IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JOE RICHARD POOL, III, TRENTON DONN POOL, and ACCELEVATE2020, LLC,	§	
Plaintiffs,	§	
v.	§	**CASE NO. 4:19-CV-02236**
CITY OF HOUSTON, and ANNA RUSSELL, in her official capacity as City Secretary of the City of Houston,	§	
Defendants.	§	

ORDER

Pending before the Court is Plaintiffs' Motion for Temporary Restraining Order. **(Instrument No. 2)**.

I.

A.

Plaintiff Joe Richard Pool, III ("Joe Pool") is a resident of the State of California with family ties in Dripping Springs, Texas, near Austin. (Instrument No. 7 at 4). Plaintiff Trenton Donn Pool ("Trenton Pool") is a resident and registered voter in Austin, Texas. *Id.* at 5. Both Plaintiffs assert that they are politically active. *Id.* at 4-5. Trenton Pool established an entity, Plaintiff Accelevate2020, LLC ("Accelevate2020"), organized under the laws of Texas, to hire professional circulators for initiative and referendum petitions in the City of Houston. *Id.* at 8. Accelevate2020 and Trenton Pool allege that they have hired dozens of professional circulators who reside in multiple states to circulate election and referendum petitions for candidates and ballot measures Trenton Pool supports or was hired to secure ballot access. *Id.* at 6-8.

On June 9, 2019, an initiative petition was started for an ordinance targeting so-called

"Pay to Play" practices (the "anti-pay-to-play petition") which allegedly would limit campaign contributions from city vendors and would prevent a candidate running for city office from accepting campaign contributions from people or entities that run sexually oriented businesses. (Instruments No. 10-4; No. 7 at 11-12). Plaintiffs Joe Pool, Trenton Pool, and Accelevate2020 allege that they desire to immediately participate and gather signatures for the petition. (Instrument No. 7 at 13). Additionally, Accelevate2020 alleges that it wishes to use persons who reside out-of-state, and who reside in Houston but are not registered to vote in Houston, to circulate initiative and referendum petitions within the City of Houston now and in the future. *Id.*

Defendant the City of Houston authorizes initiatives and referenda under its charter. (Instrument No. 7 at 9); *see* Houston, Tex., Charter art. VII-b, § 1 (1991) ("The people of Houston, in addition to the method of legislation hereinbefore provided, shall have the power of direct legislation by the initiative and referendum."). Article VII-a provides that the "holder of any public office in the City of Houston, whether elected thereto by the people or appointed by the City Council, may be removed from office by recall." Charter art. VII-a, § 1 (2012). Section 3 of the Charter, entitled "Form of Petition," provides the requirements for initiative and referendum petitions. Charter art. VII-a, § 3 (2012). The petition must be signed and verified and filed with the City Secretary. Charter art. VII-a, §§ 3, 3a. Specifically, the petition must be notarized and must include the following language:

> I,_____, being first duly sworn on oath depose and say: that **I am one of the signers of the above petition**, that the statements made therein are true, and that each signature appearing thereto was made in my presence on the day and date it purports to have been made, and I solemnly swear that the same is a genuine signature of the person whose name it purports to be.
>
> Sworn to and subscribed before me this _____ day of _____, 2___.
>
> /s/
> *Notary Public, State of Texas*

Charter art. VII-a, § 3 (2012) (emphasis in bold added). A signer of the petition must be a "qualified voter." *Id.*; Charter art. VII-a, § 2. Texas state law defines who is a "qualified voter." Tex. Elec. Code § 11.002. Among other requirements, a person who is a qualified voter must "be a resident of the county in which application for registration is made." Tex. Elec. Code § 13.001(a)(5). Plaintiffs assert that Article VII-a, § 3 of the City of Houston's Charter precludes a person from serving as a circulator of a petition if that person is not a resident of Houston and not a registered voter of Houston. (Instrument No. 7 at 10).

