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CAUSE NO. DC-25-09345

BRIAN MORROW, ET. AL,	§	**IN THE DISTRICT COURT OF**
	§	
Plaintiffs,	§	
	§	
V.	§	**DALLAS COUNTY, TEXAS**
	§	
RANDY SCHACKMANN, ET. AL,	§	
	§	
Defendants,	§	**95th JUDICIAL DISTRICT**

PLAINTIFFS' FIRST SUPPLEMENTAL PLEADING TO THE ORIGINAL PETITION FOR REMOVAL AND APPLICATION FOR INJUNCTIVE RELIEF

TO THE HONORABLE DISTRICT COURT JUDGE:

Plaintiffs Brian Morrow, Lisa Sutter, Nelly Shankle, Venus Basaran, Nicole Yarbrough, Amanda Nauert, Aaron Nauert, Iris Moore, Tierney Gonzalez, Jacob Gonzalez, Candace Valenzuela, Thomas Mendez, and Katherine E. Hughey, (collectively, "Plaintiffs"), file this *Plaintiffs' First Supplement Pleading to Plaintiffs' Original Petition for Removal and Application for Injunctive Relief,* against Defendants Randy Schackmann, Kim Brady, Cassandra Hatfield, Ileana Garza-Rojas, and Marjorie Barnes, in their official capacities as members of the Carrollton-Farmers Branch Independent School District Board of Trustees (collectively, the "Defendant Trustees"), Defendant Wendy Eldredge, in her official capacity as superintendent of the Carrollton-Farmers Branch Independent School District, and Carrollton-Farmers Branch Independent School District ("CFBISD" or the "District"), (collectively, "Defendants"). In support, Plaintiffs respectfully show the following:

I.
SUMMARY

1. Pursuant to Texas Rule of Civil Procedure 58, Plaintiffs incorporate by reference the *Plaintiffs' Original Petition for Removal and Application for Injunctive Relief.*

2. The Plaintiffs present the following arguments to rebut the arguments presented in the *Defendants' Plea to the Jurisdiction and Response in Opposition to Plaintiffs' Application for Temporary Injunction.* Specifically, to address the Defendants' plea to the jurisdiction, clarifying the designation of the superintendent as a public officer, claims of the equitable defense of laches, and errors in their statements of the applicable law. The Plaintiffs are not intending to replead issues from the *Plaintiffs' Original Petition for Removal and Application for Injunctive Relief*; however, reference to the *Plaintiffs Original Petition* is required at times to address the issues presented in the *Defendants' Plea.*

3. The Defendants' plea to the jurisdiction is, at best, premature, and lacks merit to warrant a dismissal currently since the suit is brought under Tex. Loc. Gov't Code § 87.001 et seq. and not the pro warranto provisions of Tex. Civ. Prac. & Rem. Code § 66.001 et seq.. The superintendent is deemed a public official under Tex. Educ. Code § 11.1513(f) making removal appropriate under Tex. Loc. Gov't Code §87.012(15). The Plaintiffs clarify Defendants' arguments when their erroneous interpretation of the law leads to invalid and sometimes absurd conclusions regarding TOMA. The Defendants dispute the Plaintiffs injuries by citing only cases with substantially different facts, that are all distinguishable from the present case, like cases where injunctive relief would restrict First Amendment expression, or prohibit medical care, or lack a judiciable issue to be enjoined, or provide evidence that cause of the injury will not recur. The Defendants' plea the affirmative defense of laches which this Court may dispense with by reviewing the context and accurate timelines that demonstrate the urgency with which the Plaintiffs filed their suit. And, finally, the Defendants fail to inform the Court that they exercise

power over many of the issues that they claim force the balance of equities in their favor, which if acted upon would alleviate most of the Defendants' burdens that could be weighed.

4. The Defendants' arguments and assertions are systematically and individually addressed to clarify the law, demonstrate its application, distinguish the irrelevant case law, and draw attention to logical fallacies. The Defendants' plea the affirmative defense under the equitable concept of laches, stating that the Plaintiffs come into the Court with unclean hands. Plaintiffs address the laches issue in this supplemental pleading and provide the Court with necessary context to reject the Defendants' plea. The Defendants' plea to the jurisdiction is addressed first.

II.
THE DEFENDANTS' PLEA TO JURISDICTION LACKS MERIT

A. The legal foundation for the Defendants' plea to jurisdiction is rooted in different legal principles and is factually distinguishable from the present case.

5. The Defendants rely on *In re Wolfe*, 341 S.W.3d 932 (Tex. 2011) ("*In re* Wolfe") to challenge the Court's jurisdiction; but fail to reconcile the factual disparities between *In re Wolfe* and the case before this Court. *In re Wolfe* holds that the "county attorney" controls issues of discovery; however, the Plaintiffs in the matter before this Court have not initiated any discovery requests; thus, *In re Wolfe* is not applicable, currently, to the present case.

6. *In re Wolfe* begins with "'[i]ndividual citizens … have no right to maintain an ouster suit without being joined by a proper state official,' *Garcia v. Laughlin*, 155 Tex. 261, 285 S.W.2d 191, 194 (1955)." *Id.* The *In re Wolfe* court leads with this powerful quote to support their holding that in "an ouster action, prosecuted in the State's name, the county attorney would control discovery from the official sought to be removed." *Id.,* at 933. The powerful quotation cited by Defendants is followed by the legal issue answered by the court:

> The question in this mandamus proceeding is whether, without joinder of a proper state official, individual citizens may obtain pre-suit discovery under Rule 202, Tex.R. Civ. P., to investigate grounds for removal of a county official.

In re Wolfe is not applicable in the present case before this Court, as no actions taken by the Plaintiffs require the joinder of a county attorney.

