

April 18, 2014

Valley View ISD Board of Trustees
9701 S. Jackson Rd.
Pharr, TX 78577
Via email (PDF) to: gguerra@vviewwid.net

RE: Valley View ISD employees' right to vote and right to free political expression

Dear Board of Trustees:

Two of the fundamental rights we cherish in our society are the right to vote and the right to free political expression. The United States Supreme Court has said that “the right to vote freely for the *candidate of one’s choice* is of the essence of a democratic society.”¹ Similarly, “[d]iscussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution,” and “the First Amendment affords the broadest protection to such political expression.”² This freedom “encompasses the right to associate with the political party of one’s choice.”³ It is well-established that individuals do not forsake these rights when they accept public employment.⁴

Despite these well-established principles, it is no secret that public employees in Hidalgo County—including employees of school districts, cities, and other governmental bodies—have routinely been subjected to retaliation merely for exercising the fundamental rights described above. I am sure we all agree that this must end. School district employees shall not be coerced into voting for the candidates favored by their superiors by threats of firing or demotion. Nor should they be subjected to pressure or veiled threats by, for example, being summoned to meetings with a school official who wants to “know” if the employee “is with” the official’s slate before an election. This type of coercion demeans the dignity of the employee and deprives him or her of the freedom of conscience—protected by the Texas and federal constitutions—to vote for the candidate of his or her own choice. Texas law requires a secret ballot precisely to protect the voter from “the influences which... may be brought to bear upon him with a view to overbear and intimidate, and thus prevent the real expression of public sentiment.” *Carroll v. State*, 124

¹ *Reynolds v. Sims*, 377 U.S. 533, 555 (1964) (emphasis added).

² *Buckley v. Valeo*, 414 U.S. 1, 14 (1976) (per curiam). See also *McCutcheon v. Fed. Election Comm’n*, ___ S. Ct. ___, 2014 WL 1301866, *5 (2014) (“[T]he First Amendment ‘has its fullest and most urgent application precisely to the conduct of campaigns for political office.’”) (quoting *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971)).

³ *Buckley*, 424 U.S. at 15 (quoting *Kusper v. Pontikes*, 414 U.S. 51, 56, 57 (1973) (internal quotations omitted)).

⁴ See, e.g., *Brady v. Fort Bend County*, 145 F.3d 691 (5th Cir. 1998) (affirming judgment against sheriff’s department for retaliatory decision not to rehire deputies who had supported sheriff’s opponent in election, and awarding \$751,370.75 in attorneys’ fees to plaintiffs).

Tex. Crim. 180, 185 (Tex. Crim. App. 1933) (quoting Cooley's Constitutional Limitations (8th Ed.) Vol 2 at 1373).

Valley View ISD employees should never fear workplace retaliation, and diminished financial security for their families, merely for voting, speaking and associating according to *their own* political desires. To that end, they should be aware of the following legal protections.

First, it is a crime to coerce a person “not to vote or to vote in a particular manner.” Tex. Pen. Code § 36.03(a)(2) (Coercion of public servant or voter). And because coercing a voter is a crime, it is also a crime to coerce a school district employee to take some action in furtherance of a larger scheme to coerce votes. *Id.* § 36.03(a)(1) (influencing public servant “to violate the public servant’s known legal duty”).

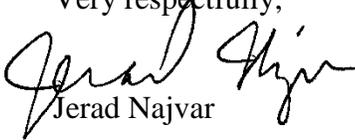
Second, it is a crime to “misuse[] government property, services, personnel, or any other thing of value belonging to the government” by a public servant who does so with intent to obtain a benefit or harm another. Tex. Pen. Code § 39.02 (Abuse of official capacity). This crime is a felony if the value of the thing used is \$1,500 or more. Thus, pressing school vehicles into service to bus employees to the polls and pressure their votes could result in a felony conviction for any school official responsible for such a scheme.

Third, voters are only eligible for assistance at the polls if they are unable to read or write, and they are never obligated to accept anyone’s offer of “assistance.” Everyone understands forced assistance is a tactic of intimidation to ensure the voter votes how the “assistant” instructs. See “[Man reports voter intimidation](#),” KRGV.com (Apr. 17, 2014). If a voter is assisted who does not need assistance, the “assistant” may be prosecuted and the ballot is uncountable. Tex. Elec. Code § 64.037.

Fourth, any employees who experience official retaliation for exercising their right to vote or their First Amendment rights to political expression may sue the school district for damages and reinstatement. For example, if any employee is demoted with a salary reduction as retaliation for exercising First Amendment freedoms, the school district can be forced to reinstate that person and compensate him or her for back pay. *Reeves v. Claiborne County Bd. of Educ.*, 828 F.2d 1096 (5th Cir. 1987); *Kingsville Ind. School Dist. v. Cooper*, 611 F.2d 1109, 1114 (5th Cir. 1980). Any employees suffering retaliation may also be entitled to recover attorneys’ fees and potentially even mental anguish damages. The Fifth Circuit Court of Appeals upheld a judgment against a Texas sheriffs’ department for refusing to rehire deputies who had expressed their support of the sheriff’s opponent in the election, and awarded the deputies more than \$750,000 in attorneys’ fees. *Brady v. Fort Bend County*, 145 F.3d 691 (5th Cir. 1998).

I am certain we all desire to protect the basic rights of the employees of our school districts. I respectfully request that the Board instruct interim superintendent Rolando Ramirez to distribute this letter to all Valley View ISD employees, so that they will know that they do not have to endure coercion or oppression at the hands of any supervisor or Board member. Furthermore, employees should be encouraged to report any intimidation to the appropriate authorities. It is imperative that we protect the fundamental rights of voting and free speech which so many Americans have willingly defended, sometimes at the sacrifice of their own lives.

Very respectfully,


Jerad Najvar

cc:

Dave Hendricks & Elizabeth Findell, *The Monitor*

Sandra Quintanilla & Rebekah Young, KRGV Channel 5

Marcy Martinez & Nadia Galindo, Action 4 News