

CAUSE NO. \_\_\_\_\_

DON ZIMMERMAN, INDIVIDUALLY AND AS EXECUTIVE DIRECTOR OF TRAVIS COUNTY TAXPAYERS UNION

*Plaintiffs,*

1.

ROUND ROCK INDEPENDENT SCHOOL DISTRICT

*Defendant*

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IN THE DISTRICT COURT

OF WILLIAMSON COUNTY,

TEXAS

\_\_\_\_ JUDICIAL DISTRICT

**PLAINTIFFS’ ORIGINAL PETITION and REQUEST FOR TEMPORARY AND PERMANENT INJUNCTIVE RELIEF**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES **DON ZIMMERMAN Individually and as Executive Director of Travis County Taxpayers Union (TCTU)** (hereinafter “Plaintiffs”), complaining of **ROUND ROCK INDEPENDENT SCHOOL DISTRICT (“RRISD”)**, (hereinafter “Defendant”), and for cause of action shows unto the Court the following:

**DISCOVERY CONTROL PLAN LEVEL**

1. Plaintiffs intend that discovery be conducted under Discovery Level 2.

**PARTIES AND SERVICE**

2. Plaintiff Don Zimmerman is an individual and a resident of the State of Texas. His address is [REDACTED], Austin, Texas 78726. Don Zimmerman is a residential and business property taxpayer who pays taxes to the Round Rock Independent School District. TCTU is an association of Texas residential and business property taxpayers of which Zimmerman is the executive director. TCTU’s purpose is to protect its taxpaying members from

the illegal expenditures challenged by this lawsuit.

3. Defendant RRISD is a government entity and political subdivision of the State of Texas, which may be served by service of citation on the board president Amy Weir, or the superintendent, Dr. Hafedh Azaiez, at the RRISD headquarters, Lillie Delgado Administration Building 1311 Round Rock Ave. Round Rock, Texas 78681 or at the meeting place of the Board of Trustees, Round Rock High School 100 lecture hall (300 N. Lake Creek Drive, Round Rock, Texas 78681), or wherever they may be found.

### **JURISDICTION AND VENUE**

4. The subject matter in controversy is within the jurisdictional limits of this court.

5. This court has jurisdiction over the parties because Defendant RRISD is a political subdivision of the State of Texas located primarily in Williamson County and because Defendant's conduct that forms the basis of this suit occurred in Williamson County.

6. Venue in Williamson County is proper in this cause under Section 15.002(a)(1) of the Texas Civil Practice and Remedies Code because all or a substantial part of the events or omissions giving rise to this lawsuit occurred in Williamson County and because the Defendant is a political subdivision of the State of Texas located primarily in Williamson County.

### **NATURE OF ACTION**

7. This is an action arising under Texas Tax Code 26.05 and action for declaratory relief pursuant to the Texas Uniform Declaratory Judgment Act, TEX. CIV. PRAC. & REM. CODE § 37.001. Additionally, Plaintiffs seek temporary and permanent injunctive relief in order to enjoin Defendants from, among other acts, violating tax limitation provisions of the Texas Tax

Code.

## STANDING

8. Plaintiff Zimmerman has standing as a citizen of Texas and as a residential and business taxpayer. TCTU has associational standing to sue in this court as its members, as individual taxpayers and Texas citizens, have standing to sue in their individual capacities. TCTU members pay, among others, property taxes, business taxes, and sales taxes. Additionally, TCTU's members are required in some instances to collect and remit tax monies. In *Williams v. Lara*, 52 S.W.3d 171 (Tex. 2001) and a series of cases going back more than a century, the Texas Supreme Court held that taxpayers have standing to seek injunctive relief and need not demonstrate a particularized injury. Further, TCTU's purpose as an association of individual taxpayers is to protect its taxpaying members from the illegal expenditures challenged by this lawsuit. Such a challenge to the illegal expenditures can be made by the association without the participation of TCTU's individual members. The only requirements for taxpayer standing are that:

- (1) the plaintiff is a taxpayer; and
- (2) public funds are expended on the allegedly illegal activity.