7. Investigating whether the Plaintiffs were mistaken to file a petition for removal under Tex. Gov't Loc. Code § 87.001 et seq., Plaintiffs review quotation's source *Garcia v. Laughlin*, 155 Tex. 261, 285 S.W.2d 191 (Tex. 1955) ("*Garcia*"). *Garcia* rules that either the county attorney or the district attorney may represent the State in an ouster proceeding brought under Article 5, Section 24 of the Texas Constitution. The matter before this Court is not governed by the Texas Constitution, Article 5, Section 24, and Article 5970 of Vernon's Annotated Civil Statutes as it existed in 1955.

8. Furthermore, *Garcia* cites *Staples v. State*, 260 S.W. 641 (Tex. App. 1924) ("*Staples*") when it states that "individual citizens … have no right to maintain an ouster suit without being joined by a proper state official." *Staples*, holds:

> the petition in the attempted quo warranto proceedings in the district court … was fatally defective, in that, under the law of this state … no suit of this character could be filed in the name of the state of Texas except on the petition of either the Attorney General of the state or a district or county attorney, …

The present matter before the Court is not a quo warranto suit where Tex. Civ. Prac. & Rem. Code § 66.002(a) requires the suit be initiated by "the attorney general or the county or district attorney." The Defendants cite case law rooted in different legal foundations, quo warranto or Texas Constitution, Article 5, Section 24, which are not applicable to the present matter that

stems from Tex. Loc. Gov't Cod § 87.001 et seq.. The law's evolution from *Staple* in 1924 to *In re Wolfe* in 2011 still cannot reconcile the substantial factual differences that make *In re Wolfe* distinguishable from, and inapplicable to, the matter before this Court.

B. The legislature expressly provides for residents to petition the Court to initiate a suit for removal and does not require the joinder of the county attorney until trial.

9. The present matter before this Court is brought under Tex. Loc. Gov't Code § 87.015 which, since the 70th Legislature in 1987, provides that "any resident" that has lived in the county for six months may file a petition for removal. Plaintiffs are residents who have lived in Dallas County for six months and discovered the cause of action through information, legally obtained, via open records requests to the District. The Plaintiffs have not taken actions that can be considered part of the trial stage defined by Tex. Loc. Gov't Code § 87.018, where the legislature first uses the phrase "county attorney."

10. Tex. Loc. Gov't Code §87.015(a) clearly states how to begin a proceeding for removal. Tex. Loc. Gov't Code § 87.015(b) states that "[a] petition for removal of an officer other than a prosecuting attorney may be filed by any resident of this state who has lived for at least six months in the county." Plaintiffs began the removal proceeding as required by Tex. Loc. Gov't Code § 87.015(b) by filing their *Original Petition for Removal and Application for Injunctive Relief.*

11. When issuing the citation, the legislature chose to use the word "person" in Tex. Loc. Gov't Code § 87.016(a), "the person filing the petition shall apply to the district judge." The legislature does not require engagement by the "county attorney" to have the citation issued.

12. Tex. Loc. Gov't Code § 87.017(a) authorizes the court to "[a]fter the issuance of the order requiring citation of the officer, the district judge may temporarily suspend the officer

and may appoint another person to perform the duties of the office." The legislature does not use the words "county attorney" in Tex. Loc. Gov't Code §§ 87.017(a), (b), or (c).

13. The legislature plainly states a county attorney must join the suit during the trial stage as that is when the proceedings shall be conducted in the name of the State of Texas. Tex. Loc. Gov't Code § 87.018.

> Sec. 87.018. TRIAL. (a) Officers may be removed only following a trial by jury.
>
> (b) The trial for removal … and the proceedings connected with the trial shall be conducted … in the name of the State of Texas, and on relation to the person filing the petition.

The statutory language plainly states that "the trial and proceedings connected to it shall be conducted in the name of the State of Texas," *Id.,* and that "[t]he county attorney shall represent the state in a proceeding for removal of an officer …" in Tex. Loc. Gov't Code § 87.018(d)

14. The Defendants' plea to jurisdiction is, at best, untimely, and at worst, without merit. The parties are not engaged in the trial stage of this legal action; this legal action is not quo warranto or grounded Texas Constitution, Article 5, Section 24; and, the Plaintiffs have not taken any action to implicate the control of the county attorney. For these reasons, the Court should dismiss the Defendants' plea to the jurisdiction.

III.
SUPERINTENDENT ELDREDGE IS "AN OFFICER NOT OTHERWISE NAMED"

15. Tex. Loc. Gov't Code § 87.012(15) provides for the removal from office of "a county officer, not otherwise named by this section, whose office is created under the constitution or other law of this state" at least since the 70th legislature. The language providing for an officer, "not otherwise named" survived amendments of the 81st and the 83rd legislature.

16. Notably, the 83rd legislature added "a member of the board of trustees of an independent school district" when they enacted S.B. 122 in 2013. The legislature chose "CHAPTER 87: REMOVAL OF COUNTY OFFICERS FROM OFFICE; FILLING OF VACANCIES" as the proper Chapter for removal of a member of the board of trustees of an independent school district. The legislature applies the same law to the board of trustees of an independent school district as the apply to county officers. As such, Tex. Loc. Gov't Code § 87.015(15), would also apply to officers of an independent school district "whose office is created under the constitution or other law of this state," *Id.*

17. The Texas Education Code deems the superintendent a public official when the board delegates to her final hiring authority. In Tex. Educ. Code § 11.1513(f), the legislature effectively created the office held by a superintendent who is delegated final hiring authority:

> If, under the employment policy, the board of trustees delegates to the superintendent the final authority to select district personnel: (1) the superintendent is a public official for the purpose of Chapter 573, Government Code, only with respect to a decision made under that delegation of authority; and (2) each member of the board of trustees remains subject to Chapter 573, Government Code, with respect to all district employees.

Tex. Educ. Code § 11.1513(f). The legislative text is clear on its face, its plain meaning is ascertainable from the text alone, "the superintendent is a public official."

