by their respective attorneys of record. No party having demanded a jury, the entire cause was submitted to the Court.

Upon the conclusion of the evidence, and after considering the trial pleadings, the written arguments and briefs of the parties, the Court finds that Plaintiffs and the members of the classes previously certified by the Court to whom notice was duly given pursuant to Rule 42(c)(2), Texas Rules of Civil Procedure, are entitled to judgment against Defendants and the members of the Defendant class of public school districts and their school attendance officers to whom notice was also duly given pursuant to Rule 42(c)(2), Texas Rules of Civil Procedure, and that Defendants along with the class of public school

districts and their school attendance officers and JIM MATTOX, ATTORNEY GENERAL OF TEXAS, are not entitled to any relief sought by them, except that the attorneys' fees, expenses and costs incurred by the Plaintiffs and representative Defendants public school districts should be divided severally among the Defendant class of public school districts and no attorneys' fees, expenses and costs shall be borne by any attendance officer of a Defendant public school district or by Defendants W. N. KIRBY, COMMISSIONER OF EDUCATION, F. PATRICK WHELAN, ASSISTANT GENERAL COUNSEL OF THE TEXAS EDUCATION AGENCY, the TEXAS EDUCATION AGENCY or JIM MATTOX, ATTORNEY GENERAL OF TEXAS.

The Court finds that Plaintiffs GALBRAITH and WELLS and over 80 members of the Plaintiff class they represent have already suffered actual injury as a result of being prosecuted because of teaching their school-age children at home in literal compliance with Section 21.033(a)(1) of the Texas Education Code; that Plaintiffs LEEPER and MINKLER, along with other members of the Plaintiff class, have been threatened with prosecution solely because their school-age children are being taught at home; that there are prosecutions pending against other members of the Plaintiff class and Plaintiffs WELLS solely because their children are being taught at home; that since the original enactment of the compulsory attendance law in Texas in 1915, school-age children have continuously been educated at home with the knowledge of Defendants TEXAS EDUCATION AGENCY and the public school districts; that until recent years, the earliest record of which is 1981, none of the Defendant school districts nor Defendant TEXAS EDUCATION AGENCY took the position that these children were not in a private school; that there is no record prior to 1981 of any prosecution of parents who were educating their children at home; that in 1981 Defendant TEXAS EDUCATION AGENCY decided incorrectly that children being taught at home were not in a private school in compliance with the act; that prosecutions against parents of these children were initiated by certain school attendance officers of the public School districts following this change of interpretation of Section 21.033(a)(1) of the Texas Education Code by Defendant TEXAS EDUCATION AGENCY; that the State Board of Education on April 12, 1986 passed a resolution describing private and parochial schools which is contrary to the literal and historical meaning of those terms as originally enacted in what is now Section 21.033(a)(1) of the Texas Education Code; that the Defendants public school districts and their school attendance officers have declared they will use the guidelines in the State Board of Education resolution of April 12, 1986 in enforcing the compulsory attendance law; that any prosecution initiated against a parent of, or one standing in parental authority to, a school-age child based upon either the interpretation of Section 21.033(a)(1) of the Texas Education Code as previously interpreted by Defendant TEXAS EDUCATION AGENCY during the years 1981-1986 or pursuant to the State Board of Education guidelines passed April 12, 1986, violates the due process clause of the Fourteenth Amendment to the Constitution of the United States and Article 1, Section 19 of the Constitution of the State of Texas and the equal protection clause of the Fourteenth Amendment to the Constitution of the United States and Article 1, Sections 3, 3a and 29 of the Constitution of the State of Texas; that the use of a home to teach school-age children is a private, non-commercial use of the home; that Plaintiffs CALVERT SCHOOL, INCORPORATED, FIRST BAPTIST ACADEMY OF DALLAS, CHRISTIAN LIBERTY ACADEMY SATELLITE SCHOOLS, INCORPORATED, REFORM PUBLICATIONS, INC., d/b/a BASIC EDUCATION, AMERICAN CHRISTIAN SCHOOLS, INCORPORATED and the classes they represent have no judicial forum other than these proceedings within which to protect their clientele or ministry; that very few, if any, parents would purchase for supplementary or enrichment use the curricula and instruction of these Plaintiffs and the class they represent; that the Plaintiffs and the classes they represent have no adequate remedy at law; and that the Plaintiffs and the classes they represent will suffer irreparable injury unless Defendants public school district school attendance officers are permanently enjoined from bringing charges pursuant to Section 4.25 of the Texas Education Code against the Texas members of the Plaintiff HOME SCHOOL LEGAL DEFENSE ASSOCIATION, Plaintiffs LEEPER, SMYTHE, MINKLER, PARTEN, MARTINEZ, KENT, JACKSON, GALBRAITH, and WELLS, and the classes they represent or their school-age children pursuant to Section 51.03 of the Texas Family Code based upon either (1) the previous interpretation of Section 21.033(a)(1) of the Texas Education Code by Defendant TEXAS EDUCATION AGENCY from 1981 to April 12, 1986 which is set out on Pages 212 and 213 of Defendant TEXAS EDUCATION AGENCY publication House Bill 72 And Subsequent Educational Legislation; Comprehensive References and Explanations dated September, 1985 which is attached to this Judgment as Attachment "A" and incorporated herein for all purposes or (2) pursuant to the resolution of the State Board of Education of April 12, 1986 appended to this judgment as Attachment "B" and incorporated herein for all purposes.

