

IN THE DISTRICT COURT, ^{417~~th~~} JUDICIAL DISTRICT
COLLIN COUNTY, TEXAS

COLLIN COUNTY REPUBLICAN PARTY, Plaintiff,

Vs.

LOVEJOY ISD and TED MOORE,
In his official capacity as
Superintendent of Lovejoy ISD,
Defendant

No. 417-11414-1

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FILED
CYNTHIA WHELESS
JUDGE
417th DISTRICT COURT
COLLIN COUNTY, TX
C. Wheeler
11/14/14

**Plaintiff's Original Petition and Application for
Temporary Restraining Order and Temporary Injunction**

HONORABLE JUDGE OF THIS COURT:

NOW COMES COLLIN COUNTY REPUBLICAN PARTY, Plaintiff herein, and files this its Plaintiff's Original Petition and Application for Temporary Restraining Order, complaining of LOVEJOY ISD, and TED MOORE, in his official capacity as Superintendent of Lovejoy ISD, Defendant herein, and in support hereof would show the Court as follows:

PARTIES
I.

Plaintiff is an entity, represented by the county party chairman, George Flint, a resident and clearly qualified elector of the State of Texas and Collin County. Defendants are an entity and the individual charged with executing the policies for the entity and they reside in the State of Texas and Collin County. Defendants may be properly served with process at their place of business, Lovejoy Independent School District, 259 Country Club Road, Allen, Collin County, Texas, 75002.

process at their place of business, Lovejoy Independent School District, 259 Country Club Road, Allen, Collin County, Texas, 75002.

JURISDICTION

II.

This court has jurisdiction over this cause of action pursuant to TEX. ELECTION CODE § 61.003.

VENUE

III.

Defendant is a resident of Collin County, Texas, and this cause of action arose in Collin County, Texas, and therefore venue is proper pursuant to TEX. CIV. PRAC. & REM. CODE ANN. SEC. 15.002 (Vernon 1986).

CAUSE OF ACTION

IV.

Texas Election Code, Section 61.003(a-1) states that an “entity that owns or controls a public building being used as a polling place may not, at any time during the voting period, prohibit electioneering on the building’s premises outside of the area described in Subsection (a), but may enact reasonable regulations concerning the time, place, and manner of electioneering.” TEX. ELEC. CODE SEC. 61.003(a-1). Subsection (a) of Section 61.003 defines the area in which electioneering and loitering is prohibited as “within 100 feet of an outside door through which a polling place is located.” TEX. ELEC. CODE SEC. 61.003(a). Section 61.003(b)(1) defines electioneering as including “the posting, use, or distribution of political signs or literature.” TEX. ELEC. CODE SEC. 61.003(b)(1).

Lovejoy ISD Policy GKDA (Local) states that, “Political campaign signs, cards, posters, and other similar materials shall not be posted or placed on any District property,

including sites designated as polling places.” LOVEJOY ISD BOARD POLICY MANUAL GDKA (LOCAL) at 2. (Exhibit “A”).

Lovejoy ISD’s blanket prohibition on the posting of political signs on District property used as a polling place is facially invalid as a violation of Section 61.003(a-1), Election Code. As a blanket prohibition, it is not, by definition a “reasonable restriction concerning the time, place, and manner of electioneering,” because it prohibits lawful electioneering (the posting, use or distribution of political signs) outside the 100 ft marker during the voting period.

Additionally, as shown in the affidavit of Eric Opiela, c.ounsel for the Republican Party of Texas and its county party, the Collin County Republican Party (attached hereto as Exhibit “B” and incorporated herein by reference for all purposes), the Lovejoy ISD Superintendent Ted Moore, acting by and through his assistant, Cindy Booker, has ordered the removal of political signs lawfully posted on school district property during the voting period outside the 100 foot zone where electioneering is prohibited. On Tuesday, November 4, 2014, candidates representing the Republican Party of Collin County and the Republican Party of Texas lawfully placed signs on district property at the Lovejoy High School Polling Location, and had those signs unlawfully removed by district personnel at the direction of Ms. Booker. State Representative Jody Laubenberg notified counsel for the Republican Party of Texas and the Office of the Texas Secretary of State, who both contacted Ms. Booker and sought voluntary compliance with the law by re-placement of the signs that were unlawfully removed. Despite the demands of counsel for the Republican Party of Texas and the Collin County Republican Party, and the advice of the Secretary of State Elections Division, Lovejoy ISD has notified counsel Republican Party of Texas and the Collin County Republican Party that it will continue to enforce Lovejoy ISD Policy GKDA(Local), and

