

CAUSE NO. D-1-GN-22-000090

CHRISTIE OATES	§	
Plaintiff,	§	IN THE DISTRICT COURT
v.	§	
TOM LEONARD,	§	
SUPERINTENDENT OF EANES	§	
INDEPENDENT SCHOOL	§	
DISTRICT, JOHN HAVENSTRITE,	§	
BOARD TRUSTEE AND	§	
CURRENT PRESIDENT OF EANES	§	
INDEPENDENT SCHOOL	§	
DISTRICT BOARD OF TRUSTEES,	§	
JENNIFER CHAMPAGNE, BOARD	§	
TRUSTEE AND PAST PRESIDENT	§	
OF EANES INDEPENDENT	§	
SCHOOL DISTRICT BOARD OF	§	
TRUSTEES, JAMES SPRADLEY,	§	455th JUDICIAL DISTRICT
BOARD TRUSTEE AND	§	
CURRENT VICE-PRESIDENT OF	§	
EANES INDEPENDENT SCHOOL	§	
DISTRICT BOARD OF TRUSTEES,	§	
HEATHER SHEFFIELD, BOARD	§	
TRUSTEE AND CURRENT	§	
SECRETARY OF EANES	§	
INDEPENDENT SCHOOL	§	
DISTRICT BOARD OF TRUSTEES,	§	
ELLEN BALTHAZAR, BOARD	§	
TRUSTEE, LAURA CLARK,	§	
BOARD TRUSTEE, KIM	§	
MCMATH, BOARD TRUSTEE	§	
AND EANES INDEPENDENT	§	TRAVIS COUNTY, TEXAS
SCHOOL DISTRICT	§	
Defendants.	§	

**PLAINTIFF’S FIRST AMENDED ORIGINAL PETITION FOR
DECLARATORY RELIEF**

Plaintiff Christie Oates files this Original Petition and seeks relief as follows:

DISCOVERY

1. Plaintiff requests that discovery in this case be conducted pursuant to Rule 190.3 (Level 3) of the Texas Rules of Civil Procedure.

PARTIES

2. Plaintiff Christie Oates is an individual resident of Travis County, Texas, and, as a member of the general public and taxpayer, an interested person under § 551.142(a) of the Texas Open Meetings Act (“TOMA”), TEX. GOV’T CODE §§ 551.001 et seq. In addition, Plaintiff has a child who attends public school at Eanes Independent School District.

3. Defendant Tom Leonard is the current Superintendent for Eanes ISD. Plaintiff brings suit against him solely in official capacity as Superintendent. He may be served at 601 Camp Craft Rd. Austin, Texas 78746-6511, or wherever else he may be found.

4. Defendant John Havenstrite is a Board Member for Eanes ISD, and currently serves as the President for the 2020-2021 academic school year, when some of the TOMA violations occurred. Plaintiff brings suit against him solely in his official capacity as Board Trustee and current President. He may be served at 601 Camp Craft Rd. Austin, Texas 78746-6511, or wherever else he may be found.

5. Defendant Jennifer Champagne is currently a member of the Board of Trustees for Eanes ISD, and served as the President for the 2019-2020 academic school year, when some of the TOMA violations occurred. Plaintiff brings suit

against her solely in her official capacity as Board Trustee and previous President. She may be served at 601 Camp Craft Rd. Austin, Texas 78746-6511, or wherever else she may be found.

6. Defendant James Spradley is a Board Member for Eanes ISD, and currently serves as the Vice-President for the 2020-2021 academic school year, when some of the TOMA violations occurred. Plaintiff brings suit against him solely in his official capacity as Board Trustee and current Vice-President. He may be served at 601 Camp Craft Rd. Austin, Texas 78746-6511, or wherever else he may be found.

7. Defendant Heather Sheffield is a Board Member for Eanes ISD, and currently serves as the Secretary for the 2020-2021 academic school year, when some of the TOMA violations occurred. Plaintiff brings suit against her solely in her official capacity as Board Trustee and current President. She may be served at 601 Camp Craft Rd. Austin, Texas 78746-6511, or wherever else he may be found.