18. The "superintendent is a public official for the purposes of Chapter 573, Government Code." Superintendent Wendy Eldredge violated Chapter 573 by hiring individuals within a prohibited degree of relation to sitting members of the independent school district board of trustees. The legislature chose to apply Tex. Loc. Gov't Code § 87.001 et seq. to the governmental body bestowing the superintendent's authority that subjects her to Chapter 573,

Government Code. Tex. Educ. Code § 11.1513(f) deems the superintendent a "public official" for the purposes of Chapter 573, Government Code. Historically, school superintendent held county office as "county school superintendent" until state funding terminated for the office on December 31, 1978.[1] Few counties supported the office of county school superintendent by ad valorum taxes until they were effectively legislatively abolished on November 15, 2017, by the 85th legislature, S.B. 1566.[2]

19. Superintendent Wendy Eldredge is subject to removal under Loc. Gov't Code § 87.015, as her actions violating Chapter 573, Government Code deems her a public official under Tex. Educ. Code § 11.1513(f), the body from which her final hiring authority flows may be removed from office under the same statute, she and the board of trustees manage the affairs of the school district as a "team of 8," and if not for legislative action in 1978 and 2017 would historically hold a "county office" of the "county superintendent of schools." For these reasons the Defendants arguments that Defendant Wendy Eldredge is not subject to removal fails, and the Court should dismiss the Defendants' plea to the jurisdiction.

IV.
THE DEFENDANTS' NOTICES REGARDING BOARD ACTIONS INVOLVING THE CAMPUS CONSOLIDATION PLAN FAILS TO MEET MINIMUM STANDARDS

20. While the Defendants unnaturally contort *Point Isabel* to fit their needs of necessity, they attempt to sidestep the ruling on which it rests. In their sidestep around *Cox Enterprises, Inc. v. Board of Trustees of Austin Independent School Dist.*, 706 S.W.2d 956 (Tex. 1986) ("*Cox*"), the Defendants assert *Tex. Turnpike Auth. v. City of Fort Worth*, 554 S.W.2d 675

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[1] See, *Opinion No. H-1205*, Office of the Attorney General-Texas, July 10, 1978. https://www.oag.state.tx.us/sites/default/files/opinion-files/opinion/1978/H-1205.pdf (providing the text of H.B. 226 bill enacted in 1975, "no state funds shall be used to support the offices of county school superintendent or ex officio county school superintendent or a board of county school trustees…"

[2] *See, Senate Journal – Regular Session,* 85th legislature, 2017 *https://lrl.texas.gov/scanned/Senatejournals/85/SBHistory85RS.pdf*

(Tex. 1977) ("*Texas Turnpike*") to support their contortion of the *Point Isabel* holding. Instead of skipping over *Cox* entirely, the Defendants cite the *Cox* decision without any commentary in footnote 20 after quoting a passage from *Texas Turnpike Authority*.[3] After the Defendants selectively quote *Texas Turnpike* to minimize the importance and purpose of TOMA notice requirements, they selectively quote *Cox*.

21. The Defendants must selectively quote *Cox* because their actions cannot be reconciled with case law and statutory language. In the interest of justice, Plaintiffs have provided the entire passage from which the Defendants only use the first sentence:

> We have held that general notice in certain cases is substantial compliance even though the notice is not as specific as it could be. See Lower Colorado River Authority v. City of San Marcos, 523S.W.2d 641 (Tex.1975), and Texas Turnpike Authority v. City of Fort Worth, 554 S.W.2d 675 (Tex.1977). However, less than full disclosure is not substantial compliance. Our prior judgments should have served as notice to all public bodies that the Open Meetings Act requires a full disclosure of the subject matter of the meetings. The Act is intended to safeguard the public's interest in knowing the workings of its governmental bodies. A public body's willingness to comply with the Open Meetings Act should be such that the citizens of Texas will not be compelled to resort to the courts to assure that a public body has complied with its statutory duty.

Cox, 959-960. The Defendants' pervert the court's holding when they use of only the first sentence of this passage in the context of their argument.[4] The court makes "full disclosure" a necessary condition to "substantial compliance" with the TOMA notice requirements in their second sentence of the passage. The Defendants want "general notice in certain cases" to be

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[3] *Defendants' Plea*, page 7, footnotes 20 and 21.
[4] *Defendants' Plea*., pg. 7.

sufficient notice "even though the notice is not as specific as it could be." The Defendants do not provide this Court with an examination of the "certain cases" for which "general notice" is substantially compliant because the Defendants notice of board activities regarding the campus consolidation plan cannot meet that standard.

22. In the interest of justice, Plaintiffs examine the notice from the "certain cases" the *Cox* court found in "substantial compliance even though notice was not as specific as it could be" *Id.* Unsurprisingly, the Plaintiffs found key elements missing from the notice provided by the Defendants which are present in both the examples from the *Cox* decision.

23. The *Texas Turnpike* court opinion provides the text of the notice:

> Consider request of County of Dallas, City of Grand Prairie, Dallas Central Highway Committee, Dallas Chamber of Commerce, and Grand Prairie Chamber of Commerce to determine feasibility of a bond issue to expand and enlarge the Dallas-Fort Worth Turnpike . . . .

Texas Turnpike, at 676.

24. The *Lower Colorado Riv. Auth. v. City of San Marcos*, 523 S.W.2d 641 (Tex. 1975) ("*Lower Colorado*") opinion provides the text of the notice:

> including the ratification of the prior action of the Board taken on October 19, 1972, in response (sic) to changes in electric power rates for electric power sold within the boundaries of the City of San Marcos, Texas.