unlawfully remove signs legally placed on district policy for the duration of the voting period on November 4, 2014.

The continued enforcement of Lovejoy ISD Policy GDKA (Local) and unlawful removal of legally posted political signs during the voting period will cause Plaintiff irreparable harm as it prohibits lawful electioneering by candidates of Plaintiff and the Republican Party of Texas, for which it has no adequate remedy at law.

V.

Traditional sanctions and remedies at law are ineffective for Election Day violations. Plaintiff asserts that he is entitled to enforcement of the election laws today and Defendant cannot be allowed to delay any longer the lawful process of the General Election.

The relief this Court can and should grant can only be effective if granted immediately, without notice or hearing. In that connection, Plaintiff would point out:

- (a) that the facts and the law are such that Plaintiff's likelihood of prevailing on the merits of this controversy is overwhelmingly high;
- (b) that no harm or prejudice will accrue to Defendant or anyone else if the relief prayed for is granted and Defendant is required to conduct the election in accordance with the provisions of the Texas Election Code, and irreparable harm will result to the Plaintiff and public if the Defendant is not restrained;
- (c) that the public interest lies in granting the relief sought by Plaintiff; and
- (d) that no bond or other security should be required as a prerequisite to relief, since no monetary loss, damage, or interest is at stake or could accrue to the Defendant by reason of the granting of such relief.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that this Court issue forthwith a Temporary Restraining Order without bond or security, to issue without notice, restraining and enjoining Defendant and any and all persons acting for or in concert with him/her or as his/her successor or subordinate in the event of his/her resignation, removal or absence, from:

1. Enforcing Lovejoy ISD Board Policy GDKA (Local), and its associated blanked prohibition on posting political signs at polling locations: "Political campaign signs, cards, posters, and other similar materials shall not be posted or placed on any District property, including sites designated as polling places."

2. Unlawfully removing political signs lawfully placed by candidates or campaigns in accordance with Section 61.003, Election Code.

Plaintiff further prays for temporary injunctive relief after due notice and hearing and for such other and further relief, general and special, at law or in equity, to which Plaintiff shows himself justly entitled.

Respectfully submitted,

THE FLINT FIRM, PC

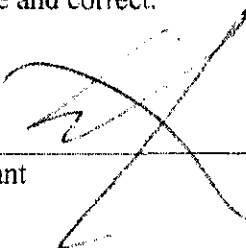
BY: 

George B. Flint
State Bar No. 07150050
16970 Dallas Pkwy, Suite 550
Dallas, TX 75248
972-424-4004
972-509-4805

Verification

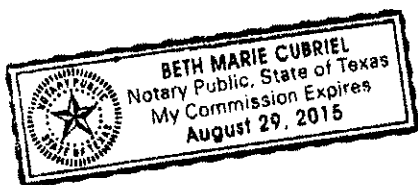
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §


BEFORE ME, a Notary Public in and for the State of Texas, on this day personally appeared Erica Piccia, to me well known to be a credible person of lawful age and qualified in all respects to make this affidavit, who being first duly sworn, on oath says, that he has read the foregoing Application for Temporary Restraining Order and Injunctive Relief, he has personal knowledge of all the facts contained in such Application, and that such Application and every statement and allegation thereof are true and correct.



Affiant

SUBSCRIBED and SWORN TO BEFORE ME by the said Erica Piccia on this 4th day of November, 2014, to certify which witness my hand and seal of office.





