

CAUSE NO. 366-04404-2014

COLLIN COUNTY REPUBLICAN PARTY and JODIE LAUBENBERG,	§	IN THE DISTRICT COURT
	§	
Plaintiffs (Consolidated)	§	
	§	
vs.	§	366 th JUDICIAL DISTRICT
	§	
LOVEJOY ISD and TED MOORE,	§	
In his official capacity as Superintendent of Lovejoy ISD,	§	
	§	
Defendants (Consolidated)	§	COLLIN COUNTY, TEXAS

PLAINTIFF COLLIN COUNTY REPUBLICAN PARTY'S SUPPLEMENTAL ORIGINAL PETITION AND APPLICATION FOR INJUNCTIVE RELIEF

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES the Collin County Republican Party (referred to as "CCGOP"), a Plaintiff herein, and files its Supplemental Original Petition and Application for Injunctive Relief as follows:

I.

Original Petition and Application for Temporary Restraining Order and Temporary Injunction

1. CCGOP's Original Petition and Application for Temporary Restraining Order and Temporary Injunction was filed on November 4, 2014, with the 417th Judicial District Court in Cause No. 417-54411-2014 (originally bench-filed as 417-11414-1). This pleading was served upon counsel for Defendants, Dennis Eichelbaum, prior to its filing in accordance with the Texas Rules of Civil Procedure.

2. By agreement, Mr. Eichelbaum accepted service of CCGOP's pleading by fax and e-mail.

3. The CCGOP's Application for Temporary Restraining Order was heard by the Hon. Cynthia Wheless on November 4, 2014, in a hearing in which Mr. Eichelbaum, attorney for Defendants, participated by telephone. The Court thereafter entered its Temporary Restraining Order, setting the hearing on the temporary injunction before the Court for November 17, 2014, at 10:00 A.M.

4. On November 5, 2014, CCGOP's Original Petition and Application was consolidated into a case filed by Plaintiff Jodi Laubenberg in the 366th Judicial District Court, in which she also obtained a temporary restraining order against Defendant Lovejoy ISD, and is set for hearing on November 17, 2014, at 9:00 A.M. before this Court.

II.

Parties and Service

5. Plaintiff CCGOP sued both Defendants. Service upon both Defendants was accomplished on November 4, 2014, by service of the pleading and the signed Temporary Restraining Order by agreement upon Dennis Eichelbaum, attorney for Defendants, by fax and e-mail. Furthermore, Defendants were formally served on November 5, 2014, by citation, temporary restraining order, and notice of hearing delivered by constable. No answer has been filed in the original case in the 417th Judicial District Court.

III.

Supplemental Causes of Action

6. Plaintiff CCGOP's Original Petition and Application for Temporary Restraining Order and Temporary Injunction filed on November 4, 2014, is referenced and incorporated by reference herein. The grounds for relief stated in that Petition are based upon violations by Defendants of TEX. ELEC. CODE §61.003(a), *et al.* This is the codification of HB 259, passed

by the last legislature and relied upon by Plaintiff Laubenberg in her petition. The further allegations of this pleading are intended to supplement the grounds stated in CCGOP's Original Petition.

7. Defendants' actions described in Plaintiff CCGOP's Original Petition, in addition to constituting a violation of the Texas Election Code, also violate Plaintiff CCGOP's rights to free speech under the First Amendment to the United States Constitution and under Article I, Section 8, of the Texas Constitution. Plaintiff CCGOP is entitled to a temporary and permanent injunction enjoining Defendants from taking those actions and enforcing those policies described in Plaintiff CCGOP's Original Petition and in the Temporary Restraining Order issued by the 417th Judicial District Court.

8. Furthermore, Plaintiff CCGOP is entitled to a declaration under the Texas Declaratory Judgment Act that Defendants' policy and actions taken pursuant to that policy did violate and, if exercised in the future through the same or similar policies or actions, will violate both the Election Code and Plaintiff's political free speech rights. Pursuant to the Texas Declaratory Judgment Act, Plaintiff CCGOP is entitled to recover reasonable and necessary attorney's fees incurred in this matter in an amount deemed equitable by this Court. Plaintiff CCGOP requests an award of reasonable and necessary attorney's fees incurred with respect to this matter in such amount as may be awarded by the Court in excess of its minimum jurisdictional limits.

9. Upon information and belief, Plaintiff CCGOP believes that Defendants may have adopted a new form of policy after Plaintiff obtained its temporary restraining order but before the hearing on Plaintiff's application for temporary injunction. If so, it is presumed that Defendants may assert that such new or revised policy allegedly resolves the conflict of the

current policy with free speech rights and with the Texas Election Code. As a result, Defendants may raise a defense of mootness (or similar defenses), arguing that a temporary and/or permanent injunction is unnecessary as a result of changed circumstances. However, the policy which is created today can be uncreated tomorrow, and without a temporary and permanent injunction enjoining Defendants from violating the Texas Election Code and Plaintiff's free speech rights, there is a realistic possibility, given the Defendants' hostility to compliance with the Texas Election Code and the rights of Plaintiff CCGOP to political speech, particularly at early voting and regular voting election time, that Plaintiff CCGOP will be back in Court seeking injunctive relief of the same type in 2016. The instant case is the type of situation which is an exception to the mootness doctrine, because the actions of Defendants are capable of repetition, yet evading review. In such circumstances, notwithstanding the efforts of Defendants to avoid the entry of an injunction, a temporary and permanent injunction against future violations of the Texas Election Code and Plaintiff CCGOP's rights is not only appropriate in the circumstances, it is necessary.