Id., at 646. The *Cox* court refers to the *Texas Turnpike* and *Lower Colorado* cases to define sufficient notice in certain cases where general notice is substantially complaint. The *Point Isabel* court instructs, "the appropriate process is a case-by-case comparison between the notice given and the action taken under the standards set by Cox," *Point Isabel*, at 180.

25. The Plaintiffs present the following examination of the notice examples from *Texas Turnpike* and *Lower Colorado* alongside the examination of notice examples from the present matter before this Court. The Plaintiffs limit their examination to the notices' structural components and do not measure the content of them against the degree of special importance. The examination of content and importance is the process advocated by *Point Isabel.* For the purposes of this case, Plaintiffs found an analysis of the structural components sufficient to identify substantial differences between the examples.

26. The *Cox* court referred to *Texas Turnpike* and *Lower Colorado* as examples of "general notice," which suggests that these examples represent the minimum requirement of what the *Cox* court would consider substantial compliance.

27. In the interest of justice, the Plaintiffs use the most detailed examples regarding the Campus Consolidation Plan which are most favorable to the Defendants:

Texas Turnpike notice, in the parts quoted by the court:

1. the action: "Consider request"
2. the subject of that action: to determine feasibility of a bond issue to"
3. the subject's properties at issue "expand and enlarge the Dallas-Fort Worth Turnpike"

Lower Colorado notice, in the parts quoted by the court:

1. the action: "ratification of"
2. the subject of that action "the prior action of the Board taken on October 19, 1972,"

3. the subject's properties at issue: "in response (sic) to changes in electric power rates for electric power sold within the boundaries of the City of San Marcos, Texas."

CFBISD Example 1: "Presentation and Discussion for Facilities Master Plan"

1. the action: "Presentation and Discussion"
2. the subject of that action: "for Facilities Master Plan"
3. the subject's properties at issue: _____

CFBISD Example 2: "Master Facilities Plan Update with Education Specification"

1. the action: "Update"
2. the subject of that action: "Master Facilities Plan"
3. the subject's properties at issue: "Education Specifications"

28. Plaintiffs argue that the notice provided by the Defendants does not withstand scrutiny even when measured against the minimum standards set by the *Cox* court and championed by the Defendants. In *Texas Turnpike* and *Lower* Colorado, the notices identify (1) the action (2) the subject on which that action will occur, and (3) the subject's properties at issue and in what manner they may be affected, (e.g. "expand and enlarge" and "changes in electric power rates").

V.
WALKING QUORUMS ARE PROHIBITED

29. The Defendants unsuccessfully present definitional argument to dispose of their violations of Tex. Gov't Code § 551.143. By presenting the definitions of "Deliberation" and "Meeting" found in Tex. Gov't Code § 551.001(2) and (4), respectively, the Defendants ignore the plain text of Tex. Gov't Code § 551.143 which addresses circumventions of TOMA through a

series of meeting which do not constitute a quorum. The plain text of Tex. Gov't Code § 551.143 disposes of the Defendant's definitional arguments.

30. Despite the plain language used in Tex. Gov't Code § 551.143, the Defendants omit relevant parts of the law to provide enough room for their definitional argument. The Defendants found room for their arguments bypassing of Tex. Gov't Code § 551.143(a)(1). Frustrating the Defendants' arguments, the legislature ensured that a quorum is not a necessary condition for the application of the TOMA, and prohibit and penalize when members of a governmental body knowingly engage in communications that would otherwise circumvent TOMA. The legislature wrote the following which is commonly referred to as the "walking quorum" prohibition:

> Section 551.143. PROHIBITED SERIES OF COMMUNICATIONS; OFFENSE; PENALTY. (a) A member of a governmental body commits an offense if the member:
>
> (1) knowingly engages in at least one communication among a series of communications that each occur outside of a meeting authorized by this chapter and that concern an issue within the jurisdiction of the governmental body in which the members engaging in the individual communications constitute fewer than a quorum of members but the members engaging in the series of communications constitute a quorum of members; and
>
> (2) knew at the time the member engaged in the communication that the series of communications:
>
> (A) involved or would involve a quorum; and
>
> (B) would constitute a deliberation once a quorum of members engaged in the series of communications.

(b) An offense under Subsection (a) is a misdemeanor punishable by:

(1) a fine of not less than $100 or more than $500;

(2) confinement in the county jail for not less than one month or more than six months; or

(3) both the fine and confinement.

31. The Defendants violated Tex. Gov't Code § 551.143(a)(1) on at least two known occasions as presented in the *Plaintiffs' Original Petition for Removal and Application for Injunctive Relief.* The legislature uses the phrase "in which the members engaging in the individual communications constitute fewer than a quorum" specifically to address and dispose of the definitional arguments proffered by the Defendants. The Defendants provide no defense for their violations of Tex. Gov't Code 551.143(a)(1). The Court should find that the Plaintiffs have a probable right to recovery based on the Defendants' violation of Tex. Gov't Code § 551.143(a)(1).

VI.
POST HOC ERGO PROPTER HOC AND EQUIVOCATION

32. The Defendants seem to suggest that the meeting minutes are an adequate substitute for sufficient notice when they state[5] in the final paragraph of page eight of the *Defendants Plea*,

> [w]hile Plaintiffs assert the Board failed to provide sufficient notice in the agenda items and meeting minutes for these public deliberations, they clearly state the subject of deliberation and whether the Board took action.

[5] *Defendants Plea,* pg. 8.

The pronoun "they" creates ambiguity in the Defendants' argument. If the Defendants intend that "they" refer to the Plaintiffs, this argument commits the post hoc ergo propter hoc fallacy. If the Defendants intend "they" to refer to the agenda items and meeting minutes, the Defendants seem to equivocate the roles of an agenda and meeting minutes and again fall victim to the post hoc ergo propter hoc fallacy.

33. The Plaintiffs ability to ascertain the subject of deliberation and whether the Board took action after the occurrence of the meeting does not satisfy the requirement for providing sufficient notice prior to the meeting. The Defendants err when they attribute an effect to an action merely because the action occurred prior in time.