The Court finds that pursuant to 42 U.S.C. Section 1988 and Section 37.009 V.T.C.A., Civil Practice & Remedies Code, Plaintiffs are entitled to recover severally from the entire class of Defendants public school districts previously certified by the Court which, number 1060 reasonable and necessary

attorneys' fees through the trial of this cause in the amount of \$277,470.00, before the Court of Appeals in the amount of \$20,000, before the Supreme Court of Texas in the amount of \$15,000 and an additional \$5,000 should oral argument be necessary, and before the Supreme Court of the United States in the amount of \$25,000 and an additional \$10,000 should oral argument be necessary. In connection with all proceedings before the trial court, the Court finds that Plaintiffs have incurred reasonable and necessary costs and expenses in the amount of \$85,459.04 which they are entitled to recover pursuant to 42 U.S.C. Section 1988. The Court finds that Defendants ARLINGTON INDEPENDENT SCHOOL DISTRICT, KATY INDEPENDENT SCHOOL DISTRICT, and EL PASO INDEPENDENT SCHOOL DISTRICT along with their school attendance officers have incurred reasonable and necessary attorneys' fees and reasonable and necessary costs and expenses on behalf of themselves and also on behalf of all of the other Defendants public school districts and their school attendance officers, and those districts and their school attendance officers, and these attorneys' fees and costs and expenses should not be borne solely by representative school districts, but by all members of the class of Defendants public school districts as previously certified by the Court. Defendant ARLINGTON INDEPENDENT SCHOOL DISTRICT through the conclusion of proceedings incurred reasonable and necessary attorneys' fees before this Court in the amount of \$41,084.37 and reasonable and necessary costs and expenses in the amount of \$ 316.40, Defendant KATY INDEPENDENT SCHOOL DISTRICT through the conclusion of proceedings in the trial court incurred reasonable and necessary attorneys' fees in the amount of \$ 105,107.50 and reasonable and necessary costs and expenses in the amount \$10,351.77. Defendant El Paso INDEPENDENT SCHOOL DISTRICT through the conclusion of the proceedings in the trial court incurred reasonable and necessary attorneys' fees in the amount of \$62,889.50, and reasonable and necessary costs and expenses in the amount of \$5,168.88. The Court also finds that should this case be appealed that Defendants ARLINGTON INDEPENDENT SCHOOL DISTRICT, KATY INDEPENDENT SCHOOL DISTRICT and EL PASO INDEPENDENT SCHOOL DISTRICT are entitled to recover, jointly and in the aggregate, reasonable and necessary attorneys' fees severally from the other members of the Defendant class of public school districts before the Court of Appeals in the sum of \$30,000 (including \$10,000 for the cost of the Statement of Facts), before the Supreme Court of Texas in the amount of \$15,000 and an additional sum of \$5,000 should oral argument be necessary, and before the Supreme Court of the United States in the amount of \$25,000 and an additional sum of \$10,000 should oral argument be necessary, to be divided among them by their agreement and if they fail to agree, then each shall be entitled to one-third (1/3) of said amounts.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that a school-age child residing in the State of Texas who is pursuing under the direction of a parent or parents or one standing in parental authority in or through the child's home in a bona fide (good faith, not a sham or subterfuge) manner a curriculum consisting of books, workbooks, other written materials, including that which appears on an electronic screen of either a computer or video tape monitor, or any combination of the preceding from either (1) of a private or parochial school which exists apart from the child's home or (2) which has been developed or obtained from any source, said curriculum designed to meet basic education goals of reading, spelling, grammar, mathematics and a study of good citizenship, is in attendance upon a private or parochial school within the meaning of Section 21.033(a)(1) of the Texas Education Code and exempt from the requirements of compulsory attendance at a public school.