*Williams*, 52 S.W.3d at 179

9. At the top of page 179, *Lara* cites cases from 2000, 1972 and 1944 for the proposition that

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1. *Looscan v. The County of Harris*, 58 Tex. 511 (Tex. 1887), *City of Austin v. McCall*, 95 Tex. 565, 68 S.W. 791 (Tex. 1902), *Terrell v. Middleton*, 187 S.W. 1138 (Tex.Civ.App. San Antonio 1916), *writ ref'd* with concurring opinion, 108 Tex. 14, 191 S.W. 1138 (Tex. 1917), *Obsome v. Keith* 177 S.W.2d at 201 (Tex. 1944), *Calvert v. Hull*, 475 S.W.2d 907 (Tex. 1972) *Bland I.S.D. v. Blue*, 34 S.W.3d 547 (Tex. 2000), *Williams v. Lara*, 52 S.W.2d3d 171 (Tex. 2001)

Texas “[t]axpayers have standing to enjoin the illegal expenditure of public funds, and need not demonstrate a particularized injury.” The 1972 case, *Calvert v. Hull*, 475 S.W.2d 907 (Tex. 1972) in turn cited the famous “chicken salad” case from 1916, *Terrell v. Middleton*, 187 S.W. 1138 (Tex.Civ.App. San Antonio 1916), *writ ref’d* with concurring opinion, 108 Tex. 14, 191 S.W. 1138 (Tex. 1917).

10. *Middleton* held that a citizen taxpayer’s effort to obtain injunctive relief against the state Comptroller was appropriate when the governor of Texas sought to illegally expend a mere \$150 in state funds on chicken salad from the Driskill Hotel in Austin. “Citizens are allowed to prevent, by injunction, the collection of illegal taxes, and the reasons for allowing them this power are no stronger than to allow restraint of an officer who seeks to expend the taxes when collected for an illegal or unconstitutional purpose. The diversion of the taxes after collection from legal purposes would be equally as injurious to the taxpayer as the collection of illegal taxes. In either event, the burdens of the taxpayer are increased.” *Terrell v. Middleton* 187 S.W. 367, 370; (Tex.Civ.App. San Antonio 1916). That expenditure was held to violate the state Constitution, which then limited the governor’s compensation to \$4,000 “and no more,” including no allowance for expenditures for chicken salad.

11. The 2000 case cited in *Lara, Bland I.S.D. v. Blue*, 34 S.W.3d 547 (Tex. 2000), written by Justice Hecht, with Justice Abbott in the six-justice majority, cited the same rule, and cited as authority, *inter alia*, the 1902 case of *City of Austin v. McCall*, 95 Tex. 565, 68 S.W. 791 (Tex. 1902). The court said in *Bland*: “[i]n Texas law there is a long-established exception to this general rule: a taxpayer has standing to sue in equity to enjoin the illegal expenditure of public funds, even

without showing a distinct injury.” (emphasis added.) This doctrine, recently reaffirmed by the Court, is well-established in Texas law. *See also Looscan v. The County of Harris*, 58 Tex. 511 (Tex. 1887), *Osborne v. Keith* 177 S.W.2d at 201 (Tex. 1944) (“This court recognizes the right of a taxpaying citizen to maintain an action in a court of equity to enjoin public officials from expending public funds under a contract that is void or illegal.”) and *Calvert v. Hull*, 475 S.W.2d 907 (Tex. 1972) (“The five Appellants, taxpayers and owners of real property in Ector County, have standing to bring the suit. *Terrell v. Middleton*, 187 S.W. 367, Tex.Civ.App. 1916”).

12. *Lara* specifically applied the long-standing Texas standard of taxpayer standing to municipal taxpayers suing over establishment clause claims. But *Lara* also reaffirmed the century-old doctrine that Texas taxpayers may sue over illegal spending. *See Williams v. Lara*, 52 S.W.2d3d 171 at (Tex. 2001). Taxpayers in Texas have standing to enjoin the illegal expenditure of public funds, and need not demonstrate a particularized injury. *See id.*; *Calvert v. Hull*, 475 S.W.2d 907, 908 (Tex. 1972); *Osborne v. Keith*, 142 Tex. 262, 177 S.W.2d 198, 200 (Tex. 1944).” Plaintiffs are taxpayers and this suit seeks declaratory and injunctive relief to stop and prevent illegal taxation by the RRISD.