Moreover, for both initiative and referendum petitions, the Charter requires a petition "signed and verified in the manner and form required for recall petitions in Article VII-a[.]" Charter art. VII-b, §§ 2(a) (initiative), 3 (referendum). Signatures for an initiative or referendum in the City of Houston are required to be collected and filed with the City Secretary within thirty days. Charter art. VII-a, § 3a. Plaintiffs accordingly assert that any signatures collected by circulators who are not registered Houston voters are invalid because those circulators cannot sign and verify the petitions in the manner and form required by the Charter, which requires the circulators' affidavit. (Instrument No. 7 at 10-11).

Plaintiffs assert that they desire to immediately participate and gather signatures for the proposed anti-pay-to-play ordinance. (Instrument No. 7 at 11). Plaintiffs admit that they are not registered voters in the City of Houston and that therefore they cannot and are unwilling to sign under penalty of perjury the circulator's affidavit affirming that they have signed the petition. *Id.* at 11-12. Plaintiff Accelevate2020 also wishes to hire out-of-state individuals and unregistered Houston residents to circulate initiative and referendum petitions within the City of Houston now, specifically the proposed anti-pay-to-play ordinance, and in the future for unspecified petitions. (Instrument No. 7 at 13).

B.

On June 21, 2019, Plaintiffs filed their Verified Complaint against Defendants City of Houston and Anna Russell, in her official capacity as the City Secretary of the City of Houston. (Instrument No. 1). That same day, Plaintiffs filed their Motion for Temporary Restraining Order. (Instrument No. 2). On June 24, 2019, Plaintiffs filed their Brief in Support of their Motion for Temporary Restraining Order. (Instrument No. 4). Plaintiffs filed their First Amended Verified Complaint on June 26, 2019. (Instrument No. 7). Plaintiffs have brought claims for violations of the First and Fourteenth Amendments pursuant to 42 U.S.C. § 1983, alleging that, both facially and as-applied, Article VII-b, Sections 2 and 3, and Article VII-a, Sections 2 and 3 of the Houston City Carter impair Plaintiffs rights. *Id.* at 16-19. Plaintiffs further seek declaratory relief and a temporary and permanent injunction against Defendants. *Id.* at 19-20.

On June 27, 2019, Defendants filed their Motion to Dismiss Plaintiffs' Complaint, arguing that this Court lacks subject matter jurisdiction because Plaintiffs' claims are not ripe and Plaintiffs lack standing. (Instrument No. 9). That same day, Defendants filed their Response to Plaintiffs' Motion for Temporary Restraining Order. (Instrument No. 10).

II.

As an initial matter, Defendants oppose Plaintiffs' Motion for Temporary Restraining Order, arguing that Plaintiffs have failed to show that their claims are ripe. (Instrument No. 10 at 10-17). Defendants specifically note that there is no injury-in-fact because "Plaintiffs would face perjury prosecution ***only if they lied about their actions and status.***" *Id.* at 10 (emphasis in original). Defendants also contend that while the City Secretary could reject the petition signatures, it is not the City of Houston's practice to do so, and Plaintiffs seek emergency relief

for future petitions on unidentified issues. *Id.* at 11. For the same reasons Plaintiffs' claims are not ripe, Defendants contend that Plaintiffs lack standing. *Id.* at 17.

Plaintiffs' arguments primarily relate to standing, a related but distinct concept from ripeness. Plaintiffs contend that supporters of the proposed anti-pay-to-play ordinance began their drive for signatures for an initiative petition on June 9, 2019, and that Plaintiffs desire to participate before July 9, 2019, the deadline for the petition to be submitted. (Instrument No. 7 at 11). Plaintiffs further assert that they are ready and able to begin circulating the petition, but that they are not willing to expose themselves to possible prosecution for perjury by acting as circulators. *Id.* at 11-12.

Article III of the United States Constitution limits this court's jurisdiction to "cases" and "controversies. *United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 395 (1980); U.S. Const. art. III, § 2. The central concept of Article III's mandate regarding "cases" and "controversies" is justiciability. Put simply, a court must determine whether the "conflicting contentions of the parties present a real, substantial controversy between parties having adverse legal interests, a dispute definite and concrete, not hypothetical or abstract." *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979) (internal quotation omitted).

