

Cause No. _____

THE STATE OF TEXAS, §
Plaintiff, §

v. §

BOB RHODEN, in his official capacity §
as Board President and Trustee for §
Place 2, §

BECKY RUSSELL, in her official §
capacity as Board Vice President and §
Trustee for Place 7, §

LINDA FLEMMING, in her official §
capacity as Board Secretary and Trustee §
for Place 5, §

SHELLE CASSELL, in her official §
capacity as Trustee for Place 1, §

DAVID HAWLEY, in his official §
capacity as Trustee for Place 3, §

ERIC HUNT, in his official capacity as §
Trustee for Place 4, §

SCOTT MARR, in his official capacity as §
Trustee for Place 6, §

DAVID KIRKBRIDE, in his official §
capacity as Superintendent of Schools, §

Denison Independent §
School District §

Defendants. §

In the District Court of

Grayson 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 Denison 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 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 Grayson County as the events and omissions that give rise to plaintiff's claims and request for relief occurred in Grayson 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 Bob Rhoden is Board President and Trustee for Place 2 of the Board of Trustees of the Denison Independent School District.
13. Defendant Becky Russell is Board Vice President and Trustee for Place 7 of the Board of Trustees of the Denison Independent School District.
14. Defendant Linda Flemming is Board Secretary and Trustee for Place 5 of the Board of Trustees of the Denison Independent School District.
15. Defendant Shelle Cassell is Trustee for Place 1 of the Board of Trustees of the Denison Independent School District.
16. Defendant David Hawley is Trustee for Place 3 of the Board of Trustees of the Denison Independent School District.
17. Defendant Eric Hunt is Trustee for Place 4 of the Board of Trustees of the Denison Independent School District.
18. Defendant Scott Marr is Trustee for Place 6 of the Board of Trustees of the Denison Independent School District.
19. Defendant David Kirkbride is Superintendent of Schools of the Denison Independent School District.
20. All Defendants are sued in their official capacities.
21. All Defendants may be served with process by serving David Kirkbride, Superintendent of Schools, at 1201 S. Rusk, Denison, Grayson County, Texas 75020.

Factual Background

22. In February of 2024, the Denison Independent School District webpage had the following on its main page.

Texas legislators and school leaders continue to oppose vouchers

Many public school educators and advocates saw the Texas House's vote blocking school vouchers last month as a forceful rebuke that should signal there's no path forward left for Gov. Greg Abbott's top legislative priority this year. But pro-voucher advocates, including private and religious school educators, say they will keep fighting for vouchers — both in the Texas Legislature and at the ballot. - *The Texas Tribune, December 4, 2023*

Our Grayson County Texas House of Representatives member Reggie Smith stood firm in his support of Texas public schools in each of the recent special sessions. For that, we say "thank you"!

Denison ISD encourages you to stay informed on Governor Greg Abbott's plan to use public school funds to support private educational institutions, thus under-funding public school students, teachers and district personnel.

Read the [Denison ISD Teacher Pay Resolution](#) and the [Denison ISD Voucher Resolution](#), both of which have been distributed to our local government representatives.

It truly is great to be a Yellow Jacket.

The posting above indicates support for a candidate that is on the ballot in the Republican primary election to be held on March 5, 2024. This posting also electioneers against candidates who vote in favor of school vouchers. The posting also references and provides a link to the Denison ISD Teacher Pay Resolution. Such resolution states in part as follows:

THEREFORE BE IT RESOLVED, that the Board of Trustees of the Denison Independent School District will continue to publicly oppose voucher programs by any name, including "taxpayer education savings accounts," that threaten to reduce public school funding and necessary support of our local public schools; and

RESOLVED, that the Denison ISD Board of Trustees will continue to use its influence and voice to educate our citizens about the potential pitfalls of vouchers; and

RESOLVED, that the Denison ISD Board of Trustees will continue to collaborate with community and parent organizations of like mind to support full funding and support of Texas public schools; and

The resolution electioneers against school vouchers.

Legal Background

23. The Court may enjoin Defendants' *ultra vires* action.

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 Defendants who are members of the Board of Trustees allowed Denison 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 David Kirkbride to authorize or approve the website postings 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, measures, or political parties.

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, measures, or political parties.

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. The website posted statements referenced above constitute political advertising because they are communications supporting or opposing a candidate or candidates for nomination or election to a public office that appeared in the form of written communication namely, a Denison Independent School District web page. Tex. Elec. Code. § 251.001(16)(B)(i).

35. Defendant David Kirkbride used public funds of the district—namely, the funds used to pay his salary and to operate the Denison Independent School District website or web page—to create and distribute political advertising.

36. The other Defendants authorized Defendant David Kirkbride to use public funds of the district to distribute political advertising.

37. Defendant David Kirkbride’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 of the Election Code from continuing or occurring. Tex. Elec. Code § 273.081.

Application for Temporary Restraining Order

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

40. 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.

41. 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.

42. 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.

43. 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

44. 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

Ernest C. Garcia

State Bar No. 07632400

Clayton Watkins

State Bar No. 24103982

Assistant Attorney General

Administrative Law Division

OFFICE OF THE ATTORNEY GENERAL OF TEXAS

P.O. Box 12548, Capitol Station

Austin, Texas 78711-2548

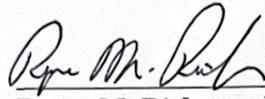
512-936-0804 • fax 512-320-0167

ernest.garcia@oag.texas.gov

clayton.watkins@oag.texas.gov

ATTORNEYS FOR PLAINTIFF

Executed in Travis County, Texas on this the 28th day of February, 2024.

A handwritten signature in black ink, appearing to read "Roger M. Richmond", written over a horizontal line.

Roger M. Richmond