

CAUSE NO. _____

**STEVEN HOTZE, MD,
HON. JOSH FLYNN, Delegate and
Secretary for Republican Party of Texas,
HON. CATHIE ADAMS, Former Chairperson
Republican Party of Texas,
RICK HOTZE, and
GREG BLUME,**

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IN THE DISTRICT COURT

Plaintiffs,

_____ DISTRICT COURT

v.

**MAYOR SYLVESTER TURNER,
in his official capacity as Mayor of
the City of Houston, Texas, and
HOUSTON FIRST CORPORATION,**

Defendants.

HARRIS COUNTY, TEXAS

**PLAINTIFFS’ ORIGINAL PETITION, VERIFIED APPLICATIONS FOR
EMERGENCY TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION,
AND PERMANENT INJUNCTION**

COME NOW Plaintiffs, Steven Hotze, MD, Hon. Josh Flynn, Hon. Cathie Adams, Rick Hotze, and Greg Blume (“Plaintiffs”) file their Original Petition, Verified Applications for Emergency Temporary Restraining Order, Temporary Injunction, and Permanent Injunction, and for cause would show as follows:

DISCOVERY CONTROL PLAN

Plaintiffs intend to conduct discovery under Level 2 of the rules set forth in Rule 190 of the Texas Rules of Civil Procedure.

DISCLOSURES

Plaintiffs request Defendant provide disclosures in accordance with Texas Rule of Civil Procedure 194, including relevant documents.

TRCP 47 STATEMENT

Plaintiffs are suing for injunctive relief and declaratory relief.

Plaintiffs are seeking monetary relief of less than \$100,000.00.

JURISDICTION AND VENUE

The Court has subject-matter jurisdiction under the Texas constitution, Article V, § 8, as the amount in controversy exceeds the minimum jurisdictional limits of the court exclusive of interest. The Plaintiff seeks relief that can be granted by courts of law or equity.

The Court has jurisdiction over the Plaintiffs' request for declaratory relief against Defendant, Mayor Turner, because the Declaratory Judgment Act waives governmental immunity when the plaintiff is challenging the validity of an ordinance or order. *See* Tex. Civ. Prac. & Rem. Code §§ 37.004, 37.006; *Texas Lottery Comm'n v. First State Bank of DeQueen*, 325 S.W.3d 628 (2010); *Texas Ed. Agency v. Leeper*, 893 S.W.2d 432, 446 (Tex. 1994).

The Court has jurisdiction over the Plaintiffs' request for injunctive relief against Defendant, Mayor Turner, because the mayor is acting *ultra vires* by imposing restrictions of the Texas Republican Convention. *See City of El Paso v. Heinrich*, 284 S.W.3d 366-368-69 (Tex. 2009).

Plaintiffs have standing to seek declaratory and injunctive relief.

The Court has personal jurisdiction over the Defendant.

Venue is proper because a substantial portion of the events giving rise to the claims occurred in Harris County, Texas. *See* Tex. Civ. Prac. & Rem. Code §§ 15.002, 15.008, 15.035.

Plaintiffs request the Court provide notice of this lawsuit to the Texas Attorney General as required by Texas Government Code §402.010.

PARTIES

Plaintiff Steven Hotze is a citizen and resident of Harris County, Texas.

Plaintiff Hon. Josh Flynn is a citizen and resident of Harris County, Texas

Plaintiff Hon. Cathie Adams is a citizen and resident of Collin County, Texas

Plaintiff Rick Hotze is a citizen and resident of Harris County, Texas.

Plaintiff Greg Blume is a citizen and resident of Harris County, Texas.

Defendant Sylvester Turner is the elected mayor of Houston, Texas and is being sued in his official capacity as mayor. He may be served with process wherever he may be found.

Defendant Houston First Corporation is a Texas corporation doing business in Harris County, Texas. It may be served with process through its registered agent.

The facts below are supported or proved by the attached Exhibits, which are incorporated herein for all purposes.

