

Cause No. _____

STATE OF TEXAS, §
Plaintiff, §

v. §

BILLIE LOGIUDICE, in her official §
capacity as Board President and Master §
Trustee, §

AMY ENGLISH, in her official capacity §
as Board Vice President and Master §
Trustee, §

SHANNON JACOBS, in her official §
capacity as Board Secretary and §
Trustee, §

SHARA TURNER, in her official §
capacity as Trustee, §

TERRENCE OWENS, in his official §
capacity as Master Trustee, §

FELIX CHAVEZ, in his official capacity §
as Trustee, §

JAMES MATLOCK, in his official §
capacity as Trustee, §

RAUL PENA, in his official capacity as §
Superintendent of Schools, Hutto §
Independent School District §

Defendants.

In the District Court of

Williamson 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 Hutto 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 Williamson County as the events and omissions that give rise to plaintiff's claims and request for relief occurred in Williamson County and

this is county of the defendants' 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 Billie Logiudice is Board President and a Master Trustee for the Board of Trustees of the Hutto Independent School District.
13. Defendant Amy English is Board Vice President and a Master Trustee for the Board of Trustees of the Hutto Independent School District.
14. Defendant Shannon Jacobs is Board Secretary and a Trustee for the Board of Trustees of the Hutto Independent School District.
15. Defendant Shara Turner is a Trustee for the Board of Trustees of the Hutto Independent School District.
16. Defendant Terrence Owens is a Master Trustee for the Board of Trustees of the Hutto Independent School District.
17. Defendant Felix Chavez is a Trustee for the Board of Trustees of the Hutto Independent School District.
18. Defendant James Matlock is a Trustee for the Board of Trustees of the Hutto Independent School District.
19. Defendant Raul Pena is the Superintendent of Schools of the Hutto Independent School District.
20. All Defendants are sued in their official capacities.
21. All Defendants may be served with process by serving Raul Pena, Superintendent of Schools, at 200 College Street, Hutto, Williamson County, Texas 78634.

Factual Background

22. On or about February 28, 2024, Raul Pena and/or the Board of Trustees caused the following social media post to be placed on Facebook on behalf of the Hutto ISD:

Hutto ISD 4d · 🌐

📌 Education is ALWAYS on the Ballot!
Vouchers hurt our public schools. For every 100 Hippos lost to a voucher, Hutto ISD would lose \$1.15 million dollars, which could mean a loss of 18 teaching positions or 8 new school buses. [#SupportPublicSchools](#)
[#FundTXPublicSchools](#)

For every 100 Hippos lost to a voucher program, Hutto ISD could face a \$1.15 million decrease in crucial state funds, equivalent to the cost of providing 18 classroom teachers

For every 100 Hippos lost to a voucher program, Hutto ISD could face a \$1.15 million decrease in crucial state funds, equivalent to the cost of providing 8 new school buses

👍❤️ 5 5 comments 1 share

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 Hutto Independent School District employees use of funds and other resources of the district, such as salaries and/or computers and email accounts, to electioneer for or against candidates, a measure or political party when they allowed Raul Pena to publish 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. Raul Pena’s posting of the communication referenced above constitutes political advertising because it is a communication supporting or opposing candidates for nomination or election to a public office, or office of a political party or a measure and such communication has also appeared in written communication. Tex. Elec. Code. § 251.001(16)(B).

35. Defendant Raul Pena used public funds of the district—namely, part of the funds used to pay his salary, Hutto ISD computers / emails and the cost to operate and maintain the Hutto ISD Facebook—to create and distribute political advertising.

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

37. Defendant Raul Pena’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, a Facebook posting. Tex. Elec. Code. § 251.001(16)(B)(i).

41. Defendant Raul Pena is believed to have used Hutto Independent School District’s internal mail system to seek approval for the social media posting and/or to distribute political advertising.

42. The other Defendants are believed to have authorized Defendant Raul Pena’s use Hutto Independent School District’s internal mail system to distribute political advertising.

43. Defendant Raul Pena’s distribution of political advertising in Hutto Independent School District’s internal mail system would be *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 Hutto 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 4, 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

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ATTORNEYS FOR PLAINTIFF

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____ Judicial District

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.

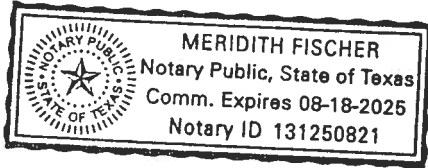
I have read the above Original Verified Petition and Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction. I verify that the

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



Roger M. Richmond

Sworn and subscribed before me on 4th day of March, 2024.





Notary Public