



Ishmael Flores in his capacity as secretary of the Seguin ISD Board of Trustees and Ricardo Guerra, Irma Lewis, Carol Teeple, and Barbara Effenberger in their capacity as Trustees of the Seguin ISD, and Sean Hoffmann in his capacity as Public Information Officer of the Seguin ISD and Sue Basham in her capacity as Guadalupe County Elections Administrator and Larry Jones in his capacity as Guadalupe County Judge (collectively referred to herein as “Defendants”) and would respectfully show the Court as follows:

**I.**  
**DISCOVERY CONTROL PLAN**

1. Plaintiff intends that discovery be conducted under Level 3.

**II.**  
**STANDING AND PARTIES**

2. Plaintiff, Ronald F. Avery, is a resident of Seguin, Texas and is a registered and qualified voter in Seguin, Texas. Avery resides at 1933 Montclair Street in Seguin, Texas, 78155. Plaintiff has standing to bring this election contest as contestant because he is and was at the time of the contested election a qualified voter of the territory covered by the election.

3. Defendants, Irene Garza, Louis Reyes, Nancy Ayotte, Ishmael Flores, Ricardo Guerra, Irma Lewis, Carol Teeple, Barbara Effenberger, and Sean Hoffmann can be served with process at the main office of the Seguin Independent School District located at 1221 E. Kingsbury, Seguin, Texas 78155, or anywhere else they may be found. Some of them may be served at their following home addresses:

Irene Garza:	208 Country Ln.	Seguin, TX 78155
Louis Reyes:	1642 Blanca St.	Seguin, Texas 78155

Nancy Ayotte:	126 Alsup Ln.	Seguin, TX 78155
Ishmael Flores:	800 Boenig St.	Seguin, TX 78155
Ricardo Guerra:	218 Roosevelt St.	Seguin, TX 78155
Irma Lewis:	829 Shadylon	McQueeney, TX 78123
Carol Teeple:	116 Country Ln.	Seguin, TX 78155
Barbara Effenberger:	601 E. Weinert	Seguin, TX 78155

4. Defendant, Sue Basham, may be served with process at the main office of the Guadalupe County Elections Administration located at 215 S. Milam, Seguin, Texas 78155, or anywhere else she may be found.

5. Defendant, Larry Jones, may be served with process at the Guadalupe County Commissioners' Court located at 211 W. Court Street, Seguin, Texas 78155, or anywhere else he may be found.

6. All Defendants are now and were serving in their respective capacities at the time of the relevant facts in this election contest.

### **III.** **JURISDICTION AND VENUE**

7. This Court has jurisdiction over this lawsuit pursuant to Section 221.002 of the Texas Election Code because this lawsuit involves an election contest.

8. Venue is proper in Guadalupe County pursuant to Section 233.005(2) of the Texas Election Code and pursuant to Section 15.016 of the Texas Civil Practice & Remedies Code since the contested election was less than statewide and covered territory within Guadalupe County.

### **IV.** **CONDITIONS PRECEDENT**

9. All conditions precedent have been performed or have occurred.

### **V.** **REQUEST FOR DISCLOSURE**

10. Plaintiff requests the following disclosure under TRCP 194:

- Defendants' legal theories and, in general, the factual basis of their defense.

## **VI. FACTUAL BACKGROUND**

11. On November 23, 2011, the Seguin Gazette Enterprise published an article about Seguin ISD joining the Texas Taxpayers Student Fairness Coalition to sue the state for unconstitutional ad valorem property taxes in support of public education in violation of Article 8 Section 1-e because they are unfair, unequal and unjust for taxpayers and students alike. The article also quoted Defendant Dr. Garza:

Navarro ISD and Seguin ISD have decided to join hundreds of other districts in the state in a lawsuit demanding equal funding for public schools.

During the regular board meeting on Monday, NISD trustees voted unanimously to join the Texas Taxpayer and Student Fairness Coalition.

Superintendent Irene Garza said SISD and many other local districts are struggling to make ends meet because the current funding system set up by the state allows some schools more funding per student than others.

"All across Texas, we share the same state taxes, but the schools across Texas don't share the same state funding," Garza said. "That's why we are joining together with other districts across the state in seeking a more equitable funding system."