IT IS, FURTHER, ORDERED, ADJUDGED AND DECREED that the school-age children of Plaintiffs GARY W. LEEPER and wife, CHERYL LEEPER, BRUCE SMYTHE and wife, PATRICIA SMYTHE, CALVIN E. MINKLER and wife, WANDA MINKLER, QUINTEN T. PARTEN, JR. and wife, SANDRA PARTEN, TONY MARTINEZ and wife, SUZANNE MARTINEZ, CHARLES KENT and Wife, CORLEE KENT, JOHN W. JACKSON, JR. AND WIFE, HELEN JACKSON, MICHAEL R. GALBRAITH and wife, SALLY K. GALBRAITH, and RICHARD WELLS and wife, KAY WELLS, have been and were at the time of trial in attendance upon a private school in compliance with Section 21.033(a)(1) of the Texas Education Code.

IT IS, FURTHER, ORDERED, ADJUDGED AND DECREED that all school-age children residing in Texas who are enrolled in CALVERT SCHOOL, INCORPORATED, FIRST BAPTIST ACADEMY OF DALLAS and CHRISTIAN LIBERTY ACADEMY SATELLITE SCHOOLS, INCORPORATED and are pursuing under the direction of a parent or parents or one standing in parental authority in or through their home in a bona fide manner the curricula of said schools are in attendance upon a private or parochial school in compliance with Section 21.033(a)(1) of the Texas Education Code.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all school-age children residing in Texas who are pursuing under the direction of a parent or parents or one standing in parental authority in or through their home in a bona fide manner the curricula of Plaintiffs CALVERTS SCHOOL, INCORPORATED, FIRST BAPTIST ACADEMY OF DALLAS, CHRISTIAN LIBERTY ACADEMY

SATELLITE SCHOOLS, INCORPORATED, REFORM PUBLICATIONS, INC., d/b/a BASIC EDUCATION and AMERICAN CHRISTIAN SCHOOLS, INCORPORATED are in attendance upon a private school in compliance with Section 21.033(a)(1) of the Texas Education Code.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants ARLINGTON INDEPENDENT SCHOOL DISTRICT, KATY INDEPENDENT SCHOOL DISTRICT, EL PASO INDEPENDENT SCHOOL DISTRICT, their school attendance officers and all other public school districts and their school attendance officers in the State of Texas are permanently enjoined from initiating charges under Section 4.25 of the Texas Education Code against parents of, or those standing in parental authority to, school-age children who are being taught in a bona fide manner in or through their home or initiating charges against said children under Section 51.03 of the Texas Family Code based upon either (1) the interpretation of Section 21.033(a)(1) of the Texas Education Code by the Defendant TEXAS EDUCATION AGENCY from 1981-1986 which is set out on Pages 212 and 213 of Defendant TEXAS EDUCATION AGENCY publication House Bill 72 And Subsequent Educational Legislation: Comprehensive References and Explanations dated September, 1985 which is attached to this judgment as Attachment "A" and incorporated herein for all purposes or (2) the resolution of the State Board of Education of April 12, 1986 appended to this judgment as Attachment "B" and incorporated herein for all purposes or any other attempt by the State Board of Education to define or regulate private or parochial schools.

