

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

STATE OF TEXAS, )  
Rick Perry, Governor of Texas, )  
David Dewhurst, Lieutenant Governor, )  
Joe Straus, Speaker of the Texas House )  
of Representatives, )  
Robert Scott, Commissioner of Education, )  
 )  
Petitioners, )  
 )  
v. ) Case No.  
 )  
UNITED STATES DEPARTMENT OF )  
EDUCATION, )  
Arne Duncan, Secretary of Education, )  
 )  
Respondents. )  
\_\_\_\_\_ )

PETITION FOR REVIEW

The **State of Texas**, Rick Perry, Governor of Texas, David Dewhurst, Lieutenant Governor of Texas, Joe Straus, Speaker of the Texas House of Representatives, and Robert Scott, Commissioner of Education file this Petition for Review pursuant to 20 U.S.C. § 1234g(a) seeking judicial review of final action taken by the United States Department of Education and Arne Duncan, Secretary of Education (collectively “Respondents”).

On September 3, 2010, Texas submitted its application to Respondents for its \$830,820,460 allocation of Education Jobs Funds, as authorized by H.R. 1586, Public Law No. 111-226 (August 10, 2010). On

September 8, 2010, Respondents unlawfully disapproved Texas' application. A true and correct copy of Texas' application and Respondents' disapproval are attached hereto.

Respondents' disapproval of Texas' application must be reversed as contrary to law. Texas' application contained every assurance required by the so-called "Doggett Amendment," and the assurances were conditioned solely on the Texas Governor's legal authority to make them. The Doggett Amendment must be interpreted to require assurances that are within the legal authority of the Texas Governor. Accordingly, Texas' application must be granted. Any other interpretation of the Doggett Amendment leads to absurd results and renders the Amendment constitutionally infirm under the Spending Clause of Article I, the Equal Protection guarantees of the Fifth and Fourteenth Amendments, and the constitutional principle of equal sovereignty of the States that underlies our federal system.

In sum, either Respondents' disapproval of Texas' application must be reversed as contrary to law because Respondents misinterpret the Doggett Amendment, or the Amendment itself must be enjoined because it places unconstitutional conditions on Texas'—and only Texas'—participation in the Education Jobs Fund.

Respondents' disapproval of Texas' application is a final agency action directly appealable to this Court under 20 U.S.C. § 1234g(a). By operation of law, the filing of this Petition for Review prohibits Respondents from distributing funds allocated for Texas under the Education Jobs Fund to any other state or for any other purpose, pending judicial review. *See* 20 U.S.C. § 1234g(a) (prohibiting the Secretary of Education from taking any action on the basis of a final agency action until judicial review is completed).

Respectfully submitted,

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ATTORNEYS FOR PETITIONERS

**CERTIFICATE OF SERVICE**

I certify that on September 22, 2010, I served a copy of the foregoing  
Petition for Review by FedEx on the following:

Arne Duncan  
Secretary of Education  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202

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James D. Blacklock