

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

MARK MILLER, MICHELE GANGNES,)
SCOTT COPELAND, LAURA PALMER,)
ANDY PRIOR, AMERICA’S PARTY OF)
TEXAS, CONSTITUTION PARTY OF)
TEXAS, GREEN PARTY OF TEXAS and)
LIBERTARIAN PARTY OF TEXAS,)

Plaintiffs,

v.

No. 1:19-cv-00700-RP

RUTH R. HUGHS in her official)
capacity as Secretary of State of Texas, and)
JOSE A. ESPARZA, in his official capacity)
as Deputy Secretary of State of Texas,)

Defendants.

**PLAINTIFFS’ OPPOSED MOTION FOR A PRELIMINARY INJUNCTION
AND MEMORANDUM IN SUPPORT**

Pursuant to Federal Rule of Civil Procedure 65 and Local Rule CV-65, Plaintiffs Mark Miller, Michele Gangnes, Scott Copeland, Laura Palmer, Tom Kleven, Andy Prior, America’s Party of Texas, Constitution Party of Texas, Green Party of Texas (“GPTX”) and Libertarian Party of Texas (“LPTX”) (collectively, “**Plaintiffs**”) respectfully move for a preliminary injunction to enjoin Defendants Ruth R. Hughs, Secretary of State of Texas,¹ and Jose A. Esparza, Deputy Secretary of State of Texas (together, “**Defendants**”) from enforcing TEX. ELEC. CODE § 141.041 as applied to Plaintiffs in the 2020 election cycle.

¹ On August 19, 2019, Governor Greg Abbott appointed Ruth R. Hughs to fill the office. Pursuant to Fed. R. Civ. P. 25(d), Secretary Hughs “is automatically substituted as a party” and “[l]ater proceedings should be in the substituted party’s name.” Plaintiffs therefore respectfully request that the Court direct the clerk to re-caption this case docket to reflect the substitution of Secretary Hughs in place of the previous named Defendant, “John Doe or Jane Doe.”

INTRODUCTION

For the limited purpose of preserving the status quo *ex ante*, Plaintiffs respectfully request that the Court enjoin Defendants from enforcing the newly enacted Texas Election Code § 141.041 against Plaintiffs in the 2020 election cycle.² Section 141.041, which took effect on September 1, 2019, imposes substantial new requirements upon candidates seeking the nomination of political parties that nominate by convention (“**Non-Primary Parties**”), which few candidates, if any, will be able to meet, much less by December 9, 2019 (the date by which full compliance is required). If not enjoined, § 141.041 will severely restrict or completely bar the Non-Primary Party Plaintiffs from participating in Texas’s 2020 general election.

Plaintiffs satisfy each element required for a preliminary injunction. Most importantly, Plaintiffs are likely to prevail on the merits on three independent grounds: (1) Defendants’ construction of § 141.041 is contrary to the plain language of the statute; (2) the enforcement of new ballot access requirements this late into the election cycle violates Plaintiffs’ right to due process of law; and (3) enforcement of § 141.041 against Plaintiffs in 2020 is unconstitutionally burdensome under the Supreme Court’s *Anderson/Burdick* constitutional framework. Further, Plaintiffs’ exclusion from the 2020 general election constitutes irreparable harm that outweighs any conceivable injury to legitimate state objectives, and the requested injunction will serve the public interest by protecting the right of all Texans to cast their votes effectively this cycle.

FACTUAL AND PROCEDURAL BACKGROUND

Section 141.041 was enacted in June 2019 and took effect on September 1, 2019.³

² All statutory citations hereafter are to the Texas Election Code unless otherwise specified.

³ House Bill 2504, the enacting legislation, was passed by the legislature on May 21, 2019 and signed by Governor Abbott on June 10, 2019. By its terms, the law took effect on September 1, 2019.

Historically, a ballot-qualified Non-Primary Party was entitled to place its nominees on the general election ballot by duly nominating them at the party's convention in March (for county, precinct and district offices) or April (for statewide offices) of an election year. Now, however, in order to appear on the general election ballot, § 141.041 newly requires Non-Primary Party nominees to pay a filing fee or submit an individual nomination petition in lieu thereof. *See* § 141.041(a)(1),(2). These obligations are separate from and additional to the requirements already faced by Non-Primary Parties to achieve general ballot access.

Section 141.041 imposes upon Non-Primary Party nominees the same schedule of filing fees, or alternatively, signature requirements, that apply to candidates seeking to appear on the primary election ballot of a party that nominates by primary election (“**Primary Parties**”). *See* §§ 141.041(b),(e); 172.024-25. Primary Parties select and place their nominees on the general election ballot by means of *state*-funded primary elections, *see* §§ 172.001-173.087, while Non-Primary Parties must nominate their candidates by *self*-funded conventions. *See* § 181.001-068. Filing fees paid by Primary Party candidates are thus specifically earmarked to help finance primary elections. *See* § 173. In contrast, filing fees paid by Non-Primary Party candidates will flow as “general revenue” into state or county coffers (*see* § 141.041(c)-(d)), with a projected “positive impact of \$230,000 to general revenue related funds through fiscal 2020-21.” *See* Texas House Research Organization, *HB 2504 Bill Analysis* (May 8, 2019), <https://hro.house.texas.gov/pdf/ba86r/hb2504.pdf#navpanes=0>.

Section 141.041 applies to “a candidate who is nominated by convention.” *See* § 141.041(a). The statute does not specify the deadline by which a nominee must pay the prescribed filing fee or submit a nomination petition but instructs the Secretary of State to adopt implementing rules as necessary. *See* § 141.041(f). On or about August 20, 2019, Defendants

promulgated their construction of the law. *See Texas Secretary of State, Nominee of Libertarian or Green Party in 2020*, available at <https://www.sos.state.tx.us/elections/candidates/guide/2020/lib-green-nom2020.shtml> (last visited October 8, 2019). Instead of following the statutory directive to impose § 141.041's requirements on Non-Primary Parties' *nominees*, Defendants announced that all *applicants for nomination* (not solely the nominees) must comply with the requirements and must do so by December 9, 2019. *Id.*

ARGUMENT

A party seeking a preliminary injunction must demonstrate “(1) a substantial likelihood that he will prevail on the merits, (2) a substantial threat that he will suffer irreparable injury if the injunction is not granted, (3) his threatened injury outweighs the threatened harm to the party whom he seeks to enjoin, and (4) granting the preliminary injunction will not disserve the public interest.” *Planned Parenthood of Gulf Coast, Inc. v. Gee*, 862 F.3d 445, 457 (5th Cir. 2017). Plaintiffs meet each element here.

I. Plaintiffs Are Likely to Succeed on the Merits of Their Challenge to Defendants' Enforcement of § 141.041 in the 2020 Election Cycle.

Plaintiffs' merits arguments are based on three separate grounds, each of which provides a strong basis for enjoining enforcement: (1) Defendants' construction of § 141.041 is contrary to the plain language of the statute; (2) Defendants' enforcement of § 141.041 in the 2020 election cycle violates Plaintiffs' right to due process of law; and (3) such enforcement is unconstitutionally burdensome under the *Anderson/Burdick* analysis.

A. Defendants' Construction of § 141.041 Is Contrary to the Plain Language of the Statute.

When interpreting the meaning of a statute, courts first look to its plain language. *See Forte v. Wal-Mart Stores, Inc.*, 780 F.3d 272, 277 (5th Cir. 2015). Here, the relevant portion of the statute at issue provides:

“...to be eligible to be placed on the ballot for the general election for state and county officers, **a candidate who is nominated by convention** under Chapter 181 or 182 must: (1) pay a filing fee to the secretary of state for a statewide or district office or the county judge for a county or precinct office; or (2) submit...a petition in lieu of a filing fee....”

§ 141.041(a) (emphasis added). The provision’s requirements expressly apply only to candidates actually “nominated by” a Non-Primary Party. As is self-evident, the mere filing of an application for nomination is not the same as receiving a nomination; nor is it a guarantee that a candidate will in fact be nominated. In addition, Non-Primary Parties do not select their nominees until their conventions in March and April—several months *after* the December deadline for filing applications. *See* §§ 41.007(a), 181.061(a)-(c). By enforcing § 141.041 against all *applicants* for nomination, Defendants defy the plain language of the statute. This alone is sufficient for Plaintiffs to succeed on the merits. *See Cadena Comercial USA Corp. v. Texas Alcoholic Beverage Comm’n*, 518 S.W.3d 318, 325 (Tex. 2017) (an agency’s statutory construction is entitled to serious consideration “so long as the construction is reasonable and does not conflict with the statute’s language”) (internal quotation marks and citation omitted).