VII.
TOMA IS RENDERED MEANINGLESS UNDER THE DEFENDANTS' INTERPRETATION OF ENFORCEMENT REQUIREMENTS

34. Defendants argue that "TOMA only allows for the voiding of actions that were approved in violation of the act."[6] The Defendants misrepresent the holding in *Point Isabel Indep. Sch. Dist. v. Hinojosa,* 797 S.W.2d 176 ("*Point Isabel*") to support their position. The Defendants' incorrectly paraphrase the *Point Isabel* holding by inserting the phrase "that were approved." The Defendants alter the *Point Isabel* holding so that the "act of approval being performed in violation of the act" is a necessary condition to voiding the action.

35. The *Point Isabel* court does not reach the conclusion that the Defendants present. The *Point Isabel* court instructs a case-by-case evaluation should be performed of the notice provided against the *Cox* standard. Aligned with their instructions for evaluating the sufficiency of notice, the *Point Isabel* court held "that defective notice of a meeting renders voidable only

[6] Id., page 7. footnote 18

those specific actions which are in violation of the Act."[7] *Point Isabel* does not hold that defective notice is a necessary condition for an action to be voidable; the court holds that whether an action is voidable depends on the sufficiency of the notice in regards to the action taken. The courts' holding is appropriately reflected by saying, an action taken by a governmental body is voidable *if* notice regarding that action was insufficient.

36. The *Point Isabel* does not hold that insufficient notice is *necessary* for an action to be voidable; as in, an action taken by a governmental body is voidable *only if* notice regarding that action was insufficient. Although Defendants desire this interpretation, if it were correct, it would render the TOMA meaningless. The aims of the TOMA would be frustrated because regardless of how many TOMA violations the governmental body committed in pursuit of their objective, if the action's final act is performed in a TOMA compliant meeting, all past transgression will be forgiven.

37. The Defendants perversely interpret the statement "to provide openness at every stage of the deliberations"[8] differently than the plain text reads when they assert:

> As such, Plaintiffs cannot establish that the Board took any action in the alleged secret meetings or improperly noticed public meetings pertaining to the Plan that are voidable. Therefore, Plaintiffs' request to void the Plan is unsupported by law.[9]

The Defendants' conclusion would curtail TOMA enforcement and effectively allow for the people's business to be done out of public view, rendering the TOMA meaningless.

38. The Defendants interpretation of TOMA turns sufficient conditions to voiding an action into necessary conditions and effectively states a governmental body's final action must

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[7] *Point Isabel Indep. Sch. Dist. v. Hinojosa,* 797 S.W.2d 176, 182-183.
[8] *Acker v. Texas Water Com'n,* 790 S.W.2d 299 (Tex. 1990), 300
[9] *Id.*

occur during a secret meeting or an improperly noticed meeting to be voidable. The Defendants' interpretation of TOMA can be summarized in a single sentence. The action is voidable o*nly if* the final act is performed in a non-compliant meeting. This interpretation stands in stark contrast to the spirit of the law embodied in *Cox* opinion written by Chief Justice Cornelius, and the *Acker* opinion of Justice Doggett. [10]

39. According to the Defendants' logic, for a suit to be supported by law, the Plaintiffs must establish that a final act occurred during a meeting of which they had no manner to know was to occur; or, in a meeting they observe by happenstance since the meeting notice was insufficient regarding the action. The Defendants' logic requires an active search for undisclosed meetings, especially based on the actions of the Defendants in the present matter. For other governmental bodies, the Defendants' logic would require attendance at every meeting of every governmental body to ensure that action was not taken in violation of the notice requirements of TOMA. The *Cox* holding requiring full disclosure allows the public sufficient notice to understand which governmental body to engage. The Defendants' logic, if correct, effectively disposes of the benefits of a representative democracy, by requiring the active search for non-disclosed meetings and observing every meeting of every governmental body.

40. The Defendants' arguments, if correct, would frustrate the purpose of TOMA, expedite public trust erosion, and relieve governmental bodies from complying with the Open Meetings Act. From the Defendants' viewpoint, all secret deliberations, private bargains, back-alley dealings, that precede the final act are forgiven as long the final act conforms with the TOMA. The Defendants argue that the acts required in preparation for a final act are not considered part of the "action" despite their absence rendering the final act impossible. The

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[10] *See, Acker v. Texas Water Com'n*, 790 S.W.2d 299 (Tex. 1990); *Cox Enterprises, Inc. v. Bd. Of Trustees of Austin Indep. Sch. Dist.,* 706 S.W.2d 956. 958 (Tex. 1986).

Plaintiffs, and the Texas Supreme Court[11], cannot agree that the acts preparing and allowing for the final act have no bearing on the erosion of public trust.

41. Chief Justice Cornelius identifies the outward manifestation of a governmental body's attempting to defeat TOMA through taking actions at secret or improperly noticed meetings, or by improper actions at executive sessions. Unlike the Defendants, who do not distinguish between TOMA prohibited meetings and TOMA permissible executive sessions; Chief Justice Cornelius, recognizes the potential abuse of TOMA permissible executive sessions.

> we conclude from a consideration of the Act's purpose and the evils it was designed to prevent, that Section 2(l) requires that the actual resolution of an ultimate issue confronting a public body be made in public. The Act was intended to keep decision making with reference to public business in the open so citizens can know how their representatives vote, and to allow citizen input in the decision making process prior to the taking of final action. To allow public officials to make their actual decisions in private sessions and then merely report their decision or present a formal, unanimous front to the public in an open meeting would thwart much of that purpose. See Garcia v. City of Kingsville, 641 S.W.2d 339 (Tex.App.--Corpus Christi 1982, no writ); Cameron County Good Gov't League v. Ramon, 619 S.W.2d 224 (Tex.Civ.App.--Beaumont 1981, writ ref'd n.r.e.).

