



October 2, 2024

Via Email & First Class Mail

Lisa McCane, Superintendent
Laura Bach, Board Chair
Augusta Independent School District
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RE: Cease & Desist Illegal Actions on Social Media

Dear Superintendent McCane and Chairperson Bach:

Liberty Justice Center is a nonpartisan, nonprofit public-interest law firm dedicated to promoting government accountability and educational freedom.¹ Consistent with that mission, we seek to hold government officials accountable when they illegally use taxpayer resources to interfere with elections—particularly when those resources are aimed at denying educational opportunities to children.²

This letter concerns the District's recent illegal use of taxpayer resources to lobby against Amendment 2, along with its violations of the First Amendment by limiting criticism of its illegal activities through selective blocking of constituents on social media. To avoid litigation, we demand that the District immediately cease its illegal activities and remove all social media and other advocacy against Amendment 2.

BACKGROUND

On October 1, the District shared a message on its official Facebook and X pages directing constituents to “Vote NO on Amendment 2”—a proposed constitutional amendment that will appear on the November 5, 2024 ballot that would empower the Kentucky Legislature to expand educational opportunities for children throughout the state. The District then broke precedent by turning off public comment only on those posts—something it appears to not have done in more than a decade of hosting a page on X/Twitter.

¹ You can learn more about our mission at libertyjusticecenter.org.

² See, e.g., *Criminal Indictments Filed Against Denton ISD Administrators*, CENTER SQUARE D (Apr. 8, 2024), <https://libertyjusticecenter.org/newsroom/criminal-indictments-filed-against-denton-isd-administrators/>.

VIOLATIONS OF KENTUCKY LAW

The conduct described above constitutes an illegal use of District funds to promote a political position. Specifically, Kentucky Revised Statute § 65.013 states that “Local, state, and federal tax dollars shall not be used to advocate, in partial terms, for or against any public question that appears on the ballot.” KRS § 65.013.

Kentucky Attorney General Russell Coleman issued a General Advisory on August 13, 2024, reaffirming that public schools may not use school resources or time to advance particular political viewpoints.³ The General Advisory cites prior guidance by the Kentucky Attorney General that states even a “nominal . . . expenditure of resources and time” to promote a viewpoint on a current political issue is illegal.

Even the Kentucky School Boards Association (KSBA)—which opposes Amendment 2—acknowledges that school districts may not spend taxpayer funds to advocate for specific political positions. KSBA guidance states that “a district may not expend funds to promote a certain viewpoint on a political issue.”⁴ The KSBA cites the opinion of the Kentucky Attorney General, and states: “Legally, a district may not expend funds to promote a certain viewpoint on a political issue (OAG 74-118).” This guidance clearly indicates that while school boards may discuss the amendment during public meetings and board members can share personal opinions, districts may not use public funds to promote a specific stance on a political issue like Amendment 2.

The District’s social media posts clearly violate KRS § 65.013, goes against the official opinion of the Kentucky Attorney General, and is contrary to the guidance of KSBA.

FIRST AMENDMENT VIOLATION

In addition to the illegal electioneering, the District’s handling of public comments on its social media platforms violates the First Amendment. The Supreme Court has made clear that government officials may be held liable under 42 U.S.C. § 1983 for violating the First Amendment when they suppress free expression on social media. *Lindke v. Freed*, 144 S. Ct. 756, 765 (2024) (recognizing, among other things, that “public schools” engage in state action when they operate social media pages). This is because official social media pages are “public forums” for purposes of the

³ Attorney General Advisory (August 13, 2024), <https://www.ag.ky.gov/Press%20Release%20Attachments/08.13.2024%20Amend%20%20Advisory.pdf>.

⁴ See Kentucky School Boards Association, *Public Discussion of Amendment 2: Frequently Asked Questions*, available at <https://filecabinet7.eschoolview.com/1365B58C-F95F-4E75-94BB-A29D9A94F1C7/20af30d5-b8c4-4a1c-a21e-48979ae72187.pdf>.

First Amendment.⁵ State actors are prohibited from engaging in viewpoint discrimination in public forums, and “[v]iewpoint discrimination is apparent . . . if a government official’s decision to take a challenged action was impermissibly motivated by a desire to suppress a particular point of view.”⁶ “It is [also] well-established that the First Amendment’s hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic.” *Reed v. Town of Gilbert*, 576 U.S. 155, 169 (2015) (cleaned up).

By blocking comments only on its Amendment 2 posts, the District has engaged in illegal viewpoint and content-based discrimination.

CONCLUSION

The District has violated KRS § 65.013. We have alerted the Attorney General through its Election Law Violations Hotline, and request that, within 48 hours of receipt of this letter, you take down all social media posts and website content that express a viewpoint on Amendment 2. The District should further commit to not block discussion of topics on social media based on viewpoint or content.

Please be advised that failure to address this issue may result in further legal action. If the Attorney General does not take action, the Supreme Court of Kentucky has affirmed that Kentucky taxpayers are “permitted to sue government bodies or their agents . . . to enjoin the imposition of an illegal tax or expenditure of public funds.” *Overstreet v. Mayberry*, 603 S.W.3d 244, 263–64 (Ky. 2020). We are prepared to pursue all available legal remedies to ensure compliance with Kentucky law and to protect the integrity of the electoral process.

Sincerely,



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⁵ *People for the Ethical Treatment of Animals v. Tabak*, 2024 WL 3573661 (D.C. Cir. July 30, 2024) (citing *Garnier v. O'Connor-Ratcliff*, 41 F.4th 1158, 1178–79 (9th Cir. 2022), *vacated and remanded on other grounds*, 144 S.Ct. 717 (2024); *Davison v. Randall*, 912 F.3d 666, 682 (4th Cir. 2019); *Knight First Amend. Inst. at Columbia Univ. v. Trump*, 928 F.3d 226, 237 (2d Cir. 2019), *judgment vacated on other grounds*, 141 S. Ct. 1220 (2021)).

⁶ *Davison*, 912 F.3d at 687 (quotation omitted).

cc:

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