Courts often elaborate the central concept of justiciability into more specific categories, such as standing or ripeness. Wright, Miller & Cooper, 13 Fed. Prac. & Proc. Juris. § 3529 (3d ed.). A plaintiff must have "standing" for the case to be justiciable. *Nat'l Fed'n of the Blind of Tex., Inc. v. Abbott*, 647 F.3d 202, 208 (5th Cir. 2011). To satisfy Article III standing requirements, Plaintiffs must show (1) they have suffered, or imminently will suffer, a concrete and particularized injury-in-fact; (2) the injury-in-fact is fairly traceable to the challenged statute; and (3) a favorable judgment is likely to redress the injury-in-fact. *Justice v. Hosemann*, 771

F.3d 285, 291 (5th Cir. 2014); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). If a plaintiff lacks standing to sue, then the court cannot consider the merits of his action. *Williams v. Parker*, 843 F.3d 617, 620 (5th Cir. 2016).

The doctrine of ripeness is closely related to the doctrine of standing. However, in a ripeness analysis, courts also consider the prudence of exercising judicial power. Specifically, courts consider the hardship to the parties of withholding court consideration, and whether the case presents purely legal questions, or if "further factual development is required." *United Transp. Union v. Foster*, 205 F.3d 851, 857 (5th Cir. 2000) (citing *New Orleans Public Service, Inc. v. Council of New Orleans*, 833 F.2d 583, 586-87 (5th Cir. 1987)). While the doctrines of ripeness and standing require the court to ask whether the plaintiff has suffered harm, the court's analysis as to ripeness requires an additional inquiry into whether the harm asserted has matured sufficiently to warrant judicial intervention. *Warth v. Seldin*, 422 U.S. 490, 499, 499 n.10 (1975).

Although Defendants Response to Plaintiffs' Motion for Temporary Restraining Order focuses primarily on whether Plaintiffs' claims are ripe, Defendants make identical arguments about Plaintiffs' standing. (*See* Instrument No. 10). After examining the parties' arguments, the Court finds that the arguments boil down to the same issue: whether Plaintiffs have demonstrated an injury-in-fact. The Court will therefore consider both doctrines in its analysis. *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 157 n.5 (2014) (analyzing standing and ripeness together).

1. Injury-In-Fact

Defendants contend that Plaintiffs have failed to show an injury-in-fact because the "[m]ere circulation of petitions does not subject Plaintiffs to any criminal penalties," and Plaintiffs admit that they have not yet verified and submitted petitions to the City Secretary.

(Instrument No. 9 at 2). Defendants also assert that the City Secretary is not likely to reject any petition signatures and has not threatened Plaintiffs with arrest. *Id.* Plaintiffs, by contrast, contend that but for the provisions of the Charter requiring them to affirm under oath that they are registered voters of the City of Houston, they would have begun circulating petitions. (Instrument No. 4 at 5). Plaintiffs contend that unless the challenged provisions of the Charter are rendered unenforceable, they are not willing to place themselves at risk of perjury prosecution. (Instrument No. 7 at 11-12).

The Supreme Court has observed that "[s]peech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people." *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 339 (2010). "In First Amendment pre-enforcement challenges, chilling a plaintiff's speech is a constitutional harm adequate to satisfy the injury-in-fact requirement." *Justice v. Hosemann*, 771 F.3d 285, 291 (5th Cir. 2014) (internal quotation omitted). Once a plaintiff has demonstrated that he is "seriously interested in disobeying, and the defendant seriously intent on enforcing, the challenged measure—the case presents a viable 'case or controversy' under Article III." *Id.* (internal quotation omitted).

Plaintiffs have demonstrated in their Verified Complaint their interest in circulating initiative and referendum petitions within the City of Houston. Trenton Pool specifically alleges that he has been circulating petitions for ballot access on behalf of candidates, new political parties, and initiatives and referenda for more than ten years in dozens of states. (Instrument No. 7 at 6-7). Trenton Pool and Joe Pool assert that they support the anti-pay-to-play ordinance that sponsors seek to place on the November 2019 Houston ballot. Trenton Pool further alleges that he created Accelevate2020 to further his circulation activities and to hire professional circulators. The record provides less information regarding Joe Pool. Specifically, there is no evidence in the

Verified Complaint about Joe Pool's history of involvement in campaigns, and he has not asserted that but for the challenged provisions in the Charter, he would have already been circulating the petition. However, Joe Pool has asserted in the Verified Complaint that he desires to immediately circulate petitions and that he is willing, as a condition precedent, to submit to the jurisdiction of the State of Texas and the City of Houston for any subsequent investigation or prosecution related to any petitions he circulates. The Courts finds, therefore, that Plaintiffs have demonstrated that they are seriously interested in disobeying the challenged provisions in the charter.