B. Defendants’ Enforcement of § 140.041 in the 2020 Election Cycle Violates Plaintiffs’ Right to Due Process of Law.

Courts have long recognized that the enforcement of new ballot access requirements enacted late in an election cycle violates the due process rights of the candidates and parties that must comply with them. “[L]egislation may achieve constitutionally valid goals but infringe the Fourteenth Amendment by doing so in an unconstitutional manner.” *Hudler v. Austin*, 419 F. Supp. 1002, 1013-14 (E.D. Mich. 1976), *summ. aff’d.*, 430 U.S. 924 (1977) (enforcement of otherwise constitutional ballot access measure in current election cycle constituted a “deprivation of due process”). If Defendants enforce § 141.041 for the 2020 election cycle, candidates seeking the nomination of a Non-Primary Party will be required to comply with substantial new filing fee or

petition signature requirements⁴ in little more than three months, or they will be barred from appearing on Texas's general election ballot. Imposing such requirements without prior notice so late in an election cycle violates Plaintiffs' due process rights. *See, e.g., Hudler*, 419 F. Supp. at 1014 (three-month period from enactment to enforcement "depriv[ed] plaintiffs of adequate time and notice" and "impose[d] an unnecessarily prejudicial burden"); *see also Poindexter v. Strach*, 324 F.Supp.3d 625, 632 (E.D.N.C. 2018) (enjoining enforcement of law "enacted during an election cycle" that effectively "disqualif[ed] previously qualifying candidates from appearing on a ballot"); *cf. Libertarian Party of Ohio v. Husted*, No. 2:13-cv-00953, 2014 WL 11515569, at *7 (S.D. Ohio Jan. 7, 2014) (enjoining immediate enforcement of new petition deadlines which "moved the proverbial goalpost in the midst of the game.").

As a ballot-qualified Non-Primary Party, Plaintiff LPTX was, until just weeks ago, entitled to place its nominees on Texas's 2020 general election ballot after selecting them at LPTX's self-funded conventions in March and April. Now the party must recalibrate its strategy and repurpose its resources to help its potential candidates comply with the new filing fee or nomination petition requirements by December, or its nominees will be barred. The late-stage changes of § 140.041 thus undermine LPTX's "legitimate expectation that [its nominees] could qualify" for Texas's 2020 general election ballot under the law as it existed until September 1, 2019. *Libertarian Party of Ohio*, 2014 WL 11515569, at *8. The same is true for other Non-Primary Party Plaintiffs. Simply put, Defendants' enforcement of § 141.041 in this election cycle violates Plaintiffs' due process rights.

⁴ Non-Primary Parties' nominees for statewide office must either pay a filing fee of \$3,750 or \$5,000 (depending on office) or submit a nomination petition containing 5,000 valid signatures, with lesser requirements for non-statewide offices. *See* §§ 141.041(b),(e); 172.024-25.

C. Defendants' Enforcement of § 141.041 in the 2020 Election Cycle Violates Plaintiffs' First and Fourteenth Amendment Rights.

Defendants' enforcement of § 141.041 in the 2020 election cycle is also unconstitutional under the Supreme Court's *Anderson/Burdick* analytic framework, in which courts weigh "the character and magnitude of the asserted injury" to Plaintiffs' First and Fourteenth Amendment rights against "the precise interests put forward by the State as justifications" *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983). The severity of the burden dictates the appropriate level of scrutiny. *See Burdick v. Takushi*, 504 U.S. 428, 434 (1992). Because § 140.041 severely burdens Plaintiffs with respect to the 2020 election cycle, "the State must provide a compelling state interest and narrow tailoring of its rule." *Texas Indep. Party v. Kirk*, 84 F.3d 178, 184 (5th Cir. 1996). Here, neither the law nor the Secretary's interpretation is rationally related to any legitimate interest, so it fails under any level of scrutiny.

1. *Immediate Enforcement of these Requirements Would Severely Burden Plaintiffs' Rights.*

Defendants' decision to enforce § 141.041 in the 2020 election cycle, and to require Plaintiffs' compliance by December 9, 2019, severely burdens Plaintiffs because it will effectively bar most, if not all, Non-Primary Party nominees from appearing on Texas's 2020 general election ballot. *See Williams v. Rhodes*, 393 U.S. 23, 25, 31 (1968) (restrictive provisions that made it "virtually impossible" for non-major parties to achieve ballot access substantially burdened "both the right to vote and the right to associate"). Lacking the benefit of prior notice, neither the Non-Primary Party Plaintiffs nor their potential nominees can now raise the funds needed to pay the new filing fees for the 2020 cycle. *See* Decl. of Wes Benedict ("**Benedict Decl.**") ¶¶ 6, 8-10; Decl. of David Collins ("**Collins Decl.**") ¶¶ 7-10; Decl. of Bill Kelsey ¶ 8; Decl. of Kerry McKennon ("**McKennon Decl.**") ¶ 6; Decl. of Alfred Molison ("**Molison Decl.**") ¶¶ 16-18; Decl. of Rebecca Paddock ("**Paddock Decl.**") ¶ 6; Decl. of Arthur Thomas IV ("**Thomas Decl.**") ¶¶ 11-12; Decl. of

Charles Waterbury ¶ 9; Decl. of John Wilford (“**Wilford Decl.**”) ¶¶ 10-13. In any event, even if they could afford to meet these obligations, such expenditures would exhaust the parties’ budgets for future campaigning, putting them in the untenable position of expending funds for mere applicants who will never become their nominee at the expense of the candidates who are nominated. Paddock Decl. at ¶ 7; Wilford Decl. ¶ 11. This is a further burden to Plaintiffs. *See Williams*, 393 U.S. at 31 (“The right to form a party for the advancement of political goals means little if a party can be kept off the election ballot and thus denied an equal opportunity to win votes.”).

Candidates who cannot raise the funds to pay the filing fees required by § 141.041 must submit nomination petitions instead. *See* § 141.041(a)(2). But collecting signatures by hand on paper nomination petitions is inherently time-consuming, labor-intensive, and likely even more expensive than paying the filing fee. *See* Benedict Decl. ¶ 6; McKennon Decl. ¶ 8; Molison Decl. ¶ 11; Paddock Decl. ¶ 6; Thomas Decl. ¶¶ 9, 13. These burdens are exponentially heavier as applied in the 2020 election cycle because Plaintiffs have only three short months to comply.⁵

2. *Enforcement of § 141.041 in the 2020 Election Cycle Is Not Reasonably Tailored to Further Any Sufficient State Interest.*

The severe burdens imposed by § 141.041 are unsupported by any legitimate interests, much less compelling ones. While the Election Code does impose identical requirements on non-Primary Party candidates, *see* § 141.041(b),(e), those fees are justifiable because they help finance the very *state*-funded primary elections in which those candidates seek to participate. *See* § 173; *Bullock v. Carter*, 405 U.S. 134, 147 (1972) (“reliev[ing] the State treasury of the cost of

⁵ In contrast, Primary Party candidates have had the ability to collect signatures for months because there is no statutory limitation on how early they may start and because their nomination petitions were available to them much earlier. *See* Collins Decl. ¶ 7; Molison Decl. ¶¶ 8-9.

conducting ... primary elections ... is a legitimate state objective.”). Non-Primary Parties, on the other hand, must fund their own nominating conventions, so this objective has no rational relation to § 141.041. Likewise, the new fee or petition requirements are not necessary to help the state “regulat[e] the number of candidates on the ballot.” *Bullock*, 405 U.S. at 145. In the 50 years since Texas first imposed a nomination petition requirement on Non-Primary Parties, no more than three such parties have ever qualified to appear on the general election ballot in any single election cycle, and—in any event—each such party may place only one nominee on the general election ballot for any office. Indeed, the new law appears to serve no purpose other than raising general revenue for the state. *See supra* at 3; *Belitskus v. Pizzingrilli*, 343 F.3d 632, 646–47 (3d Cir. 2003) (state’s asserted interest in offsetting election costs is unavailing where fees go to general operating fund).

Because the requirements imposed by § 141.041 are not justified by any legitimate state interest, “no amount of narrowing application will preserve it from constitutional attack.” *Amawi v. Pflugerville Indep. Sch. Dist.*, 373 F. Supp. 3d 717, 751 (W.D. Tex. 2019). Even if a sufficient state interest existed, Defendants’ method of enforcing the statute would still sweep too broadly to pass constitutional muster. As many Non-Primary Party applicants may ultimately fail to secure their party’s nomination for office, no legitimate interest can justify requiring all such applicants to pay filing fees or submit nomination petitions. Section 140.041 cannot withstand any level of scrutiny under the *Anderson/Burdick* analysis.

