

Cause No. \_\_\_\_\_

THE STATE OF TEXAS, §  
*Plaintiff,* §

v. §

DEWEY TALIAFERRO, in his official §  
capacity as Board President and Trustee §  
for Place 1, §

MARY LOU MARTINEZ, in her official §  
capacity as Board Vice President and §  
Trustee for Place 5, §

CATHY GATICA, in her official capacity §  
as Board Secretary and Trustee for §  
Place 6, §

DAVID HOLDER, in his official capacity §  
as Trustee for Place 7, §

TRACY GALLMAN, in her official §  
capacity as Trustee for Place 2, §

LINDA AGUILLON, in her official §  
capacity as Trustee for Place 4, §

ARIELA MARTINEZ, in her official §  
capacity as Trustee for Place 3, §

RENEE SMITH-FAULKNER, in her §  
official capacity as Superintendent of §  
Schools, Castleberry Independent §  
School District §

*Defendants.* §

In the District Court of

Tarrant 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 Castleberry 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 and internal mail systems for political advertising in violation of Sections 255.003(a) and 255.0031(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 Tarrant County as the events and omissions that give rise to plaintiff's claims and request for relief occurred in Tarrant 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 Dewey Taliaferro is Board President and Trustee for Place 1 of the Board of Trustees of the Castleberry Independent School District.

13. Defendant Mary Lou Martinez is Board Vice President and Trustee for Place 5 of the Board of Trustees of the Castleberry Independent School District.

14. Defendant Cathy Gatica is Board Secretary and Trustee for Place 6 of the Board of Trustees of the Castleberry Independent School District.

15. Defendant David Holder is Trustee for Place 7 of the Board of Trustees of the Castleberry Independent School District.

16. Defendant Tracy Gallman is Trustee for Place 2 of the Board of Trustees of the Castleberry Independent School District.

17. Defendant Linda Aguillon is Trustee for Place 4 of the Board of Trustees of the Castleberry Independent School District.

18. Defendant Ariela Martinez is Trustee for Place 3 of the Board of Trustees of the Castleberry Independent School District.

19. Defendant Renee Smith-Faulkner is Superintendent of Schools of the Castleberry Independent School District.

20. All Defendants are sued in their official capacities.

21. All Defendants may be served with process by serving Renee Smith-Faulkner, Superintendent of Schools, at 52238 Ohio Garden Road, Fort Worth, Tarrant County, Texas 76114.

### **Factual Background**

22. On February 18, 2024, Linda Jo Galvan, the President of the Castleberry School Retirees Association, sent an e-mail (“Galvan e-mail”) regarding the upcoming elections to Renee Smith-Faulkner, Superintendent of Schools of the Castleberry Independent School District. The e-mail said in part: “This Tuesday, early voting in the primary elections begin. We have 13 days left to save education in Texas. Early voting is over March 1<sup>st</sup>. Election day is March 5. The following are screenshots of excerpts from the email:

First of all, remember to vote for Pat Hardy for the State Board of Education. She has done a stellar job. She is against vouchers. She has a challenger who likes vouchers, Brandon Hill. We need to make sure she is reelected and Brandon is sent away.

...

To list again the brave legislators who stuck their necks out to vote for us:

District Legislator for us Abbott/Paxton challenger

1-New Boston Gary VanDeaver Chris Spencer

4-Forney Keith Bell Joshua Feuerstein

7-Longview Jay Dean Joe McDaniel

11-Nacogdoches Travis Clardy Joanne Shofner

18-Sheiphard Earnest Bailes Janis Holt

33-Rockwall Justin Holland Katrina Pierson

44-Seguin John Keumpel Alan Schoolcraft

55-Temple Hugh Shine Hillary Hickland

58-Cleburne DeWayne Burns Helen Kerwin

60-Mineral Wells Glenn Rogers Mike Olcott

62-Sherman Reggie Smith Shelley Luther\*\*\*

71-Abilene Stan Lambert Liz Case

88-Canadian Ken King Karen Post

99-FtWorth Charlie Geren Jack Reynolds

121-San Antonio Steven Allison Marc LaHood

...

Lets show up at the polls and vote those for us in.... and those against us out.