Defendants suggest that they are not seriously intent on enforcing the requirement that circulators be registered voters of the City of Houston and that the City Secretary would likely not invalidate any signatures Plaintiffs submit. (Instrument No. 10 at 13-15). Defendants' assertion, however, is contradicted by the fact that the Charter requires inclusion of the affidavit. Plaintiffs are required to affirm under oath that they have signed the petition as a qualified voter. The inclusion of the affidavit ensures the veracity of the statement by imposing a penalty of perjury prosecution in case of mendacity. For Defendants to suggest that they would simply look the other way while Plaintiffs affirm an untruth and commit a crime would destroy the purpose of the affidavit requirement and conflicts with the provisions of the Charter and the City Secretary's oversight duties.

Importantly, the penalty Plaintiffs have identified is criminal prosecution. Defendants do not dispute that the challenged provisions, as currently written, could lead to the perjury prosecution of Plaintiffs for their circulating activities. Where a plaintiff has demonstrated an actual threat of prosecution, "it is not necessary that petitioner first expose himself to actual arrest or prosecution to be entitled to challenge a statute that he claims deters the exercise of his

constitutional rights." *Steffel v. Thompson*, 415 U.S. 452, 459 (1974). Plaintiffs have demonstrated their intent to circulate the petitions. They need not commit a crime before they can establish an injury-in-fact.

Defendants correctly argue that Plaintiffs have not demonstrated an injury-in-fact with respect to unidentified future petitions. However, with respect to the currently proposed ordinance, Plaintiffs have demonstrated that their inability to act as circulators chills their political speech and constitutes an injury-in-fact. The purpose of Plaintiffs' circulation of the petition is to have the proposed ordinance on the ballot for the November 2019 election. Supporters of the initiative began their drive for signatures on June 9, 2019. Under the City of Houston Charter, signatures for an initiative or referendum must be collected within a period of thirty days, in this case July 9, 2019. Under the challenged provisions of the Charter, Plaintiffs risk prosecution for perjury by participating in the circulation of the petition. On the other hand, if Plaintiffs decide to circulate the petition and not sign the affidavit, as Defendants suggest Plaintiffs do, any signatures they collect will not be properly "signed and verified" and the City Secretary must invalidate the signatures. The City Secretary's invalidation of the signatures, as required by the Charter, would render the circulating activity moot. The Court finds that Plaintiffs have demonstrated a concrete imminent injury.

2. Causal Connection & Redressability

Plaintiffs have demonstrated that they face potential prosecution for perjury by circulating the petition, and that their failure to sign the affidavit affirming that they are registered voters of the City of Houston could result in the invalidation of the signatures they collect. Plaintiffs have therefore shown that there is a causal connection between Plaintiffs' alleged injury-in-fact and the challenged provisions of the Charter. Plaintiffs have also

demonstrated that a favorable judgment from this Court would redress the injury-in-fact.

Defendants have argued that Plaintiffs do not have standing and that their claims are not ripe. However, Plaintiffs have demonstrated their immediate desire and need to circulate the anti-pay-to-play petition, and that their circulating activity would result in either (1) the invalidation of the signatures they collect for failure to conform to the requirements laid out in the Charter, or (2) prosecution for signing a false affidavit.

Accordingly, the Court finds that Plaintiffs have standing to sue and that their claims regarding the anti-pay-to-play petition are ripe for review.

III.

