

CASE NO. _____

TEXAS NATIONALIST MOVEMENT, INC.	§ § §	IN THE DISTRICT COURT
Plaintiff,	§	
v	§	____ JUDICIAL DISTRICT
HON. MATTHEW RINALDI in his official capacity as chairman of the Republican Party of Texas,	§ § §	
Defendant.		TRAVIS COUNTY, TEXAS

**PLAINTIFF’S VERIFIED ORIGINAL PETITION AND APPLICATION FOR
TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION, AND
PERMANENT INJUNCTION.**

COMES NOW, Texas Nationalist Movement, Inc. (“Plaintiff” or “TNM”) and brings this its Original Petition and Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction against Defendant Hon. Matthew Rinaldi (“Defendant” or “Rinaldi”) in his official capacity as chairman of the Republican Party of Texas and respectfully represents the following:

**I.
DISCOVERY CONTROL PLAN**

Discovery should be conducted under Level 3 in accordance with a tailored discovery control plan under Rule 190.4 of the Texas Rules of Civil Procedure (“TRCP”).

**II.
CLAIM FOR RELIEF**

Plaintiff seeks only nonmonetary injunctive relief and attorneys’ fees.

III. **PARTIES**

Plaintiff, Texas Nationalist Movement, Inc. is a Texas nonprofit corporation with its principal office located in Jefferson County, TX.

Defendant Hon. Matthew Rinaldi is the Chairman of the Republican Party of Texas being sued in his official capacity and may be served with process at the Republican Party of Texas office located at 807 Brazos St, Austin, Texas 78701 or wherever he may be found.

IV. **FACTUAL ALLEGATIONS**

In June 2023, TNM launched a campaign to obtain signatures for a voter petition for referendum, pursuant to Texas Election Code § 172.088, to place the following question on the 2024 Republican General Primary Ballot: “The State of Texas should reassert its status as an independent nation. FOR OR AGAINST” (the “Referendum”). Exhibit A, Voter Petition for Referendum (a motion to file Exhibit A under seal and via flash drive mailed to the Court is forthcoming because Exhibit A contains confidential information and is hundreds of thousands of pages long and thus, cannot be redacted by any reasonable means). Section 172.088(e) requires such a petition to have at least “five percent of the total vote received by all candidates for governor in the party's most recent gubernatorial general primary election,” which was 97,709.

By the end of the 180-day campaign, TNM collected a total of 170,097 signatures by electronic signature. Of those, TNM inspected the signatures, rejected

30,426 as technically defective, and processed 215 requests for the removal of signatures. This left a total of 139,456 signatures that were hand-delivered to Rinaldi as Chairman of the Republican Party of Texas at its headquarters on December 11, 2023, at approximately 12:05 p.m, which day was the deadline for candidates applications for a place on the primary ballot pursuant to Texas Election Code § 172.088(d). *See* Exhibit A; Exhibit B, Rinaldi Letter Rejecting Petition. The number of signatures submitted was 33,619 signatures above the statutory minimum required in Texas Election Code § 172.088(e). *See* Exhibit A.

On December 27, 2023, Rinaldi issued an open letter to TNM, officially rejecting the petition on two grounds. Exhibit B. First, Rinaldi claimed that TNM's petition (the "Voter Petition") was not timely filed by interpreting § 172.088(d) to require filing by the day before the regular filing deadline for candidates' applications for a place on the primary ballot, which would be December 10, 2023, not December 11. *Id.* Second, Rinaldi claimed that the signatures were invalid primarily because electronic signatures do not suffice for the requirements of § 172.088(e) by citing Texas Election Code § 141.063(a). *Id.* However, the Texas Uniform Electronic Transactions Act (hereinafter "UETA"), which, as set forth below, applies to the Texas Election Code and provides, "A record or signature may not be denied legal effect or enforceability solely because it is in electronic form." Tex. Bus. & Com. Code § 322.007.

Additionally, Rinaldi asserted, in complete contradiction of the bona fide signatures submitted with the Voter Petition, "The vast majority of petition

signatures were invalid” by claiming, “A number of the signatures omitted one or all of the residence address, county of registration, and date of birth/voter registration number” and “Many contained invalid voter names.” Exhibit B. However, the valid signatures collected were indisputably number well over the 97,709 minimum number required for petitions under Tex. Elec. Code § 172.088. *See* Exhibit A.

TNM submitted a letter to Rinaldi demanding that he reconsider his unlawful rejection of the Voter Petition. Exhibit C, TNM Demand Letter to Rinaldi. As of this date, Respondent has not fulfilled his duty to accept TNM’s petition and place the Referendum contained in the petition on the 2024 Republican General Primary Ballot.

Accordingly, TNM filed the Emergency Petition for Writ of Mandamus, attached hereto as Exhibit D, with the Texas Supreme Court. The Texas Supreme Court denied the filing for unspecified reasons as reflected in Exhibit E attached hereto. Presumably, since the allegations, if taken as true, entitled TNM to mandamus relief, the Supreme Court denied on the grounds that there was an issue of material fact precluding mandamus relief in an original proceeding before it, which would mean that a trial court must decide the factual issues.