13. Additionally, standing is specifically granted by the Legislature in Texas Tax Code 26.05. Tax Code 26.05 (e) states: “A person who owns taxable property *is entitled to an injunction* restraining the collection of taxes by a taxing unit in which the property is taxable if the taxing unit has not complied with the requirements of this section or Section 26.04.” (emphasis added.)

## **FACTS**

14. At its September 14, 2021 meeting, the RRISD Board of Trustees purported to set the

2021 tax rate. (Agenda Item #6.) The meeting was captured on video by the district, and the recording constitutes an official record of the district, a government agency. Pursuant to Texas Rule of Evidence 201 and 902, The Court is hereby requested to take judicial notice of the recording at <https://roundrockisdtx.new.swagit.com/videos/139574> (beginning at 46:59).

15. Trustee Feller: was “I move that we accept the proposed total tax rate for the 21 22 for 2021 2022 for Round Rock ISD is \$1.1336 cents. This is comprised of an M&O rate of 0.8936, which includes 0.8436 for Tier One and 0.5 golden pennies and a 0.2400 cents for debt service.

16. Interruption by other Trustee: “I just want to confirm again the total rate one, 1.12 or 1.336?”

17. Feller response: “1.1336.

18. Other Male Trustee: “Thank You.”

19. Feller: “So I’m adding one penny to the overall rate, and I’m adding one penny to the M&O rate and I’m leaving the twenty four cents for debt service the same.”

20. Unknown Male Trustee: “I second.”

21. Trustee Weir: “OK, we have a motion and second to add one penny overall and one penny to the M&O an leave debt services as listed.”

22. Trustee Feller: “Just to clarify, one penny overall, which includes the one golden penny, because you said and golden penny. I want to make sure it’s not one penny overall and one golden penny, it’s just one penny overall.”

23. Trustee Weir: “I will say we have a motion and second and I won’t repeat it. The motion that Ms. Feller made all those in favor Raise your hand. Those opposed. So motion passes four

to one.”

24. <https://roundrockisdtx.new.swagit.com/videos/139574> (beginning at 46:59)

25. The actions of the Board of Trustess were not taken in good faith. The bad faith of the Board of Trustees is illustrated on its own video record.

26. The video demonstrates repeatedly that the Trustees sought to empower the District Superintendent to arbitrarily limit the size of the meeting room and further limit seating in that room to prevent individuals from participating in the meeting. The Trustees further asserted that disagreement with these rules constitutes a “meeting disruption”, a criminal offense under the Texas Penal Code repeatedly cited by Trustee Weir - which was represented to be a justification for removing public participants by Round Rock ISD police.

27. The September 14<sup>h</sup> meeting demonstrated bad faith action of Board members in seeking to violate the Texas Open Meetings Act through placing above the OPA “administrative rules” of unelected District staff. The Trustees also failed to comply with Tax Code law in presenting and voting on a tax increase.

28. Bad faith was demonstrated later by the 5 Board members attempting a “censure” of Trustees Weston and Bone, largely focused on their efforts to demand conformance with the Open Meetings Act. Though action on the proposed Censure Resolution has been previously blocked by TRO from Williamson County Judge Betsy Lambeth, the Trustees discussed the item at length as though action were anticipated.

29. Bad faith was further demonstrated by abuse of “administration rules” which violated Gov. Abbott’s orders (such as Exec. Order GA-38(3)(g.), “... business activities and legal

proceedings are free to proceed without COVID-19-related limitations imposed by local governmental entities or officials”; and moreover, as recently as September 21<sup>s</sup> (2021), Round Rock ISD passed “mask mandate” rules in defiance of GA-38 and related orders to the contrary.

30. Board President Weir called the September 14th meeting to order at 5:31 PM, with the opening remark, “Before we start, the rule of the meeting tonight, based on the administration’s rules, is the number of seats in here are the number of seats, you are not allowed to bring your own seat, you are not allowed to sit on the floor. I’m going to give you one warning, and then we will have to escort you out”; <https://roundrockisdtx.new.swagit.com/videos/139574> (beginning at 0:15)

31. Board Trustees Dr. Mary Bone and Captain Danielle Weston immediately objected to and challenged the District’s “administration rule” - supported by five members of the Board - to meet in a small room with few chairs widely spaced, which excluded many members from the meeting room. (beginning at 0:35)

32. Board Trustees Dr. Mary Bone and Captain Danielle Weston immediately objected to and challenged the ruling of the Chair repeatedly.