Board of Trustees of Austin Independent School Dist. v. Cox Enterprises, Inc., 679 S.W.2d 86, 89 (Tex. App. 1984). Chief Justice Cornelius provides examples of situations that warrant suspicion that the governmental body is defeating TOMA by abusing permissible executive sessions.

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[11] *Id.*

42. A governing body that consistently presents a formal, unanimous front to the public in an open meeting may be making their actual decisions in private sessions. Although Chief Justice provides examples that warrant suspicion, he balances the needs for deliberation in executive session against enforcement of abuse:

> We wish to make it clear, however, that the Act does not prohibit members in an executive session from expressing their opinions on an issue or announcing how they expect to vote on the issue in the open meeting, so long as the actual vote or decision is made in the open session. A contrary holding would debilitate the role of the deliberations which are permitted in the executive sessions and would unreasonably limit the rights of expression and advocacy.

As Chief Justice Corneluis balances the role of TOMA permissible executive sessions against the potential for its abuse, he concedes that the difficulty of enforcement does not outweigh the meaning of the legislature. In footnote 4, Chief Justice Cornelius writes.

> [w]e recognize that enforcement of the provision as here interpreted may be difficult. A group could defeat the purpose of the Act by expressing their opinions in the private session and then confirming the majority position by unanimous vote in the open meeting. Difficulty of enforcement, however, is not a proper canon for interpretation of a statute as long as the meaning of the legislature can be ascertained. Moreover, such a practice can usually be detected and brought to light.[12]

Id. Chief Justice Cornelius believes that a governmental body engaged in the practice of defeating the purpose of TOMA "can usually be detected and brought to light," *Id.* A group

[12] The Texas Supreme Court did not reverse the ruling of Chief Justice Cornelius in the quoted sections.

abusing TOMA permissible executive sessions to defeat the purpose of TOMA would manifest in regular occurrence of a "unanimous vote" in the open meeting. A citizen's reasonable suspicion rises as the consistency with which a governing body casts a unanimous vote rises.

43. In the present matter, Chief Justice Cornelius' footnote is prescient. The consistency with which the Board has voted unanimously, or near unanimously, should be considered sufficient evidence of the practice that Chief Justice Cornelius believes "can usually be detected and brought to light," *Id.* The Board consistently acts to "defeat the purpose of the Act by expressing their opinions in private session and then confirming the majority position by unanimous vote in the open meeting."

44. The Plaintiffs examined the regular and special meeting minutes between January 2023 and May 2025.[13] Specifically, the Plaintiffs counted the number of:

- agenda items on which the Board voted,
    - how many passed,
    - how many did not pass, and
    - how many times any member of the board cast a vote in opposition.

The Board voted unanimously during their regular meetings 137 of the 140 votes taken between January 2023 and May 2025. The Board presented a unanimous front in 97.9% of all votes in their regular sessions. Trustee Benavides was the only opposing vote in two of only three votes where any opposition votes were cast.

45. Overall, between both regular and special meetings, the Board passed 155 of the 156 agenda items on which they voted. The Board approved 99.4% of all agenda items and only encountered opposition votes on six of them. The Plaintiffs did not identify the votes that

[13] Plaintiffs reviewed the meeting minutes found on the CFBISD website, each of which will be provided and authenticated at trial. *See,* https://meetings.boardbook.org/Public/Organization/631

followed a permissible executive session where Chief Justice Cornelius expressed the potential for abuse. Whether the votes followed a permissible executive session or not, a 97.9% unanimous vote amongst all actionable agenda items makes the citizens' suspicions warranted.

46. The Defendants' perverse interpretation of the Texas Open Meetings Act evaluated against a 97.9% unanimous voting record raises the suspicion that they intend to frustrate the spirit of the Texas Open Meetings Act.

XIII.
PROBABLE, IMMINENT, AND IRREPARABLE INJURY

47. The Defendants cite six cases that are factually distinguishable from the present case to argue against the probable, imminent, and irreparable injuries that the Plaintiffs will experience without this Court's issuance of injunctive relief. TOMA violations threaten public trust in government and are, by their very nature, irreparable as the public's trust in government cannot be restored through monetary awards. Additionally, by the Defendants unlawful actions, on August 12, 2025, the Plaintiffs will experience the harm of being unlawfully displaced from their school campuses, educational communities, friends, and families, making the "threat of injury" more than probable, it will occur on a fixed date. We ask the Court finds the Plaintiffs injuries are probable, imminent, and irreparable.

48. Defendants cite Operation Rescue-National v. Planned Parenthood of Houston and *Southeast Texas, Inc.*, 975 S.W.2d 546, 554 (Tex. 1998) ("*Operation Rescue*") to define the probable injury standard as that which would impose restrictions on First Amendment rights. The controversy in *Operation Rescue* is about anti-abortion protests and addresses First Amendment constitutional issues of expression which are not present in the case before this Court. The present case and *Operation Rescue* only possess the issue of injunctive relief in common. The present matter before this Court does not involve First Amendment issues.

49. To mute the ability for this Court to reverse a violation of TOMA, the Defendants cite *State v. Morales*, 869 S.W.2d 941 (Tex. 1994) ("*Morales*"). The Defendants seem to argue that the injury is no longer imminent because the Defendants have already acted. The Defendants fail to recognize that the Plaintiffs' injuries persist and will be revisited every day as the Plaintiffs longer trust in their governing bodies and are unlawfully displaced from their schools. *Morales*, like *Operation Rescue*, only possesses the issue of injunction in common with the case before this Court. The facts in *Morales*, like in *Operation Rescue*, strain to find more ways to differ. *Morales* identifies the equity courts' limitations when applying equitable remedies, specifically when interpreting a criminal statute. "The long-standing limitation on equity jurisdiction that controls this case relates to the narrow circumstances under which an equity court can construe a criminal statute." *Id.,* at 944. The Defendants want imminent harm in violations of TOMA to resemble imminent harm in violations of criminal statutes. The present matter before this Court does not involve the penal code.