THIS JUDGMENT DOES NOT PRECLUDE THE TEXAS EDUCATION AGENCY, THE COMMISSIONER OF EDUCATION OR THE STATE BOARD OF EDUCATION FROM SUGGESTING TO THE PUBLIC SCHOOL ATTENDANCE OFFICERS LAWFUL METHODS, INCLUDING BUT NOT LIMITED TO INQUIRY CONCERNING CURRICULA AND STANDARDIZED TESTS SCORES, IN ORDER TO ASCERTAIN IF THERE IS COMPLIANCE WITH THE DECLARATION CONTAINED IN THIS JUDGMENT. HOWEVER, THIS JUDGMENT IS NOT TO BE INTERPRETED AS REQUIRING STANDARDIZED TESTS IN ORDER FOR THERE TO BE COMPLIANCE WITH THE INTERPRETATION MADE BY THE COURT OF SECTION 21.033(a)(1) OF THE TEXAS EDUCATION CODE. THE LAWFUL POWERS OF INVESTIGATION BY PUBLIC SCHOOL ATTENDANCE OFFICERS AND THE CONSTITUTIONAL RIGHTS OF PERSONS SUBJECT TO SUCH INVESTIGATIONS ARE NOT AFFECTED BY THIS JUDGMENT.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs shall recover of and from Defendants ARLINGTON INDEPENDENT SCHOOL DISTRICT, KATY INDEPENDENT SCHOOL DISTRICT and EL PASO INDEPENDENT SCHOOL DISTRICT and the other public school districts, severally, reasonable and necessary attorneys' fees through the conclusion of proceedings before this Court in the sum of \$277,470.00; reasonable and necessary costs and expenses through the conclusion of proceedings before this Court in the sum of \$85,459.04; reasonable and necessary attorneys' fees before the Court of Appeals in the sum of \$20,000, if an appeal is taken to that court; reasonable and necessary attorneys' fees before the Supreme Court of Texas in the amount of \$15,000, if an appeal is taken to that court; and an additional sum of \$5,000 should oral argument be necessary; and reasonable and necessary attorneys' fees before the Supreme Court of the United States in the sum of \$25,000, if an appeal is taken to that court; and an additional sum of \$10,000 should oral argument be necessary.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants ARLINGTON INDEPENDENT SCHOOL DISTRICT, KATY INDEPENDENT SCHOOL DISTRICT and EL PASO INDEPENDENT SCHOOL DISTRICT shall recover from the other Defendants public school districts in Texas severally the reasonable and necessary attorneys' fees and reasonable and necessary costs and expenses incurred by said Defendants on their behalf, said fees incurred by ARLINGTON through the conclusion of proceedings before this Court in the amount of \$41,084.37, and costs and expenses before this Court in the amount of \$316.40; fees incurred by KATY before this Court in the amount of \$105,107.50, and costs and expenses before this Court in the amount of \$10,351.77; fees incurred by EL PASO before this Court in the amount of \$62,889.50; and costs and expenses before this Court in the amount of \$5,168.55; and should there be an appeal these representative school districts shall recover severally from the other Defendant public school districts, jointly and in the aggregate, additional reasonable and necessary attorneys' fees and costs before the Court of Appeals in the sum of \$30,000 (which includes \$10,000 for the cost of the Statement of Facts), before the Supreme Court of Texas in the sum of \$15,000, and an additional sum of \$5,000 should oral argument be necessary, and before the Supreme Court of the United States in the sum of \$25,000 and an additional sum of \$10,000 should oral argument be necessary, to be divided among them by their agreement and if they fail to agree, then each shall be entitled to one-third (1/3) of said amounts.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this cause is a proper class action suit as to Plaintiffs and Defendants and that Plaintiffs LEEPER, SMYTHE, MINKLER, PARTEN,