V.
**CAUSE OF ACTION: ULTRA VIRES CLAIM FOR DECLARATORY
JUDGMENT AND INJUNCTIVE RELIEF**

Plaintiff incorporates all of the factual allegations stated above and in his previous petitions filed in this case as though fully set forth herein.

To assert an ultra vires claim and injunctive relief, the plaintiff must allege and prove that a public official (1) failed to perform a ministerial action or (2) acted without legal authority. *Phillips*, 635 S.W.3d at 628; *City of Houston v. Houston Mun. Empls. Pension Sys.*, 549 S.W.3d 566, 576 (Tex.2018); *Houston Belt & Terminal Ry. v. City of Houston*, 487 S.W.3d 154, 161 (Tex.2016); *Southwestern Bell Tel., L.P. v. Emmett*, 459 S.W.3d 578, 587 (Tex.2015); *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009).

An official commits an ultra vires act when he neglects or refuses to perform a ministerial act. *See Texas Lottery Comm'n v. First State Bank*, 325 S.W.3d 628, 633 (Tex. 2010); *Heinrich*, 284 S.W.3d at 372. An act is ministerial when the law clearly spells out the duty to be performed by the official with sufficient certainty that nothing is left to the official's discretion. *Phillips*, 635 S.W.3d at 628; *Houston Mun. Empls.*, 549 S.W.3d at 576; *Southwestern Bell*, 459 S.W.3d at 587.

An ultra vires claim may also be brought if the official is alleged to have exercised judgment or limited discretion without reference to or in conflict with the constraints of the law authorizing the official to act. *E.g.*, *Phillips*, 635 S.W.3d at 629 (P properly brought ultra vires claim when P alleged that Health & Human Services Commission official did not hold mandatory contested-case hearing); *Houston Belt & Terminal*, 487 S.W.3d at 163–64 (Ps properly pleaded ultra vires claim against city official by alleging that he acted “without legal authority” in determining impervious-surface and benefited-property calculations).

An official acts without lawful authority when (1) the relevant statutory or constitutional provisions gave the official some authority to act, but not absolute authority, and (2) the official acts beyond the limits of her authority or acts in conflict with his authority. *Phillips*, 635 S.W.3d at 628; *Hall v. McRaven*, 508 S.W.3d 232, 239 (Tex.2017).

An official acts beyond the limits of his authority when he acts in conflict with the law that authorizes him to act or violates state law. *Hall*, 508 S.W.3d at 238; *see Heinrich*, 284 S.W.3d at 370–71 & n.3; *Ferrell*, 248 S.W.3d at 160 (Brister & O'Neill, JJ., concurring).

To assert an ultra vires claim, the plaintiff must sue the public official, not the State. *Southwestern Bell*, 459 S.W.3d at 587; *Reconveyance Servs.*, 306 S.W.3d at 258; *Heinrich*, 284 S.W.3d at 373.

Whereas TNM fulfilled all of the requirements under Tex. Elec. Code § 172.088 for the Voter Petition to require the Referendum be placed on the ballot for the 2024 Republican Primary in March 2024, TNM seeks a declaratory judgment that Rinaldi failed to perform a ministerial act and/or acted without legal authority when he rejected the Voter Petition and refused to place the Referendum on the March 2024 ballot, an act Tex. Elec. Code § 172.088(a) required he perform.

Texas Election Code § 172.088(a) states, “Voters by petition may require that a proposal to include a demand for specific legislation or any other matter in a political party's platform or resolutions be submitted to a vote in the party's general

primary election by placement on the general primary election ballot.” TNM’s Petition satisfied all of the requirements of Section 172.088.

Rinaldi’s rejection of the Voter Petition primarily stems from an alleged lapse in timeliness and secondarily from alleged defects in the signatures. As to timeliness, the relevant provision of the Election Code states, “The petition must be filed with the state chair of the political party holding the primary to which the petition applies before the date of the regular filing deadline for candidates' applications for a place on the primary ballot.” Tex. Elec. Code § 172.088(d). Candidate applications “must be filed not later than 6 p.m. on the second Monday in December of an odd-numbered year.” Tex. Elec. Code § 172.023.

Rinaldi’s assertion that TNM failed to timely submit the Petition lacks legal foundation. The crux of this issue is interpretation of the phrase “before the date of the regular filing deadline.” § 172.088(d). When used to denote a deadline on a specific date, use of the word “before” generally encompasses the entire day up to its conclusion. *See* Blacks Law Dictionary, *Ward v. Walters*, 63 Wis. 44, 22 N.W. 844 (1885), days or weeks must intervene before the day fixed. There is a notable absence of any Texas authority interpreting “before” to mean the day before the date specified.