Notary Public, State of Texas

NONSCHOOL USE OF SCHOOL FACILITIES
DISTRIBUTION OF NONSCHOOL LITERATURE

GKDA
(LOCAL)

DISTRIBUTION OF
NONSCHOOL
LITERATURE
PERMITTED

Written or printed materials, handbills, photographs, pictures, films, tapes, or other visual or auditory materials not sponsored by the District or by a District-affiliated school-support organization shall not be sold, circulated, distributed, or posted on any District premises by any District employee or by persons or groups not associated with the District, except in accordance with this policy.

The District shall not be responsible for, nor shall the District endorse, the contents of any nonschool literature distributed on any District premises.

[See CPAB regarding use of the District's internal mail system and FNAA regarding distribution of nonschool literature by students]

LIMITATIONS ON
CONTENT

Nonschool literature shall not be distributed on District property if:

1. The materials are obscene, vulgar, or otherwise inappropriate for the age and maturity of the audience.
2. The materials endorse actions endangering the health or safety of students.
3. The materials promote illegal use of drugs, alcohol, or other controlled substances.
4. The distribution of such materials would violate the intellectual property rights, privacy rights, or other rights of another person.
5. The materials contain defamatory statements about public figures or others.
6. The materials advocate imminent lawless or disruptive action and are likely to incite or produce such action.
7. The materials are hate literature or similar publications that scurrilously attack ethnic, religious, or racial groups or contain content aimed at creating hostility and violence, and the materials would materially and substantially interfere with school activities or the rights of others.
8. There is reasonable cause to believe that distribution of the nonschool literature would result in material and substantial interference with school activities or the rights of others.

PRIOR REVIEW

All nonschool literature intended for distribution on school campuses or other District premises under this policy shall be submitted to the Superintendent for prior review in accordance with the following:

1. Materials shall include the name of the person or organization sponsoring the distribution.

NONSCHOOL USE OF SCHOOL FACILITIES
DISTRIBUTION OF NONSCHOOL LITERATURE

GKDA
(LOCAL)

2. Using the standards found in this policy at LIMITATIONS ON CONTENT, the Superintendent shall approve or reject submitted materials within two school days of the time the materials were received.

EXCEPTIONS TO
PRIOR REVIEW

Prior review shall not be required for distribution of nonschool literature in the following circumstances:

1. Distribution of materials by an attendee to other attendees at a school-sponsored meeting intended for adults and held after school hours;
2. Distribution of materials by an attendee to other attendees at a community group meeting held in accordance with GKD(LOCAL) or a noncurriculum-related student group meeting held in accordance with FNAB(LOCAL); or
3. Distribution for electioneering purposes during the time a school facility is being used as a polling place in accordance with state law [see BBB].

All nonschool literature distributed under these exceptions shall be removed from District property immediately following the event at which the materials were distributed.

Even when prior review is not required, all other provisions of this policy shall apply.

PROHIBITION ON
SIGNS

Political campaign signs, cards, posters, and other similar materials shall not be posted or placed on any District property, including sites designated as polling places.

TIME, PLACE,
AND MANNER
RESTRICTIONS

The Superintendent shall designate times, locations, and means for distribution of nonschool literature at District facilities, in accordance with this policy.

VIOLATIONS OF
POLICY

Failure to comply with this policy regarding distribution of non-school literature shall result in appropriate administrative action, including but not limited to confiscation of nonconforming materials and/or suspension of use of District facilities. Appropriate law enforcement officials may be called if a person refuses to comply with this policy or fails to leave the premises when asked. [See GKA]

APPEALS

Decisions made by the administration in accordance with this policy may be appealed in accordance with the appropriate District complaint policy. [See DGBA or GF]

Exhibit "B", AFFIDAVIT OF ERIC OPIELA

State of Texas §

County of Travis §

BEFORE ME, the undersigned authority, personally appeared Eric Opiela, a person known to me or identified to me by his Texas drivers license, who upon his oath stated:

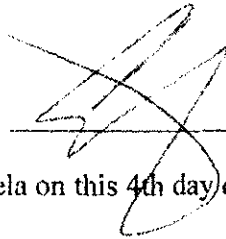
"I, Eric Opiela, swear that all the factual statements made in this Affidavit are in all things true and correct. My title and address are: Associate General Counsel, Republican Party of Texas, 1108 Lavaca, Suite 500, Austin, Texas, 78701. The telephone number at the Republican Party of Texas is 512-477-9821. I have personal knowledge of the statements made in this Affidavit, and am fully and legally capable of making this Affidavit.

