



Office of Legal Services

February 19, 2018

Via Certified Mail RRR# 9214 8901 7896 6400 0033 42

And Via E-Mail: Cleve.Doty@oag.texas.gov

Cleve W. Doty
Assistant Attorney General
Administrative Law Division
P.O. Box 12548
Austin, Texas 78711-2548

Re: Response to February 14, 2018 Letter

Mr. Doty:

The Lewisville Independent School District (the “District” or “LISD”) is in receipt of your letter dated February 14, 2018, entitled “Request to Cease and Desist Unlawful Electioneering,” attached hereto as **Exhibit A**. You requested to hear from the District, “in writing, no later than the end of business on Friday, February 16, 2018.” As you are aware, I sent you an e-mail on February 16 informing you that the District would provide its response today.¹

The District believes that the actions taken by LISD that you have pointed out in your letter are within the law. As will be explained in detail below, the District prefers to work together with your office to obtain more information about your concerns. Please also know that the District is communicating to its staff members, as it has before, that the decision regarding for whom to vote is the decision of each individual person, and that neither the Board of Trustees nor administration desires to dictate that.

LISD requests that its representatives set up a time with representatives from your office to discuss this matter further. Please feel free to reach out to Dr. Kevin Rogers, Superintendent, Angie Cox, LISD Board President, or me to schedule a date and time.

In the context of working together to resolve this matter, the District wishes to express its disappointment about the way your office chose to communicate about these concerns. To my knowledge, your office did not attempt to reach out to any Board member or administrator in LISD to express these concerns or obtain the District’s response to the allegations. Your letter was based on your observation with no feedback from LISD, and the District asserts that it would have been extremely helpful for your office to have at least spoken with the District before jumping to the conclusions you reached in your letter.

¹ Because the post office is closed on February 19, the District will send this letter to your office via certified mail on February 20, 2018.

February 6 Tweet

The tweet you referenced was sent from the LISD official Twitter account (@LewisvilleISD) on February 6, 2018, at approximately 6:45 PM, reading, “We are asking for support from our state Legislature. We’re not getting it. It’s time for change. #TXTeacherVoice.” After being made aware by a local elected official that the tweet may have been interpreted in a way the District did not intend, the District decided to delete the tweet out of an abundance of caution the next day, February 7, at approximately 5:00 PM. The tweet was on the LISD Twitter account for less than 24 hours, and when your office sent the letter dated February 14, the tweet had been deleted for almost one full week. As such, from the District’s perspective, there is no need to discuss this particular tweet further.

Texas Election Code and Education Code Provisions

The District also thinks it is important to flesh out the laws you allege the District violated in an attempt to clarify why you believe LISD has violated those laws. As you cited in your letter, it is impermissible for a school district employee to engage in political advertising using district resources. TEX. ELEC. CODE § 255.003(a). “Political advertising” is defined as “a communication supporting or opposing a candidate for nomination or election to public office or office of a political party, a political party, a public officer, or a measure.” TEX. ELEC. CODE § 251.001(16). However, your letter fails to state that it is not a violation of that prohibition on political advertising if the communication factually describes the purposes of a measure as long as the communication does not advocate its passage or defeat. TEX. ELEC. CODE § 255.003(b). Further, Texas Education Code section 11.169 prohibits a school district board of trustees from using “resources of the district to electioneer for or against any candidate, measure, or political party.” But your letter does not provide any definition of “electioneer.” In fact, the Education Code does not define “electioneer,” but we can look at the Election Code for guidance regarding the legislature’s likely intent: “the posting, use, or distribution of political signs or literature.” TEX. ELEC. CODE § 61.003(b).

Based on a full reading of the law in this area, the District contends that the subject of your letter, “Request to Cease and Desist Unlawful *Electioneering*” (emphasis added) is misleading at best and inaccurate at worst. *See generally Exhibit A*. You generally declare that the District has engaged in illegal electioneering without defining that term. LISD asserts that, even using the definition of “electioneer” in the Election Code, which is merely guidance and does not necessarily apply to the provision you cited in the Education Code, the District could not have electioneered by making a video because it is not a “political sign or literature.” This is something about which the District would like to get more information from your office.

Texas Teacher Voice Video

The District would further like to address the concerns you raised related to a video LISD created entitled “Texas Teacher Voice 2018” (<http://bit.ly/2nD3mvl>). Your comments in the letter related to this video have created questions the District would like to explore with your office. Throughout the letter, you often paraphrase comments made by the Superintendent in the video that make them appear to have a meaning that is not evident in the actual words he uses. The letter appears to jump to conclusions contrary to the Superintendent’s intent and without much explanation. As stated above, the District believes a discussion

with your office to shed light on this matter would greatly assist it in understanding why you believe the Superintendent's comments violate the law.