Plaintiffs seek a temporary restraining order that immediately enjoins Defendants from:

> (1) enforcing Article VII-b, Section 2 and Article VII-a, Sections 2 & 3 of the Houston City Charter (the "challenged provisions") to the extent that, in tandem, they require circulators of initiative petitions to sign the petition as qualified voters of the City of Houston; (2) requiring circulators of initiative petitions to execute a sworn affidavit that includes the affirmation "that I am one of the signers of the above petition"; (3) preventing out-of-state circulators, who are willing to submit to the jurisdiction of the State of Texas and the City of Houston, from circulating initiative petitions; and (4) preventing residents of the State of Texas who are not qualified voters of the City of Houston from circulating initiative petitions.

(Instrument No. 4 at 2). Plaintiffs contend that they wish to circulate petitions personally because they support the petition. *Id.* Plaintiffs further contend that the drive for signatures for the anti-pay-to-play ordinance began on June 9, 2019 and is slated to end on July 9, 2019. *Id.*

Defendants contend that Plaintiffs' requested relief amounts to a mandatory injunction for which Plaintiffs have failed to make a clear showing that they are entitled to relief. (Instrument No. 10 at 18). Defendants also contend that (1) the alleged harm to Plaintiff is only imminent because Plaintiffs "waited until the eleventh hour to start their petition drive and file their lawsuit"; (2) Plaintiffs' proposed anti-pay-to-play ordinance is "flagrantly

unconstitutional"; and (3) that the balance of hardships and public interest favor the City of Houston because the City of Houston has an interest in preventing fraud, foreign influences, and preventing children from serving as circulators. *Id.* at 18-23.

A.

"The purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held." *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981). To obtain a temporary restraining order or a preliminary injunction, a plaintiff must show the following:

> (1) a substantial likelihood that the plaintiff will prevail on the merits;
> (2) a substantial threat that the plaintiff will suffer irreparable injury if the injunction is not granted;
> (3) a showing that the threatened injury to the plaintiff outweighs the potential harm to the defendants if the injunctive relief is not granted; and
> (4) a showing that issuance of the injunction will not disserve the public interest.

Allied Mktg. Grp., Inc. v. CDL Mktg., Inc., 878 F.2d 806, 809 (5th Cir. 1989). The decision whether to grant a temporary restraining order is within the sound discretion of the district court. *Id.* A party is not required to prove his case in full at the temporary restraining order hearing and the evidence presented at the hearing may be less complete than in a trial on the merits. *Camenisch*, 451 U.S. at 395. However, a temporary restraining order is "an extraordinary remedy" that courts should only grant if the moving party has clearly carried its burden of persuasion with respect to all four factors. *Allied Mktg.*, 878 F.2d at 809.

Where a plaintiff moves for mandatory preliminary relief—that is, a preliminary injunction that orders a party to "take action" or perform certain acts—the standard becomes more stringent. *See Meghrig v. KFC Western, Inc.*, 516 U.S. 479, 484 (1996); *Davis v. Angelina Coll. Bd. of Trs.*, No. 9:17-cv-179, 2018 WL 1755392, at *1 (E.D. Tex. Apr. 11, 2018).

"Mandatory preliminary relief, which goes well beyond simply maintaining the status quo pendente lite, is particularly disfavored, and should not be issued unless the facts and law clearly favor the moving party." *Martinez v. Mathews*, 544 F.2d 1233, 1243 (5th Cir. 1976).

B.

The Verified Complaint contends that the challenged provisions of the Charter prohibit Plaintiffs from engaging in political speech in violation of their rights under the First and Fourteenth Amendments. (Instrument No. 7 at 17-18). Plaintiffs have brought both a facial and an as-applied challenge to the relevant provisions of the Charter. *Id.*

1. Substantial Likelihood that Plaintiff Will Prevail on the Merits

There is no First Amendment right to place an initiative on the ballot. *Meyer v. Grant*, 486 U.S. 414, 424 (1988). However, "[p]etitions by themselves are protected speech, and unlike a completed voter registration form, they are the circulator's speech." *Voting for Am., Inc. v. Steen*, 732 F.3d 382, 390 (5th Cir. 2013). In First Amendment challenges, courts examine whether regulations that make it more difficult to circulate and gather signatures for initiative and referenda petitions indirectly impact "core political speech." *Meyer*, 486 U.S. at 421-22.