"I am an associate general counsel for the Republican Party of Texas. I received news that Jodie Laubenberg's campaign signs for State Representative for House District 89 were being removed from the polling place at the Lovejoy High School polling location. I attempted to resolve the problem by contacting the Lovejoy Independent School District's Superintendent and the staff of the Lovejoy High School to inform them of the Texas Election Code provision that specifically allows campaign signs at polling locations. I was informed by Cindy Booker, assistant to Ted Moore, Lovejoy ISD Superintendent, that the District has a policy GDKA (Local) prohibiting the posting of campaign signs on their property, and that until ordered by a Court otherwise, the District would continue to remove lawfully placed political signs at the Lovejoy High School polling location."

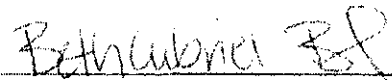
"I also spoke with Keith Ingram, Director of Elections for the Texas Secretary of State, who informed me that his office had similarly advised Ms. Booker that enforcement of Policy GDKA (Local) was inadvisable."

"During the last legislative session, I assisted in the passage for House Bill 259, authored by State Representative Ron Simmons, a portion of which is now Texas Election Code § 61.003. This law was proposed because there were issues statewide with polling locations at courthouses, schools, and other public buildings, prohibiting the posting of campaign signs. Frequently, staff from those buildings would physically remove the signs at the polling place. House Bill 259 was passed to prevent exactly what is happening at Lovejoy High School from occurring.

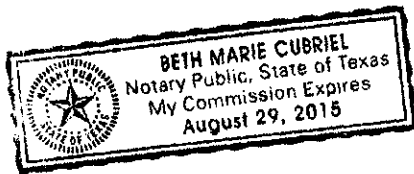
"Further affiant sayeth not."



SWORN AND SUBSCRIBED by Eric Opiela on this 4th day of November, 2014, to witness which my hand and official seal of office.



Notary Public in and for the State of Texas



Order

On the 4th day of November, 2014, this Court heard the application of COLLIN COUNTY REPUBLICAN PARTY, Plaintiff, for a temporary restraining order and other relief, upon the Plaintiff's verified petition, with / without notice to the Defendant(s), LOVEJOY ISD and TED MOORE, in his official capacity as Superintendent; and the Court having considered the facts set forth in said verified petition (and the affidavit(s) attached hereto as exhibit(s)) finds:

1. That no adequate remedy at law exists;
2. That the General Election process is still in progress at this time;
3. That immediate and irreparable harm, loss and injury will result to Plaintiff if Defendant is not restrained and enjoined from doing the acts set forth herein;
4. That Defendant seeks to enforce Lovejoy ISD Policy GDKA (Local) which prohibits the posting of political signs at polling places in violation of Section 61.003, Election Code.
5. That Lovejoy ISD Policy GDKA (Local)'s blanket prohibition on posting political signs at polling places is prohibited by Section 61.003(a-1) and is not a reasonable regulation concerning time, place and manner of electioneering as contemplated by Section 61.001(a-1), and is unenforceable.
6. That unless restrained and enjoined, Defendant will continue to commit and permit such violation and irregularities; and
7. That no bond or other security is required.

