IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

J. and R. DOE, et al.,
Plaintiffs,
vs.
JAMES PLYLER, et al.,
Defendants.

CIVIL ACTION NO. TY-77-261-CA

PLAINTIFFS' RESPONSE TO POST TRIAL
BRIEF OF THE STATE

The State relies upon DeCanas v. Bica 424 U.S. 351 (1976) to support its claim that undocumented children are not protected by the Fourteenth Amendment. While DeCanas is certainly relevant (though not dispositive) to the Plaintiffs' preemption claim, it does not address in any way the Equal Protection cause of action.

One can search from the beginning to the end of the DeCanas decision without finding any reference to the Fourteenth Amendment. The reason is simple. The employers who were challenging the statute there in question had neither the standing nor the interest to assert the Constitutional rights of undocumented persons. They did not do so, nor did the Court address that issue on its own volition.

While DeCanas was silent on the issue, the Court did speak to it in Mathews v. Diaz 426 U.S. 67 (1976). As the Court stated:

> "The Fifth Amendment, as well as the Fourteenth Amendment, protects every one of these persons (aliens) from deprivation of life, liberty, or property without due process of law...Even one whose presence in this country is unlawful, involuntary, or transitory is entitled to that Constitutional protection."
>
> 426 U.S. 76,78,96 S. Ct. 1883, 1890
> (citations omitted)

See also the discussion in the Plaintiffs' Trial Brief. In sum, the reliance of the State on DeCanas is misplaced. in essence, they ask this Court to take a case which is silent on the issue at

bar and use it to override a Supreme Court decision which has directly spoken to the issue.

The State has also urged this Court to limit any ruling to the Tyler ISD. They make this request on the basis of a revisionist analysis of the approach they took at trial. They would have this Court believe that the case they presented only went to the constitutionality of excluding children in Tyler.

The evidence presented by both the Plaintiffs and the State served to address the question of the Constitutional propriety of Section 21.031 in general. The State presented no evidence that was particularized to Tyler. Instead, they presented a school district employee from Houston, a Texas Education Agency employee who had conducted a study in the Rio Grande Valley, an immigration officer from Houston and a faculty member from the University of texas at Austin. One can search in vain for any evidence in that testimony which indicates that the State was under the misconception that only practices in the Tyler ISD were involved!

While the Plaintiffs did present testimony particular to Tyler, the major thrust of our evidence was to discredit the statute in general. The testimony of the four (4) experts presented by the Plaintiffs all tended to show the arbitrary and unreasonable nature of this legislation, irrespective of any unique application to Tyler.

Relief, as prayed for in the Plaintiffs' Amended Complaint, is entirely proper as to the State of Texas. There is no question that the State was a party to this action from its inception and was fully represented. There is no Eleventh Amendment bar to the relief sought. Ex parte Young 209 U.S. 123 (1908), Edelman v. Jordan 415 U.S. 651 (1974), Milliken v. Bradley 53 L. Fed 2d 745 (1977). Further, a recent decision lends support to a conclusion that the State (as opposed to its officers) is a "person" within the meaning of 42 U.S.C. 1983. See Monell v. Department of Social Science of the City of New York 46 U.S.L.W. 4569 (June 6, 1978).

In any event, the Governor of the State cannot establish a separate identity from the State for purpose of enforcing its laws!

The evidence supports a finding that Section 21.031 is unconstitutional on its face. Such a declaration and injunction should issue against the State as well as the Tyler School District. The evidence demands as much; public policy also cries for such a result. Children should not be entitled to attend school merely upon their location in the State of Texas; nor should possible migrations be encouraged from district to district.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFFS

DATE: July 27, 1978

Peter D. Roos

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):

PLAINTIFFS' RESPONSE TO POST TRIAL BRIEF OF THE STATE

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

1. Rick Arnett, Esq.
   Asst. Attorney General
   Supreme Court Bldg.
   P.O. Box 12548
   Austin, TX 78711

2. John Hardy
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3. Joe Rich, Esq.
   U.S. Department of Justice
   Washington, DC 20430

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 27th day of July, 19 78.

Lesley A. Salas

Lesley A. Salas, Litigation Secretary

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