

Cause No. _____

THE STATE OF TEXAS, §
Plaintiff, §
 §
 v. §
 §
 DYNETTE DAVIS, in her official §
 capacity as Board President and Trustee §
 for Place 4, §
 GOPAL PONANGI, in his official §
 capacity as Board Vice President and §
 Trustee for Place 1, §
 RENE ARCHAMBAULT, in her official §
 capacity as Board Secretary and Trustee §
 for Place 7, §
 MARVIN LOWE, in his official capacity §
 as Trustee for Place 2, §
 STEPHANIE ELAD, in her official §
 capacity as Trustee for Place 3, §
 MARK HILL, in his official capacity as §
 Trustee for Place 5, §
 JOHN CLASSE, in his official capacity §
 as Trustee for Place 6, §
 MIKE WALDRIP, in his official capacity §
 as Superintendent of Schools, §
 MEGAN DEWOLFE, in her official §
 capacity as "Committee Chair," Frisco §
 Independent School District, §
 Government Affairs, §
Defendants. §
 §

In the District Court of

 Collin 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 Frisco Independent School District funds to electioneer for or against any candidate in violation of Sections 11.169 and 45.105(c) of the Education Code and their *ultra vires* use of public funds and internal mail systems for political advertising in violation of Section 255.003(a) 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 and Standing

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).

Parties

9. Plaintiff is the State of Texas.

10. Defendant Dynette Davis is Board President and Trustee for Place 4 of the Board of Trustees of the Frisco Independent School District.

11. Defendant Gopal Ponangi is Board Vice President and Trustee for Place 1 of the Board of Trustees of the Frisco Independent School District.

12. Defendant Rene Archambault is Board Secretary and Trustee for Place 7 of the Board of Trustees of the Frisco Independent School District.

13. Defendant Marvin Lowe is Trustee for Place 2 of the Board of Trustees of the Frisco Independent School District.

14. Defendant Stephanie Elad is Trustee for Place 3 of the Board of Trustees of the Frisco Independent School District.

15. Defendant Mark Hill is Trustee for Place 5 of the Board of Trustees of the Frisco Independent School District.

16. Defendant John Classe is Trustee for Place 6 of the Board of Trustees of the Frisco Independent School District.

17. Defendant Mike Waldrip is Superintendent of Schools of the Frisco Independent School District.

18. Defendant Megan DeWolfe is “Committee Chair” for the Government Affairs or Legislative Leadership Committee of the Frisco Independent School District.

19. All Defendants are sued in their official capacities.

20. All Defendants may be served with process by serving Mike Waldrip, Superintendent of Schools, at 5515 Ohio Drive, Frisco, Collin County, Texas 75035.

Factual Background

21. On February 20, 2024, the Frisco ISD Government Affairs, Facebook page stated: “Today is the first day of early voting! Public education is always on the ballot, especially during the primaries. The Texas legislature determines public school funding. Last session, proposed legislation that tied public school funding to a voucher program failed, leaving Frisco ISD \$90 million behind 2019 funding levels. Many of the seats up for election do not have competitive races during the November general

election, so whoever wins the primary – in most cases – will win the November election. That means candidates we’re voting for right now will decide whether or not public schools get funded appropriately. Make your voice heard!”

22. On or about February 23, 2024, the Frisco ISD Government Affairs, Facebook page stated: “Very few competitive seats were left after Texas redistricted Senate and House districts in 2021. Redistricting mostly solidified which seats would be held by a Republican and which would be held by a Democrat. That means whoever wins the party’s primary race will most likely be elected in the general election in November 2024. This is why it is so important to vote in the primary elections in Texas. Early voting in the primary election is happening now and Election Day is March 5. Get out and vote!”

23. On Tuesday, February 27, 2024, the Frisco ISD Government Affairs, Facebook page stated: “In Texas, we have “open primaries”, which means any registered voter can vote in either party’s primary. Since redistricting has mostly solidified which seats will be held by a Republican and which will be held by a Democrat, some voters choose to vote in the primary of the party that’s most likely to win in their area, regardless of which party they normally identify with. Early voting in the primary election is happening now, and Election Day is March 5. Get out and vote!”

24. The social media posts referenced above encourage individuals to vote for candidates who support public schools and, apparently, who are against vouchers. The posts also appear to influence the reader to vote in a particular party primary.

Legal Background

25. The Court may enjoin Defendants’ *ultra vires* actions.

26. The Court may enjoin Defendants’ violations of the Election Code. Tex. Elec. Code § 273.081.

Claim One: Violation of Education Code § 11.169.

27. 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.”

28. The Defendants who are members of the Board of Trustees allowed Frisco ISD employees to use funds and other resources of the district to electioneer for or against candidates, a measure or political party when they allowed Megan DeWolfe to publish the statements referenced above, on the Frisco ISD Government Affairs, Facebook page.

29. 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 any candidate.

30. 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 any candidate.

Claim Two: Violation of Education Code § 45.105.

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

32. 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.

33. 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.

34. 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).

35. 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.”

36. The social media statements referenced above constitute political advertising because they are communications supporting or opposing candidates for nomination or election to a public office that appeared on an internet website namely, Facebook. Tex. Elec. Code. § 251.001(16)(B)(ii).

37. Defendant Megan DeWolfe used public funds of the district—namely, the funds used to pay her salary and operate Frisco ISD Government Affairs Facebook page and/or email systems—to create and distribute political advertising.

38. The other Defendants authorized Defendant Megan DeWolfe to use public funds of the district to distribute political advertising.

39. Defendant Megan DeWolfe’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).

40. Unless enjoined, Defendants will continue to act without legal authority in their use of public funds of the district for political advertising.

Prayer

41. 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 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 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 social media posts containing electioneering or political advertising.
- j. All other relief to which the plaintiff may be entitled.

Dated: February 28, 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/Lauren McGee

Lauren McGee

State Bar No. 24128835

Assistant Attorney General

Ernest C. Garcia

State Bar No. 07632400

Assistant Attorney General

Administrative Law Division

OFFICE OF THE ATTORNEY GENERAL OF TEXAS

P.O. Box 12548, Capitol Station

Austin, Texas 78711-2548

512-475-3203 • fax 512-320-0167

lauren.mcgee@oag.texas.gov

ernest.garcia@oag.texas.gov

ATTORNEYS FOR PLAINTIFF

Restraining Order and Temporary Injunction. I verify that the facts stated therein are within my personal knowledge and are true and correct.



Roger M. Richmond

Sworn and subscribed before me on 28th day of February, 2024.





Notary Public