33. Board President Weir repeated the threat to remove persons not complying with the administration’s “rules” to select a particularly small room when much larger meeting rooms in the same building were deliberately left unused - and further limit seating to chairs spaced more than 6 feet apart (as seen in the video);

34. In the video recording of the meeting, Weir repeated the threat to have Round Rock ISD police physically remove people from the room; at 1:25 in the recorded video, Weir reads from



the “Texas Penal Code”, citing “disruption of meeting by disorderly conduct”, and adds, “you get one warning to abide by the administration’s rules”;

35. At 2:00, Trustee Weir states, “I will ask the officers to go ahead ... the chairs that the administration set up are the only chairs for this room”, and suggests that Round Rock ISD police should remove anyone in the room who cannot be seated in an existing chair, and suggests that not complying with “administration rules” may cause arrest;

36. At 2:21 an unelected speaker on dais (probably the Superintendent) with microphone says “So I think you have instructed your law enforcement to escort folks who are being disruptive... if you wish to do so you can continue to do so”;

37. At 2:55 in the video, another unelected District staff member with microphone objects to Trustees Bone and Weston call for a vote on the “administration rules” which they claim are arbitrary, unlawful restrictions on the right of the public to attend the tax rate meeting, by suggesting only District administrators have the right to set seating rules for the meeting which can be enforced by armed Round Rock ISD police. Staff member adds, “if you wish to use your law enforcement to enforce the rule for the meeting you are allowed to do so without a vote” of the Board;

38. At 3:54 in the video, in response to Trustee Bone protest that arbitrary rules can’t just be made up, insisting on being informed who made the rule, the Superintendent responds, “There were no rules, it was a decision we made... I made ... and we had this setup for like several meetings now... this is not the first meeting like this ... since July”; Trustee Bone then asks “what

is the down side” to allowing members of the public to remain in the room; another Trustee objects to the question with “that is not on the agenda”;

39. At 4:35, Trustee Weir says, “this is your last warning...”, making another threat the police will clear the room of public members who refuse to comply with the arbitrary selection of small room, further limited to small number of chairs;

40. At 5:00, the Board votes to adopt the “administration rules” of arbitrarily limiting seating in a small than needed room, and the vote is 5-2 in favor of administration rules, and Trustee Weir states, “it passes, Officer Willoughby, can we please have those without....can we remove those not in the chairs provided by the administrators..”, to the escalated objections of members of the public who came to speak, and asserting Open Meeting Rules are being violated, and to the continued protest of Trustees Weston and Bone who are concerned Open Meeting laws are being violated;

41. At 5:40, Trustee Bone insists that individuals are “not being unruly by not sitting in chairs ... this is ridiculous ... this is out of control” - as some persons brought their own chairs, or were quietly sitting on the floor; Trustee Weir asserts they are “being disruptive”, and Bone asserts the only disruption taking place is because they are being threatened and force to leave because they don’t have a seat under the “administration’s rules”;

42. At 6:27, Trustee Weir threatens Trustee Bone saying “you could be removed for arguing with me like that...”

43. At 7:15, the Pledges of Allegiance commence

44. At 9:11, Trustee Weir prepares to start hearing from public speakers (it is not clear whether police have removed any persons from the room); Weir again cites the “Texas Penal Code” regarding “meeting disruption” and again threatens to remove persons from the meeting, “as soon as the children are done [speaking], we will be clearing the room of all the extra chairs” (these are the chairs public speakers have brought for their own seating - because for months they have been prevented from attending meetings with the administration’s assertions that meeting participation is limited to available chairs);

45. At 10:03, the first public speaker is recognized for 1 minute of remarks;

46. At 24:30, a frustrated public speaker confronts the majority Board for the rules of arbitrarily limiting participation;

47. At 25:27, Trustee Weir notes there are a few chairs available, and again says “we are going to clear the room”; Trustee Bone again questions the authority and responsibility of who is making the order to “clear the room” based on the “administration rules” - Trustee Weir insists that because the Board voted to adopt the administration rules people will be removed from the meeting room;

48. At 26:09, Trustee Harrison requests to go into executive session and asserts the can clear the room and go into executive session, but District staff says they can not;

49. At 28:33 in the video, after a recess, Trustees Weston and Bone announce they are leaving the meeting expressing concerns that Open Meetings Act law has been violated by the Board majority and they will not be part of a potentially illegal meeting.