BACKGROUND FACTS

The Republican Party of Texas (“the RPT”) has been preparing to host the 2020 State Republican Convention (the “Convention”) for almost 2 years. *See* Ex. A (Declaration of J. Flynn) at ¶ 7. It was set to take place from July 16–18 at the George R. Brown Convention Center (the “GRB”) in Houston, Texas. *See* Ex. A (Declaration of J. Flynn) at ¶ 7. However, on the evening of July 8, 2020, just eight days before the Convention’s first day, the GRB’s landlord, the Houston First Corporation (“HFC”), terminated its License Agreement with the RPT—capitulating to the political pressure from Houston’s Mayor, Sylvester Turner, effectively cancelling the RPT’s Convention, and denying each Republican attendee the right to voice their support in-person.

A. Mayor Turner’s Ultimatum

Over the weeks leading up to the Convention’s cancellation, Mayor Turner, a member of the Democratic party, demonstrated that he would use his office’s power to stifle the speech and association of the RPT and its members. Since the beginning of the COVID-19 hysteria, Mayor Turner has issued formal orders from his office that, amongst other things, purported to restrict “large” gatherings but, ultimately went unenforced, ignored, or even circumvented. *See* Ex. B (4th

Amended City Order). As the Convention drew near, Mayor Turner began to indicate that such orders would no longer be ignored, at least as it pertained to the RPT and its Convention. Mayor turned held press conferences and contacted the RPT, attempting to compel the cancellation of the Convention but, despite, these numerous advances by Turner to cancel the Convention, the State Republic Executive Committee, a 64-member body that serves as the governing board of the state party, voted overwhelmingly (40-20) to proceed in-person. *See* Ex. A (Declaration of J. Flynn) at ¶ 10.

On July 7, 2020, under the guise of advice and encouragement, Mayor Turner sent a letter to the RPT's leaders, requesting they cancel the in-person component of the Convention and "hold a virtual convention." *See* Ex. A (Declaration of J. Flynn) at ¶ 12; Ex. A-1 (June 6 Turner Letter). This letter also attached a document the letter titled "**Requirements for events and gatherings during the COVID-19 pandemic**" (the "Requirement List") and instructed that these "operational requirements" were necessary. Ex. A-1 (June 6 Turner Letter) (emphasis in original). However, the attached Requirements List was not an order from the Mayor's office but, rather, a document from the Houston Health Department that, at numerous different times, contradicts itself by identifying points as "recommendations" and then as "requirements." *Compare* Ex. A-1 (June 6 Turner Letter) ("The recommendations below are intended to reduce the risk of COVID-19 infection and spread . . . Even with intense recommendations, the convention remains at best a in [*sic*] the **Higher Risk** category") *with* (the very next line, which titles the remnants of the document "**Requirements for Event Organizers**") (emphasis in original). Mayor Turner warned that if the RPT failed to comply and cancel the in-person Convention then it would be required to comply, instead, with the Requirements List. *See* A-1 (June 6 Turner Letter).

The Requirements List was not only mischaracterized and deceitfully passed off as law, it also sought to impose an excessively strict, haphazardly assembled list of bulleted “requirements” that spanned five, single-spaced pages. *See* A-1 (June 6 Turner Letter). This Requirements List, demanding executive compliance, included a number of items of serious constitutional concern, including demands to:

- “enforce the Governor’s executive order on the use of face coverings (masks) or face shields if face covering are not possible. Those who do not comply will be removed;”
- “limit attendance, seating capacity, or host smaller events in larger rooms”
- “Maintain a contact list of all convention attendees including name, home, address, home, or cell phone, and email address. Be prepared to share that list with local public health;”
- “Have a plan to isolate and safely transport those who are sick . . . Attendees who develop symptoms or test positive for COV-19 during the convention or in the two weeks following the convention must notify convention organizers who will then coordinate with local public health in Houston and in the attendee’s local jurisdiction;” and
- “After the event. Attendees should be advised to quarantine for 14 day and self-monitor for symptoms and follow CDC guidance if symptoms develop.”

Ex. A-1 (June 6 Turner Letter).