12. It is obvious that Defendants, Dr. Garza and the Seguin ISD Board of Trustees, thought the current system of funding public education, which includes the funding of the new high school construction bonds that just passed, was unfair to their own local school district taxpayers and students or they would not have sued the state to pressure the legislature to fix it. Seguin ISD's "Plaintiffs' First Corrected Amended Original Petition and Request for Declaratory Judgment" alleges at paragraph 45 that the ad valorem property tax in support of public education was, at the time of the filing of their lawsuit and now is, in violation of Article 8 Section 1-e:

The \$1.17 tax cap is both a floor and a ceiling leaving the districts with no meaningful discretion. This lack of meaningful discretion has converted these taxes into a state property tax prohibited by Article VIII, §1-e of the Texas Constitution. *West Orange Cove II*, 176 S.W.3d 746 (Tex. 2005). The Court in *West Orange Cove v. Alanis* 107 S.W.3d 558, 578 (Tex. 2003) (*West Orange Cove I*) noted that it is not necessary that most school districts be forced to tax at the cap for the tax to be characterized as a State ad valorem tax. “A single district states a claim under Article VIII, section 1-e if it alleges that it is constrained by the State to tax at a particular rate.” *Id* at 579.

13. On February 5, 2013 Judge John Dietz ruled that the, then and now present, Seguin ISD ad valorem property taxes to support local public education and construction of public schools by the sale of bonds paid by the levy of ad valorem property taxes (such as those passed on November 5, 2013) are in violation of Article 8 Section 1-e of the Texas Constitution. Page 2 of the Court’s Order finds the following for the Texas Taxpayers Student Fairness Coalition (Seguin ISD):

The Court declares the school finance system has created a state ad valorem tax in violation of Article VIII, §1-e of the Texas Constitution.

14. On February 6, 2013, the Seguin Gazette Enterprise published an article about the Seguin ISD winning their lawsuit against the state. The said article quoted Defendant SISD Superintendent, Dr. Garza, saying the present system of ad valorem property taxation to fund public education is “antiquated and outdated” and that the recent ruling should be an opportunity for the State to fund public education rather than the local areas:

The lawsuits claimed that the state was not equal or fair in providing funding to school districts and district Judge John Dietz agreed that the current system is unconstitutional.

“I am pleased that Judge Dietz ruled very quickly and very decisively in favor of four of the plaintiff groups, which include the Equity Center Fairness Coalition, which we are a member,” said Navarro ISD superintendent Dee Carter. “That was rapid decision on his part. He will provide a full set of findings at a later date and that is what will go on to the Texas Supreme Court when the state appeals the decision.”

Seguin ISD superintendent Irene Garza agreed, adding that the system is antiquated and outdated.

Garza is hopeful it doesn’t come to a decision by the Supreme Court.

“This is an opportunity for the Legislature to take immediate action while they are currently in session and look at reinstating that \$5.4 billion,” she said. “It’s a

short term opportunity that would be helpful to districts while the system actually gets revamped to bring equity across the state of Texas for all students.”

15. This same SGE article of February 6, 2013, mentioned the fact that the same Judge Dietz who ruled in February 2013 was the same judge that the Supreme Court of Texas affirmed in 2005 finding that the ad valorem property taxes in support of public education were unconstitutional in violation of Article 8 Section 1-e. It is safe to assume that the Supreme Court will once again affirm Judge Dietz since the new evidence reflects the same conditions found in 2005. And this same article mentioned that very expectation, knowledge and assumption by Seguin ISD.

16. On August 21, 2013 the Seguin ISD Board of Trustees voted to approve an order calling for a bond issue election in the amount of \$83,300,000 to be held on November 5, 2013 for the purpose of demolishing the existing high school and building a new high school on the same property. The Seguin ISD Board of Trustees knew at the time they voted unanimously to order this bond issue election that the said bond issue and the ad valorem property taxes used to pay them off were ruled unconstitutional in February of 2013 in a lawsuit in which they were plaintiffs complaining of the unconstitutionality of same.

17. On August 21, 2013, the Seguin Gazette Enterprise posted a news article on their website at 9:03 PM that stated the Order calling for the Bond Issue Election on November 5, 2013, to be administered under contract by the Guadalupe County Elections Administrator, was unanimously approved by all Seguin ISD Trustees:

Seguin ISD trustees voted unanimously to call a bond election for \$83.3 million on Wednesday night.

The bond, which will appear on the Nov. 5 ballot, includes \$78.3 million for a new high school and \$5 million for districtwide technology upgrades.

18. None of the Seguin ISD Defendants at any time relevant to these facts or during their bond promotion period leading up to the election on November 5, 2013 mentioned anything about their proposed bonds and their method of payment by ad valorem property taxes being recently ruled unconstitutional in a lawsuit in which they were a plaintiff complaining of same.

19. Know Seguin ISD Bond, a Specific Purpose Political Committee (SPPC), formed to oppose the Seguin ISD bond issue election on November 5, 2013, published information at least two weeks prior to the election showing that the present means of funding public education in Texas is unconstitutional and that the proposed bond issue and means of paying them off would also be unconstitutional. But the Seguin ISD Defendants never responded or made a statement regarding the unconstitutionality of the bond issue and the means of paying off the bonds.

