

Cause No. _____

STATE OF TEXAS, §
Plaintiff, §

v. §

AMANDA McGEE, in her official §
capacity as Board President and Trustee §
for Place 7, §

KIRK VAUGHN, in his official capacity §
as Board Vice President and Trustee for §
Place 4, §

RAY BURT, in his official capacity as §
Board Secretary and Trustee for Place 3, §

MATT DUTTON, in his official capacity §
as Trustee for Place 6, §

DEAN WARREN, in his official capacity §
as Trustee for Place 2, §

JARED DAGLEY, in his official capacity §
as Trustee for Place 1, §

JEREMY PHILLIPS, in his official §
capacity as Trustee for Place 5, §

BENNY SOILEAU, in his official §
capacity as Superintendent of Schools, §
Huffman Independent §
School District §

Defendants. §
§

In the District Court of

Harris 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 Huffman 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 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, 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 Harris County as the events and omissions that give rise to plaintiff's claims and request for relief occurred in Harris 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 Amanda McGee is Board President and Trustee for Place 7 of the Board of Trustees of the Huffman Independent School District.

13. Defendant Kirk Vaughn is Board Vice President and Trustee for Place 4 of the Board of Trustees of the Huffman Independent School District.

14. Defendant Ray Burt is Board Secretary and Trustee for Place 3 of the Board of Trustees of the Huffman Independent School District.

15. Defendant Matt Dutton is Trustee for Place 6 of the Board of Trustees of the Huffman Independent School District.

16. Defendant Dean Warren is Trustee for Place 2 of the Board of Trustees of the Huffman Independent School District.

17. Defendant Jared Dagley is Trustee for Place 1 of the Board of Trustees of the Huffman Independent School District.

18. Defendant Jeremy Phillips is Trustee for Place 5 of the Board of Trustees of the Huffman Independent School District.

19. Defendant Benny Soileau is the Superintendent of Schools of the Huffman Independent School District.

20. All Defendants are sued in their official capacities.

21. All Defendants may be served with process by serving Benny Soileau, Superintendent of Schools, at 24302 FM 2100, Huffman, Harris County, Texas 77336.

Factual Background

22. On November 17, 2023, during a special session, the Texas House of Representatives voted 84-63 in favor of an amendment offered by Rep. John Raney, R-College Station, to remove school vouchers from an education bill. A total of 21 House Republicans joined House Democrats in support of the offered Raney amendment.

23. On February 2, 2024, Superintendent Benny Soileau on behalf of the Board of Trustees of the Huffman Independent School District posted the Notice or Agenda for the called Board meeting of the Board of Trustees that was to take place on the evening of February 7, 2024. The agenda referenced that at the 6:00 p.m. meeting on February 7, 2024, the Board would have a discussion (closed to the public) regarding an evaluation of the superintendent and that they would consider his contract during the meeting.

24. At 8:00 a.m. the morning of Wednesday, February 7, 2024, a school day, Dr. Benny Soileau, Superintendent of Schools of the Huffman Independent School District held a meeting with the Hargrave High School Administration faculty and staff at the Hargrave High School Cafeteria.

25. During the February 7, 2024, meeting Dr. Soileau communicated about public school funding and the upcoming elections. He referenced that 21 legislators had supported public school finance during the past special session. In relevant part he communicated the following:

And those 21 were called the Raney 21 because the representative that carried the bill that stripped the vouchers out of that portion of HB3 in the House, his name was Raney.

So it was Raney 21. Now we count from 25 down to 21. So those 21, that number was then compromised this way.

So after they passed the vote and HB3 was dead, we killed the vouchers, but we also had to sacrifice the money that was in that bill that was coming to public education. So those 21 now have to face an election in the primaries coming up in March. It's right around the corner.

Every one of those 21 have a challenger. They put a challenger up against every one of them. And we know that if we don't show up and support those 21, well, I say 21.

Let me back up a little bit. Five of those 21 are retiring, they're not coming back. They're not even running.