In effect, Mayor Turner posed his rival political party with an ultimatum—cancel the in-person Convention or submit to drastic and unwarranted oversight from the City of Houston, including mandatory, detailed recordation of the Republican attendees and the removal of non-compliant attendees. *See* Ex. A-1 (June 6 Turner Letter).

B. The Cancellation

Despite Mayor Turner’s July 7, 2020 ultimatum, the RPT did not succumb to the pressure. Dissatisfied with that result, Mayor Turner sought further legal footing for cancelling the in-person Convention. *See* Ex. C (July 8 Media Coverage) (“During a virtual City Council meeting Wednesday, Turner said he asked the city’s legal department to work with the Houston First Corporation, which operates the George R. Brown Convention Center, to review the contract with the state party.”). Mayor Turner’s legal basis became unnecessary when the GRB’s landlord, HFC,

with whom the RPT signed its License Agreement to host the Convention became complicit in the efforts to cancel the in-person Convention.

On July 8, 2020, HFC, first sent the RPT a letter mirroring the sentiment of Mayor Turner's letter the day before. *See* Ex. A-1 (Declaration of J. Flynn) at ¶ 12; Ex. A-2 (HFC's Advisory Letter). Just hours later, though, HFC sent a second letter to the RPT terminating its License Agreement to host the Convention, alleging the occurrence of a force majeure event. *See* Ex. A-3 (HFC's Termination Letter). HFC even cites a letter to itself and Mayor Turner, from Dr. David Perse (the physician director for the Houston Fire Department) as a basis for cancellation but does not disclose what prompted the doctor's letter. *See* Ex. A-1 (Declaration of J. Flynn) at ¶ 12; Ex. A-3 (HFC's Termination Letter).

C. Selective Enforcement

While Mayor Turner has taken efforts to disguise his effort, his choices with regard to the RPT's Convention are simply opportunistic and are in stark contrast to the treatment of other peaceful, political assemblies during this same pandemic. For example, for Houston's June 2 organized march to protest the death of George Floyd,, Turner gave a press conference to the City of Houston supporting the marches, personally attended, and gave speeches to large crowds, stating only that people "should wear a mask, carry hand sanitizer, and attempt to maintain social distance." *See* Ex. D (June 1 Media); Ex. E (Press Release). Moreover, the June 2 march was of such a size that the City of Houston shut down roads and shut down municipal buildings to facilitate the crowded march. *See* Ex. F (June 2 Media).

In short, just one month ago, Mayor Turner not only allowed, but advocated for the exercise of Houston's citizens' constitutional rights and promoted high levels of attendance. However, when the RPT, an organization rivaling Mayor Turner's political party, sought to convene and exercise those same rights, he chooses to quash them.

CAUSES OF ACTION

“The Constitution is not suspended when the government declares a state of disaster.” *In re Abbott*, No. 20-0291, 2020 WL 1943226, at *1 (Tex. Apr. 23, 2020). “All government power in this country, no matter how well-intentioned, derives only from the state and federal constitutions.” *In re Salon A La Mode et al.*, No. 20-0340 (concurring opinion, J. Blacklock) (Tex. May 5, 2020). During a pandemic “the judiciary, the other branches of government, and our fellow citizens—must insist that every action our governments take complies with the Constitution, especially now. If we tolerate unconstitutional government orders during an emergency, whether out of expediency or fear, we abandon the Constitution at the moment we need it most.” *Id.*

A. Requests for Declaratory Relief

The Plaintiffs brings their claims for relief under the Uniform Declaratory Judgment Act. They also bring suit under *City of El Paso v. Heinrich*, 284 S.W.3d, 366, 368-369 (Tex. 2009), which authorizes *ultra vires* claims against public officials who act in violation of state law.

Plaintiffs are seeking relief entirely under state law and are not asserting any claims that arise under federal law.

1. Declaratory Relief: Declaration that Defendants’ actions in canceling the TRC violate article 1, section 8 of the Texas Constitution.