50. The combination of actions by the majority of the Board demonstrates a lack of good faith by the Board of Trustees in the actions of September 14, 2021.

### **VIOLATION OF TEXAS TAX CODE 26.05**

#### **The tax rate is automatically lowered.**

51. Texas Tax Code 26.05 (c) states: “If the governing body of a taxing unit does not adopt a tax rate before the date required by Subsection (a), the tax rate for the taxing unit for that tax year is the lower of the no-new-revenue tax rate calculated for that tax year or the tax rate adopted by the taxing unit for the preceding tax year.”

52. RRISD missed the deadline.<sup>2</sup>

53. The 2021 Tax Rate for RRISD is set at 1.1336 total, 0.8936 M&O and 0.24 Interest and Sinking Fund Rate

54. The 2020 Tax Rate for RRISD is 1.2212 total, 0.9564 M&O and 0.2648 Interest and Sinking Fund Rate.

55. The no-new-revenue tax rate calculated for that tax year (2021) is 1.112000.

56. The no-new-revenue tax rate calculated for that tax year (2021) is lower than the tax rate adopted by the taxing unit for the preceding tax year. Therefore, the no-new-revenue tax rate would automatically go into effect.

57. The requirement under Tax Code 26.05(b) is:

For a school district, the vote on the ordinance, resolution, or order setting a

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<sup>2</sup> Sec. 26.05. TAX RATE. (a) ... The governing body must adopt a tax rate before the later of September 30 or the 60th day after the date the certified appraisal roll is received by the taxing unit, except that the governing body must adopt a tax rate that exceeds the voter approval tax rate not later than the 71st day before the next uniform election date prescribed by Section 41.001, Election Code, that occurs in November of that year.

tax rate that *exceeds* the sum of the no-new-revenue maintenance and operations tax rate of the district as determined under Section 26.08(i) and the district's current debt rate must be a record vote, and at least 60 percent of the members of the governing body must vote in favor of the ordinance, resolution, or order.

*Emphasis added.*

58. The required declaration is: "I move that the property tax rate be increased by the adoption of a tax rate of (specify tax rate), which is effectively a (insert percentage by which the proposed tax rate exceeds the no-new-revenue tax rate) percent increase in the tax rate."

59. What was actually declared in the meeting by Trustee Feller: was "I move that we accept the proposed total tax rate for the 21 22 for 2021 2022 for Round Rock ISD is \$1.1336 cents. This is comprised of an M&O rate of 0.8936, which includes 0.8436 for Tier One and 0.5 golden pennies and a 0.2400 cents for debt service."

60. The "motion" actually moved does not comply with the literal language of 26.05(b), and does not include the information required by 26.05(b).

61. The vote was four to one, with two abstentions, as two Trustees were absent from the dias. That 4/7ths vote falls short of the statutory 60% threshold. Moreover, the vote by raising of hands was not a "record" vote, as there is no record of who voted for and who voted against.

62. The no-new-revenue maintenance and operations tax rate of the district as determined under Section 26.08(i) is 0.8472.3

63. The sum of the no-new-revenue maintenance and operations tax rate of the district as determined under Section 26.08(i) and the district's current debt service rate (0.2648 ) is 0.8472

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<sup>3</sup> The M&O rate for 2020 was 0.956400.

This number is calculated by subtracting the current debt service rate from the total 2021 NNR rate.

0.2648, or 1.11200.

### **REQUEST FOR TEMPORARY AND PERMANENT INJUNCTIVE RELIEF**

64. Texas Tax Code 26.05 (e) states: “A person who owns taxable property *is entitled to an injunction* restraining the collection of taxes by a taxing unit in which the property is taxable if the taxing unit has not complied with the requirements of this section or Section 26.04.” (*emphasis added.*) As demonstrated above, RRISD violated the requirements of Texas Tax Code 26.05 or 26.04.