50. To support their assertion that "Courts do not issue injunctions based on lists of hypothetical future possibilities" [14] the Defendants cite *State v. Zurawski*, 690 S.W.3d 644 (Tex. 2024) ("*Zurawski*"). This case regarding abortion struggles to compare factually to the present matter before this Court. The Defendants quote the section of the *Zurawski* opinion which discusses a court enjoining a state law based on hypothetical situations. In essence, injunctive relief is not in order without the presence of a justiciable issue. The Defendants' assertion and citation are not relevant to the present matter as the TOMA violations are well pleaded and supported with evidence and the Plaintiffs' injuries are inextricably linked to those violations.

[14] *Defendants Plea.*, Pg.9

51. Like *Morales*, cited above, where the Defendants refuse to acknowledge their reversable past TOMA violations will continually injure the Plaintiffs. The Defendants cite, *Dallas General Drivers, Warehousemen and Helpers v. Wamix, Inc., of Dallas*, 156 Tex. 408, 295 S.W.2d 873 (Tex. 1956) ("*Dallas General Drivers*"). *Dallas General Drivers* sought to enjoin picketers from using language "which is intimidating and coercive in character," *Id.* The facts in *Dallas General Drivers* support that the picketers will not continue to use coercive language. In the present matter, the Defendants have not provided any indication that they will stop their TOMA violations activities and still deny their existence. The Plaintiffs injury is not ameliorated without the injunctive relief prayed for and holding the Defendants accountable.

52. Like *Zurawski,* cited above, the Defendants deny their TOMA violations occurred and that they continue to injure the Plaintiffs. *Frey v. DeCordova Bend Estates Owners Ass'n*, 647 S.W.2d 246 (Tex. 1983) ("*Frey*"), is cited by the Defendants to assert that "[f]ear or apprehension of an injury or harm is insufficient." [15] The *Frey* court actually states, "fear or apprehension of the possibility of injury ***alone*** is not a basis for injunctive relief," *Id.,* at 248 (emphasis added). In *Frey*, only fear or apprehension were present in the facts, neither party acted to create a judiciable issue. *Frey* is irrelevant in the present matter where the facts clearly articulate the concrete actions this Court may enjoin.

53. The Defendants cite *Texas Employment Commission v. Martinez*, 545 S.W.2d 876 (Tex. Ct. App. 1976) ("*Martinez*") to support their position that injunctive relief should not issue because the consequences of their past actions are no longer imminently threatened. Consistent with the Defendants prior cited cases, the Defendant erroneously deny their TOMA violations and assert their actions do not cause ongoing harm to the Plaintiffs. *Martinez* does not support

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[15] *Id.*

the Defendants' position. Unlike *Martinez*, the Defendants have not taken action to prevent the recurrence of their TOMA violations. In fact, the Defendants deny their actions violated TOMA and Chapter 573, nepotism prohibitions, suggesting they believe they are within their rights to continue acting in the manner that compelled the initiation of this suit. No parallel can be drawn between the present case and the *Martinez* decision.

IX.
RESTORING THE STATUS QUO IS THE FIRST STEP TO REBUILDING TRUST

54. Restoring the status quo requires the Court to issue mandatory and prohibitive injunctive relief. Mandatory injunctive relief to compel the Defendants to restore operations to the "last, actual, peaceable, noncontested status that preceded the controversy resulting in the suit." [16] The controversy resulting in this suit centers on the vote to approve the Campus Consolidation Plan, during the regular board meeting on March 6, 2025. The status of CFBISD operations as they existed on March 5, 2025, is "the last peaceable status prior to the controversy" which represents the status quo.

55. Contrary to their own definition, the Defendants refer to the existing state of CFBISD operations, as the status quo. The Defendants are asking to preserve the status resulting from the controversy resulting in this suit. The Defendants defining the status quo as the status of CFBISD operations after the execution of the Campus Consolidation Plan is untenable.

56. The proficiency with which the Defendants circumvented the Texas Open Meetings Act and the expediency with which they implemented the Campus Consolidation Plan is not a justification for denying the Plaintiffs injunctive relief. The Defendants' argument that

[16] *Defendants Plea*, pg. 9

this Court should not issue injunctive relief because of the time required for the Plaintiffs to file suit is incredulous.

57. The Defendants exercise complete control regarding notifying and engaging the public, deliberating on, and voting on the Campus Consolidation Plan. The Defendants proficiently minimized community engagement while attempting to capitalize on the compressed timeline between announcing, approving, and enacting the Campus Consolidation Plan. In comparison to surrounding school districts, the Defendants' actions appear designed to deter any potential community action, including this suit. Denying the Plaintiffs' injunctive relief would reward the Defendants for their skills circumventing the Texas Open Meetings Act and further erode the public's trust.

58. This case should not serve as instructions to like-minded public officials on how to successfully circumvent TOMA.

X.
THE LAWSUIT'S OBJECTIVE: PUBLIC TRUST

59. The Plaintiffs are transparent in their objectives for the present suit. The Defendants assertion that the issuance of temporary injunctive relief achieves the objective of this suit is baseless. Restoring the status quo is required to begin rebuilding public trust. The first step in the process of restoring public trust is reversing the TOMA violations and the actions executed in their service. After restoring the status quo, the Defendants must be put on trial, held accountable, and ultimately removed from their positions as public officials.

