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Neal Dikeman, Shawn Kelly, Roy
Eriksen, Jared Wissel, Scott Ford,
Billy Pierce, Christina Ford, Charlie
Stevens, and Neko Antoniou,
Plaintiffs,

vs.

Ruth R. Hughs, in her official
capacity as Secretary of State of the
State of Texas, Lina Hidalgo, in her
official capacity as County Judge
of Harris County, Texas, and
Diane Trautman, in her official
capacity as County Clerk of Harris
County, Texas,
Defendants.

IN THE DISTRICT COURT

FILED

Marilyn Burgess
District Clerk

DEC 02 2019

Time: 4:40 PM
Harris County, Texas

By: [Signature] A
Deputy

11th JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

ORDER GRANTING TEMPORARY INJUNCTION

On November 18 and 22, 2019, the Court heard Plaintiffs' motion for temporary injunction. On the first day of the hearing, Plaintiffs appeared in person, with counsel. By agreement of the parties, Plaintiffs appeared the second day by declaration and through counsel. Defendants appeared both days through counsel.

After considering the pleadings, the oral and written testimony, the evidence, the arguments of counsel, and the applicable law,¹ the Court **GRANTS** the temporary injunction.

BACKGROUND

Plaintiffs all identify as members of the Libertarian party. Plaintiffs all intend to vote for the Libertarian candidate. Most plaintiffs intend to run for office and would have to comply with Texas Elections Code §141.041.

¹ The Court has reviewed the order denying a temporary injunction issued in *Miller v. Doe*, No. 1:19-cv-00700-RP (W.D. Tex.—Austin Div.) (filed 11 July 2019). That order is not binding on this Court. Additionally, it is distinguishable and not persuasive authority regarding the issue presented to this Court.

A political party in Texas nominates candidates for public office either by a primary election² or by a convention.³ A political party in Texas that has received at least twenty percent of the vote in the last gubernatorial election nominates its general-election candidates through a primary election ("major party"). A political party whose gubernatorial candidate received less than two percent of the vote in the last election nominates its general-election candidates through a convention ("minor party").⁴ Republicans and Democrats are the only two parties that have received twenty percent or more of the vote in recent gubernatorial elections, and thus are the only two parties that nominate their general-election candidates through a primary election.⁵

To become a candidate in a primary election, the candidate submits an application accompanied by either a filing fee or a petition.⁶ A primary-election candidate pays filing fees to either the county or the state chairs of the Republican or Democratic parties.⁷ The party chairs then remit the filing fees to the secretary of state or county to be used for the financing of the primary election.⁸ The state does not provide any funding to finance conventions.

Section 141.041 of the Texas Election Code—the provision challenged by Plaintiffs—requires convention-nominated candidates for state or county office (1) to pay filing fees to the secretary of state or the local county or (2) to collect signatures on a petition in order to get on the general-election ballot.⁹ The fee and petition requirements in §141.041 for convention-nominated general-election candidates to get on the *general-election ballot* mirror the fee and petition requirements for candidates seeking a place on a *primary-election ballot*. Major-party candidates do not have to pay a fee to get on a general-election ballot.

The Libertarian Party has received less than two percent of the vote in gubernatorial elections, so it nominates its general-election candidates by convention.¹⁰ On August 31, 2019, the Texas Secretary of State promulgated Election Advisory No. 2019-13 issued on

² See Tex. Elec. Code Ch. 171-74.

³ See Tex. Elec. Code Ch. 181-82.

⁴ Political parties that receive more than 2% but less than 20% of the vote in a gubernatorial election may nominate either by primary or by convention. See Tex. Elec. Code §172.002 and §181.002.

⁵ See Office of the Secretary of State, 1992 - Current ELECTION HISTORY, <https://elections.sos.state.tx.us/index.htm> (last viewed on Nov. 17, 2019).

⁶ See Tex. Elec. Code § 172.021(b). Filing fees range from \$75 - \$5,000. See Tex. Elec. Code §172.024. Petitions must contain between 500 - 5,000 signatures. See Tex. Elec. Code §172.025.