IT IS, THEREFORE, ORDERED, that Defendant _____, and any and all persons acting for or in active concert and participation with him/her, be hereby, restrained from:

1. Enforcing Lovejoy ISD Board Policy GDKA (Local), and its associated blanked prohibition on posting political signs at polling locations: "Political campaign signs, cards, posters, and other similar materials shall not be posted or placed on any District property, including sites designated as polling places."
2. Unlawfully removing political signs lawfully placed by candidates or campaigns in accordance with Section 61.003, Election Code.

and is further ORDERED that the Plaintiff's application for Temporary Injunction is hereby set for hearing on _____, 2014, at _____ a.m./p.m., in the _____ Judicial District Court, Collin County, Texas, and the Temporary Restraining Order herein granted shall remain operative until and pending said hearing and the further order of this Court.

It is further ORDERED that a copy of this notice and order, together with a copy of the Petition, be served on the Defendant forthwith by Plaintiff or his agent or by the Sheriff or any Constable, Deputy Sheriff or Deputy Constable of Collin County, Texas.

SIGNED this ____ day of _____, 2014.

JUDGE PRESIDING

Order

On the 4th day of November, 2014, this Court heard the application of COLLIN COUNTY REPUBLICAN PARTY, Plaintiff, for a temporary restraining order and other relief, upon the Plaintiff's verified petition, with / without notice to the Defendant(s), LOVEJOY ISD and TED MOORE, in his official capacity as Superintendent; and the Court having considered the facts set forth in said verified petition (and the affidavit(s) attached hereto as exhibit(s)) finds:

1. That no adequate remedy at law exists;
2. That the General Election process is still in progress at this time;
3. That immediate and irreparable harm, loss and injury will result to Plaintiff if Defendant is not restrained and enjoined from doing the acts set forth herein;
4. That Defendant seeks to enforce Lovejoy ISD Policy GDKA (Local) which prohibits the posting of political signs at polling places in violation of Section 61.003, Election Code.
5. That Lovejoy ISD Policy GDKA (Local)'s blanket prohibition on posting political signs at polling places is prohibited by Section 61.003(a-1) and is not a reasonable regulation concerning time, place and manner of electioneering as contemplated by Section 61.001(a-1), and is unenforceable.
6. That unless restrained and enjoined, Defendant will continue to commit and permit such violation and irregularities; and
7. That no bond or other security is required.

IT IS, THEREFORE, ORDERED, that Defendant _____, and any and all persons acting for or in active concert and participation with him/her, be hereby, restrained from:

1. Enforcing Lovejoy ISD Board Policy GDKA (Local), and its associated blanked prohibition on posting political signs at polling locations: "Political campaign signs, cards, posters, and other similar materials shall not be posted or placed on any District property, including sites designated as polling places."
2. Unlawfully removing political signs lawfully placed by candidates or campaigns in accordance with Section 61.003, Election Code.

and is further ORDERED that the Plaintiff's application for Temporary Injunction is hereby set for hearing on _____, 2014, at _____ a.m./p.m., in the _____ Judicial District Court, Collin County, Texas, and the Temporary Restraining Order herein granted shall remain operative until and pending said hearing and the further order of this Court.

It is further ORDERED that a copy of this notice and order, together with a copy of the Petition, be served on the Defendant forthwith by Plaintiff or his agent or by the Sheriff or any Constable, Deputy Sheriff or Deputy Constable of Collin County, Texas.

SIGNED this ____ day of _____, 2014.

JUDGE PRESIDING

417-11414-1

Order

On the 4th day of November, 2014, this Court heard the application of COLLIN COUNTY REPUBLICAN PARTY, Plaintiff, for a temporary restraining order and other relief, upon the Plaintiff's verified petition, with / without notice to the Defendant(s), LOVEJOY ISD and TED MOORE, in his official capacity as Superintendent; and the Court having considered the facts set forth in said verified petition (and the affidavit(s) attached hereto as exhibit(s)) finds:

1. That no adequate remedy at law exists;
2. That the General Election process is still in progress at this time;
3. That immediate and irreparable harm, loss and injury will result to Plaintiff if Defendant is not restrained and enjoined from doing the acts set forth herein;
4. That Defendant seeks to enforce Lovejoy ISD Policy GDKA (Local) which prohibits the posting of political signs at polling places in violation of Section 61.003, Election Code.
5. That Lovejoy ISD Policy GDKA (Local)'s blanket prohibition on posting political signs at polling places is prohibited by Section 61.003(a-1) and is not a reasonable regulation concerning time, place and manner of electioneering as contemplated by Section 61.001(a-1), and is unenforceable.
6. That unless restrained and enjoined, Defendant will continue to commit and permit such violation and irregularities; and
7. That no bond or other security is required.

