

Cause No. _____

STATE OF TEXAS, §
Plaintiff, §
 §
 v. §
 §
 FORREST COLLINS, in his official §
 capacity as Board President and Trustee §
 for Place 4, §
 JESSICA BROWN, in her official §
 capacity as Board Vice President and §
 Trustee for Place 3, §
 DAVID LEAR, in his official capacity as §
 Board Secretary and Trustee for Place 1, §
 JENNIFER LOFTIN, in her official §
 capacity as Trustee for Place 2, §
 JENNIFER TAYLOR, in her official §
 capacity as Trustee for Place 5, §
 ZACH TARRANT, in his official capacity §
 as Trustee for Place 6, §
 HOYT HARRIS, in his official capacity §
 as Trustee for Place 7, §
 SUSAN BOHN, in her official capacity §
 as Superintendent of Schools, Aledo §
 Independent School District §
Defendants. §

In the District Court of

 Parker County, Texas

 ____ Judicial District

**Plaintiff's Original Petition and
Request for a Temporary Restraining Order,
Temporary Injunction, and Permanent Injunction**

Plaintiff, the State of Texas, files this Original Petition against Defendants to enjoin their *ultra vires* spending of Aledo Independent School District funds to electioneer for or against any candidate, measure, or political party in violation of Sections 11.169 and 45.105(c) of the Education Code and their *ultra vires* use of public funds for political advertising in violation of Sections 255.003(a) and 255.0032 of the Election Code.

Discovery Control Plan

1. Discovery is intended to be conducted under Level 3 of Texas Rule of Civil Procedure 190.4.

Claim for Relief

2. The State of Texas seeks injunctive relief prohibiting future *ultra vires* acts.

3. The State of Texas seeks declaratory relief.

4. The State of Texas does not seek monetary relief.

5. The State of Texas does not seek attorney's fees.

6. This suit is not governed by the expedited actions process in Texas Rule of Civil Procedure 169.

Jurisdiction, Standing and Venue

7. Defendants in their official capacities do not have sovereign immunity to suits to enjoin their *ultra vires* acts. *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009).

8. “As a sovereign entity, the State has an intrinsic right to enact, interpret, and enforce its own laws.” *State v. Hollins*, 620 S.W.3d 400, 410 (Tex. 2020) (citing *State v. Naylor*, 466 S.W.3d 783, 790 (Tex. 2015)). The State has a justiciable interest in its sovereign capacity in the maintenance and operation of its municipal corporations in accordance with law. *Yett v. Cook*, 115 Tex. 205, 221, 281 S.W. 837, 842 (1926).

9. The relief sought is within the jurisdiction of this court. Tex. Const. art. V, § 8, Tex. Gov’t Code Ann. §§ 24.007, 24.008, 24.011, and Tex. Civ. Prac. & Rem. Code § 65.021(a).

10. Venue is proper in Parker County as the events and omissions that give rise to plaintiff’s claims and request for relief occurred in Parker County and this is county of the defendant’s principal office in our state. Tex. Civ. Prac. & Rem. Code § 15.002. *See also*, Tex. Civ. Prac. & Rem. Code § 65.023(a).

Parties

11. Plaintiff is the State of Texas.

12. Defendant Forrest Collins is Board President and Trustee for Place 4 of the Board of Trustees of the Aledo Independent School District.

13. Defendant Jessica Brown is Board Vice President and Trustee for Place 3 of the Board of Trustees of the Aledo Independent School District.

14. Defendant David Lear is Board Secretary and Trustee for Place 1 of the Board of Trustees of the Aledo Independent School District.