65. In general, a TRO requires a probable right to relief, probable injury, imminent harm, and irreparable injury, and there is no other adequate remedy at law. A Temporary Injunction requires probable right to recovery and probable injury, with the supporting evidence of witness testimony, scientific information, statistics, and any other relevant evidence.

66. Plaintiffs request the following temporary and permanent injunctive relief:

(a) Plaintiffs request that Defendants be enjoined from taxing at the amount adopted at September 14, 2021 meeting. Plaintiffs request that the correct tax cap amount be calculated.

(j) Alternatively or in addition, Plaintiffs ask this Court to issue an injunction stating that the Defendants are not complying with Texas Tax Code 26.05.

67. It is probable that Plaintiff will prevail on one or more of its claims after a trial on the merits. It is not necessary prior to injunctive relief be granted that Plaintiffs prove they will ultimately prevail. *Keystone Life Ins. Co. v. Marketing Mgmt., Inc.*, 687 S.W.2d 89, 92 (Tex.App. Dallas 1985, no writ). A reasonable probability of success, not the standard of an overwhelming

likelihood, is all that need be shown for preliminary injunctive relief. In this Petition with its supporting evidence, Plaintiffs have established a prima facie case that the Defendants are either not currently complying with Texas Tax Code 26.05 and/or have or will act in violation of these provisions.

68. Plaintiffs will suffer irreparable injury if injunctive relief is not granted and Plaintiffs have no adequate remedy at law. Once monies are appropriated illegally they cannot be recovered without raising taxes on Plaintiffs and other taxpayers. Plaintiffs, in a case such as this, are unable to recover damages from the Defendants for their illegal spending. Consequently, the only remedies available to Plaintiffs are declaratory and injunctive relief. Both forms of relief are in the public interest, and Texas citizen-taxpayers have a vested interest in the proper implementation of Texas Tax Code tax limitation.

### **REQUEST FOR DECLARATORY RELIEF**

69. Plaintiffs request several forms of declaratory relief.

(a) Plaintiffs request that Court issue a declaratory judgment stating

(b) Plaintiffs request that Court issue a declaratory judgment stating  
Inflation).

(c) Alternatively or in addition, Plaintiffs ask this Court to issue a declaratory judgment stating that one or more of the Defendants are not

70. Plaintiffs are entitled to declaratory relief under the Texas Uniform Declaratory Judgment Act, TEX. CIV. PRAC. & REM. CODE § 37.001. The Texas Uniform Declaratory

Judgment Act provides that “a court of record within its jurisdiction has power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” TEX. CIV. PRAC & REM CODE § 37.003. The Texas Uniform Declaratory Judgment Act is a remedial statute designed “to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations.” *Tex. Natural Res. Conservation Comm’n v. IT Davy*, 74 S.W.3d 849, 855 (Tex. 2002). A trial court has discretion to enter a declaratory judgment so long as it will serve a useful purpose or will terminate the controversy between the parties. *Bonham State Bank v. Beadle*, 907 S.W.2d 465, 468 (Tex. 1995); *James v. Hitchcock Indep. Sch. Dist.*, 742 S.W.2d 701, 704 (Tex. App. Houston [1st Dist.] 1987, writ denied).

71. A declaratory judgment in this case will clarify the meaning of Texas Tax Code Section 26.05, removing uncertainty on the part of taxpayers and the various government entities involved concerning who is responsible and accountable for implementation and how compliance should be measured. A declaratory judgment will also serve the public interest by providing some legal oversight to ensure that the intent of the Texas legislature is carried out.

### **REQUEST FOR ATTORNEYS FEES**

72. In order to pursue the remedies requested herein, Plaintiffs are required to employ the undersigned counsel. Pursuant to the Texas Uniform Declaratory Judgment Act, and Texas Tax Code Section 26.05, Plaintiffs request that they be awarded reasonable and necessary attorney’s fees for prosecuting these claims.

### **PRAYER**

73. WHEREFORE, PREMISES CONSIDERED, Plaintiffs, Don Zimmerman and TCTU,



respectfully pray that the Defendants be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiffs against Defendants for injunctive relief, declaratory relief, attorneys' fees, and such other and further relief to which the Plaintiffs may be entitled at law or in equity.

Respectfully submitted,

/s/ David Rogers

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