60. Tex. Loc. Gov't Code § 87.001 et seq., TOMA and Chapter 573, Government Code require Plaintiffs file a petition in district court to initiate proceedings to restore public trust. TOMA allows the Plaintiffs petition to "bring an action to stop, prevent, or reverse a violation or threatened violation of this chapter by members of a governmental body." As stated

in the Plaintiffs Original Petition for Removal and Application for Injunctive Relief, the Defendants' violations of TOMA and Chapter 573, Government Code destroyed public trust. The Defendants have shown an unwillingness to comply with the Open Meetings Act which,

> is intended to safeguard the public's interest in knowing the workings of its governmental bodies. A public body's willingness to comply with the Open Meetings Act should be such that the citizens of Texas will not be compelled to resort to the courts to assure that a public body has complied with its statutory duty.

Cox Enterprises, Inc. v. Board of Trustees of Austin Independent School Dist., 706 S.W.2d 956 (Tex. 1986), 959.

XI.
WHEN WEIGHING THE EQUITIES, WE ASK THE COURT TO ACCOUNT FOR THE DEFENDANTS' POWER TO LIGHTEN THEIR BURDEN

A. The Plaintiffs acted promptly to enforce their rights and came into the Court with clean hands.

61. A seven-day difference between the time required for the Plaintiffs to file their suit once establishing a cause of action and the time required for the Defendants to file their answer does not support the Defendants unclean hands argument. If the Court considers the resources available to the Plaintiffs and the Defendants, the affirmative defense embodied in the Defendants unclean hands argument fails.

62. The Plaintiffs filed this action on June 11, 2025, at 11:33 PM, forty-seven days after establishing that the Defendants violation of Tex. Gov't Code § 551.143 was a pattern of behavior. The Plaintiffs obtained evidence supporting this cause of action on April 25, 2025 which compelled the Plaintiffs' counsel, also a named Plaintiff, to learn the case law pertaining to the Texas Open Meetings Act, Chapter 573, Government Code, and the Texas Local

Government Code, and revisit the Texas Rules of Civil Procedure to draft, and properly file, a petition for removal and application for injunctive relief, detailing the extent to which the Defendants have violated TOMA. The Plaintiffs' counsel submitted an affidavit indicating that, although licensed to practice law, he is employed full-time in a position unrelated to legal work.

63. The Defendants filed their answer to this action on July 22, 2025, at 9:56 AM, forty-one days after receiving notice through the Court eServe application on June 11, 2025. Notably, Defendants counsel is a well-established and large law firm that specializes in the law at issue in this case. Defendants counsel are full-time practicing attorneys with significant financial and human resources at their disposal. With significantly greater expertise, experience, and resources the Defendants and their counsel required forty days to prepare and file their answer.

64. The Plaintiffs' filing date does not support an unclean hands argument; it is a testament to the Defendants' proficiency at circumventing TOMA without being discovered.

B. The Defendants' financial forecasts show sufficient funds for maintaining operations under the status quo, as defined by the Plaintiffs, until 2030.

65. The Defendants argue that the "District will incur millions of dollars in costs in addition to the District's deficit."[17] The Board has not adopted a budget for the 2026 fiscal year; thus, the millions of dollars in costs are not capable of being "additional" to the District's deficit. To identify the District's deficit requires that the Board adopt a budget for a fiscal year. It is misleading for the Defendants to state that the costs to resume operations as they were in the prior fiscal year will add to their deficit. Resuming operations will require the finance department to revise their 2026 fiscal year budget proposal. If this Court issues injunctive relief the District's budget proposal will for the 2026 fiscal year will align with the financial forecasts

[17] *Defendants Plea*, pg. 11

presented in support of the Campus Consolidation Plan. At that time, before the school funding reforms passed by the Texas legislature in 2025, the District's financial forecasts projected that the District's Fund Balance is sufficient to sustain operations until a trial can be held on the merits. According to the District's financial forecasts, if the Campus Consolidation Plan were not approved the operations as they existed in the 2025 fiscal year will not deplete the District's Fund Balance until 2030.[18]

66. We agree that injunctive relief will disrupt the District operations as well as students, families, and staff within the District. However, the District has been aware of this suit since June 11, 2025, their failure to prepare for a scenario in which injunctive relief is granted does not justify denying the relief. Within hours of the Board's approval of the Plan the District used every available communication channel to notify the public, which notably is unlike any other communication regarding the Campus Consolidation Plan. The speed at which the District executed the Campus Consolidation Plan demonstrates their ability to move quickly and suggests that restoring the status quo can be achieved while minimizing disruption to the students, families, and staff. Hundreds of families dreading the impending first day of school because of the Defendants' actions will likely welcome the disruption.

67. The Defendants hold power over the date school begins. The Defendants can change the first day of school and alleviate their burden. The Texas Education Code vests the power in the Board of Trustees to establish the school-year calendar. CFBISD is a District of Innovation, under the Tex. Educ. Code, and begins their school year two weeks earlier than the date required under Tex. Educ. Code § 25.0811, which states that a school district may not begin

[18] Plaintiffs are prepared to present evidence to the Court regarding the Fund Balance forecasts presented in support of the Campus Consolidation Plan.

instruction for students for a school year before the fourth Monday in August. Changing the first date of school to align with neighboring school districts is not an insurmountable task.

68. The District has options available to comply if this Court issues injunctive relief that would alleviate the disruption to the affected parties. The Defendants hold the power to remedy the injuries they caused but are unwilling to exercise it without being ordered to do so.

69. The Defendants claim the balance of equities weighs in their favor but refuse acknowledging that they exercise control over the weights tipping the scales. Plaintiffs ask the Court to account for the Defendants power to change and alleviate their claimed burdens and find that the balance of equities weighs in favor of the Plaintiffs and issue injunctive relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 24, 2025, a true and correct copy of the foregoing document was transmitted to all parties and counsel of record in this case *via* email and/or the Court's electronic case filing/service system.

/s/ Brian T. Morrow
Brian T. Morrow

Automated Certificate of eService

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