Plaintiffs reallege and incorporate the foregoing paragraphs here as if fully set forth herein. Plaintiffs seek a declaration stating that Defendants’ actions in canceling the Texas Republican Convention violate the Texas Constitution because the actions violate Plaintiffs’ freedom of expression.

On July 8, 2020, Defendant Houston First Corporation sent a letter to State Chairman of the Republican Party, James Dickey, informing Dickey that Houston First Corporation was canceling its contract to host the Texas Republican Convention. Canceling the Texas Republican

Convention is a severe limitation of Plaintiffs' political speech. Defendant Turner directed his legal team to look for any way possible to cancel the Convention, ostensibly as a result of the novel coronavirus. Defendant Turner's statements indicate that he was concerned about allowing the Texas Republican Convention to proceed because Turner claimed the gathering would threaten the City of Houston. The actions of Defendant Houston First Corporation, acting at Turner's behest to cancel the Texas Republican Convention at the last minute, deprive Plaintiffs of their right to express their political beliefs, and make core political determinations.

Article 1, section 8 of the Texas Constitution provides that "no law shall ever be passed curtailing the liberty of speech. . . ." Tex. Const. art. 1, § 8. The Supreme Court has noted that article 1, section 8 of the Texas Constitution "demonstrates Texas's strong and longstanding commitment to free speech" including the constitution's mandate that the liberty is fundamental and shall "remain forever inviolate." *Davenport v. Garcia*, 834 S.W.2d 4, 7 (Tex. 1992) (quoting Tex. Const. art. 1 § 29). Texas courts have noted that article 1, section 8 of the Texas Constitution affords at least the same protections afforded by the First Amendment to the United States Constitution. *See Kinney v Barnes*, 443 S.W.3d 87, 91–92 (Tex. 2014). The Supreme Court of Texas has noted that a prior restraint on speech is permissible only when essential to avoid an impending danger. *Davenport*, 834 S.W.2d at 9.

The First Amendment to the United States Constitution prohibits regulating speech in ways that favor some viewpoints or ideas at the expense of others. *Tex. Dept. Of Transp. v. Barber*, 111 S.W.3d 86, 92 (Tex. 2003). Regulations that impose different burdens on expression because of its content are presumed invalid and subject to strict scrutiny. *Id.* at 92. Content-based regulations are constitutional only if the regulation is narrowly tailored to serve a compelling state interest. *Id.* at 92–93.

In circumstances in which the regulations are content neutral, the First Amendment to the United States Constitution allows reasonable restrictions on the time, place, and manner of written and oral expression. *See id.* at 92. Content neutral regulations are subject to an intermediate level of scrutiny and are valid if they are narrowly tailored to serve a substantial government interest and do not unreasonably limit alternative channels for communicating the information. *Id.* at 93.

The divergence between Mayor Turner's statements and actions in response to the protests of the death of George Floyd and his response to the Texas Republican Party's plan to host the TRC suggest that the true reasons behind Mayor Turner's actions in forcing Houston First Corporation to cancel the TRC are not content-neutral regulations. Both events occurred during the COVID-19 pandemic and both events have the potential for virus transmission because they involve large groups of people gathering together. But Mayor Turner's actions in canceling the TRC while encouraging the protests suggests that Mayor Turner valued the expression at the protests more than he values the expression of Republicans. The fact that Mayor Turner encouraged large protests while canceling the TRC suggests that Mayor Turner's regulation of speech was motivated by the viewpoint and content of the speech. Accordingly, Defendants' actions are presumptively unconstitutional. *See id.* at 92. Mayor Turner's actions in compelling Houston First to cancel the TRC are not narrowly tailored. Even presuming for the sake of argument that Mayor Turner and Houston First are acting on a compelling government interest, their actions are not narrowly tailored. Defendants canceled the entire convention rather than attempting to find a way to facilitate the freedom of expression while limiting virus transmission.