Love to you through all of this,

Linda Jo Galvan

23. On February 19, 2024, Renee Smith-Faulkner attached/forwarded the Galvan e-mail to a Castleberry ISD email list (Admin Leadership Team Distribution List), to encourage individuals to vote to have a voice in future public education (“Smith–Faulkner e–mail”).

**From:** Smith-Faulkner, Renee  
**Sent:** Monday, February 19, 2024 8:59 AM  
**To:** Admin Leadership Team Distribution List  
<[Administrative\\_Leadership\\_Team\\_Distribution\\_List@Castleberryisd.net](mailto:Administrative_Leadership_Team_Distribution_List@Castleberryisd.net)>  
**Subject:** Fw: Elections: From the Retired Teachers Association

The email below came from our Castleberry ISD Retired Teachers Association:

Please take the information in her email and vote accordingly. The main responsibility we have is to have a voice in the future of public education.

We are operating on the same budget amount as in 2019 although we have seen record inflation since then. And there is no new money coming to our district next year.

Vote in the Primaries. Have a voice!

Thanks, Renee


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**RENEE SMITH-FAULKNER**


**CASTLEBERRY INDEPENDENT SCHOOL DISTRICT**

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**SUPERINTENDENT OF SCHOOLS**

 5228 Ohio Garden Road | Fort Worth, TX 76114  
817.252.2005

[WWW.CASTLEBERRYISD.NET](http://WWW.CASTLEBERRYISD.NET)

PORTFOLIO 

Twitter: @faulknerr  
Instagram: @reneesmithfaulkner  
Facebook: @renee.smithfaulkner

24. The Smith–Faulkner e–mail, sent by an official Castleberry ISD e–mail address to the Admin Leadership Team Distribution List, referenced and incorporated the Galvan e–mail. Due to the statements therein, including listing specific candidates that do and do not deserve support, the Smith–Faulkner e–mail violates the Education Code and the Election Code.

### **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 Castleberry Independent School District employees to use funds and other resources of the district to electioneer for or against candidates, a measure or political party when they allowed Renee Smith-Faulkner to email the statements referenced above.

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 candidates.

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 candidates.

### **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 emailed statements referenced above constitute political advertising because they are communications supporting or opposing candidates for nomination or election to a public office that appeared in the form of written communication namely, a Castleberry Independent School District email. Tex. Elec. Code. § 251.001(16)(B)(i).

37. Defendant Renee Smith-Faulkner used public funds of the district—namely, the funds used to pay her salary and to operate the Castleberry Independent School District email system—to create and distribute political advertising.

38. The other Defendants authorized Defendant Renee Smith-Faulkner to use public funds of the district to distribute political advertising.

39. Defendant Renee Smith-Faulkner'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. Injunctive relief is appropriate to prevent a violation of the Election Code from continuing or occurring. Tex. Elec. Code § 273.081.

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

41. 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.”

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

43. Defendant Renee Smith-Faulkner used Castleberry Independent School District’s internal mail system to distribute political advertising.

44. The other Defendants authorized Defendant Renee Smith-Faulkner to use Castleberry Independent School District’s internal mail system to distribute political advertising.

45. Defendant Renee Smith-Faulkner’s distribution of political advertising in Castleberry 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).

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

## Application for Temporary Restraining Order

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

48. 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.

49. 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. With early voting in-progress, and election day rapidly approaching, the harm is not only irreparable, but imminent.

50. 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.

51. The State of Texas request 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

52. 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: 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/ Ernest C. Garcia*

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*ATTORNEYS FOR PLAINTIFF*

Cause No. \_\_\_\_\_

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MARY LOU MARTINEZ, in her official	§	In the District Court of
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Trustee for Place 5,	§	
CATHY GATICA, in her official capacity	§	
as Board Secretary and Trustee for	§	
Place 6,	§	Tarrant County, Texas
DAVID HOLDER, in his official capacity	§	
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LINDA AGUILLON, in her official	§	_____ Judicial District
capacity as Trustee for Place 4,	§	
ARIELA MARTINEZ, in her official	§	
capacity as Trustee for Place 3,	§	
RENEE SMITH-FAULKNER, in her	§	
official capacity as Superintendent of	§	
Schools, Castleberry Independent	§	
School District	§	
<i>Defendants.</i>	§	

**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 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 28<sup>th</sup> day of February, 2024.

  
\_\_\_\_\_  
Notary Public