II. The Remaining Preliminary Injunction Factors Weigh Heavily in Favor of Enjoining Enforcement.

Irreparable Harm. The Fifth Circuit has repeatedly held that “the 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) (internal quotation marks and citation omitted). Absent relief, the Non-Primary Party

Plaintiffs will be severely restricted, or barred, from running candidates in Texas's 2020 general election. The exclusion of such candidates will cause irreparable harm to Plaintiffs' voting, speech, and associational rights. *See Williams*, 393 U.S. at 31.

Balance of Equities. Defendants cannot credibly articulate any harm they will suffer if enjoined from enforcing § 140.041, especially this late in the 2020 election cycle. By contrast, Plaintiffs suffer irreparable harm to their "most precious [First Amendment] freedoms." *Williams*, 393 U.S. at 30. The balance of equities therefore tips strongly in Plaintiffs' favor. *See Amawi*, 373 F. Supp. 3d at 758 (in balancing equities, the "the State 'can never have a legitimate interest in administering [a regulation] in a way that violates federal law.'" (Pitman, J.) (alteration in original) (citation omitted); *see also Opulent Life Church v. City of Holly Springs, Miss.*, 697 F.3d 279, 297 (5th Cir. 2012) (where petitioners have shown irreparable harm, respondent "would need to present powerful evidence of harm to its interests to prevent [petitioner] from meeting this requirement.")).

Public Interest. Defendants regulated Non-Primary Parties' ballot access for more than 50 years before § 140.041 was enacted. Moreover, unlike the fees paid by Primary Party candidates, the fees that § 140.041 requires of Non-Primary Party candidates will not be used to offset taxpayer-funded nominating procedures. Therefore, enjoining the enforcement of this provision for one more election cycle plainly will not harm the public interest. To the contrary, an injunction will protect the right of all Texans to cast their votes effectively. *See Texans for Free Enter.*, 732 F.3d at 539 ("[I]njunctive protecting First Amendment freedoms are always in the public interest") (internal quotation marks and citation omitted).


RELIEF REQUESTED

For the foregoing reasons, Plaintiffs ask the Court to enter an order enjoining Defendants from enforcing § 141.041 as applied to Plaintiffs in the 2020 election cycle.

Dated: October 10, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

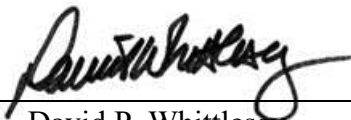
I certify that on October 10, 2019, this document was filed electronically via the Court's CM/ECF system, causing electronic service upon all counsel of record.



David P. Whittlesey

CERTIFICATE OF CONFERENCE

As required by Local Rule CV-7(i), I certify that I previously conferred by telephone with Anna Mackin, counsel for Defendants, in a good-faith attempt to resolve by agreement the matters referenced in this motion. After discussing the merits and requested relief, the parties were unable to reach agreement, and Defendants oppose the motion.



David P. Whittlesey

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No. 1:19-cv-00700-RP

JOHN or JANE DOE, in his or her official)
capacity as Secretary of State of Texas, and)
JOSE A. ESPARZA, in his official capacity)
as Deputy Secretary of State of Texas,)

Defendants.)

**DECLARATION OF WES BENEDICT IN SUPPORT OF PLAINTIFFS’ MOTION FOR
PRELIMINARY INJUNCTION**

(Pursuant to 28 U.S.C. § 1746)

I, Wes Benedict, hereby declare as follows:

1. I am over the age of 18 and reside in Texas.
2. I have personal knowledge about the matters to which I attest. If called to testify,

I could and would competently testify to these statements.

3. I joined the Libertarian Party in 1996 and I am an active member of the Libertarian Party of Texas (“LPTX”). I served as Executive Director of LPTX from 2004 to 2009, when I resigned to become Executive Director of the Libertarian National Committee. I served in that position until 2012 when I founded the Libertarian Booster PAC. In 2013 I returned to serving as Executive Director of the LNC until 2019 when I returned to Texas to serve as President of

Libertarian Booster PAC again Libertarian Booster PAC promotes Libertarian policies by helping Libertarian candidates run efficient and effective campaigns.

4. I want to seek LPTX's nomination for U.S. Senate in 2020. I think it is critical that voters hear a principled Libertarian voice on national issues that impact us here in Texas. In particular, if I am able to run, my campaign will focus on ending our foreign wars – *i.e.*, bringing troops home from Iraq and Afghanistan, and keeping them out of Iran, among other foreign entanglements; cutting taxes and spending across the board by ten percent; advocating tolerance for all people regardless of race, religion and other social factors; and legalizing marijuana at the federal level nationwide.

5. The new filing fee or nomination petition requirements that Texas enacted in 2019 are a major obstacle to my ability to seek LPTX's nomination for U.S. Senate. *See* TEX ELEC. CODE ANN. § 141.041. My understanding is that § 141.041 requires candidates seeking LPTX's nomination for U.S. Senate either to pay a filing fee of \$5,000 or submit a nomination petition with at least 5,000 valid signatures on or before the December 9, 2019 deadline for filing applications for nomination.

6. I do not have \$5,000 to spend on a filing fee, nor do I have a team of volunteer petition circulators available to collect 5,000 valid signatures before the December 9, 2019 filing deadline. Although I have extensive experience collecting signatures in Texas, I cannot take the necessary time away from my paid employment to collect the signatures myself. Further, based on my past experience, it would cost at least \$3 per signature to hire paid petition circulators, which makes completing the nomination petition far more expensive than paying the filing fee. As such, the nomination petition is not a practical option for me, or for any Libertarian candidate I know.

7. Additionally, assuming I had the resources to conduct a petition drive, which I do not, it is unclear to me what a candidate must do to comply with the signature requirement. For example, the nomination petition that candidates must circulate states that if voters sign it, they “become ineligible” to vote in a primary election “during this voting year.” I do not know whether that means a voter who voted in the 2018 primary election is ineligible to sign my petition in 2019, or that a voter who signs my petition in 2019 is ineligible to vote in a primary election in 2020, or both. And if a voter who signs my nomination petition in 2019 becomes ineligible to vote in the 2020 primary elections, I do not know whether I am obligated to notify each potential signer of that fact, or whether a voter who signs my nomination petition in 2019 and then votes in a primary election in 2020 is thereby violating a law for which there may be civil or criminal penalties.

8. I am attempting to raise funds to pay the \$5,000 filing fee for my own candidacy, and Libertarian Booster PAC is attempting to raise funds to pay other candidates’ filing fees. Under the best of circumstances, however, it is difficult for a relatively small political party like LPTX to raise a substantial amount of money in a short time, because our donor base is so much smaller than the older parties that have existed for more than a century. It takes money to raise money, and fundraising to cover the fees required by § 141.041 is especially difficult, because LPTX’s supporters are understandably reluctant to contribute to candidates who are not yet on the ballot, and who may not be on the ballot. When potential donors ask why LPTX candidates are now required to pay filing fees, even though LPTX selects nominees at its own self-funded convention and the state does not incur any cost as a result of their candidacy for LPTX’s nomination, I have no answer. To me, § 141.041 only appears intended to make it more difficult for LPTX to place candidates on the general election ballot, and to enrich the state at LPTX’s expense.

9. In my own case, even if I had \$5,000 available to spend on a filing fee, such a large expenditure would impose a serious hardship upon my family. It is difficult to justify such an expenditure when I have no way of knowing whether LPTX will nominate me at its 2020 convention; I could pay the \$5,000 filing fee only to lose the nomination to another candidate. Furthermore, if I paid the \$5,000 filing fee, and subsequently won LPTX's nomination, I could not afford to spend any additional funds on my campaign.

10. Because I do not have the funds and resources necessary to comply with § 141.041, and I do not have a reasonable expectation of raising \$5,000 before December 9, 2019, the new requirements that § 141.041 imposes are likely to prevent me from seeking LPTX's nomination as a candidate for U.S. Senate.

11. I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed: 10/07/2019

Wes Benedict
Wes Benedict

IN THE UNITED STATES DISTRICT COURT
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AUSTIN DIVISION

MARK MILLER, MICHELE GANGNES,)
SCOTT COPELAND, LAURA PALMER,)
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Plaintiffs,)

v.)

No. 1:19-cv-00700-RP

JOHN or JANE DOE, in his or her official)
capacity as Secretary of State of Texas, and)
JOSE A. ESPARZA, in his official capacity)
as Deputy Secretary of State of Texas,)

Defendants.)

**DECLARATION OF DAVID COLLINS IN SUPPORT OF PLAINTIFFS’ MOTION FOR
PRELIMINARY INJUNCTION**

(Pursuant to 28 U.S.C. § 1746)

I, David Collins, hereby declare as follows:

1. I am over the age of 18 and reside in Texas.
2. I have personal knowledge about the matters to which I attest. If called to testify,

I could and would competently testify to these statements.