In the alternative, even presuming for the sake of argument that Mayor Turner and Houston First Corporation's reasons for canceling the TRC are content neutral, canceling the event at the last minute is not a reasonable restriction on the time, place, and manner of this core political

expression. Canceling the event is not narrowly tailored to achieve a substantial government interest. As stated above, Defendants canceled the entire convention rather than attempting to find ways to allow it to proceed while limiting virus transmission. Further, there are no reasonable alternative means for communicating the information that Plaintiffs intended to communicate at the TRC. At the convention, Plaintiffs would take part in choosing delegates, electors, party chairs and would rally and encourage each other entering election season. Plaintiffs have been planning the TRC are unable at the last minute to find an alternative that will allow them to accomplish their goals. Accordingly, canceling the TRC violates article 1, section 8 of the Texas Constitution because the action prohibits core political speech and is not narrowly tailored to serve a substantial government interest.

2. Declaratory Relief: Declaration that Defendants Actions Violate Plaintiffs' Freedom of Association

Plaintiffs reallege and incorporate the foregoing paragraphs here as if fully set forth herein. Plaintiffs seek a declaration stating that Defendants' actions in canceling the Texas Republican Convention violate the Texas Constitution because the actions violate Plaintiffs' freedom of association. Article 1, section 27 of the Texas Constitution provides: "The citizens shall have the right, in a peaceable manner, to assemble together for their common good; and apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address or remonstrance." Tex. Const. Art. 1, § 27.

Freedom of association for the purpose of advancing ideas and airing grievances is a fundamental liberty guaranteed by the First Amendment. *In re Maurer*, 15 S.W.3d 256, 260 (Tex. App.— Houston [14th Dist.] 2000, orig. proceeding). An action abridging the freedom of association is subject to strict scrutiny and is valid only if it is narrowly tailored to serve a compelling state interest. *See*

In re Houstonian Campus, L.L.C., 312 S.W.3d 178, 189 (Tex. App.— Houston [14th Dist.] 2010, orig. proceeding); *Ex parte Morales*, 212 S.W.3d 483, 490 (Tex. App.— Austin, 2006).

The TRC is an event where Texas Republicans gather together to choose delegates, electors, and party chairs for their political party. The right to associate for these purposes is core Article 1, section 27 of the Texas Constitution. Accordingly, the right can be abridged only if the regulation on the right is narrowly tailored to serve a compelling state interest. As explained above, Defendants actions in canceling the TRC are not narrowly tailored to serve a compelling state interest. Accordingly, Defendants actions violate the Texas Constitution.

3. Declaratory Relief: Defendants' Actions Deny Plaintiffs Equal Protection

Plaintiffs reallege and incorporate the foregoing paragraphs here as if fully set forth herein. Defendants seek a declaration that Defendants actions are invalid because they violate Article I, section 3 of the Texas Constitution. As described above, Defendant Turner embraced and participated in protests that expressed anger over the killing of George Floyd. These protests involved over sixty thousand people who spent hours in close proximity and did not undertake systemic precautions to avoid virus transmission. At the same time, Defendant Turner has canceled the TRC, an event that would be much smaller than the protests and where Party officials could ensure safety through undertaking precautions to avoid virus transmission.

Article I, § 3 of the Texas constitution prohibits the government from treating differently similarly situated individuals. *See* Tex. Const. art. 1 § 3; *Klumb v. Houston Municipal Employees Pension Sys.*, 458 S.W.3d 1, 13 (Tex. 2015). To prevail on an equal protection claim under Article I, § 3, Plaintiffs must show that Defendants' decision to cancel the TRC is not rationally related to a legitimate governmental purpose. *See id.*; *Cadena Comm. USA Corp. v. Tex. Alcoholic Beverage Comm'n*, 518 S.W.3d 318, 365 (Tex. 2017). Defendants' actions canceling the TRC are not

rationally related to a legitimate government purpose, but instead are motivated by bias against the TRP. There is no need to shut down the TRC in order promote public health.