15. Defendant Jennifer Loftin is Trustee for Place 2 of the Board of Trustees of the Aledo Independent School District.

16. Defendant Jennifer Taylor is Trustee for Place 5 of the Board of Trustees of the Aledo Independent School District.

17. Defendant Zach Tarrant is Trustee for Place 6 of the Board of Trustees of the Aledo Independent School District.

18. Defendant Hoyt Harris is Trustee for Place 7 of the Board of Trustees of the Aledo Independent School District.

19. Defendant Susan Bohn is the Superintendent of Schools of the Aledo Independent School District.

20. All Defendants are sued in their official capacities.

21. All Defendants may be served with process by serving Susan K. Bohn, Superintendent of Schools, at 1008 Bailey Ranch Road, Aledo, Parker County, Texas 76008.

Factual Background

22. On February 20, 2024, Susan Bohn and/or the Board of Trustees caused an email to be sent from the Aledo ISD Communications email account to Aledo ISD recipients discussing the school's budget and how voting in the primary election would greatly impact Aledo schools. It stated in part:

that our state leaders, with our governor leading the charge, prioritized taxpayer-funded private/home school vouchers over funding your Aledo ISD schools. This happened even though enough legislators opposed vouchers to vote them down repeatedly for decades and again in 2023. . . . **“Bearcats VOTE! Your Aledo public schools are on the ballot starting TODAY! . . .** The decisions made by those on this Primary Election ballot affect you DAILY as evidenced by the budget shortfalls discussed at the top of this email. See the entire voting schedule below. Thank you for the ways you are #AllinAledo in how you support our schools, staff and school children, provide important feedback, make a plan to vote, and so much more! Have a great week. All in, Susan Bohn, Superintendent; Aledo ISD Board of Trustees President Forrest Collins, Vice President Jessica Brown, Secretary David Lear, and Board Members Jennifer Loftin, Jennifer Taylor, Zach Tarrant and Hoyt Harris.

(emphasis in the original). A complete copy of the email transmittal is attached as Exhibit A and incorporated herein by reference as if fully set forth herein.

Legal Background

23. The Court may enjoin Defendants' *ultra vires* actions.

24. The Court may enjoin Defendants' violations of the Election Code. Tex. Elec. Code § 273.081.

Claim One: Violation of Education Code § 11.169

25. Section 11.169 of the Education Code provides, "Notwithstanding any other law, the board of trustees of an independent school district may not use state or local funds or other resources of the district to electioneer for or against any candidate, measure, or political party."

26. The superintendent of a school district acts as the agent of the board of trustees. *Bowman v. Lumberton Independent School Dist.*, 801 S.W. 2d 883, 888 (Tex. 1990). The Defendants who are members of the Board of Trustees also allowed or approved of Aledo Independent School District employees use of funds and other resources of the district, such as salaries, to electioneer for or against candidates, a measure or political party when they allowed Susan Bohn to distribute the communication referenced above.

27. This electioneering was *ultra vires* because Defendants acted without legal authority, in violation of Section 11.169, by using state or local funds or other resources of the district to electioneer for or against candidates, a measure or a political party.

28. Unless enjoined, Defendants will continue to act without legal authority in their use of state or local funds or other resources of the district to electioneer for or against candidates, a measure or a political party.

Claim Two: Violation of Education Code § 45.105

29. Section 45.105(a) of the Education Code provides, “The public school funds may not be spent except as provided by this section.”

30. Nothing in Section 45.105 authorizes Defendants’ spending of public-school funds for electioneering for or against any candidate, any measure, or a political party.

31. This spending of public-school funds to electioneer for or against any candidate, measure or party was *ultra vires* because it is outside the scope of authority to spend public school funds only as provided by Section 45.105.

32. Unless enjoined, Defendants will continue to act outside their authority to spend public school funds only as provided by Section 45.105.

Claim Three: Violation of Election Code § 255.003(a)

33. Section 255.003(a) of the Election Code provides, “An officer or employee of a political subdivision may not knowingly spend or authorize the spending of public funds for political advertising.”

34. Susan Bohn’s distribution of her communication referenced above constitutes political advertising because they are communications supporting or opposing candidates for nomination or election to a public office of a political party or a measure and such communication has also appeared in written form in an email. Tex. Elec. Code. § 251.001(16)(B).