3. I joined the Green Party of Texas (“GPTX”) in 2000. I currently serve as co-Chair of the Green Party of Houston.

4. In 2012, I ran as the GPTX nominee for U.S. Senate. In 2014, I ran as the GPTX nominee for Harris County judge. In 2020, I want to seek GPTX’s nomination for U.S. Senate, and I have declared my candidacy for that office.

5. I run for office as a GPTX candidate to build public support for the policies set forth in the platform of GPTX and the platform of the Green Party of the United States. As a candidate for U.S. Senate in 2020, I will focus in particular on the need to address the climate emergency by transitioning away from fossil fuel toward renewable resources; educating the workforce for the new reality of the 21st century, that a fossil fuel economy is no longer sustainable; removing the United States' military presence from hundreds of military bases around the world; implementing improved Medicare for all as outlined in the Eco-Socialist Green New Deal (which is bolder and more radical than the "Green New Deal" that some congressional Democrats support); and legalizing marijuana and other banned substances at the federal level.

6. I understand that in 2019 Texas adopted new ballot access requirements for candidates who seek the nomination of a party like GPTX, which nominates by convention. *See* TEX. ELEC. CODE § 141.041. My understanding is that § 141.041 now requires me either to submit a nomination petition with 5,000 signatures, or pay a filing fee of \$5,000, on or before the December 9, 2019 deadline for filing my application for nomination as GPTX's nominee for U.S. Senate.

7. I understand that the requirements that § 141.041 imposes on candidates seeking GPTX's nomination are the same as those the state imposes on candidates seeking the nomination of parties that nominate by primary election. GPTX does not nominate by primary election, however, so there is no reason its candidates should be required to comply with the requirements for appearing on the primary election ballot. Furthermore, unlike the parties that nominate by primary, GPTX candidates had no notice that we would be subject to these new requirements, and that we would have to comply with them by December 9, 2019. Therefore, neither GPTX nor its

individual candidates like me have had the opportunity to take action to comply with § 141.041, for example by raising funds and recruiting petition circulators.

8. I do not have \$5,000 available to spend on the filing fee, nor do I believe, based on my past experience as a GPTX nominee, that I am likely to raise that much money before the December 9, 2019 filing deadline. To do so, I would need to convince 50 supporters to donate \$100 each, or 100 supporters to donate \$50 each (or even more supporters to make smaller donations). That is a massive task, since GPTX donors typically contribute closer to \$25 at a time. At that rate, I would need 200 supporters to contribute to my campaign – before I have been nominated, and before I am sure whether I will be on the ballot or not. But donors are reluctant to contribute until after a candidate has secured the party's nomination.

9. I also do not have petition circulators standing at the ready to help me gather 5,000 valid signatures by December 9, 2019. I have made it known to my GPTX supporters that I cannot comply with § 141.041 by myself, and I am hoping to recruit volunteers to collect signatures, but I am doubtful that we will be able to find enough people to put in the hours needed to collect 5,000 valid signatures in the short time left. As a result, it appears very likely that § 141.041 will prevent me from seeking GPTX's nomination for U.S. Senate.

10. I am still attempting to comply with § 141.041, but at this point I think it will take a minor political miracle. Given my lack of funds and resources I do not see it happening.

11. I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed: 8 OCTOBER 2019



David Collins

**IN THE UNITED STATES DISTRICT COURT
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MARK MILLER, MICHELE GANGNES,)
SCOTT COPELAND, LAURA PALMER,)
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TEXAS, CONSTITUTION PARTY OF)
TEXAS, GREEN PARTY OF TEXAS and)
LIBERTARIAN PARTY OF TEXAS,)

Plaintiffs,)

v.)

No. 1:19-cv-00700-RP

JOHN or JANE DOE, in his or her official)
capacity as Secretary of State of Texas, and)
JOSE A. ESPARZA, in his official capacity)
as Deputy Secretary of State of Texas,)

Defendants.)

**DECLARATION OF BILL KELSEY IN SUPPORT OF PLAINTIFFS’ MOTION FOR
PRELIMINARY INJUNCTION**

(Pursuant to 28 U.S.C. § 1746)

I, Bill Kelsey, hereby declare as follows:

1. I am over the age of 18 and reside in Texas.
2. I have personal knowledge about the matters to which I attest. If called to testify,

I could and would competently testify to these statements.

3. I am an active member of the Libertarian Party of Texas (“LPTX”). I have run as LPTX’s nominee for U.S. Representative in District 10 twice before, in the 2014 and 2016 general elections.

4. I want to seek LPTX’s nomination to run for U.S. Representative in District 10 in the 2020 election.

5. I run for office as a Libertarian candidate to present a principled alternative to the Republicans and Democrats. Those parties take pride in “bipartisan consensus” when it comes to foreign policy – they agree we should maintain troops and military bases in Europe and Central Asia, and on interventionism generally. I disagree. I want to bring our troops home and to avoid foreign entanglements. I am also opposed to the Republicans’ and Democrats’ position on immigration; my view is that we should have a more tolerant policy. My goal in running for office as a Libertarian is to keep alternative voices alive on these and other issues.

6. I understand that in June 2019, Texas enacted a new Election Code provision, TEX. ELEC. CODE § 141.041, which took effect on September 1, 2019. I understand that this law requires the nominees of parties that nominate by convention to pay a filing fee or, alternatively, to submit a nomination petition, to qualify for placement on the general election ballot. I understand that the Secretary of State is requiring all candidates who file applications for nomination to comply with § 141.041 on or before the December 9, 2019 deadline for filing the applications.

7. I understand that § 141.041 requires that candidates for U.S. Representative pay a filing fee of \$3,125 or submit a nomination petition with the lesser of 500 valid signatures or two percent of the total vote for governor in the district in the preceding election.

8. It would be an extreme hardship for me to comply with § 141.041 on or before December 9, 2019. I did not have notice that I would be subject to the new requirements that this provision imposes, and I do not have the funds or resources to pay the prescribed filing fee or to mount a successful petition drive in the short time before the December 9, 2019 filing deadline. I have not had the opportunity to raise funds or recruit petition circulators in anticipation of complying with these new requirements, which makes enforcing them in the 2020 election cycle, so soon after their enactment, fundamentally unfair.

9. It will be especially difficult to organize a successful petition drive before the December 9, 2019 filing deadline because there is significant confusion among LPTX members about voters' eligibility to sign our nomination petitions. We do not know whether voters are eligible to sign if they voted in the 2018 primary elections, nor do we know whether voters are prohibited from voting in the 2020 primary elections if they sign an LPTX candidate's nomination petitions in 2019, or whether we are required to tell voters that they are. Additionally, my understanding is that collecting signatures is unreliable and discouraging because there is no way to know whether a signature is valid in advance. As a result, I could submit 600 signatures, only to find out that 101 were invalid for technical reasons, and I would be prevented from running. It therefore appears that the only way to ensure ballot access is to pay the filing fee.

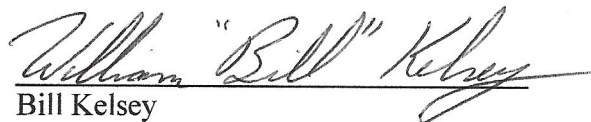
10. To pay the filing fee required by § 141.041 is not only financially burdensome, but unjustified because the state does not pay for the LPTX convention and LPTX does not participate in the primary election. There is no reason an LPTX candidate should have to pay these fees, yet I must do so from my own personal funds. That makes it especially hard to justify such a large expenditure to my family, when the fee does not even support my campaign, but only permits me the opportunity to seek LPTX's nomination at our convention, when there is no guarantee I will be nominated.

11. As a result, the requirements imposed by § 141.041 will prevent me from seeking LPTX's nomination as a candidate for U.S. Representative in District 10 in the 2020 election cycle.

12. By preventing me from seeking LPTX's nomination for U.S. Representative, § 141.041 denies me a platform to present voters with an alternative view to those of the Democratic and Republican candidates. It also undermines my ability to promote and support LPTX, both as a candidate and as a voter who wishes to vote for Libertarian candidacies, including my own, and to help LPTX grow as a party by encouraging new members to join.

13. I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed: 7 OCT '19


Bill Kelsey

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MARK MILLER, MICHELE GANGNES,)
SCOTT COPELAND, LAURA PALMER,)
ANDY PRIOR, AMERICA’S PARTY OF)
TEXAS, CONSTITUTION PARTY OF)
TEXAS, GREEN PARTY OF TEXAS and)
LIBERTARIAN PARTY OF TEXAS,)

Plaintiffs,)

v.)