So now we're down to 16. And **they're calling them Sweet 16. And if we don't support those 16 representatives in the upcoming election, we roll into the next session almost assured that we're going to face a universal voucher bill that will change the face of public education for years to come.**

Because once it's here, it's awfully hard to do away with it. Some states are wrestling with that right now. The call has come astronomically to support it.

And where does that money come from? It comes from the same pot of money that we get ours from. **So I'm going to stress to you the importance of showing up for polls and supporting those 16 individuals that have supported us.** Because if they – and let me say this.

So that's Sweet 16. How many of those have to get beat for them to have that upper hand? Six. Six.

If six get beat, then they have the upper hand and they can walk into the next session pretty confident that they're going to be able to pass this voucher bill. And that's the goal. So two things, like I said, alleviate this.

New money. And that new money, for us to get that new money, I think **we have to have a good showing at this primary. That's what it is.**

That we show up for polls and show them that we're worth paying attention to. And we've done it a couple times in the past. We've had a couple times where we had a cause like this that was that important, and we showed up, and it made a difference.

So we've seen it happen. **We've just got to make sure that we're communicating to one another. Y'all hear this, that you pass the word to your friends and family, other educators.**

We've got to make sure that we have a good showing. So I've just given you a lot of information in a short period of time. Let me give you an opportunity to ask questions.

What questions can I help with?

Faculty/Staff Question by Grace Ann: "How do we get the list of those 16 Legislators?"

We'll get those for you, Mandy, [believed to be a reference to Amanda Fortenberry the Huffman ISD Director of Communications] can you help us with that? **Get those 16 individuals, the Sweet 16, those names out to our staff.**

(emphasis added)

This communication has also appeared in written form on the internet through x.com or twitter.

Legal Background

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

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

Claim One: Violation of Education Code § 11.169

28. 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."

29. 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 Huffman Independent School District employees use of funds and other resources of the district, such as the Huffman High School cafeteria (and salaries), to electioneer for or against candidates, a measure or political party when they allowed Benny Soileau to distribute the communication referenced above.

30. 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.

31. 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

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

33. 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.

34. 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.

35. 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)

36. 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.”

37. Benny Soileau’s distribution of his 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 on the internet. Tex. Elec. Code. § 251.001(16)(B).

38. Defendant Benny Soileau used public funds of the district—namely, part of the funds used to pay his reported \$289,000 annual salary and the cost to operate the Huffman High School—to create and distribute political advertising.

39. The other Defendants authorized and/or approved of Defendant Benny Soileau’s use of public funds of the district to distribute political advertising.

40. Defendant Benny Soileau’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).

41. 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.

Application for Temporary Restraining Order

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

43. 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.

44. 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.

45. 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.

46. 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

47. 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,

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Attorney General

BRENT WEBSTER
First Assistant Attorney General

JAMES LLOYD
Deputy Attorney General for Civil Litigation

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Chief, Administrative Law Division

/s/ Ernest C. Garcia

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ATTORNEYS FOR PLAINTIFF

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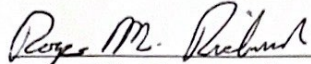
In the District Court of
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Declaration of Roger M. Richmond

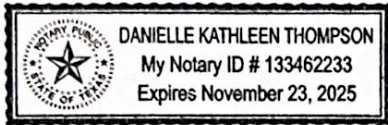
My name is Roger M. Richmond. I am over eighteen years of age, am of sound mind, and am capable of making this declaration. I am an Investigator in the Administrative Law Division of the Office of the Texas Attorney General.

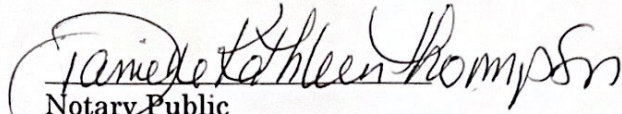
I have read the above Original Verified Petition and Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction. I verify that the

facts stated therein are within my personal knowledge and are true and correct.


Roger M. Richmond

Sworn and subscribed before me on 1st day of March, 2024.




Notary Public