20. A person with the assumed name of “nr” responded to a comment Plaintiff posted on the Seguin Gazette Enterprise website regarding the unconstitutionality of the Seguin ISD bond election of 2013. Obviously, “nr” was unaware of the unconstitutionality of the bond issue and the method of paying them off. The following responsive comment to me was posted by “nr” on the SGE website at the end of their news article about the passage of the Seguin ISD bonds:

“You do know that property taxes are to fund things like schools right? Can you tell me where specifically where I can find what you are talking about how it is unconstitutional?”

21. Another person with the assumed name of “josemartinez” posted the following comment in response to the same SGE news story and my comments regarding the unconstitutionality of the bond issue. The comment by “josemartinez” reveals that they

too did not have enough information regarding the constitutionality of the bond issue and the means of paying off the bonds:

Mr. Avery,

I am interested to hear more about what you are suggesting and why it is unconstitutional. To be quite honest, I don't really have an opinion one way or another as I do not have enough information.

However, you suggested that the news business would be interested in that. I don't believe I've ever read anywhere in the Gazette where they've brought up this issue of constitutionality.

I am thankful for citizens like you that question the establishment instead of just 'going-along' with what is popular”

22. The Seguin ISD Defendants never informed the voters that they had joined the Texas Taxpayers Student Fairness Coalition as one of the approximately 400 school districts that had sued the state for unconstitutional school financing and school building and won their lawsuit in February of 2013. The Seguin ISD Defendants voted unanimous to call for the same unconstitutional means of funding local public education construction using a bond election which they knew was unfair, unequal, and inefficient for their own students and taxpayers in their own district. This knowledge was fresh on their minds as they had won their lawsuit proving the same only six months prior to their unanimous approval of their order calling for a bond election on August 21, 2013.

23. The Seguin ISD Defendants never informed the public about their knowledge of the unconstitutionality of the bonds and the fact that they were a plaintiff in the lawsuit that proved said bond issue and the means of paying them off was unconstitutional.

24. On Tuesday October 22, 2013 during early voting Plaintiff attended the Guadalupe County Republican Women's meeting at the Seguin Silver Center where he spoke with Defendant, County Commissioners' Court Judge Larry Jones. Plaintiff told Defendant, Larry Jones, that the Seguin ISD bond issue election and the ad valorem property taxes imposed to pay them off were unconstitutional and that the Seguin ISD

knew it because they were plaintiffs in the lawsuit that proved it. Judge Jones replied that he had written an article in the paper in support of all the bonds. Plaintiff, Avery, asked him to look at the opposition SPPC website to find the information proving the unconstitutionality of it. Defendant Judge Jones replied that he had seen it already and said that “Blackhorse” was some kind of nut. “Blackhorse” is the assumed name a person used when leaving comments on the opposition SPPC website where all that information about unconstitutionality was posted. Defendant, Judge Jones, had seen the information on the opposition SPPC website with links to the Judge Dietz ruling of February 5, 2013 finding the present and proposed bond system unconstitutional. Defendant Judge Jones failed to tell his Elections Administrator Defendant, Sue Basham, to refrain from counting any votes in the Seguin ISD bond issue election as the whole of it was unconstitutional.

25. Defendant, Sue Basham, Guadalupe County Elections Administrator, counted all the votes cast in the Seguin ISD bond election held on November 5, 2013 showing 66.6% were in favor of the bond issue. Many of those voters who cast their vote in favor of the bond would not have done so if they had been informed by their Trustees that the bond issue and the means of paying the bonds off had been ruled unconstitutional in February of 2013 and that they were unfair, unequal and inefficient to both students and taxpayers.

26. Defendant, Sean Hoffmann, Public Information Officer for the Seguin ISD, responded to an opposition SPPC email open records request wherein he said that Seguin ISD attorneys approved “informational” literature which was delivered to teachers and other Seguin ISD staff to give to their students to take home to their parents. This

literature had the same color scheme as all literature distributed by the “Seguin’13” bond promoting SPPC.

27. None of this “informational” literature mentioned that Seguin ISD had been a plaintiff that sued the State of Texas for unconstitutional ad valorem property taxes in support of public education in violation of Article 8 Section 1-e and that they had won their lawsuit in February of 2013.

28. When the bond opposition SPPC asked Defendant Sean Hoffmann, in an open records request email, who it was that produced that “informational” literature with the same color scheme of the bond promoting Seguin’13 SPPC, Hoffmann replied that it was confidential and that the person who designed it was a parent of students in the Seguin ISD and had asked the Seguin ISD to keep his name confidential.

29. Defendant Sean Hoffmann, Public Information Officer for Seguin ISD, thought he and the district had some fiduciary duty to protect the identity of the person that designed that so-called “informational” literature passed out to students of Seguin ISD to take home to their parents. However, no Seguin ISD Defendant thought they had a fiduciary duty to the parents and students of their school district to inform them that the proposed school bond issue was antiquated, outdated, unconstitutional, unfair, unequal and inefficient and detrimental to their interests.