No. 1:19-cv-00700-RP

JOHN or JANE DOE, in his or her official)
capacity as Secretary of State of Texas, and)
JOSE A. ESPARZA, in his official capacity)
as Deputy Secretary of State of Texas,)

Defendants.)

**DECLARATION OF KERRY MCKENNON IN SUPPORT OF PLAINTIFFS’ MOTION
FOR PRELIMINARY INJUNCTION**

(Pursuant to 28 U.S.C. § 1746)

I, Kerry McKennon, hereby declare as follows:

1. I am over the age of 18 and reside in Texas.
2. I have personal knowledge about the matters to which I attest. If called to testify,

I could and would competently testify to these statements.

3. I am an active member of the Libertarian Party of Texas (“LPTX”) and have been since 2013. In 2014 I ran as LPTX’s nominee for Texas House, District 88. In 2018 I ran as LPTX’s nominee for Lt. Governor.

4. In 2020, I want to run as LPTX’s nominee for U.S. Senate. I believe voters need to hear the principled Libertarian position on issues like addressing opioid addiction, ending the

war on drugs, improving veterans' care and reforming immigration policy so that our nation can once again welcome immigrants in a productive and humane way, among other issues. I want to be that voice.

5. I understand that Texas has adopted new requirements that recently took effect, pursuant to which candidates seeking LPTX's nomination for U.S. Senate must either pay a filing fee of \$5,000 or submit a nomination petition with 5,000 valid signatures on or before the December 9, 2019 deadline for filing our applications for nomination. *See* TEX ELEC. CODE ANN. § 141.041. I am unable to comply with these requirements.

6. I don't have \$5,000 to pay the filing fee, or any reasonable expectation of raising that kind of money before I have even secured LPTX's nomination. When I ran for Lt. Governor in 2018, I spent around \$20,000 on my entire electoral campaign, including in-kind donations. Almost all of that money came from small donors, but most donors will not donate to your campaign until you are actually nominated. As a result, these new requirements will reduce competition for LPTX's nomination, because we can't afford to have multiple candidates seeking the same office. In effect, LPTX will have to pick winners before the convention, so that donors can coalesce around one candidate and combine funds to pay the filing fee.

7. Additionally, I believe § 141.041 creates a strong advantage for candidates who have more money and access to more donors. If you are not independently wealthy, like me, and you do not have connections to a large donor pool, and you cannot leave your job to seek LPTX's nomination, you are at a serious disadvantage. For many candidates, including me, that disadvantage may be insurmountable. Most donors to my 2018 campaign contributed around \$25 each. At that rate, I will need to convince 200 donors to contribute to my 2020 campaign just to cover the filing fee.


8. Although I understand that § 141.041 permits candidates to submit a nomination petition “in lieu of” paying the filing fee, that is a non-starter for me. I do not have access to a team of volunteer petition circulators who I can rely on to obtain 5,000 valid signatures in the short time before the December 9, 2019 deadline. Further, hiring professional petition circulators at several dollars per signature would cost even more than the filing fee.

9. I have several additional concerns about § 141.041. For one, I do not believe the state has any valid interest in imposing restrictions on which candidates may seek LPTX’s nomination. Apparently § 141.041 imposes the same requirements that apply to candidates who seek access to the primary election ballot, but LPTX nominates by convention, and our candidates do not participate in the primary election. I see no reason why candidates should pay the state a filing fee to participate in the LPTX convention, when LPTX pays for the convention and the state takes no part in the process.

10. I am attempting to comply with § 141.041 so that I may seek LPTX’s nomination for U.S. Senate in 2020, but to me the law seems punitive, unnecessary and irrational. Whether I am able to comply with it or not, it poses a major obstacle to my potential candidacy, to LPTX’s ability to grow as a party, and ultimately, to Libertarian voters’ ability to nominate the candidates who enjoy the most support among party members.

11. I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed: 26 October 2019


Kerry McKennon

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

MARK MILLER, MICHELE GANGNES,)
SCOTT COPELAND, LAURA PALMER,)
ANDY PRIOR, AMERICA’S PARTY OF)
TEXAS, CONSTITUTION PARTY OF)
TEXAS, GREEN PARTY OF TEXAS and)
LIBERTARIAN PARTY OF TEXAS,)

Plaintiffs,)

v.)

No. 1:19-cv-00700-RP

JOHN or JANE DOE, in his or her official)
capacity as Secretary of State of Texas, and)
JOSE A. ESPARZA, in his official capacity)
as Deputy Secretary of State of Texas,)

Defendants.)

**DECLARATION OF ALFRED MOLISON IN SUPPORT OF PLAINTIFFS’ MOTION
FOR PRELIMINARY INJUNCTION**

(Pursuant to 28 U.S.C. § 1746)

I, Alfred Molison, hereby declare as follows:

1. I am over the age of 18 and reside in Texas.
2. I have personal knowledge about the matters to which I attest. If called to testify,

I could and would competently testify to these statements.

3. I have been an active member of the Green Party of Texas (“GPTX”) since 1999, and I currently serve as its co-Chair.

4. It is my understanding that, under Texas law, GPTX is currently eligible to place its nominees on the 2020 general election ballot because at least one of its nominees for statewide

office received more than 2 percent of the entire vote cast for that office in one of the previous five general elections.

5. In recent election cycles, GPTX has placed dozens of candidates for state and federal office on Texas's general election ballot. In 2016, for example, GPTX ran 33 such candidates; in 2014; GPTX ran 28 such candidates; and in 2012, GPTX ran 36 such candidates.

6. I understand that in June 2019, Texas enacted a new Election Code provision, TEX. ELEC. CODE § 141.041, which took effect on September 1, 2019. I understand that this law imposes new requirements on potential candidates of parties that nominate by convention—specifically, parties that nominate by convention may no longer place their nominees on the general election ballot unless each nominee has separately paid a filing fee or, alternatively, submitted a nomination petition. I understand that these requirements also apply to nominees of parties, such as GPTX, that are already ballot-eligible.

7. On or about August 20, 2019, the Secretary of State's office published an announcement on its website regarding the implementation of § 141.041, which I have viewed. Based on this announcement, it is my understanding that each candidate who files an application for nomination (and not just a party's actual nominees) must comply with the new requirements, and must do so before the December 9, 2019.

8. Although this announcement was made on or about August 20, 2019, the Secretary of State did not make the required nomination petitions available online, whereas nomination petitions for primary election candidates have been available online since before that date. GPTX members repeatedly contacted Secretary Hughs's office to request the nomination petitions required by § 141.041, but were told they were unavailable.

9. On September 3, 2019, Keith Ingram, Director of the Elections Division of the Office of the Secretary of State, provided the nomination petitions to GPTX via email. The nomination petitions were not posted online at the Secretary of State's website until approximately September 17, 2019.

10. Based on my understanding, each candidate who wishes even to seek nomination by GPTX must now pay up to thousands of dollars in individual filing fees (or, alternatively, obtain up to thousands of petition signatures) by December 9, 2019, or else he or she will be disqualified from appearing on Texas's general ballot in 2020. For example, each candidate for United States Senate must pay a filing fee of \$5,000 or submit a petition with 5,000 valid signatures; candidates for other statewide offices must pay a filing fee of \$3,750 or submit a petition with 5,000 valid signatures; and candidates for U.S. House must pay a filing fee of \$3,125 or submit a nomination petition with the lesser of 500 valid signatures or two percent of the total vote for governor in the district in the preceding election. Applicants for local offices are also subject to filing fees or petition requirements.

11. In my previous experience with petition signature drives in Texas, obtaining the required number of valid petition signatures for any given office (in lieu of paying the filing fee) would likely impose even more costs than the filing fees themselves. Nomination petition drives are time-consuming and burdensome under the best of circumstances. Given the short time before the December 9, 2019 deadline for complying with § 141.041, volunteer efforts are likely to fail, such that it will be necessary to hire paid petition circulators. The cost of doing so would likely exceed the filing fees.

12. These requirements will impose a severe hardship upon GPTX and the candidates who wish to seek GPTX's nomination for office. Although the new filing fee or petition

requirements directly apply to individual candidates, GPTX is equally affected because, to the extent its candidates are unable to meet these requirements, the party will be barred from placing any candidates on the general ballot for 2020, despite the fact that GPTX is ballot-eligible for this election cycle.

13. On August 31, 2019, GPTX had a balance of \$481.00 in its bank account. GPTX does not have any other cash on hand or financial assets. Sustaining donations from GPTX members average less than \$200.00 per month, the majority of which is applied toward modest operational costs.