35. Defendant Susan Bohn used public funds of the district—namely, part of the funds used to pay her reported \$290,139 annual salary and the cost to operate the Aledo ISD Communications email account—to create and distribute political advertising.

36. The other Defendants authorized and/or approved of Defendant Susan Bohn’s use of public funds of the district to distribute political advertising.

37. Defendant Susan Bohn’s creation and distribution of political advertising was *ultra vires* because it was done without legal authority in violation of Section 255.003’s prohibition against using public funds of the district to distribute political advertising. Tex. Ethics Comm’n Op. No. 45 (1992); Tex. Ethics Comm’n Op. No. 443 (2002).

38. Unless enjoined, Defendants will continue to act without legal authority in their use of public funds of the district for political advertising. Injunctive relief is appropriate to prevent a violation or a threatened violation of the Election Code from occurring or continuing. Tex. Elec. Code § 273.081.

Claim Four: Violation of Election Code § 255.0031(a)

39. Section 255.0031(a) of the Election Code provides, “An officer or employee of a state agency or political subdivision may not knowingly use or authorize the use of an internal mail system for the distribution of political advertising.”

40. The email referenced above constitutes political advertising because it is a communication supporting or opposing a candidate for nomination to a public office, a political party or a measure, that appeared in the form of a written communication—namely, an email message. Tex. Elec. Code. § 251.001(16)(B)(i).

41. Defendant Susan Bohn used Aledo Independent School District’s internal mail system to distribute political advertising.

42. The other Defendants authorized Defendant Susan Bohn to use Aledo Independent School District’s internal mail system to distribute political advertising.

43. Defendant Susan Bohn’s distribution of political advertising in Aledo Independent School District’s internal mail system was *ultra vires* because it was done without legal authority to use public funds of the district to distribute political advertising. Tex. Ethics Comm’n Op. No. 45 (1992); Tex. Ethics Comm’n Op. No. 443 (2002).

44. Unless enjoined, Defendants will continue to act without legal authority by using Aledo Independent School District's internal mail system to distribute political advertising.

Application for Temporary Restraining Order

45. The State of Texas is exempt from filing a bond. Tex. Civ. Prac. & Rem. Code § 6.001.

46. The State of Texas has pleaded a valid cause of action and requested permanent injunctive relief. The State of Texas has a probable right to such relief because the allegations herein show the Defendants have engaged in *ultra vires* conduct in violation of the Texas Election Code and Education Code.

47. With an election currently ongoing, the injury to the State of Texas should further electioneering occur is irreparable. Damages are not sought and would not be able to remedy the injury Defendants' conduct has caused. The only possible remedy for this type of injury is enjoining any future impermissible communications and political advertising. With early voting in-progress, and election day rapidly approaching, the harm is not only irreparable, but imminent.

48. The State of Texas is entitled to the relief demanded herein, and all or part of the relief requires the restraint of future actions by the Defendants. Injunctive relief is authorized by Tex. Civ. Prac. & Rem. Code § 65.011. A person who is being harmed or is in danger of being harmed by a violation or threatened violation of the Election Code is entitled to appropriate injunctive relief to prevent the violation from continuing or occurring. Tex. Elec. Code § 273.081.

49. The State of Texas requests a TRO be issued without notice to the Defendants. Because an election is ongoing, any time spent notifying the Defendants risks further irreparable injury. Every moment that passes, more and more Texans are headed to the polls to cast their ballots, and many more will do so on election day. In order to preserve the integrity of the election, the Defendants' conduct must be

immediately restrained so no further violations of the Election Code or Education Code may occur.

