

THE STATE OF TEXAS, §
Plaintiff, §

v. §

MIA PRICE, in her official capacity as §
Board President and Trustee for Place 4, §
BARBARA BURNS, in her official §
capacity as Board Vice President and §
Trustee for Place 1, §
PATRICIA SOSA-SANCHEZ, in her §
official capacity as Board Secretary and §
Trustee for Place 7, §
AMY BUNDGUS, in her official capacity §
as Trustee for Place 3, §
SHERYL ENGLISH, in her official §
capacity as Trustee for Place 2, §
CHARLES STAFFORD, in his official §
capacity as Trustee for Place 5, §
LORI TAYS, in her official capacity as §
Trustee for Place 6, §
JAMIE WILSON, in his official capacity §
as Superintendent of Schools, §
LINDSEY LUJAN, in her official §
capacity as “Director of Special §
Programs” for the Denton Independent §
School District, and the principal of §
Alexander Elementary School, *and* §
JESUS LUJAN, in his official capacity §
as the principal of Borman Elementary §
School,

In the District Court of

Denton County, Texas

_____ Judicial District

Defendants.

**Plaintiff’s Original Petition and
Request for a Temporary Restraining Order and
Temporary Injunction**

Plaintiff, the State of Texas, files this Original Petition against Defendants to enjoin their *ultra vires* spending of Denton Independent School District funds to electioneer for or against any candidate 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 190.3.

Claim for Relief

2. Paxton seeks injunctive relief prohibiting future *ultra vires* acts.
3. Paxton seeks declaratory relief.
4. Paxton does not seek monetary relief.
5. Paxton 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 and Standing

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).

Parties

9. Plaintiff is the State of Texas.

10. Defendant Mia Price is Board President and Trustee for Place 4 of the Board of Trustees of the Denton Independent School District.

11. Defendant Barbara Burns is Board Vice President and Trustee for Place 1 of the Board of Trustees of the Denton Independent School District.

12. Defendant Patricia Sosa-Sanchez is Board Secretary and Trustee for Place 7 of the Board of Trustees of the Denton Independent School District.

13. Defendant Amy Bundgus is Trustee for Place 3 of the Board of Trustees of the Denton Independent School District.

14. Defendant Sheryl English is Trustee for Place 2 of the Board of Trustees of the Denton Independent School District.

15. Defendant Charles Stafford is Trustee for Place 5 of the Board of Trustees of the Denton Independent School District.

16. Defendant Lori Tays is Trustee for Place 6 of the Board of Trustees of the Denton Independent School District.

17. Defendant Jamie Wilson is Superintendent of Schools of the Denton Independent School District.

18. Defendant Lindsey Lujan is “Director of Special Programs” for the Denton Independent School District and the principal of Alexander Elementary School, a school in the Denton Independent School District.

19. Defendant Jesus Lujan is the principal of Borman Elementary School, a school in the Denton Independent School District.

20. All Defendants are sued in their official capacities.

21. All Defendants may be served with process by serving Jamie Wilson, Superintendent of Schools, at 1307 N. Locust St., Denton, Texas 76201.

Factual Background

22. On information and belief, on February 5, 2024, Lindsay Lujan, the “Director of Special Programs” for the Denton Independent School District, and the principal of Alexander Elementary School, a school in the Denton Independent School District, sent an email from her school email address, llujan@dentonisd.org, to AlexanderAllStaff@dentonisd.org. Plaintiff believes that emails sent to this email address are forwarded to all staff at Alexander Elementary School. A copy of the email is attached as Exhibit 1.

23. The email encourages the staff of Alexander Elementary School to vote for candidates who “support public schools” and, apparently, who are against “vouchers.”

24. The email has a link to a website¹ operated by “Texans for Public Education,” which says that it is “concerned citizens that actively participate in the promotion of public education through block voting. Here you will find information about which politicians we believe have the best policies and intentions for supporting public education, its educators, and students.”² The website ranks candidates for Governor, Lieutenant Governor, Land Commissioner, Attorney General, SBOE (State Board of Education), Senate, and House as Friendly, Neutral, Not Rated, or Unfriendly.