14. GPTX also does not have a ready supply of trained petition circulators who can work full-time on a nomination petition drive. Although GPTX members and supporters volunteer for such efforts, they are not independently wealthy, and cannot afford to take time away from their paid employment and other obligations to devote more than a few hours per week to circulating nomination petitions.

15. GPTX did not have prior notice that Texas would enact § 141.041, and has taken no action in recent months, such as targeted fundraising or training volunteer petition circulators, that would have allowed GPTX even to attempt to offset the new fee or petition requirements for its candidates.

16. Given GPTX's limited resources, GPTX is unable to provide financial or other resources to support candidates who seek the party's nomination in 2020 comply with § 141.041 by December 9, 2019. Our candidates will therefore need to rely on their own funds and resources to pay the required filing fee or submit a nomination petition. Based on my conversations with our candidates and upon other information, it is my understanding that most—and perhaps all—will be unable to do so.

17. Several candidates have declared their intention to seek GPTX's nomination in 2020, including the following:

- William Philbin (U.S. Senate)
- Rusty Tomlinson (U.S. House, District 13)
- William Hackett (U.S. House, District 20)
- Allen Olson-Urtecho (U.S. House, District 21)
- Hal Ridley Jr (U.S. House, District 36)
- Charles Waterbury (Texas Supreme Court)
- Robert Travis Hildt (Texas House, District 23)
- Brody Andrew Mulligan (Texas House, District 92)
- Janis Richards (Texas House, District 128)
- Christian Malcolm (Texas House, District 129)
- Hunter Crow (Tarrant County Tax Assessor)
- Vanessa Tijerina (Willacy County Sheriff)
- Alfred Molison (To Be Announced)
- John Hancock (To Be Announced)

18. Based on my knowledge as a long-standing member of GPTX and its current co-Chair, I believe it will be an extreme hardship for these candidates to raise the funds and resources necessary to comply with § 141.041, and that most if not all of them will be unable to do so by the December 9, 2019 deadline. As a result, most if not all of these candidates, and any others who may seek GPTX's nomination, are likely to be excluded from Texas's 2020 general election ballot.

19. Additionally, I intend to seek GPTX's nomination for statewide office in 2020, either at the state or federal level, but I lack the funds and resources to comply with § 141.041.

20. The exclusion of GPTX's nominees from the general election ballot will effectively sideline GPTX from participating in the 2020 election. GPTX members and supporters, including myself, who intend to vote for GPTX's nominees will be unable to do so. In my opinion, this will also harm all Texas voters who wish to have more robust debate on matters of public interest and a meaningful range of choices at the polls.

21. The exclusion of GPTX's nominees from Texas's 2020 general election ballot will also be a devastating blow to GPTX going forward. Running candidates for public office is among GPTX's core functions. Merely having GPTX candidates on the ballot is itself one of the most effective means of building public support for GPTX and its platform. Additionally, the exclusion of our nominees from the general election ballot will in 2020 will significantly reduce GPTX's chances of being able to retain ballot access for the next election cycle.

22. Retaining ballot access is vital to GPTX's ability to participate in Texas's electoral process in the future. GPTX does not have the funds and resources necessary to support another petition drive to qualify the party for the ballot, nor does GPTX have any reasonable expectation that it can raise the necessary funds and resources. Therefore, if § 141.041 excludes our candidates from the general election ballot, such that no candidate for statewide office is able to garner sufficient votes to qualify GPTX to retain ballot access, it will effectively terminate GPTX's ability to participate in Texas's electoral process.

23. I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed: 10/9/2019



Alfred Molison

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

MARK MILLER, MICHELE GANGNES,)
SCOTT COPELAND, LAURA PALMER,)
ANDY PRIOR, AMERICA’S PARTY OF)
TEXAS, CONSTITUTION PARTY OF)
TEXAS, GREEN PARTY OF TEXAS and)
LIBERTARIAN PARTY OF TEXAS,)

Plaintiffs,)

v.)

No. 1:19-cv-00700-RP

JOHN or JANE DOE, in his or her official)
capacity as Secretary of State of Texas, and)
JOSE A. ESPARZA, in his official capacity)
as Deputy Secretary of State of Texas,)

Defendants.)

**DECLARATION OF REBECCA PADDOCK IN SUPPORT OF PLAINTIFFS’ MOTION
FOR PRELIMINARY INJUNCTION**

(Pursuant to 28 U.S.C. § 1746)

I, Rebecca Paddock, hereby declare as follows:

1. I am over the age of 18 and reside in Texas.
2. I have personal knowledge about the matters to which I attest. If called to testify,

I could and would competently testify to these statements.

3. I am an active member of the Libertarian Party of Texas (“LPTX”).

4. In 2014 I was the LPTX nominee for U.S. Senate. I ran to promote my principles as a Constitutional Libertarian, and in particular to advocate for Second Amendment rights, a strong military, and for more resources and better care for our veterans, who need our support before and after they complete their service to the nation, among other issues.

5. I want to seek LPTX's nomination for U.S. Senate in 2020, to continue my advocacy and to help LPTX grow as a party, but I will not do so due to the new filing fee or nomination petition requirements that Texas adopted in 2019. *See* TEX ELEC. CODE ANN. § 141.041. As I understand it, § 141.041 requires every candidate who seeks LPTX's nomination either to pay a filing fee or submit a nomination petition with a specified number of valid signatures on or before the December 9, 2019 deadline for filing applications for nomination. My understanding is that candidates for U.S. Senate must pay a filing fee of \$5,000 or submit a nomination petition with 5,000 signatures.

6. I do not have volunteers who are able to devote the hours needed to collect 5,000 valid signatures by the December 9, deadline. Hiring professional petitioners would be even more expensive than paying the filing fee, because they charge much more than \$1 per signature. That means my only conceivable option to comply with § 141.041 would be to pay the filing fee, but I do not have \$5,000 available for that purpose. As a result, I would need to raise the funds from LPTX members and supporters.

7. I will not attempt to raise funds to pay the filing fee required by § 141.041 because I know that at least one other candidate is seeking LPTX's nomination for U.S. Senate, and I do not want to divide the party's limited fundraising resources. If more than one candidate runs for LPTX's nomination for the same office, each of us would be required to pay the filing fee. It will be hard enough for a single candidate to raise the funds needed to pay the filing fee for each office, however, because donors do not want to give money to candidates until we are actually nominated and have a place on the ballot. When I ran for U.S. Senate in 2014, for example, I did not start fundraising until after I won LPTX's nomination.

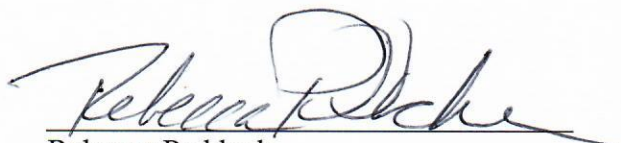
8. As a result, the more candidates who seek LPTX's nomination for any given office, the less likely any one of them is to succeed in raising the funds and resources necessary to comply with § 141.041. For the offices with the highest filing fees, like U.S. Senate, I doubt that more than one candidate can raise the necessary funds, especially when the candidates have not been nominated yet. But even if they could, it would be a waste of our supporters' limited financial resources to pay several filing fees: the funds are needed to support our candidates' general election campaigns. Section 141.041 is therefore impeding the democratic process by giving candidates like me a powerful incentive not to seek LPTX's nomination, thus denying LPTX members the opportunity to choose among candidates at the convention.

9. It is the state's responsibility to run elections. I pay taxes to support that. But LPTX candidates do not run in the primary election, so I do not understand why the state has decided to start requiring them to pay the same filing fees that candidates must pay to run in the primary election. LPTX selects our nominees at conventions, and LPTX pays for the conventions. I do not see any rational basis for the state to require LPTX candidates to pay filing fees to participate in the LPTX convention, when the state takes no part in the process whatsoever.

10. I believe that § 141.041 will have dire consequences for LPTX. Ballot access is what the party brings to the table. If LPTX loses ballot access, then the party is going to fall apart. This will decimate the party. It will not decimate the values, but the party will fall apart in Texas. The purpose of the party is to put people on the ballot and get people elected. If LPTX cannot put people on the ballot, then what are we doing? At that point, we are no longer a political party. We are an education club, maybe, or a philosophy club, but we are not a political party in any meaningful sense of the word. LPTX gives people a platform for their voice. If you want to shut down that platform, taking away ballot access is the way to do it.

11. I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed: 10/7/2019


Rebecca Paddock

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

MARK MILLER, MICHELE GANGNES,)
SCOTT COPELAND, LAURA PALMER,)
ANDY PRIOR, AMERICA’S PARTY OF)
TEXAS, CONSTITUTION PARTY OF)
TEXAS, GREEN PARTY OF TEXAS and)
LIBERTARIAN PARTY OF TEXAS,)

Plaintiffs,)

v.)