In fact, throughout the entire video, Dr. Rogers does not name a single politician or candidate for office, nor does he encourage anyone to vote for a particular candidate. He does not tell anyone to vote for an incumbent or a challenger in any race. Dr. Rogers does not mention a specific political party, or in which party's primary someone should vote. As an educator who has given over 30 years of his life to serving kids in public education, of course Dr. Rogers encourages people to unite behind the cause of public education because of the amazing impact he has seen it have on countless children's lives.

As you know, uniting behind the common cause of public education is not a violation of any law, and supporting public education generally is not "supporting or opposing a candidate for nomination or election to public office or office of a political party, a political party, a public officer, or a measure." TEX. ELEC. CODE § 251.001(16). The District believes Dr. Rogers's comments in this video have not violated any laws, and it maintains there is currently no reason to remove the video from the District website.

As an education leader, Dr. Rogers urges the community to make sure pro-education legislators are elected or re-elected to the legislature. This is far from an endorsement of a particular candidate, but a constitutional mandate and priority. Emboldening people to choose legislators that serve their constituents and the educational futures of our children should be something that everyone wants and will work toward together. Because it is apparent your office and LISD have differing opinions on whether the Superintendent's comments violate the law, the District believes having a chance to work together toward a common understanding, instead of spending taxpayer-funded time and resources drafting letters, briefings, or other correspondence, is in the best interest of all Texans.

Please feel free to reach out if you have questions or would like to discuss this matter further.

Sincerely,



Jeff Crownover
General Counsel, Lewisville ISD

Enclosures

cc: Angie Cox, President, Board of Trustees
Krona Thimsesch, Vice President, Board of Trustees
Katherine Sells, Secretary, Board of Trustees
Kristi Hassett, Board of Trustees
Tracy Scott Miller, Board of Trustees
Jenny Proznik, Board of Trustees
Trisha Sheffield, Board of Trustees
Dr. Kevin Rogers, Superintendent of Schools



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 14, 2018

Kevin Rogers
Superintendent, Lewisville Independent School District
1565 W. Main Street
Lewisville, TX 75067

VIA CMRRR 7008 3230 0003 0489 9301

Angie Cox, President
Board of Trustees
Lewisville Independent School District
1565 W. Main Street
Lewisville, TX 75067

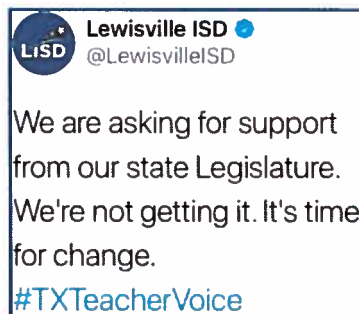
VIA CMRRR 7008 3230 0003 0489 9295

ALSO VIA REGULAR MAIL AND E-MAIL

RE: Request to Cease and Desist Unlawful Electioneering

Superintendent Rogers and President Cox:

It has come to our attention that the Lewisville Independent School District recently launched an official campaign advocating the election of candidates that hold particular political views of the Texas Legislature. See Lewisville ISD Twitter Page, available at <https://twitter.com/LewisvilleISD> (“We are asking for support from our state Legislature. We’re not getting it. It’s time for change. #TxTeacherVoice[.]”).



In a widely distributed video, Superintendent Rogers encourages citizens to vote against particular candidates: “. . . it’s time to use your teacher voice and let the Texas Legislature know you’ve had enough. . . . They are attacking you and me.” Lewisville ISD website, available at <http://bit.ly/2nD3mvl>. Lewisville ISD issues a “challenge” to everyone to “unite behind a common cause this spring, ensuring pro-education legislators come out of the primary and move on to the general election in November. . . . we must be active in the primary if we hope to impact the landscape of Texas politics.” *Id.* Lewisville ISD further encourages students, staff, and citizens to “send a clear message” by electing certain candidates with particular political viewpoints to the Texas legislature: “It is time for you and me to choose legislators that serve us as constituents instead of being worried about the fringe of their party.” *Id.* The District concludes its message by stating that its purpose is to “send a strong

message to Austin” by electing certain candidates. *Id.* In short, Lewisville ISD promulgated a campaign to ensure the election of certain candidates to the Texas Legislature.

As of February 13, Lewisville ISD appears to have promoted this video on the homepage of every school in the district and also promoted this message on its social media outlet above all other content. *See, e.g.,* Lewisville ISD Twitter Page, *available at* <https://twitter.com/LewisvilleISD> (pinning tweet with link to video quoted above). This evidence reveals that these communications were made on behalf of the School District as a government entity, acting in its official capacity, and using resources that belong to the taxpayers of Texas.