8. Defendant Ellen Balthazar is a Board Member for Eanes ISD. Plaintiff brings suit against her solely in her official capacity as Board Trustee and current President. She may be served at 601 Camp Craft Rd. Austin, Texas 78746-6511, or wherever else she may be found.

9. Defendant Laura Clark is a Board Member for Eanes ISD. Plaintiff brings suit against her solely in her official capacity as Board Trustee and current

President. She may be served at 601 Camp Craft Rd. Austin, Texas 78746-6511, or wherever else she may be found.

10. Defendant Kim McMath is a Board Member for Eanes ISD. Plaintiff brings suit against her solely in her official capacity as Board Trustee and current President. She may be served at 601 Camp Craft Rd. Austin, Texas 78746-6511, or wherever else she may be found.

11. Defendant Eanes Independent School District (“EISD”) is a public school located in Travis County, Texas, and a governmental body under TOMA § 551.001(3). It may be served with process by serving its current President, John Havenstrite, who may be served at 601 Camp Craft Rd. Austin, Texas 78746-6511, or wherever else he may be found.

JURISDICTION & VENUE

12. Jurisdiction is proper in this Court because the declaratory relief sought is within this Court’s jurisdiction. Venue is proper in this Court pursuant to TEX. CIV. PRAC. & REM. CODE § 15.002 (a)(1) and (2) because all or a substantial part of the acts and omissions giving rise to this claim occurred in Travis County, Texas, and because Defendants reside in Travis County, Texas.

CLAIMS FOR RELIEF

13. As required by TEX. R. CIV. P. 47, Plaintiff solely seeks non-monetary declaratory relief.

FACTS

14. Eanes Independent School District (“Eanes ISD” or “EISD”) is a school district headquartered in Travis County, Texas, in the Greater Austin area. Its enrollment is approximately 7,814 students, distributed among six elementary schools, two middle schools, and one high school.

15. Eanes ISD has a Board of Trustees comprised of seven members serving three-year staggered terms. John Havenstrite is the current President and is also a Board Member. James Spradley is the current Vice-President and a Board Member. Heather Sheffield is the current Secretary and a Board Member. Ellen Balthazar, Jennifer Champagne, Laura Clark, and Kim McMath are the remaining Board Members. Dr. Tom Leonard serves as the Superintendent of Eanes ISD.

16. A cornerstone of representative democracy for all Texans rests upon its commitment to open government. The Texas Legislature protects the democratic process through the Texas Open Meetings Act (“Open Meetings Act” or “the Act” or “TOMA”). Local government officials, like school board trustees, must abide by the Act or face civil penalties—ordinances may be declared void—and be prosecuted as criminals who may serve up to 180 days in jail. Tex. Gov’t Code §§ 551.143-.144 (penalties); *id.* at 551.141 (ordinance voidable).

17. In other words, Texas places an extraordinarily high value upon basic democratic government principles. Texas enshrines those principles in the Open Meetings Act. Through the Act, Texas ensures that all citizens may know what the

citizens' government is doing and have an opportunity to both observe deliberations and participate in democratic government. As the Texas Supreme Court has previously stated:

“Our citizens are entitled to more than a result. They are entitled not only to know what government decides but to observe how and why every decision is reached. The explicit command of the statute is for openness at every stage of the deliberations.”

Acker v. Texas Water Comm'n, 790 S.W.2d 299, 300 (Tex. 1990) (citation omitted).

18. Unfortunately, the local officials governing the Eanes Independent School District haven chosen to reject those principles by explicitly violating the Act on multiple occasions. As will be shown herein, decisions were not made in the open and during board meetings. To the contrary, secret deliberations and walking quorums were conducted outside board meetings, all of which violates the Texas Open Meetings Act. As a result, parents, students, and other residents of the Eanes ISD were deprived of their opportunity to learn about or participate in their government.

19. TOMA requires EISD to post notice of a meeting not less than 72 hours before the scheduled time for the meeting. TEX. GOV'T CODE ANN. § 551.041. Literal and strict compliance are required. *Smith County v. Thornton*, 762 S.W.2d 2, 3 (Tex. 1986); *Fielding v. Anderson*, 911 S.W.2d 858, 863 (Tex. App.— Eastland 1995, writ denied). Any “final action, decision, or vote” by EISD “may only be made in an open meeting that is in compliance with the notice provisions.” TEX. GOV'T

CODE ANN. § 551.102. Any action taken by EISD in violation of the Open Meetings Act is “voidable.” TEX. GOV’T CODE ANN. § 551.141.