No. 1:19-cv-00700-RP

JOHN or JANE DOE, in his or her official)
capacity as Secretary of State of Texas, and)
JOSE A. ESPARZA, in his official capacity)
as Deputy Secretary of State of Texas,)

Defendants.)

**DECLARATION OF ARTHUR THOMAS IV IN SUPPORT OF PLAINTIFFS’ MOTION
FOR PRELIMINARY INJUNCTION**

(Pursuant to 28 U.S.C. § 1746)

I, Arthur Thomas IV, hereby declare as follows:

1. I am over the age of 18 and reside in Texas.
2. I have personal knowledge about the matters to which I attest. If called to testify,

I could and would competently testify to these statements.

3. I am an active member of the Libertarian Party of Texas (“LPTX”). I have run as LPTX’s nominee several times, for both state and federal office. In 2018, I ran as the LPTX nominee for U.S. Representative in District 28. In 2012, I ran as the LPTX nominee for State Representative in District 121. In 2010, I ran as the LPTX nominee for State Senate in District 25.

4. I want to seek LPTX's nomination to run for U.S. Representative in District 28 in the 2020 election.

5. My policy goals for running as a Libertarian candidate vary depending on the office I am seeking, but in general I want to promote Libertarian principles and to present voters with a choice other than Republicans and Democrats. In my recent races, including those in 2018, 2012 and 2010, I was the only candidate on the ballot other than the incumbent. If I had not run, therefore, voters would have had no choice but to re-elect the incumbent. Based on my review of the elections results, that was true of 23 incumbents in the 2018 general election: they would have run unopposed but for the Libertarian candidate.

6. In my 2018 campaign for U.S. Representative, my platform focused on reducing the deficit, ending our endless wars, ending the war on drugs, and promoting a more rational and humane immigration policy. These policy positions reflect my fundamental belief in limited government. Apart from Libertarians, I do not believe other candidates or parties represent this position.

7. I understand that in June 2019, Texas enacted a new Election Code provision, TEX. ELEC. CODE § 141.041, which took effect on September 1, 2019. I understand that this law requires the nominees of parties that nominate by convention to pay a filing fee or, alternatively, to submit a nomination petition, to qualify for placement on the general election ballot. I understand that the Secretary of State is requiring all candidates who file applications for nomination to comply with § 141.041 on or before the December 9, 2019 deadline for filing the applications.

8. I understand that § 141.041 requires that candidates for U.S. Representative pay a filing fee of \$3,125 or submit a nomination petition with the lesser of 500 valid signatures or two percent of the total vote for governor in the district in the preceding election.

9. The new requirements that § 141.041 imposes make me incapable of running for U.S. Representative in 2020. Ordinarily, I would need to collect at least 750 signatures in total to ensure that I have at least 500 valid signatures. That would be a difficult task under the best of circumstances. In this case, however, I did not know that I would be required to submit nomination petitions (or pay a filing fee) by the December 9, 2019 deadline, and I have not taken any steps to prepare a petition drive, such as recruiting volunteer petition circulators. Even if I had, I would be unable to provide petition circulators with reliable guidance as to which voters are eligible to sign, because the instructions on the petitions are unclear.

10. I have reviewed the petitions, which are available on the Secretary of State's website. See Texas Secretary of State, *Nominee of Libertarian or Green Party in 2020*, available at <https://www.sos.state.tx.us/elections/candidates/guide/2020/lib-green-nom2020.shtml> (last visited October 3, 2019). The petitions state that "signing more than one petition to entitle a party to have its nominees placed on the general election ballot in the same election is prohibited." See *id.* The purpose of the petition is not to entitle LPTX to place its nominees on the general election ballot, however, but to allow me to seek LPTX's nomination at the LPTX convention. The quoted language therefore appears to be inapplicable, but I am reluctant to disregard it, as it is clearly intended to establish a prohibition against signing more than one petition. I can only guess as to whether it means that voters are prohibited from signing more than one candidate's petitions, or that they are prohibited from signing more than one candidate's petitions for the same office, or something else entirely. Additionally, the petitions state that voters who sign the petitions are "ineligible" to vote in a primary "during this voting year." See *id.* I assume that means that voters cannot sign my petitions in 2019 and then vote in a primary in 2020, but it also might mean that voters cannot sign my petitions in 2019 if they voted in a primary in 2018.

11. Because of these uncertainties surrounding the signature requirements, in my view, the only way to completely ensure ballot access is to pay the filing fee. I do not have the resources to pay this amount of money, which would have to come from my own pocket. Even if I could pay the filing fee, I would have to pay it before LPTX selects its nominees at convention, and there is no guarantee that I would be nominated or appear on the general election ballot. And if I did secure the nomination, my campaign would start in a hole, financially, which would limit my capacity to promote my candidacy to voters.

12. I believe it is unfair to enforce § 141.041 against candidates like me in 2020, when we reasonably believed based on existing Texas law that we would be able to appear on the general election ballot once we secured LPTX's nomination. LPTX candidates did not know we would have to comply with these new requirements and we have not had an opportunity to raise the funds and resources necessary to do so. What is worse, the filing fees we are now required to pay do not offset any costs that we cause the state to incur. Instead, it appears they will finance primary elections in which we do not participate.

13. Although the requirements that § 141.041 imposes on candidates for State Representative or State Senator are lower, they are still substantial enough to prevent me from seeking those offices in 2020. I understand that the filing fee for candidates for State Representative is \$750, and the filing fee for candidates for State Senator is \$1,250. Collecting the required number of signatures in lieu of paying those fees will likely cost even more. Realistically, I cannot afford to pay more than \$500 toward a filing fee or petition drive.

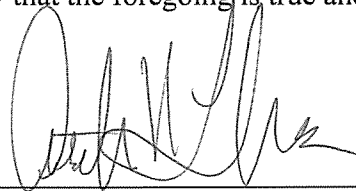
14. By preventing me from seeking LPTX's nomination for U.S. Representative, State Representative or State Senator, § 141.041 denies me the opportunity to present an alternative platform to Texas voters, and to give voters a meaningful choice in an election that otherwise

might be uncontested. We will lose valuable media coverage; no one will reach out to me to hear the Libertarian viewpoint on campaign issues, and no one will raise the issues that I believe are important. Further, LPTX will lose the foothold we have been building with the Texas electorate, because voters will be less likely to consider LPTX a legitimate party if we only run a few candidates, at most, in subsequent election cycles. I have spent years of my life and countless hours helping to establish LPTX as a genuine alternative to the older established parties, and all of that effort will be undermined if we are prevented from running our candidates for public office.

15. I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed:

10/4/2019



Arthur Thomas IV

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MARK MILLER, MICHELE GANGNES,)
SCOTT COPELAND, LAURA PALMER,)
ANDY PRIOR, AMERICA'S PARTY OF)
TEXAS, CONSTITUTION PARTY OF)
TEXAS, GREEN PARTY OF TEXAS and)
LIBERTARIAN PARTY OF TEXAS,)

Plaintiffs,)

v.)

No. 1:19-cv-00700-RP

JOHN or JANE DOE, in his or her official)
capacity as Secretary of State of Texas, and)
JOSE A. ESPARZA, in his official capacity)
as Deputy Secretary of State of Texas,)

Defendants.)

DECLARATION OF CHARLES WATERBURY IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION

(Pursuant to 28 U.S.C. § 1746)

I, Charles Waterbury, hereby declare as follows:

1. I am over the age of 18 and reside in Texas.
2. I have personal knowledge about the matters to which I attest. If called to testify,

I could and would competently testify to these statements.

3. I am an active member of the Green Party of Texas ("GPTX"). I have run as GPTX's nominee for Justice of the Texas Supreme Court three times before, in the 2012, 2014 and 2016 general elections.

4. I want to seek GPTX's nomination to run for Justice of the Texas Supreme Court in the 2020 election.

5. My goal in running as a Green is to give more oxygen to the debate and give people more options at the polls. I think democracy is well-served when voters have more options – whether it be Green, Libertarian, Constitution or another party – and it is poorly served when voters have only two, much less one option.

6. As an attorney, I run for Justice of the Texas Supreme Court to raise awareness of issues the Republicans and Democrats will not touch, like the erosion of the jury system by mandatory arbitration clauses, caps on damages and other machinations that many people would reject if they knew what was happening. The Founders believed that power was to be vested in the people, and we are losing that idea in the civil justice system. Ultimately, I run for Supreme Court Justice because I believe in devolution of power back to the people.