As you know, Texas law empowers local school districts to register students to vote, promote civic engagement, and allow high school students to serve as early voting clerks. *See, e.g.,* Tex. Elec. Code § 13.046; Tex. Educ. Code § 25.087. By creating such a statute, the Legislature recognized the vital role educators play in the functioning of a democracy.

However, like all other governmental authorities, Lewisville ISD has limits on its participation in the political process using taxpayer resources meant for the education of Texas’s youth. Like all state authorities, school districts “may not use state or local funds or other resources to electioneer for or against any candidate, measure, or political party.” Tex. Educ. Code § 11.069; *see generally* Tex. Att’y Gen. Op. No. KP-0177 (2018). Furthermore, school districts and their employees “may not knowingly authorize the spending of public funds for political advertising,” which includes “a communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or a measure” that appears on an Internet website, among other things. Tex. Elec. Code §§ 255.003(a), 251.001(16). To undergird the importance of governmental entities, like Lewisville ISD, not engaging in unlawful electioneering, the Legislature not only prohibits such actions, but classifies violations as a Class A misdemeanor. Tex. Elec. Code § 255.003(c).

As mentioned above, your district launched an official campaign designed to “change” the makeup of the Texas Legislature. *See* Lewisville ISD Twitter Page, *available at* <https://twitter.com/LewisvilleISD> (“We are asking for support from our state Legislature. We’re not getting it. It’s time for change. #TxTeacherVoice[.]”). By advocating for change in political representation, Lewisville ISD produced “a communication . . . opposing a candidate for nomination or election to a public office or office of a political party.” This communication violates Texas law. *See* Tex. Elec. Code §§ 255.003(a), 251.001(16).

Accordingly, we ask you to withdraw the above noted communication, and any like communications, and cease from making any further communications designed to support or oppose certain political candidates, or which may otherwise run afoul of Texas law. We request that we hear from you, in writing, no later than the end of business on Friday, February 16, 2018.

Sincerely,



Cleve W. Doty
Assistant Attorney General
Administrative Law Division
Cleve.Doty@oag.texas.gov

Enclosures

cc: Kronda Thimesch, Board of Trustees
Katherine Sells, Board of Trustees
Kristi Hassett, Board of Trustees
Tracy Scott Miller, Board of Trustees
Jenny Proznik, Board of Trustees
Trisha Sheffield, Board of Trustees