In *Meyer v. Grant*, the Court examined a Colorado statute that made it a felony to pay petition circulators. *Id.* at 416. The Court reasoned that the circulation of a petition constitutes "core political speech" because it restricted political expression in two ways:

> "First, it limits the number of voices who will convey appellees' message and the hours they can speak and, therefore, limits the size of the audience they can reach. Second, it makes it less likely that appellees will garner the number of signatures necessary to place the matter on the ballot, thus limiting their ability to make the matter the focus of statewide discussion."

Id. at 422-23. Holding that the restriction was a "limitation on political expression subject to exacting scrutiny," the Court found that the state had failed to justify the burden on the advocates' free speech rights. *Id.* at 420, 428.

Similarly, in *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182, 186 (1999) ("*ACLF*"), the State of Colorado placed a requirement that initiative-petition circulators be registered voters, among other requirements. The Court affirmed that the state could impose an age restriction, six-month limit on circulation of petitions, and an affidavit requirement to allow the state to protect the integrity and reliability of the initiative process. *Id.* at 191 ("States allowing ballot initiatives have considerable leeway to protect the integrity and reliability of the initiative process, as they have with respect to election processes generally."). However, the Court held that the voter registration requirement placed on circulators produced a "speech diminution of the very kind produced by the ban on paid circulators at issue in *Meyer*." *Id.* at 194 (citing *Am. Const. Law Found., Inc. v. Meyer*, 120 F.3d 1092, 1100 (10th Cir. 1997)). The requirement that circulators be registered voters, served to decrease the pool of potential circulators. *Id.* Although the state had provided a justification for the requirement, namely policing lawbreakers among petition circulators, the Court found that the state could accomplish that objective by requiring each circulator to submit an affidavit setting out, among several particulars, their residential address. *Id.* at 196.[1]

The Court finds that the voter registration requirement for circulators in this case is factually similar to *ACLF*. Defendants also concede that *ACLF* renders the voter registration requirement for circulators unconstitutional. (Instrument No. 10 at 8). At this stage of the proceedings, it appears to the Court that the voter registration requirement for circulators serves to limit the number of circulators to solicit petition signatures and imposes an undue time and manpower burden on circulators. Defendants correctly note the *ACLF* Court made no finding as

[1] Plaintiffs contend that the challenged provisions of the Charter are subject to strict scrutiny. (Instrument No. 4 at 13-14). However, the majority in *ACLF* did not explicitly apply strict scrutiny. *See ACLF*, 525 U.S. at 201 (affirming the Circuit Court's application of "exacting scrutiny"); *see also* 525 U.S. at 206-14 (Thomas, J., concurring).

to the State of Colorado's requirement that a circulator reside in Colorado. *ACLF*, 525 U.S. at 197. Defendants argue that the Charter's provisions are not unconstitutional as to *residency* requirements. (Instrument No. 10 at 9-10). However, as Defendants concede, courts are split on whether residency requirements for circulators are constitutionally permissible. *Id.* at 9 n.4 (citing cases on residency requirements). Regardless, the way the affidavit section is provided for in the Charter, a circulator must sign the petition as a qualified voter. Thus, the residency requirement is subsumed within the voter registration requirement and the two requirements cannot be separated. Given the Supreme Court's precedent, the Court finds that Plaintiffs have shown that there is a substantial likelihood that they will prevail on the merits.

2. Irreparable Injury

Both the Supreme Court and the Fifth Circuit have said that "[t]he loss of First Amendment freedoms for even minimal periods of time constitutes irreparable injury justifying the grant of a preliminary injunction." *Texans for Free Enter. v. Texas Ethics Comm'n*, 732 F.3d 535, 539 (5th Cir. 2013) (citing *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Plaintiffs have demonstrated that the challenged provisions of the Charter have resulted in their inability to circulate the anti-pay-to-play petition since June 9, 2019.