⁷ See Tex. Elec. Code §§173.061-.063.

⁸ See Tex. Elec. Code §173.062; see also Tex. Elec. Code Ch. 173.

⁹ See Tex. Elec. Code §141.0141.

¹⁰ See Tex. Elec. Code §§172.002, 181.002-.003 & 182.001.

August 31, 2019 by the Texas Secretary of State (“Advisory”) relating to the implementation of §141.041.¹¹

STANDING AND JURISDICTION

Plaintiffs have filed a declaratory judgment asking this Court to find: (1) that Texas Election Code §141.041 violates the Texas Constitution; (2) that the Advisory violates the Texas Election Code; and (3) that the implementation of Texas Election Code §141.041 would violate the Texas Constitution.

This Court is a general-jurisdiction court and has subject-matter jurisdiction over all actions, proceedings, and remedies unless otherwise provided by law.¹² Both the Civil Practices and Remedies Code §37.004 and the Texas Election Code §273.081 authorize injunctive relief.¹³

Plaintiffs have provided evidence of actual injury because Plaintiffs intend to run for office and would have to comply personally with §141.041.¹⁴

FINDINGS

Accordingly, the Court **FINDS** that Plaintiffs have shown a probable right of recovery. Specifically, the Court **FINDS**:

- Plaintiffs have presented evidence that the candidate-eligibility requirements imposed by Texas Election Code §141.041 implicate Plaintiffs’ basic constitutional rights guaranteed by both the Texas and United States Constitutions, including their right to freedom of association.¹⁵ Plaintiffs have presented evidence that §141.041 is an actual or threatened violation of the Texas and United States Constitutions.
- Plaintiffs have presented evidence that the Advisory¹⁶ implicates plaintiffs’ basic constitutional rights guaranteed by both the Texas and United States Constitutions, including their right to freedom of association.¹⁷

¹¹ Tex. Sec’y State Op. No. 2019-13 (2019).

¹² See *Dubai Petrol Co. v. Kazi*, 12 S.W.3d 71, 75 (Tex. 2000) (construing Tex. Const. art. V, § 8).

¹³ See *Andrade v. NAACP*, 345 S.W.3d 1, 17 (Tex. 2011).

¹⁴ See *Heckman v. Williamson Cnty.*, 369 S.W.3d 137, 147 (Tex. 2012).

¹⁵ See *Anderson v. Celebrezze*, 460 U.S. 780, 786 (1983).

¹⁶ The Advisory did not go through the formal rule-making procedures outlined in the Administrative Procedures Act. Additionally, the Texas Government Code §2001.003 requires rules to have “general applicability.” In some parts, the Advisory seems to apply to all convention-nominated candidates, and in other parts, the Advisory seems to apply only to Libertarian and Green Party members.

¹⁷ See *Anderson v. Celebrezze*, 460 U.S. 780, 786 (1983).

- Plaintiffs have presented evidence that the Advisory violates the Texas Elections Code. Specifically, the Advisory states that candidates that fail to “complete the petition in lieu of filing fee or pay the filing fee, they will not be eligible for nomination by the party convention process.”¹⁸ But §141.041(a) only requires payment of a filing fee or filing of a petition in lieu thereof to “be eligible . . . for the general election.” Section 141.041 does not speak to candidate eligibility at a convention.¹⁹
- Plaintiffs have presented evidence of imminent and irreparable harm. Specifically, if the Plaintiffs are successful in their challenges to the Advisory and §141.041, “they cannot recover damages . . . because of governmental immunity from liability and there are no other sources of recovery for these costs.” *See Tex. Assoc. of Bus. v. City of Austin*, 565 S.W.3d 425, 441 (2018). Therefore, Plaintiffs “have established that they will suffer irreparable harm” from both the Advisory and §141.041 if Plaintiffs were to comply with either the Advisory or §141.041. *Id.*
- For the reasons stated above, Plaintiffs have shown that they would not have an adequate remedy at law and would suffer imminent and irreparable harm if Defendant Hughs is not enjoined from implementing, enforcing, following, or complying with the Advisory in her official duty.
- For the reasons stated above, Plaintiffs have shown that they would not have an adequate remedy at law and would suffer imminent and irreparable harm if Defendants Hidalgo and Trautman are not enjoined from implementing, enforcing, following, or complying with the Advisory in their official duties.
- For the reasons stated above, Plaintiffs have shown that they would not have an adequate remedy at law and would suffer imminent and irreparable harm if Defendant Hughs is not enjoined from implementing Texas Election Code §141.041.
- For the reasons stated above, Plaintiffs have shown that they would not have an adequate remedy at law and would suffer imminent and irreparable harm if