25. The email describes the website as “a list of all candidates and whether or not the [sic] SUPPORT or OPPOSE Public School Education.” As an example, for Texas Senate District 26, which is partially in Denton County, the website lists Matthew McGhee (Democrat) and Dale Frey (Democrat) as Friendly and lists their “Blockvote Choice” as “Voter’s Choice,” Michael Braxton (Democrat) as Not Rated and lists his “Blockvote Choice” as “None,” and Cade Clark, (Republican), Brent Hagenbuch (Republican), Jace Yarbrough (Republican), and Carrei de Moor (Republican) as

¹ ratings.t4pe.org

² <https://t4pe.org/>

Unfriendly and lists their “Blockvote Choice” as “Undervote.” This page directs voters to vote for either McGhee or Frey and not to vote for Clark, Hagenbuch, Yarbrough, or de Moor.

26. On information and belief, some time before February 20, 2024, Jesus Lujan, the principal of Borman Elementary School, a school in the Denton Independent School District, sent an email from his school email address, jlujan@dentonisd.org, to BormanAllStaff. Plaintiff believes that emails sent to this email address are forwarded to all staff at Borman Elementary School. A copy of the email is attached as Exhibit 2.

27. The email encourages the staff of Borman Elementary School to vote in the Republican primary, even if the staff member is not a Republican, “for candidates who support public education and school funding.” It states that “historically, 85% of PRIMARY voters³ in TX want vouchers. That’s why it is so important that teachers and public school and funding advocates show up at the primaries.”

Legal Background

28. The Court may enjoin Defendants’ *ultra vires* action.

29. The Court may enjoin Defendants’ violations of the Election Code. Tex. Elec. Code § 273.081.

Claim One: Violation of Education Code § 11.169

30. 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.”

31. The Defendants who are members of the Board of Trustees allowed DISD employees to use funds and other resources of the district to electioneer for or against candidates when they allowed Lindsey Lujan and Jesus Lujan to create and send the

³ Presumably, the reference is to Republic primary voters.

emails (Exhibit 1, Exhibit 2) from their school email addresses to all staff members of Alexander Elementary School and Borman Elementary School at their school email addresses.

32. 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 any candidate.

33. 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 any candidate.

Claim Two: Violation of Education Code § 45.105

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

35. Nothing in Section 45.105 authorizes Defendants’ spending of public-school funds for electioneering for or against any candidate.

36. This spending of public-school funds to electioneer for or against any candidate was *ultra vires* because it is outside the scope of authority to spend public school funds only as provided by Section 45.105.

37. 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)

38. 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.”

39. The emails (Exhibit 1, Exhibit 2) constitute political advertising because they are communications supporting or opposing a candidate for nomination to a public office that appeared in a pamphlet, circular, flier, billboard or other sign, bumper

sticker, or similar form of written communication—namely, an email message. Tex. Elec. Code. § 251.001(16)(B)(i).

40. Defendants Lindsey Lujan and Jesus Lujan used public funds of the district—namely, the funds used to pay their salary and operate Alexander Elementary School’s and Borman Elementary School’s email systems—to create and distribute political advertising.

41. The other Defendants authorized Defendants Lindsey Lujan and Jesus Lujan to use public funds of the district to distribute political advertising.

42. Defendants Lindsey Lujan and Jesus Lujan’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).

43. Unless enjoined, Defendants will continue to act without legal authority in their use of public funds of the district for political advertising.

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

44. 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.”

45. The emails (Exhibit 1, Exhibit 2) constitute political advertising because they are communications supporting or opposing a candidate for nomination to a public office that appeared in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication—namely, an email message. Tex. Elec. Code. § 251.001(16)(B)(i).