30. The students and parents of the Seguin ISD had trust in their Trustees that they would be informed of something as crucial to the bond election as the unconstitutionality of it. But the students and parents were left uninformed about the unconstitutionality of the bond issue so that the Seguin ISD could obtain the unconstitutional funding for the new high school.

31. The parents and students have a right to count on and trust their Seguin ISD Trustees to tell them if the bonds and the means of paying them off are lawful and constitutional or not. But no disclosure of that crucial information was ever made by the Seguin ISD Defendants.

32. Plaintiff, Avery, was astonished at how many people did not know anything about the Travis County District Court ruling of February 5, 2013. Many people on the street he talked to became angry when hearing that the school district had been a plaintiff in the lawsuit proving the unconstitutionality of bond issue they had just ordered to be held on November 5, 2013. The election results would have been much different if the Seguin ISD Defendants had fully informed their students and taxpayers they serve about the unlawfulness of the bond issue.

33. Obviously the Seguin ISD Defendants thought the present means of funding public education and building new schools was unfair, unequal, inefficient and unconstitutional or they would not have sued the State for same in November of 2011. The Seguin ISD Defendants were found to be correct by the ruling of Judge John Dietz on February 5, 2013. But rather than spare the parents and students in their district of such an antiquated, outdated, unfair, unequal, inefficient and unconstitutional method of funding a new high school they chose to try to get voters to approve the old unconstitutional method by purposefully concealing that critical information.

34. The Seguin ISD Defendants should not be able to sue the State for all the harmful elements of the present unconstitutional means of funding public education and building new schools and win and then immediately turn around and call for an election

to impose those same harms on their district while keeping the voters ignorant of the harms and unlawfulness of the bonds.

## **VII.** **ELECTION CONTEST**

35. Defendant Larry Jones, County Commissioners' Court Judge, should have instructed his Election Administrator and Defendant, Sue Basham, to disregard all votes in the Seguin ISD bond election once he knew the measure was unconstitutional and that Seguin ISD Defendants also knew about it but called for the election anyway against the interests of their students, and parents and property owners.

36. Defendant Sue Basham, Guadalupe County Elections Administrator, counted all the votes including the votes for the unconstitutional Seguin ISD bond issue resulting in an unconstitutional measure passing with a 66.6% margin.

37. Defendants, Dr. Irene Garza and the entire Seguin ISD Board of Trustees and Sean Hoffmann had a duty as Superintendent, Trustees, Informational Officer and servants of the people of the district to refrain from calling for and ordering an unconstitutional bond issue that would use an unconstitutional ad valorem property tax in violation of Article 8 Section 1-e to pay the bonds off. They knew the passage of the bond election would be harmful to their district and unconstitutional and they knowingly called for the election anyway. There would not have been a Seguin ISD bond election had the Seguin ISD Defendants not deceived their district by ordering a bond election they knew would violate Article 8 Section 1-e of the Texas Constitution.

38. At least, the Seguin ISD Defendants had the minimum duty to inform the voters that the bond issue and the means of paying them off had been ruled unconstitutional in February of 2013 and that Seguin ISD had been a plaintiff in the

lawsuit that proved the same. The election results would have been very different if the voters had been informed of that crucial and vital information.

39. Non-disclosure of facts that are as crucial as the constitutionality of the election and/or the results of an election and known to the Seguin ISD Defendants is the same as telling lies or falsehoods about the election measure constituting election fraud and is sufficient grounds for declaring the result of the November 5, 2013 Seguin ISD election to be null and void.

40. Additionally and alternatively, it is well established that those without authority cannot delegate what they have not to anyone else. The voters in the Seguin ISD do not have authority to delegate power to the Seguin ISD to impose an unconstitutional tax upon the property owners in the Seguin ISD. Even if 100 % of the voters had approved the issue of bonds to be paid off with an ad valorem property tax in violation of Article 8 Section 1-e it would not be lawful or constitutional and would be required to be declared null and void.

41. And additionally, or in the alternative, even if all the local school district people and voters had been informed by the Seguin ISD that their bond issue was unconstitutional and had then passed with 100% in favor of same, the bond issue election would still need to be declared null and void as local voters cannot overturn statewide law and impose a local unconstitutional ad valorem property tax upon themselves or their local neighbors. Voters in a small area of Texas cannot vote to impose an unconstitutional tax forbidden to the whole State of Texas.

**VIII.**  
**PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays for the following relief:

1. a judgment declaring the Seguin Independent School District bond election held on November 5, 2013 in the amount of \$83,300,000 null and void;
2. costs of suit;
3. and such other and further relief to which Plaintiff may be justly entitled both at law and in equity.

Respectfully Submitted,

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pro se

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