Tweet



Lewisville ISD 

@LewisvilleISD

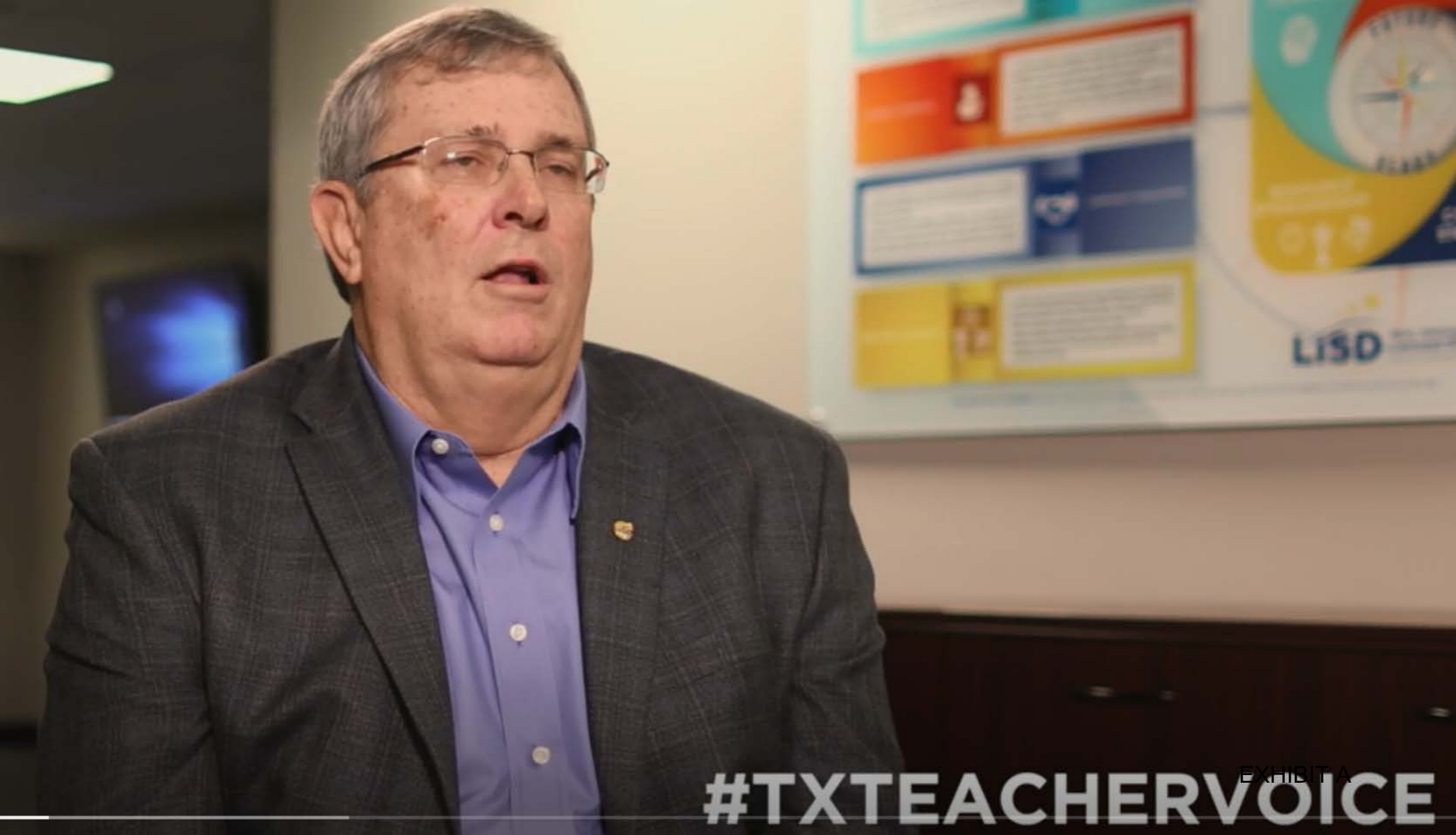


We are asking for support from our state Legislature. We're not getting it. It's time for change.

[#TXTeacherVoice](#)

2/6/18, 6:45 PM

41 Retweets **89** Likes



#TXTEACHERVOICE

EXHIBIT A

Tweets
5,946

Following
221

Followers
3,605

Likes
2,505

Lists
2



1



4

Hebron High School Retweeted



Lewisville ISD @LewisvilleISD · Feb 5

Let Your Voice Be Heard - VOTE: bit.ly/2nD3mvl. #TXTeacherVoice



3



99



42



Tweets
6,694

Following
1,055

Followers
41.1K

Likes
8,710

Lists
8

Lewisville ISD ✓

@LewisvilleISD

Real Innovation. Limitless Opportunity.
#LISDthrive #LISDculture

📍 Lewisville, TX, USA

🌐 lisd.net

📅 Joined August 2009

🖼️ 1,300 Photos and videos



Tweets

Tweets & replies

Media



Pinned Tweet



Lewisville ISD ✓ @LewisvilleISD · Feb 5

Let Your Voice Be Heard - VOTE: bit.ly/2nD3mvl. #TXTeacherVoice



🗨️ 3

📌 99

❤️ 42

[Return to Headlines](#)

VIDEO: Let Your Voice Be Heard - VOTE

Feb. 2, 2018

Lewisville ISD Parents,

For the last few years, our district has become increasingly active in advocating at the state level for our students and community. From fighting the Texas Education Agency to change its fundamentally-flawed approach to student accountability, to challenging the legislature to find a funding formula that removes some of the burden from local taxpayers and increases the state share, we are doing all we can to change the landscape of education in Texas.

But we can't do it alone! We need you to join the fight. How can you do that? Join educators across Texas to elect pro-public education legislators at the state and local levels. **Early voting for the March 6 primary election begins Feb. 20.**

We sent this informational video to our school community, and I want to share it with you. I've encouraged our staff members to use their TEACHER VOICE in the elections, and I am calling on each of you to find YOUR "teacher voice" to speak out on behalf of public education.



Video link: <http://bit.ly/TXTeacherVoice>.

In the coming weeks, we will send additional non-partisan resources to help you research candidates and find those who best align with your beliefs. Look for our posts on social media with the hashtag #TXTeacherVoice and start lending your voice – and your vote – to the efforts.

As a proud Texan, it disappoints me that so few registered voters actually show up at the polls. I hope you will be a part of changing that! Together, we can create a wave of support for public schools across the state and elect legislators who truly represent our students and our schools.

Are you with me?

Kevin Rogers
Superintendent of Schools
Lewisville Independent School District

EXHIBIT A