Prayer

50. The State of Texas seeks:
- a. A temporary restraining order prohibiting Defendants, their employees, and agents from using state or local funds or other resources of the district to electioneer for or against any candidate, measure, or political party.
 - b. A temporary restraining order prohibiting Defendants, their employees, and agents from spending public funds for political advertising.
 - c. A temporary restraining order prohibiting Defendants, their employees, and agents from publishing emails or social media posts containing electioneering or political advertising.
 - d. A temporary injunction prohibiting Defendants, their employees, and agents from using state or local funds or other resources of the district to electioneer for or against any candidate, measure, or political party.
 - e. A temporary injunction prohibiting Defendants, their employees, and agents from spending public funds for political advertising.
 - f. A temporary injunction prohibiting Defendants, their employees, and agents from publishing emails or social media posts containing electioneering or political advertising.
 - g. A permanent injunction prohibiting Defendants, their employees, and agents from using state or local funds or other resources of the district to electioneer for or against any candidate, measure, or political party.
 - h. A permanent injunction prohibiting Defendants, their employees, and agents from spending public funds for political advertising.

- i. A permanent injunction prohibiting Defendants, their employees, and agents from publishing emails or social media posts containing electioneering or political advertising.
- j. All other relief to which the plaintiff may be entitled.

Dated: March 1, 2024.

Respectfully submitted,

KEN PAXTON
Attorney General

BRENT WEBSTER
First Assistant Attorney General

JAMES LLOYD
Deputy Attorney General for Civil Litigation

ERNEST C. GARCIA
Chief, Administrative Law Division

/s/ Ernest C. Garcia

Ernest C. Garcia

State Bar No. 07632400

Clayton Watkins

State Bar No. 24103982

Assistant Attorney General

Administrative Law Division

OFFICE OF THE ATTORNEY GENERAL OF TEXAS

P.O. Box 12548, Capitol Station

Austin, Texas 78711-2548

512-936-0804 • fax 512-320-0167

ernest.garcia@oag.texas.gov

clayton.watkins@oag.texas.gov

ATTORNEYS FOR PLAINTIFF

Cause No. _____

STATE OF TEXAS, §
Plaintiff, §
 §
 v. §
 §
 FORREST COLLINS, in his official §
 capacity as Board President and Trustee §
 for Place 4, §
 JESSICA BROWN, in her official §
 capacity as Board Vice President and §
 Trustee for Place 3, §
 DAVID LEAR, in his official capacity as §
 Board Secretary and Trustee for Place 1, §
 JENNIFER LOFTIN, in her official §
 capacity as Trustee for Place 2, §
 JENNIFER TAYLOR, in her official §
 capacity as Trustee for Place 5, §
 ZACH TARRANT, in his official capacity §
 as Trustee for Place 6, §
 HOYT HARRIS, in his official capacity §
 as Trustee for Place 7, §
 SUSAN BOHN, in her official capacity §
 as Superintendent of Schools, Aledo §
 Independent School District §
Defendants. §

In the District Court of

 Parker County, Texas

 ____ Judicial District

Unsworn Declaration of Roger M. Richmond

My name is Roger Mason Richmond, and I am an employee / investigator of the following governmental agency: Office of the Attorney General, Administrative Law Division, located at 300 W. 15th Street, Austin, Texas 78701. I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the foregoing factual statements in the Petition are true and correct.

Executed in Travis County, Texas on this the 1st day of March, 2024.



Roger M. Richmond

Exhibit A

From: Aledo ISD Communications <Communications@aledoisd.org>

Date: February 20, 2024 at 6:26:50 PM CST

To: Aledo ISD Recipients <recipients@aledo.parentlink.net>

Subject: Aledo ISD Update

Reply-To: Aledo ISD Communications <Communications@aledoisd.org>

Good evening Aledo ISD community:

Today, we have two *critically* important topics to discuss with you all that are related to our budget and budget cuts and voting in this very important primary election that will greatly affect Aledo schools. *Please take the time to read this email in its entirety.*

Aledo ISD Budget

We are so disappointed to have to write you today regarding the Aledo ISD budget and planning for upcoming budget cuts. As you know, we wrote to you in 2023 about the state withholding adequate school funding and the implications for our district's budget and the budgets of school districts across the state. The budget deficit that Aledo ISD faces now and into the future is a serious and dire situation.