WHEREFORE, PREMISES CONSIDERED, Plaintiff Collin County Republican Party prays that, upon trial hereof, it have a declaration of its free speech rights with respect to electioneering authorized by the Texas Election Code with respect to polling places under the supervision or control of Defendants; that it have and recover a temporary and permanent injunction against Defendants Lovejoy ISD and Ted Moore, in his capacity as Superintendent of the Lovejoy ISD, restraining and prohibiting Defendants from directly or indirectly:

1. Adopting any form of policy which effectually denies Plaintiff and candidates for political office the right to post campaign signs in the ground at polling places in violation of the Texas Election Code, Section 61.003, as same may be renumbered, recodified, and amended;

2. Enforcing any form of policy which effectually denies Plaintiff and candidates for political office the right to post campaign signs in the ground at polling places in violation of the Texas Election Code, Section 61.003, as same may be renumbered, recodified, and amended; and

3. Removing, destroying, or defacing campaign signs in the ground at polling places in violation of the Texas Election Code, Section 61.003, as same may be renumbered, recodified, and amended;

that it have and recover from Defendants its reasonable and necessary attorney's fees incurred in the prosecution of this action in excess of this Court's minimum jurisdictional limits; that it have and recover from Defendants costs of Court; and that it have and recover from Defendants such other and further relief, general and special, at law and in equity, to which Plaintiff may show itself justly entitled.

Respectfully submitted,

/s/ George B. Flint

George B. Flint
State Bar No. 07150050

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Certificate of Service

I hereby certify that on November 14, 2014, a true and correct copy of the foregoing pleadings was served upon Dennis J. Eichelbaum, attorney for Defendants, by e-mail to deichelbaum@edklaw.com and by fax to 972-377-7277, and upon Ron D. Hinds, attorney for Plaintiff Jodie Laubenberg, by e-mail to rdhinds@verizon.net.

/s/ George B. Flint

George B. Flint

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REGISTER OF ACTIONS

CASE NO. 366-04411-2014

Collin County Republican Party vs. Lovejoy ISD and Ted Moore In his official capacity as Superintendent of Lovejoy ISD

§
§
§
§
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§

Case Type: All Other Civil Cases
Date Filed: 11/05/2014
Location: 366th District Court
Case Number History: 417-04411-2014

PARTY INFORMATION

Defendant	Lovejoy ISD	Lead Attorneys Pro Se
Defendant	Moore, Ted	Pro Se
Plaintiff	Collin County Republican Party	George B Flint Retained 972-424-4004(W)

EVENTS & ORDERS OF THE COURT

OTHER EVENTS AND HEARINGS			
11/04/2014	<u>Plaintiff's Original Petition (OCA) \$283.00</u>		
	<i>Plaintiff's Original Petition and Application for Temporary Restraining Order and Temporary Injunction</i>		
11/04/2014	<u>Temporary Restraining Order</u>		
11/05/2014	<u>Request for Citation \$8.00</u>		
11/05/2014	<u>Request for Temporary Injunction \$8.00</u>		
11/05/2014	<u>Citation</u>		
	Lovejoy ISD	Served	11/05/2014
	Moore, Ted	Served	11/05/2014
11/05/2014	<u>Temporary Injunction</u>		
	Lovejoy ISD	Served	11/05/2014
	Moore, Ted	Served	11/05/2014
11/05/2014	<u>Court Admin - Mailed Notice</u>		
	<i>Notice sent advising that case is being consolidated with 366-04404-2014 and will be heard on 11/17/14 at 9:00 a.m. in the 366th JDC.</i>		
11/05/2014	<u>Administrative Order</u>		
	<i>Case transferred to 366th</i>		
11/14/2014	<u>Request for Copies \$</u>		
11/17/2014	<u>Temporary Restraining Order Hearing</u> , (10:00 AM) (Judicial Officer Wheless, Cynthia M)		
	<i>SPECIAL SET</i>		

FINANCIAL INFORMATION

	Plaintiff Collin County Republican Party		
	Total Financial Assessment		316.00
	Total Payments and Credits		316.00
	Balance Due as of 11/14/2014		0.00
11/05/2014	Transaction Assessment		283.00
11/05/2014	Payment	Receipt # DC-88331-2014	Collin County Republican Party (283.00)
11/05/2014	Transaction Assessment		16.00
11/05/2014	Transaction Assessment		16.00
11/05/2014	Payment	Receipt # DC-88372-2014	Collin County Republican Party (32.00)
11/14/2014	Transaction Assessment		1.00
11/14/2014	Payment	Receipt # DC-92355-2014	Kelci Bailey (1.00)