IT IS, THEREFORE, ORDERED, that Defendant _____, and any and all persons

*Lovejoy ISD and Ted Moore
In his official capacity
as
superintendent
of
Lovejoy
ISD,
Defendant*

acting for or in active concert and participation with him/her, be hereby, restrained from:

1. Enforcing Lovejoy ISD Board Policy GDKA (Local), and its associated blanked prohibition on posting political signs at polling locations: "Political campaign signs, cards, posters, and other similar materials shall not be posted or placed on any District property, including sites designated as polling places."
2. Unlawfully removing political signs lawfully placed by candidates or campaigns in accordance with Section 61.003, Election Code.

and is further ORDERED that the Plaintiff's application for Temporary Injunction is hereby set for hearing on 17th of November 2014, at 10:00 (a.m.) p.m., in the 417th Judicial District Court, Collin County, Texas, and the Temporary Restraining Order herein granted shall remain operative until and pending said hearing and the further order of this Court Order shall remain in effect until November 17, 2014.

It is further ORDERED that a copy of this notice and order, together with a copy of the Petition, be served on the Defendant forthwith by Plaintiff or his agent or by the Sheriff or any Constable, Deputy Sheriff or Deputy Constable of Collin County, Texas.

SIGNED this 4th day of Nov, 2014.



JUDGE PRESIDING



**Cynthia M Wheless, Judge Presiding
417th District Court
COLLIN COUNTY, MCKINNEY TEXAS**

LOVEJOY ISD
259 COUNTRY CLUB RD
ALLEN TX 75002

Date:	November 05, 2014
RE:	Cause No. 417-04411-2014
	Collin County Republican Party vs. Lovejoy ISD and Ted Moore In his official capacity as Superintendent of Lovejoy ISD

Please be advised, the above styled case is being consolidated with Cause # 366-04404-2014 and will be heard in the 366th Judicial District Court which is set for:

Date November 17, 2014
Time 9:00 AM
Event Temporary Restraining Order Hearing
Court 366th District Court

Sincerely,

Todd Hill, Court Coordinator



**Cynthia M Wheless, Judge Presiding
417th District Court
COLLIN COUNTY, MCKINNEY TEXAS**

TED MOORE 259 COUNTRY CLUB ROAD ALLEN TX 75002

Date:	November 05, 2014
RE:	Cause No. 417-04411-2014
	Collin County Republican Party vs. Lovejoy ISD and Ted Moore In his official capacity as Superintendent of Lovejoy ISD

Please be advised, the above styled case is being consolidated with Cause # 366-04404-2014 and will be heard in the 366th Judicial District Court which is set for:

Date November 17, 2014
Time 9:00 AM
Event Temporary Restraining Order Hearing
Court 366th District Court

Sincerely,

Todd Hill, Court Coordinator



Ray Wheless, Judge Presiding
366th District Court
COLLIN COUNTY, MCKINNEY TEXAS

LOVEJOY ISD
259 COUNTRY CLUB RD
ALLEN TX 75002

Date:	November 05, 2014
RE:	Cause No. 366-04404-2014
	Jodie Laubenberg v Lovejoy ISD

Please be advised, the above styled case is being consolidated with Cause # 417-04411-2014 and will be heard in the 366th Judicial District Court which is set for:

Date November 17, 2014
Time 9:00 AM
Event Temporary Injunction
Court 366th District Court

Sincerely,

Todd Hill, Court Coordinator

Collin County Courthouse, 2100 Bloomdale Road, McKinney, Texas 75071

Check case and calendar information online at: www.co.collin.tx.us/district_courts