MARTINEZ, KENT, JACKSON, GALBRAITH and WELLS have fairly and adequately protected the Plaintiff class of parents of, or those standing in parental authority to, school-age children being taught in or through their home and their school-age children; that Plaintiffs CALVERT SCHOOL, INCORPORATED, FIRST BAPTIST ACADEMY OF DALLAS, CHRISTIAN LIBERTY ACADEMY SATELLITE SCHOOLS, INCORPORATED, REFORM PUBLICATIONS, INC., d/b/a BASIC EDUCATION and AMERICAN CHRISTIAN SCHOOLS, INCORPORATED, have fairly and adequately represented the class of private and parochial schools and entities who provide home school curricula and instruction; and that Defendants ARLINGTON INDEPENDENT SCHOOL DISTRICT, KATY INDEPENDENT SCHOOL DISTRICT, and EL PASO INDEPENDENT SCHOOL DISTRICT along with their school attendance officers have fairly and adequately represented the Defendant class of public school districts and their school attendance officers.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiffs LEEPER, SMYTHE, MINKLER, PARTEN, MARTINEZ, KENT, JACKSON, GALBRAITH and WELLS shall mail a copy of this judgment to the members of the class they represent appearing on the mailing list of Hearth & Home Ministries, formerly Texas Association of Home Education, 1112 Mill Springs, Richardson, Texas 75080 within ten (10) days of the date of this judgment and file with the clerk of this court within fifteen (15) days of the date of this judgment a written certification executed by one of Plaintiffs' counsel of record that this notice has been given.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs CALVERT SCHOOL, INCORPORATED, FIRST BAPTIST ACADEMY OF DALLAS, REFORM PUBLICATIONS, INC., d/b/a BASIC EDUCATION and AMERICAN CHRISTIAN SCHOOLS, INCORPORATED shall mail a copy of this judgment to each member of their constituency residing in the State of Texas within ten (10) days of the date of this judgment and file with the clerk of this Court within fifteen (15) days of the date of this judgment a written certification executed by one of Plaintiffs' counsel of record that this notice has been given.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant TEXAS EDUCATION AGENCY shall within fourteen (14) days of the date of this judgment duplicate and mail to all public school districts in the State of Texas, a notice of this judgment with a copy of the judgment attached and file with the clerk of this Court within twenty (20) days of the date of this judgment a written certification executed by counsel for Defendant TEXAS EDUCATION AGENCY that the notice has been sent as required by this JACKSON, GALBRAITH and WELLS shall mail a copy of this judgment to the members of the class they represent appearing on the mailing list of Hearth & Home Ministries, formerly Texas Association of Home Education, 1112 Mill Springs, Richardson, Texas 75080 within ten (10) days of the date of this judgment and file with the clerk of this court within fifteen (15) days of the date of this judgment a written certification executed by one of Plaintiffs' counsel of record that this notice has been given.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs CALVERT SCHOOL, INCORPORATED, FIRST BAPTIST ACADEMY OF DALLAS, REFORM PUBLICATIONS, INC., d/b/a BASIC EDUCATION and AMERICAN CHRISTIAN SCHOOLS, INCORPORATED shall mail a copy of this judgment to each member of their constituency residing in the State of Texas within ten (10) days of the date of this judgment and file with the clerk of this Court within fifteen (15) days of the date of this judgment a written certification executed by one of Plaintiffs' counsel of record that this notice has been given.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant TEXAS EDUCATION AGENCY shall within fourteen (14) days of the date of this judgment duplicate and mail to all public school districts in the State of Texas, a notice of this judgment with a copy of the judgment attached and file with the clerk of this Court within twenty (20) days of the date of this judgment a written certification executed by counsel for Defendant TEXAS EDUCATION AGENCY that the notice has been sent as required by this judgment with a copy of the notice and its attachment appended to the certification along with a list of the names and addresses of each public school district who was sent a copy of the judgment.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant TEXAS EDUCATION AGENCY shall pay into the registry of this Court from funds in its possession designated for Defendants public school districts the sum of \$587,847.13 within forty (40) days from the date of this judgment provided there is no appeal; and if there is an appeal, then Defendant TEXAS EDUCATION AGENCY shall pay into the registry of this Court from funds in its possession designated for Defendants public school districts within fifteen (15) days of the final conclusion of appeal the sum of \$637,847.13 if the appeal ends with the Court of Appeals or the sum of \$667,847.13 if the appeal ends with the Supreme Court of Texas without oral argument or the sum of \$677,847.13 if the appeal ends with the Supreme

Court of Texas with oral argument or the sum of \$727,847.13 if the appeal ends with the Supreme Court of the United States without oral argument or the sum of \$747,847.13 if the appeal ends with the Supreme Court of the United States with oral argument.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all relief not granted herein is denied.

IT IS FINALLY ORDERED, ADJUDGED AND DECREED that a writ of injunction shall issue on this judgment as required by law and a writ of execution shall issue only if Defendant TEXAS EDUCATION AGENCY fails to pay the monies as required by this judgment. SIGNED this 4 day of September, 1987.

Charles J. Murray
Judge Presiding