This situation has been caused by the historic inflation that all of us have been dealing with (estimated at 19% since 2019) partnered with the fact that our state leaders, with our governor leading the charge, prioritized taxpayer-funded private/home school vouchers over funding for your Aledo ISD schools. This happened even though enough legislators opposed vouchers to vote them down repeatedly for decades and again in 2023.

Important details about the AISD budget:

- Aledo ISD cut about \$1.1 million from the current (2023-2024) year budget at this time last year by primarily reducing non-staff operating budgets 10% across the district.
- The AISD budget has seen record inflation costs of non discretionary items since the 2019-2020 school year such as fuel (188.95% inflation), utilities (55.53%) and insurance (329.43%).
- We are now looking to cut approximately \$3.8 million from our budget for the 2024-2025 school year.
- Approximately 80 percent of our budget expenditures are personnel-related, so, while we are focusing on minimizing the impact on the classroom and student programs, it will be impossible to cut enough from non-staff operations alone to take care of the shortfall.
- We have managed and used the district's financial reserves when needed, but that fund is now very close to the minimum amount required by district policy.
- Based on data available at this time, we expect no additional funding for the 2025-2026 school year, and we expect that budget will require further cuts.

Below is a list of items we are discussing in relation to our budget. No decisions have been made at this time. What is under consideration includes:

- Further cuts to department and campus operating budgets
- Larger class sizes/increasing average class size

Reduce staffing positions through attrition

- Reducing instructional support for classroom teachers
- Reducing academic supports/interventions & extensions for students
- Changes to transportation services
- Reducing professional learning opportunities for staff
- Reducing staff travel for student programs and staff development
- Freezing salaries
- Reducing staff work calendars
- Reducing contests, events and/or competitions and student travel
- Freezing the addition of new academic and extracurricular programming for students
- Reducing academic and extracurricular program offerings

We are focusing on using our limited resources to support the greatest needs of our students, staff and schools. Simply put, our schools can no longer do more with less.

We will continue to communicate with you as we have more information to share regarding our budget.

Bearcats VOTE! Your Aledo public schools are on the ballot starting TODAY!



If you have been in our district for even a couple of years, you likely already know that we always remind you about voting! We find it crucially important that you vote in ANY election, so we want to remind you that **Early Voting for the March 5, 2024, Primary Election started today!** Early voting offers you 11-straight days (yes, including Saturday and Sunday!) to vote, and then Election Day is on Tuesday, March 5 (polls open 7 a.m. to 7 p.m.). For many years, we have held early and election day voting at the AISD Administration Building, and there is rarely a wait to vote during early voting!

We highly encourage you to make your plan now to VOTE EARLY! The decisions made by those on this Primary Election ballot affect you DAILY as evidenced by the budget shortfalls discussed at the top of this email. See the entire voting schedule below.



BEARCAT NATION

Early Voting Has Begun!

Voting Times:

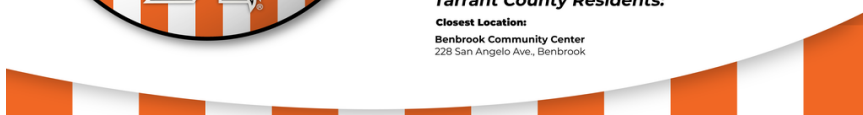
Tuesday - Friday, February 20 - 23, 2024 | 8 a.m. - 5 p.m.
Saturday, February 24, 2024 | 7 a.m. - 7 p.m.
Sunday, February 25, 2024 | 10 a.m. - 4 p.m.
Monday - Thursday, February 26 - 29, 2024 | 7 a.m. - 7 p.m.
Friday, March 1, 2024 | 7 a.m. - 7 p.m.