4. Declaratory Relief: Section 418.101 Violates Article II, section 1 of the Texas Constitution.

Plaintiffs reallege and incorporate the foregoing paragraphs here as if fully set forth herein. Plaintiffs seek a declaration that Section 418.101(b) *et seq.* violate Article II, section 1 of the Texas Constitution. Section 418.101(b) allows mayors or county judges to issue local disaster declarations. Section 418.101(g) of the Texas Government Code gives mayors the authority to "control ingress and egress from a disaster area under the jurisdiction and authority of the county judge or mayor and control the movement of persons and the occupancy of premises in that area." Tex. Gov. Code §418.101(g). Before canceling the TRC, Mayor Turner has demanded that the TRC meet certain demands in order to host the convention. The restrictions related to COVID-19. To the extent Mayor Turner compelled Houston First Corporation to cancel the Republican Convention under authority stemming from Texas Government Code section 418.101(g), Mayor Turner's action violates the Texas Constitution because Texas Government Code section 418.101(g) is an impermissible delegation of legislative authority.

Article II, section 1 of the Texas Constitution provides that "The powers of the Government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are Legislative to one; those which are Executive to another, and those which are Judicial to another; and no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted." Tex. Const. art. 2, §1. The Texas Constitution vests the Legislature with "legislative power, *i.e.*, the law-making power of the people." Tex. Const. art. 3, § 1.

Only the Legislature can exercise law-making power, subject to restrictions imposed by the constitution. Tex. Const. art. II, § 1. Because of the Texas Constitution's "explicit prohibition against one government branch exercising a power attached to another," *Perry v. Del Rio*, 67 S.W.3d 85, 91 (Tex. 2001), exceptions to the constitutionally-mandated separation of powers may "never be implied in the least; they must be 'expressly permitted' by the Constitution itself." *Fin. Comm'n of Texas v. Norwood*, 418 S.W.3d 566, 570 (Tex. 2013). These restrictions must be expressed or clearly implied. *Jones v. State*, 803 S.W.2d 712, 716 (Tex. Crim. App. 1991) (citing *Gov't Servs. Ins. Underwriters v. Jones*, 368 S.W.2d 560, 563 (Tex. 1963)). The Legislature may enact laws that enhance the general welfare of the state and resolve political questions, such as the boundaries of political subdivisions, subject to constitutional limits. *Carter v. Hamlin Hosp. Dist.*, 538 S.W.2d 671, 673 (Tex. Civ. App.-Eastland 1976); *see also Hunter v. Cty of Pittsburgh*, 207 U.S. 161, 178-79 (1907).

The Legislature may delegate some of its powers to another branch, but only if those powers are not more properly attached to the legislature by Constitutional mandate. For example, Legislative power cannot be delegated to the executive branch, either directly or to an executive agency. *State v. Rhine*, 297 S.W.3d 301, 306 (Tex. Crim. App. 2009). The issue becomes a question of the point at which delegation becomes unconstitutional. *Id.* The Texas Supreme Court has described the problem: "the debate over unconstitutional delegation becomes a debate not over a point of principle but over a question of degree." *Tex. Boll Weevil Eradication Found., Inc.*, 952 S.W.2d 454, 466 (Tex. 1997).

The Texas Court of Criminal Appeals in *Ex parte Granviel*, 561 S.W.2d 503 (Tex. Crim. App 1978), stated that sufficient standards are necessary to keep the degree of delegated discretion below the level of legislating. The existence of an area for exercise of discretion by the executive

branch requires that standards are formulated for guidance and there is limited discretion. *Ex parte Granviel*, 561 S.W.2d at 514. The statute must be sufficiently complete to accomplish the regulation of the particular matters falling within the legislature's jurisdiction, the matters of detail that are reasonably necessary for the ultimate application, operation and enforcement of the law may be expressly delegated to the authority charged with the administration of the statute. *Ex parte Granviel*, 561 S.W.2d at 514. Therefore, if the Legislature has not provided sufficient standards to guide the executive's discretion and the delegated power is legislative, that executive has been granted a power that is more properly attached to the Legislature and the delegation is an unconstitutional violation of separation of powers. *State v. Rhine*, 297 S.W.3d 306 (Tex. Crim. App. 2019).