Rinaldi asserts that the applicable deadline was December 10, 2023, which is a Sunday. Exhibit B. In this context, it is highly dubious the Texas Legislature intended a statutory deadline to fall on a Sunday, whereas the deadline specified in the statute is always a Monday. Moreover, the Republican Party of Texas headquarters was not open on Sunday, December 10, 2023. Indeed, whereas the

Legislature specified the exact time and date for applications for candidates to be “filed not later than 6 p.m. on the second Monday in December,” it would be strange for the Legislature to specify a different deadline for voter petitions for referendums as there would be no ostensible purpose for a separate deadline. More likely, the Legislature intended for both candidate applications and voter petitions to have the same deadline, which is why it referenced the candidate application deadline in the provision applicable to the voter petition deadline.

As to Rinaldi’s secondary reason for rejecting the Petition due to the signatures being electronic, this also lacks legal foundation. The UETA explicitly acknowledges the legal effect of electronic signatures in the State of Texas: “A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.” Tex. Bus. & Comm. Code § 322.007. Yet, that is exactly what Rinaldi did in rejecting the Petition. Section 322.007(d) states, “If a law requires a signature, an electronic signature satisfies the law.” § 322.007(d).

Any argument by Rinaldi that the UETA does not apply to the Texas Election Code is unfounded. The only exclusions for applicability provided by the UETA are as to “a law governing the creation and execution of wills, codicils, or testamentary trusts,” a transaction governed by the Uniform Commercial Code (other than certain enumerated sections), documents produced by a court reporter “for use in the state or federal judicial system,” and transactions “governed by rules adopted by the supreme court.” § 322.003. If the Legislature meant to exclude any provision of the Texas Election Code from the UETA, it would have included any such exclusion under the

scope of the statute identified in § 322.003. Thus, Rinaldi's assertion that electronic signatures do not satisfy the requirements for a voter's petition for referendum pursuant to Texas Election Code § 172.088 has no validity.

Regarding Rinaldi's remaining assertions in his letter that the "vast majority of petition signatures were invalid" due to omission of one or "one or all of the residence address, county of registration, and date of birth/voter registration number" and/or signatures not being in the petitioner's own handwriting, the signatures attached to the Petition conclusively refute Rinaldi's unsupported assertion. Exhibit A. Thus, Rinaldi had no discretion to reject the Petition.

TNM has been harmed by Rinaldi's ultra vires and unlawful act in violation of the election code by having its fundamental rights and the rights of the voters it represented in filing the Voter Petition to petition the government for a redress of grievances and to have their voices heard in the political process have been deprived. There could be no greater injury than having one's fundamental civil rights trampled.

VI.

APPLICATION FOR TEMPORARY RESTRAINING ORDER AND TEMPORARY AND PERMANENT INJUNCTIVE RELIEF

TNM incorporates all of the factual allegations stated above as though fully set forth herein.

TNM requests that the Court enter a temporary restraining order to preserve the status quo by restraining Rinaldi from allowing the Republican Party of Texas ("RPT") to order and print ballots for the March 2024 General Primary Election (the "Primary") without placing the Referendum on the ballot.

There is appellate precedent that the issue of placing the Referendum on the ballot becomes moot after the ballots are printed. *See In re Lopez*, 593 S.W.3d 353, 357 (Tex. App.—Tyler 2018, no pet.) (collecting cases). If Rinaldi is not restrained from allowing the RPT to order the ballots, TNM will forever lose its right to have the Referendum on the ballot and the rights of almost 140,000 Texas voters will be crushed.

TNM further requests that the Court set a hearing for a Temporary Injunction as soon as practicable and enter a Temporary Injunction ordering Rinaldi to perform his ministerial duty of accepting the Voter Petition and placing the Referendum on the Primary ballot.

There is no adequate remedy at law because no amount of monetary damages could compensate TNM and the voters it represents from being deprived of their fundamental rights to petition their government for redress of grievances and to have their voices heard in the political process.

TNM has a probable right to relief at trial on the merits because there is no question that Texas law requires Rinaldi to accept the Voter Petition and place the Referendum on the Primary ballot whereas Exhibit A conclusively demonstrates that TNM collected the minimum amount of signatures and submitted them in a timely fashion pursuant to Tex. Elec. Code § 172.088.

There is no risk of harm to Rinaldi in granting this injunctive relief because it is purely a ministerial function he is required by law to fulfill.

TNM is willing to post bond in an appropriate amount, which TNM asserts should be no more than a nominal amount because there is no risk of harm to Rinaldi. Any possible harm would be outweighed by the violation of TNM's fundamental civil rights.

TNM requests that the Court enter a temporary restraining order ("TRO") in the form of order it will submit consistent with the above-requested relief. TNM further requests that the Court set a temporary injunction hearing as soon as practicable from the issuance of the TRO and to make the TRO extend until the hearing.

After a trial on the merits, Plaintiffs request the Court make any non-moot provisions of the temporary injunction permanent.

VII.
ATTORNEYS' FEES

Plaintiff requests its reasonable and necessary attorneys' fees and costs related to this lawsuit pursuant to CPRC §§ 37.009 and 143A.007(a)(1).

VIII.
CONDITIONS PRECEDENT

All conditions precedent to Plaintiffs' claims for relief have been performed or have occurred.

IX.
NO JURY DEMAND

Plaintiff does not demand a jury trial and consents to a bench trial.