20. On June 23, 2020, then-President Jennifer Champagne called the Eanes ISD Board of Trustees meeting to order at 5:00 p.m. After going into Executive Session for approximately an hour, the Board of Trustees called upon its Superintendent, Dr. Tom Leonard, to provide his Superintendent’s Report in open session. During his Report, Dr. Leonard referred to the fact that EISD has been in communications with a DEI¹ consultant for over six months, beginning in January of 2020. This statement was alarming, given the fact that none of the prior board agendas or meeting minutes or website information ever mention this fact. Parents were intentionally left in the dark. In retrospect, this concealed activity was the inevitable result of the fact that the entire Board of Trustees had previously voted to abdicate their responsibilities by turning over their Board and TOMA obligations to Defendant Leonard on March 14, 2020, under the guise of a Covid-19 necessity. This improper delegation of purported authority ultimately led to a situation where

¹ “DEI” is an anachronism for Diversity, Equity, and Inclusion. These “politically correct” words are terms that everyone can support, including Plaintiff. But in truth, DEI is actually a camouflaged code word for Critical Race Theory, commonly referred to as CRT. Because of CRT’s controversial underpinnings, and further because of the strong and vocal local opposition to the unwelcome and unwarranted indoctrination of parents’ minor children, Eanes ISD preferred to develop its CRT program and hire its CRT consultant behind closed doors and out of the disinfectant light of TOMA. EISD’s lack of inclusion of the public in its decision-making process is an ironic twist for an organization that espouses inclusion.

Defendant Leonard was acting in place of the Board of Trustees, but without any public oversight and certainly without any compliance to TOMA.

21. The public did not and could not have known the extent of EISD's negotiations and discussions with their handpicked consultant, Dr. Mark Gooden. A hint of what was to come occurred when Dr. Leonard announced at this same meeting that the Eanes ISD website would soon post DEI reading resources "within the week or at least by the end of July..." One wonders if EISD ever considered how it could reconcile being in possession of Dr. Gooden's writings, on the one hand, while keeping his retention secret, on the other hand. Immediately thereafter, Dr. Leonard directly implicated the Board of Trustees, as he explained that what he had been doing was in keeping with "the desires of the Trustees."

22. The publicly posted Agenda for the June 23, 2020 meeting made no mention of this subject matter whatsoever. Indeed, there is no reference to Diversity, Equity or Exclusion, no reference to DEI, no reference to Critical Race Theory, not reference to CRT, no reference to hiring a consultant, no reference to Dr. Mark Gooden, the consultant EISD had already selected, no reference to a public bidding process to determine what consultant should be hired, no reference to the financial terms of a consultant agreement, and no reference to any reading resources to be posted on EISD's public website for the entire world to see. To the contrary, the

only reference in the June 23, 2020 Meeting Agenda under the Superintendent's Report is to COVID-19.

23. No motions were made. No votes were taken. From the public's perspective, no action had been noticed and no action had been taken. Or at least that is what EISD led the public to believe. And yet, Dr. Leonard stopped short of announcing that the retention of Dr. Gooden was almost complete. In truth, however, Dr. Leonard had been negotiating with Dr. Gooden for months. In fact, Dr. Leonard notified Dr. Gooden on June 30, 2021 of his decision to "move forward with ... plans" previously discussed. This is just one week after the sneak preview casually mentioned at the Board Meeting.

24. The next meeting of the Board of Trustees took place on July 21, 2020. Although the decision had already been made in private, the Board Agenda referred to the subject of Dr. Gooden serving as the District's consultant for Diversity, Equity, and Inclusion. Tellingly, the Board vote was unanimous, 7 to 0. Not surprisingly, no serious discussion, much less debate, occurred. To the contrary, both the consultant and the Board Members heaped both compliments and high praise upon one another. The most damning comment came when Dr. Leonard, forgetting his public audience for just a moment, admitted that the Board had approved Dr. Gooden's retention. After blurting out this admission, Dr. Leonard

quickly retreated, suggesting that the Board still needed to actually vote to approve the contract.