46. Defendants Lindsey Lujan and Jesus Lujan used DISD’s internal mail system to distribute political advertising.

47. The other Defendants authorized Defendants Lindsey Lujan and Jesus Lujan to use DISD's internal mail system to distribute political advertising.

48. Defendants Lindsey Lujan and Jesus Lujan's distribution of political advertising in DISD'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).

49. Unless enjoined, Defendants will continue to act without legal authority by using DISD's internal mail system to distribute political advertising.

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.
- 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 sending emails 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.
- 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 sending emails 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.
- 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 sending emails containing electioneering or political advertising.

Dated: February 22, 2024.

Respectfully submitted,

KEN PAXTON
Attorney General

BRENT WEBSTER
First Assistant Attorney General

JAMES LLOYD
Deputy Attorney General for Civil Litigation

ERNEST GARCIA
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/s/ Ernest C. Garcia
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ATTORNEYS FOR PLAINTIFF

EXHIBIT 1

• From: Lujan, Lindsay P <lujjan@dentonisd.org>
Sent: Monday, February 5, 2024 8:00 AM
To: AlexanderAllStaff <AlexanderAllStaff@dentonisd.org>
Subject: Are YOU Registered to VOTE?

Panthers,

The Republican Primary is coming up! Please make sure you are registered to vote, so that you may go vote!

"If Texas educators do not come together & vote on the candidate that will support public schools, we are in trouble. We cannot wait. Billions of \$\$ sitting there holding us hostage, for vouchers. Districts adopting deficit budgets across the state while politics are played" – Brian Bowman, Superintendent of Schools, Diboll ISD

The Texas Legislature has not increased the public school allotment per student since 2019, even with inflation going up! No school in Texas, including Denton ISD will NOT be able to provide raises next year if legislation doesn't change!

We need to do our part for our Texas Public Schools! Here is a list of all candidates and whether or not the **SUPPORT** or **OPPOSE** Public School Education. <https://ratings.t4pe.org/>

February 21st and 26th (& more if needed), we will provide coverage for ALL Borman employees to go and vote in the Texas Republican Primary. Our goal is 100% of Borman employees voting, because it is THAT important! Below is the sign-up. Please choose a time that works for you. We have allotted 30 minutes, and a map of the UNT Gateway Center Voting Location below. This voting location is closest in proximity to Borman, and should allow for completion during the 30 minute window. If you do not need coverage, or if you are going on your own time, please do not use the sign-up below. Thank you!

[Alexander Elementary Voting/Coverage Schedule](#)

EXHIBIT 2



○ Lujan, Jesus <jlujan@dentonisd.org>

Yesterday at 10:09 AM

To: BormanAllStaff

🔔 This message is high priority.

Please make sure to sign up to go **VOTE!** 😊 The Gateway Center is only 5 minutes away. We will find coverage for you to have 30 minutes to go **VOTE!** 😊

Voting in Republican Primaries is especially important because the **votes** cast in primaries inform issues that the party will prioritize. Since TX tends to always elect a Republican, we want to inform the party through our primary **votes** which issues we care about the most and how we feel about them. Thus, **vote** for candidates who support public education and school funding in the Republican primaries, no matter what your party affiliation is, Republican or Democrat. Consider thinking from a “**purple**” mindset in future elections, voting for the candidate that will support public ed and funding in the future, despite their party affiliation.

Early Voting Dates: Feb 20 - March 1

Election Day: March 5th

Please know that historically, 85% of PRIMARY voters in TX want vouchers. That’s why it is so important that teachers and public school and funding advocates show up in the primaries.

3 Important Key Concepts to move forward with:

1. Awareness - Be aware of the critical issues. Make others aware!
2. Urgency - Help others understand WHY these issues are important and critical.
3. Advocacy - Keep making others aware of importance!

Thank you,

Jesús Luján, M. Ed.

Head of School/Principal, Borman Elementary

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Achiever | Significance | Relator | Command | Competition