7. I understand that in June 2019, Texas enacted a new Election Code provision, TEX. ELEC. CODE § 141.041, which took effect on September 1, 2019. I understand that this law requires the nominees of parties that nominate by convention to pay a filing fee or, alternatively, to submit a nomination petition, to qualify for placement on the general election ballot. I understand that the Secretary of State is requiring all candidates who file applications for nomination to comply with § 141.041 on or before the December 9, 2019 deadline for filing the applications.

8. I understand that § 141.041 requires that candidates for Justice of the Texas Supreme Court pay a filing fee of \$3,750 or submit a nomination petition with 5000 valid signatures.

9. I personally do not have the funds to pay the required filing fee, nor do I have the resources to collect the required number of signatures before the December 9, 2019 filing deadline. GPTX also lacks the funds and resources to help. The party does not have the funds and resources necessary to comply with § 141.041, because we do not have the structure and assets in place, yet

we will never have the opportunity build that structure and develop those assets unless we can overcome the barriers to ballot access. To me, this speaks to the basic unfairness of the Texas electoral system, which guarantees access to the two oldest and biggest parties, yet makes it practically impossible for a new party to gain traction long enough to establish itself and develop support among the electorate. The new requirements imposed by § 141.041 make this dilemma exponentially worse, by substantially increasing the cost GPTX must bear to place party nominees on the general election ballot.

10. Additionally, it is unclear to me what a candidate must do to comply with § 141.041. For example, I do not know whether I am permitted to collect signatures from voters who participated in last year's primary elections. Relatedly, I do not know whether I am required to tell voters that signing my nomination petition will prevent them from participating in the primary elections in 2020. Finally, I do not know whether signatures I collect for my nomination petition will later be invalidated if those voters participate in the 2020 primary elections. Because of this uncertainty, attempting to satisfy the § 141.041 through the nomination petition will require me to collect many more signatures than the law actually requires, just to ensure that I have enough "valid" signatures to meet the minimum threshold.

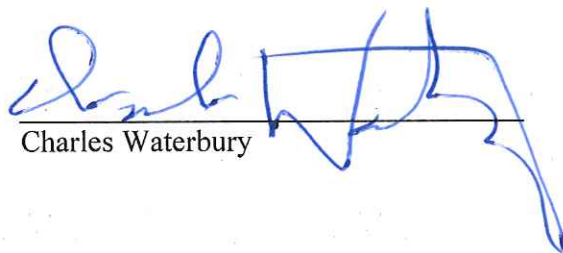
11. Because I cannot afford to comply with the new requirements imposed by § 141.041, I will be unable to seek GPTX's nomination as a candidate for Justice of the Texas Supreme Court in the 2020 election cycle.

12. By preventing me from seeking GPTX's nomination for Justice of the Texas Supreme Court, § 141.041 will silence a voice in the general election that would raise the tough questions that establishment party candidates want to ignore. This is a disservice to voters and contrary to the idea of democracy, which is to allow opposing points of view to be heard, and to

let voters decide which ones they support. And unless GPTX is able to place me and other candidates for statewide office on the ballot, it will soon lose its status as a ballot-qualified party. GPTX's core function is to nominate candidates and run them for public office, thereby promoting the Green Party platform and ideas; if we are prevented from doing that, our efforts to build a vibrant and viable alternative to the existing parties will be destroyed.

13. I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed: 10-4-19


Charles Waterbury

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MARK MILLER, MICHELE GANGNES,)
SCOTT COPELAND, LAURA PALMER,)
ANDY PRIOR, AMERICA’S PARTY OF)
TEXAS, CONSTITUTION PARTY OF)
TEXAS, GREEN PARTY OF TEXAS and)
LIBERTARIAN PARTY OF TEXAS,)

Plaintiffs,)

v.)

No. 1:19-cv-00700-RP

JOHN or JANE DOE, in his or her official)
capacity as Secretary of State of Texas, and)
JOSE A. ESPARZA, in his official capacity)
as Deputy Secretary of State of Texas,)

Defendants.)

**DECLARATION OF JOHN WILFORD IN SUPPORT OF PLAINTIFFS’ MOTION FOR
PRELIMINARY INJUNCTION**

(Pursuant to 28 U.S.C. § 1746)

I, John Wilford, hereby declare as follows:

1. I am over the age of 18 and reside in Texas.
2. I have personal knowledge about the matters to which I attest. If called to testify,

I could and would competently testify to these statements.

3. I am the current Chair of the Libertarian Party of Texas (“LPTX”). I have been an active member of LPTX since 2011.

4. LPTX is currently eligible to place its nominees on the 2020 general election ballot in Texas.

5. In recent election cycles, LPTX has placed dozens of candidates on Texas's general election ballot. In 2018, for example, LPTX ran 76 such candidates; in 2016, LPTX ran 71 such candidates; and in 2014, LPTX ran 105 such candidates.

6. I understand that in June of this year, Texas enacted a new Election Code provision, TEX. ELEC. CODE § 141.041, which imposes new filing fees (or, alternatively, petition requirements) on candidates of parties that nominate by convention, such as LPTX. It is also my understanding that the Secretary of State announced her intention to enforce these new requirements against all applicants for nomination (not just nominees), and has imposed a deadline of December 9, 2019. If LPTX candidates do not pay the required filing fees or submit the required nomination petitions by that time, I understand those candidates will be barred from appearing on the state's general ballot in 2020, despite the fact that LPTX itself has previously qualified to appear on the ballot.

7. I have reviewed the schedule of filing fees and petition signature requirements established by § 141.041, which range from \$3,750 to \$5,000 for each candidate seeking LPTX's nomination for statewide office. Alternatively, those candidates may submit a nomination petition with 5,000 valid signatures. The law imposes similar, but lesser, filing fee and signature requirements for various local offices.

8. These requirements will impose a severe hardship upon LPTX and the candidates planning to seek LPTX's nomination for office. LPTX was able to qualify for ballot access in 2020 by adopting strategies and utilizing its resources based on state law as it existed prior to September 1, 2019. Despite these efforts, LPTX will now be barred from placing candidates on the ballot next year unless each candidate is able to meet the new filing fee or signature requirements by December 9, 2019.

9. At present, LPTX has approximately \$45,057 in total assets. For the year to date, LPTX has on average received between \$1,100 and \$1,200 per month in gross revenues. As these funds are allocated to monthly operating expenses, LPTX has so far recorded a slight loss in aggregated net income for 2019.

10. Until the passage of § 141.041 and subsequent announcement by the Secretary of State, LPTX was under the expectation that, as a ballot-qualified party, it would be permitted to place its nominees on the general election ballot in 2020. Accordingly, both the party and its candidates lacked any notice that they should have been apportioning time or effort to raise funds or organize petition drives in preparation for a December 2019 deadline.

11. Given LPTX's limited resources, the party is unable to provide the requisite financial resources to ensure its candidates will be in compliance with § 141.041 by December 9, 2019. Even if LPTX used a portion of its reserve funds to ensure its candidates were not barred from the 2020 ballot, those expenditures would diminish the party's ability to later give financial support to its' eventual nominees during the general election campaign. Our candidates will therefore need to rely on their own funds and resources to pay the required filing fee or submit a valid nomination petition.

12. Candidates who seek LPTX's nomination generally do not announce their candidacy this early in an election cycle. However, several of LPTX's recent nominees have notified me that they wish to seek LPTX's nomination in 2020, but they are unable to comply with the new requirements that § 141.041 imposes by the December 9, 2019 deadline.

13. Based on my communications with these candidates and others, and on my knowledge as Chair of LPTX, it is my understanding that the majority of LPTX's candidates will be unable to submit the required filing fees or petition signatures by December 9, 2019. As a

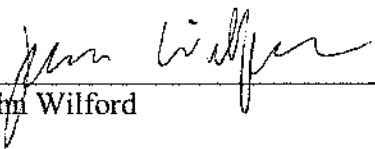
result, most of LPTX's nominees will likely be excluded from Texas's 2020 general election ballot.

14. Excluding any one of LPTX's nominees from Texas's 2020 general election ballot will restrict LPTX's ability to participate in the electoral process and to build public recognition and support among potential voters. It will also restrict our members and supporters from voting for LPTX nominees.

15. In addition, the exclusion of LPTX's nominees for statewide office from the 2020 general election ballot will diminish our ability to retain ballot access for the 2022 election cycle. If our nominees for statewide office continue to be excluded from the general election ballot, LPTX will be stripped of its status as a ballot-qualified party. This will terminate LPTX's ability to participate in Texas's electoral process, because LPTX does not have the funds and resources necessary to complete another successful nomination petition drive to qualify for the ballot again.

16. I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed: October 8th, 2019



John Wilford