Parker County Residents:

7 Total Locations Including:
Aledo ISD Admin Building
1008 Bailey Ranch Rd.
Hudson Oaks Public Safety Building
150 N. Oakridge Dr., Hudson Oaks

Tarrant County Residents:

Closest Location:
Benbrook Community Center
228 San Angelo Ave., Benbrook



Thank you for the ways you are #AllinAledo in how you support our schools, staff and school children, provide important feedback, make a plan to vote, and so much more! Have a great week.

All In,

Susan Bohn, Superintendent; Aledo ISD Board of Trustees President Forrest Collins, Vice President Jessica Brown, Secretary David Lear, and Board Members Jennifer Loftin, Jennifer Taylor, Zach Tarrant and Hoyt Harris

Proposed Order

Cause No. _____

STATE OF TEXAS, §
Plaintiff, §
 §
 v. §
 §
 FORREST COLLINS, in his official §
 capacity as Board President and Trustee §
 for Place 4, §
 JESSICA BROWN, in her official §
 capacity as Board Vice President and §
 Trustee for Place 3, §
 DAVID LEAR, in his official capacity as §
 Board Secretary and Trustee for Place 1, §
 JENNIFER LOFTIN, in her official §
 capacity as Trustee for Place 2, §
 JENNIFER TAYLOR, in her official §
 capacity as Trustee for Place 5, §
 ZACH TARRANT, in his official capacity §
 as Trustee for Place 6, §
 HOYT HARRIS, in his official capacity §
 as Trustee for Place 7, §
 SUSAN BOHN, in her official capacity §
 as Superintendent of Schools, Aledo §
 Independent School District §
Defendants. §

In the District Court of

 Parker County, Texas

 ____ Judicial District

TEMPORARY RESTRAINING ORDER

ON THIS DAY, the Court considered Plaintiff the State of Texas’s emergency request for a Temporary Restraining Order enjoining the above defendants from violating the Texas Education Code and Texas Election Code. Plaintiff has provided a verified petition which constitutes good cause for this Order. Having found good cause existing, the Petition is **GRANTED**.

It is, therefore, **ORDERED** that Defendants, their officers, and their agents of the Aledo Independent School District shall cease using any funds or resources of the Aledo Independent

School District, to engage in electioneering in violation of Texas Education Code sections 11.169 and 45.105(c) and Texas Election Code section 255.003(a).

This Order shall be effective without the execution and filing of a bond. Pursuant to Texas Civil Practice and Remedies Code section 6.001 the State of Texas is exempt from filing a bond, thus, it is **ORDERED** that no bond be paid by the Plaintiff.

When a person who is being harmed or is in danger of being harmed by a violation or threatened violation of the Election Code, Texas Election Code section 273.081 authorizes the Court to issue appropriate injunctive relief to prevent the violation from continuing or occurring.

The Court finds that when the State of Texas seeks injunctive relief pursuant to an authorized statute, it need not prove immediate and irreparable injury, nor does the Court have to balance equities when the State litigates in the public's interest. *See State v. Texas Pet Foods*, 591 S.W.2d 800 (Tex. 1979). Nevertheless, The States' verified petition establishes probable, imminent, and irreparable harm if the Court does not issue a temporary restraining order against the Defendants. Any ongoing or future electioneering by the Defendants, their officers, or agents injures the Plaintiff and impacts elections currently in progress. Such injury is irreparable because damages cannot undo the harm of the alleged conduct.

The nature of the harm alleged in Plaintiff's application for this Temporary Restraining Order, that is, electioneering in violation of the Texas Education Code and Election Code, impacts ongoing elections and requires the immediate restraint of the alleged conduct without notice to the Defendants.

This Order is effective upon signing and shall remain in effect for until March 13, 2024, unless extended by written agreement of the parties. A temporary injunction hearing is set for _____, 2024 at _____ o'clock.

It is Ordered that the Clerk of the Court issue a writ of injunction to Defendants in accordance with the terms of this Order.

Signed on this _____ March 2024, at _____ o'clock.

Judge Presiding