Defendants contend that there is no imminent irreparable injury to Plaintiffs because the proposed anti-pay-to-play ordinance is unconstitutional on its face and would deprive Houston residents of their rights to First Amendment speech. (Instrument No. 10 at 21). The question of whether the anti-pay-to-play ordinance is constitutional is not before this Court and the Court need not provide any opinion as to its constitutionality at this juncture. If there is any issue that is not yet ripe for review in this case, it would be the constitutionality of the anti-pay-to-play petition which has yet to gain sufficient signatures, yet to be submitted to the City Secretary, and

yet to be put on the ballot for the November 2019 election. Defendants have therefore not shown that Plaintiffs lack a threat of irreparable injury at this time.

3. Injury to Plaintiffs Outweighs Potential Harm to Defendants

Plaintiffs have identified the injury from having their political speech prohibited by the challenged provisions of the Charter. Defendants have in a conclusory fashion identified their concern that a temporary restraining order might result in fraudulent signatures submitted on citizen petitions and unexplained "foreign influences" corrupting the City of Houston's initiative process. (Instrument No. 10 at 22). Defendants further allege, without explanation, that a temporary restraining order would do nothing to prevent children from collecting signatures. (Instrument No. 10 at 22). While the Court acknowledges that fraud is a legitimate concern, Defendants have not shown how an order enjoining Defendants from enforcing the circulator voter registration requirement would lead to petitions with fraudulent signatures. Plaintiffs have therefore demonstrated that the injury to Plaintiffs outweighs the potential harm to Defendants.

4. Public Interest

In First Amendment cases, "injunctions protecting First Amendment freedoms are always in the public interest." *Texans for Free Enter.*, 732 F.3d at 539 (quoting *Christian Legal Soc'y v. Walker*, 453 F.3d 853, 859 (7th Cir. 2006)).

Plaintiffs have met all four elements necessary for a temporary restraining order. Accordingly, the Court finds that Plaintiffs' Motion for a Temporary Restraining Order is **GRANTED in part**. **(Instrument No. 2)**. However, neither Plaintiffs' proposed temporary restraining order to strike out the affidavit requirements nor the City of Houston's suggestion that Defendants will ignore the Charter's circulator affidavit requirements is a satisfactory solution.

C.

Plaintiffs' requested remedy is to simply excise the language imposing the "qualified voter" requirement while still permitting the circulator to affirm the remainder of the jurat. (Instrument No. 4 at 23). Plaintiffs propose the following jurat language:

> I, _____, being first duly sworn on oath depose and say: ~~that I am one of the signers of the above petition~~, that the statements made ~~therein~~ in the above petition are true, and that each signature appearing thereto was made in my presence on the day and date it purports to have been made, and I solemnly swear that the same is a genuine signature of the person whose name it purports to be.
>
> _____
>
> Sworn to and subscribed before me this_____day of_____, 2___.
>
> /s/_____
> *Notary Public, State of Texas*

Id. at 24. Defendants contend that the excised language leaves the City of Houston with no ability to locate the circulator if it needs to find the circulator. (Instrument No. 10 at 22).

If the circulator signs and verifies the petition as a registered voter, the City Secretary would have the circulator's contact information, including residential address, from the voter registration records. Plaintiffs' proposed remedy does not allow the City of Houston to locate a circulator.

Moreover, Plaintiffs' proposed language seeks an order from this Court adjudicating on the merits the constitutionality of the proposed ordinance provision, and the City's proposal does nothing to address the imminent harm that might befall a foreign circulator if they do not remove this language. The purpose of injunctive relief is to preserve the status quo. Therefore, the Court orders that Plaintiffs add the following language to any petition circulated by a foreign circulator who is either not a resident of the City of Houston or not a registered voter in the City of

Houston:

> "By Order of the United States District Court, entered July 1, 2019, I certify that I am a foreign circulator who is either not a resident of the City of Houston or is not registered to vote in the City of Houston. I have been granted authorization by the District Court to serve as a professional circulator to collect signatures from July 1 to July 9, 2019 and to sign this alternative affidavit. I hereby subject myself to the jurisdiction of the Courts of Texas in connection with any fraud associated with the circulation of any referendum or the collection of signatures for any referendum circulated in the City of Houston during the time period of July 1, 2019 to July 9, 2019. I understand that the City of Houston is temporarily enjoined from enforcing the residency or voter registration requirements or rejecting the signatures on the petition because I have not signed the affidavit required by the City Charter attesting to residency and voter registration.
>
> I, _____, being first duly sworn on oath depose and say that I am a citizen of the United States or documented permanent resident; I have never been convicted of the crimes of fraud or misrepresentation; I agree to submit myself to the jurisdiction of the Harris County courts, and waive any challenge to venue and personal jurisdiction in connection with the matters encompassed by this affidavit. Should the need for me personally to appear in Houston arise, I agree to make myself available in person in Houston, at my own expense, within 72 hours of a request by the City of Houston concerning matters encompassed by this affidavit. I further depose and say that each signature appearing on this petition was made in my presence on the day and date it purports to have been made, and I solemnly swear the same is a genuine signature of the person whose name it purports to be."
>
> Name: _____
>
> Address: _____
>
> Contact Number: _____
>
> Email Address: _____
>
> Sworn to and subscribed before me this_____day of_____, 2___.
>
> /s/_____
> *Notary Public, State of Texas*

D.

Plaintiffs request that the Court waive the bond requirement if the injunction issues.

(Instrument No. 4 at 23).

Federal Rule of Civil Procedure 65(c) provides that a court "may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Because Rule 65(c) gives the court discretion for setting the amount of security, the Fifth Circuit has held that the district court "may elect to require no security at all." *Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 628 (5th Cir. 1996). The Court finds that Plaintiffs have made the requisite showing for why the bond requirement should be waived in this case.

V.

For the foregoing reasons, the Court finds that Plaintiffs' Motion for Temporary Restraining Order is **GRANTED in part. (Instrument No. 2)**.

IT IS HEREBY ORDERED that Defendants City of Houston and Anna Russell, in her official capacity as Secretary of the City of Houston, are hereby temporarily enjoined from enforcing the residency and voter registration requirements with respect to the petition to be circulated from July 1, 2019 to July 9, 2019 by Plaintiffs Joe Pool, Trenton Pool, Accelevate2020, and any circulators they hire, and from rejecting signatures on the petition because the circulator has not signed the affidavit required by the City Charter attesting to residency and voter registration.

IT IS FURTHER ORDERED that Plaintiffs add the following language and jurat to any petition circulated by a foreign circulator who is either not a resident of the City of Houston or not a registered voter in the City of Houston:

"By Order of the United States District Court, entered July 1, 2019, I certify that I am a foreign circulator who is either not a resident of the City of Houston or is not registered to vote in the City of Houston. I have been granted authorization by the District Court to serve as a professional circulator to collect signatures from July 1 to July 9, 2019 and to sign this alternative affidavit. I hereby subject myself to the jurisdiction of the Courts of Texas in connection with any fraud associated with the circulation of any referendum or the collection of signatures for any referendum circulated in the City of Houston during the time period of July 1, 2019 to July 9, 2019. I understand that the City of Houston is temporarily enjoined from enforcing the residency or voter registration requirements or rejecting the signatures on the petition because I have not signed the affidavit required by the City Charter attesting to residency and voter registration.

I, _____, being first duly sworn on oath depose and say that I am a citizen of the United States or documented permanent resident; I have never been convicted of the crimes of fraud or misrepresentation; I agree to submit myself to the jurisdiction of the Harris County courts, and waive any challenge to venue and personal jurisdiction in connection with the matters encompassed by this affidavit. Should the need for me personally to appear in Houston arise, I agree to make myself available in person in Houston, at my own expense, within 72 hours of a request by the City of Houston concerning matters encompassed by this affidavit. I further depose and say that each signature appearing on this petition was made in my presence on the day and date it purports to have been made, and I solemnly swear the same is a genuine signature of the person whose name it purports to be."

Name: _____

Address: _____

Contact Number: _____

Email Address: _____

Sworn to and subscribed before me this_____day of_____, 2___.

/s/_____
Notary Public, State of Texas

IT IS FURTHER ORDERED that Plaintiffs are not required to post any bond for the issuance of this Temporary Restraining Order.

The Clerk shall enter this Order and provide a copy to all parties.

SIGNED on this the 1st day of July, 2019, at Houston, Texas.

VANESSA D. GILMORE
UNITED STATES DISTRICT JUDGE