¹⁸ Tex. Sec’y State Op. No. 2019-13, at 2 (2019).

¹⁹ Plaintiffs have presented evidence that the Advisory establishes constitutionally violative hurdles for potential candidates to attend a convention—a convention that is not administered in any manner by either the State or the County. Defendants have not shown that they have any interest in the convention or the administration of the convention, yet the Advisory establishes procedures that directly impact Plaintiffs’ rights and abilities to seek nomination at the convention. Defendants have not presented any evidence nor put forth any rationale for limiting the number of candidates seeking to be a general-election nominee at a convention. Only the nominee put forth by the convention appears on the general election ballot; the other candidates seeking nomination at the convention do not appear on the general election ballot.

Defendants Hidalgo and Trautman are not enjoined from implementing Texas Election Code §141.041.

TEMPORARY INJUNCTION

Based on the Court's findings and, in an effort to balance the equities, the Court **GRANTS** Plaintiffs' petition and **ORDERS** the entry of a temporary injunction.

The Court **ORDERS** that the temporary injunction granted below shall be effective immediately upon the Plaintiffs filing with the court clerk a bond in the amount set out below with two or more good and sufficient sureties, or cash deposit in lieu of bond.

The Court **ORDERS** that the temporary injunction shall be binding on Defendant Hughs and her agents, servants, employees, representatives, and on those persons in active concert or in participation with her who receive actual notice of this order by personal service.

The Court **ORDERS** that the temporary injunction shall be binding on Defendants Hidalgo and Trautman and their agents, servants, employees, representatives, and on those persons in active concert or in participation with her who receive actual notice of this order by personal service.

The Court **ORDERS** that Defendant Hughs is temporarily enjoined from refusing to accept or rejecting applications for nomination from third-party candidates on the grounds that the applicant did not pay a filing fee or submit a petition in lieu thereof at the time of filing or at any other time.

The Court **ORDERS** that Defendants Hidalgo and Trautman are temporarily enjoined from refusing to accept or rejecting applications for nomination from third-party candidates on the grounds that the applicant did not pay a filing fee or submit a petition in lieu thereof at the time of filing or at any other time.

The Court **ORDERS** that Defendant Hughs is temporarily enjoined from refusing to certify third-party nominees for the general-election ballot on the grounds that the nominee did not pay a filing fee or submit a petition in lieu thereof at the time of filing or at any other time.

The Court **ORDERS** that Defendants Hidalgo and Trautman are temporarily enjoined from refusing to certify third-party nominees for the general-election election ballot on the grounds that the nominee did not pay a filing fee or submit a petition in lieu thereof at the time of filing or any other time.

The Court **ORDERS** that if a higher court holds that any provision of this injunction is invalid, unenforceable, or illegal, that provision shall be severed out and such invalidity, unenforceability, or illegality will not affect any other provision of this injunction.

The Court **ORDERS** that this Temporary Injunction shall continue in full force and effect until the Court signs a Final Order or by further order of this Court.

The Court **ORDERS** that Plaintiffs file a bond, with two or more good and sufficient sureties, or cash deposit in lieu of bond, of \$500 (five hundred dollars).

The Court **ORDERS** that the District Clerk to set this case for trial on the two-week docket starting on **February 18, 2020** and to notify all parties.

Signed this the 2 day of December, 2019.



THE HONORABLE KRISTEN HAWKINS
JUDGE PRESIDING

Unofficial Copy Office of Marilyn Burges District Clerk