25. The discussion and retention of Dr. Gooden was in direct violation of the Texas Open Meetings Act. Eanes ISD had no authority to retain their DEI consultant. Accordingly, Plaintiff seeks to invalidate EISD's action.

CAUSES OF ACTION

A. Violations of the Texas Open Meetings Act

26. EISD and its Board of Trustees' failure to timely post notice of the discussion and retention of Dr. Gooden as a DEI Consultant invalidates their vote on July 21, 2020 and renders the consultant contract void and unenforceable under TOMA.

B. Declaratory Relief

27. EISD and its Board of Trustees' failure to timely post notice of the discussion and retention of Dr. Gooden as a DEI Consultant invalidates their vote on July 21, 2020. Plaintiff seeks declaratory relief that the consultant contract is void and unenforceable.

WAIVER OF GOVERNMENTAL IMMUNITY

28. The discussion and retention of Dr. Gooden without complying with the posting requirements was a direct violation of TOMA and therefore ultra vires. The vote taken by the Trustees failed to comply with the notice provisions of TOMA and therefore was ultra vires.

29. TOMA contains a “clear and unambiguous” waiver of governmental immunity for suits for mandamus and injunctive relief. *Town of Shady Shores v. Swanson*, 590 S.W.3d 544, 554 (Tex. 2019). TOMA “is intended to safeguard the public’s interest in knowing the workings of its governmental bodies.” *Cox Enterprises, Inc. v. Board of Trustees*, 706 S.W.2d 956, 960 (Tex. 1986). The public is harmed and injured when EISD and its officials violate TOMA, act without authority, and deny information about, access to and participation in EISD’s decision-making process. Plaintiff and the general public have a right to declaratory relief because the Defendants have clearly violated TOMA and acted ultra vires as set forth herein.

30. Plaintiff asserts that no immunity exists for a claim brought under the “ultra vires” exception to governmental immunity. As explained in *City of El Paso v. Heinrich*, 284 S.W.3d 366, 369-76 (Tex. 2009), the ultra vires exception allows a plaintiff to sue a local official in an official capacity, thereby binding the governmental body, through its agent, for injunctive and/or declaratory relief to restrain the official from violating statutory or constitutional provisions. Governmental immunity does not bar such a suit because, in concept, acts of local officials that are not lawfully authorized are *not* considered to be acts of the local government. Thus, the remedy of compelling such officials to comply with the law, while binding on the local governmental body, does not attempt to exert control over

the governmental body, but instead attempts to reassert the control of the local governmental body. It is for this reason that Plaintiff has sued certain Defendants in their respective official capacities.

31. In addition, the Texas Declaratory Judgments Act contains a waiver of immunity from suit for governmental bodies whose presence is necessary to effectuate and bind them to a judicial declaration. Plaintiff asserts a claim under the Texas Declaratory Judgments Act against Defendant EISD. More specifically, Plaintiff seeks a judicial declaration that EISD violated TOMA.

32. In order to bind the governmental body which would be affected by such a judicial declaration, Plaintiff is required to join EISD as a necessary party. Accordingly, governmental immunity does not preclude equitable remedies in official-capacity suits against government actors who have violated statutory and constitutional provisions, by acting without legal authority, or by failing to perform a purely ministerial act. *Heinrich*, 284 S.W.3d at 372-73. Of significance, suits to require government officials to comply with the law and the constitution are not prohibited even if a declaration to that effect compels the payment of money. Thus, to the extent this Court rules that the DEI Consultant contract is void due to the fact that TOMA was violated, no immunity exists to bar that requested declaratory relief.

CONCLUSION

33. For the reasons detailed above, Plaintiff respectfully requests that upon

final hearing, Plaintiff be awarded all of its requested declaratory relief.

Respectfully submitted,

ANDY TAYLOR & ASSOCIATES, P.C.

By: /s/Andy Taylor

ANDY TAYLOR

State Bar No. 19727600

2628 Highway 36S, #288

Brenham, Texas 77833

Tel: (713) 222-1817

Fax: (713) 222-1855

ataylor@andytaylorlaw.com

ATTORNEY FOR PLAINTIFF