Chapter 418 of the Texas Government Code contains several sections that provide executives including governors, county judges, and mayors the authority to issue orders and proclamations that have the force and effect of law. *See, e.g.*, Tex. Gov. Code § 418.012. This delegation of power violates Article II, section 1 of the Texas Constitution. Because the delegation of power violates Article II, section 1 of the Texas Constitution, Section 418.101(b) *et. seq.* of the Texas Government Code are null and void.

In his Order, Mayor Turner cites Texas Government Code section 418.108 asserting, among other things, he has the ability to control ingress and egress, thereby suspending laws. (Exhibit "B").

B. Promissory Estoppel

Plaintiffs reallege and incorporate the foregoing paragraphs and incorporate them here as if fully set forth herein.

Defendant HRC made a promise to allow Plaintiffs, and Plaintiffs' related organization, the RPT, to use its facilities at GRB to conduct all activities related to the Convention from July

16, 2020 to July 18, 2020. Plaintiffs, as deeply involved members of the RPT, reasonably and substantially relied on HRC's promise to grant Plaintiffs' license to use its facilities for the Convention.

However, acting complicity with Mayor Turner, HRC determined that its political interests were better served were more important than its legal obligations to Plaintiffs and, with only eight days remaining before the Convention, terminated the license agreement, prevented Plaintiffs from attending the Convention in-person and from exercising their constitutional rights. HRC knew, or reasonably should have known, that Plaintiffs would rely on its promise and that their baseless termination would cause Plaintiffs harm. Accordingly, injustice to Plaintiffs can only be avoided by enforcing Defendant HRC's promise to license Plaintiffs' use of the GRB facilities for the Convention from July 16, 2020 to July 18, 2020.

APPLICATION FOR TEMPORARY RESTRAINING ORDER

Plaintiffs reallege and incorporate the foregoing paragraphs and incorporate them here as if fully set forth herein.

Plaintiffs seek a temporary restraining order preventing Defendants from canceling the TRC. A temporary restraining order serves to provide emergency relief and preserve the status quo until a hearing may be had on a temporary injunction. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). To obtain injunctive relief, "the applicant must plead and prove three specific elements: (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparably injury in the interim." *See Butnaru*, 84 S.W.3d at 204. An applicant must plead a cause of action and present some evidence that tends to sustain it to show a probable right of recovery. *Intercontinental Terminals Co., LLC v. Vopak N. Am., Inc.*, 354 S.W.3d 887, 897 (Tex. App.—Houston [1st Dist.] 2011, no pet.). "[T]he applicant is not required

to establish that it will prevail on final trial.” *Texas Kidney, Inc. v. ASD Specialty Healthcare*, No. 14-13-01106-CV, 2014 WL 3002425, at *2 (Tex. App.—Houston [14th Dist.] July 1, 2014, no pet.).

The Uniform Declaratory Judgment Act and *Heinrich* each provide Plaintiffs with a cause of action to seek declaration and injunctive relief against the Defendants. Plaintiffs have a probable right to relief because, for the reason described above, the Defendants’ conduct violates the Texas Constitution. Plaintiffs will suffer probable, imminent, and irreparable injury absent a temporary restraining order and temporary injunction because canceling the TRC prevents Defendants from expressing their political beliefs, gathering together to choose delegates, electors and party chairs and generally participating in Texas politics. Because Defendants seek to cancel the TRC so soon before the convention is set to take place, Plaintiffs will not be able to organize another convention.

Without immediate relief, Plaintiffs will suffer imminent and irreparable harm.

The harm to Plaintiffs described herein is a direct and proximate result of the acts of Defendants. The requested temporary restraining order is appropriate to preserve the status quo until a hearing on Plaintiffs’ application for temporary injunctive relief can be held. For just cause, Plaintiffs request the entry of a Temporary Restraining Order as follows, and further requests entry of a Preliminary Injunction following a hearing:

Plaintiffs will provide Defendants’ counsel with notice of this Application for Temporary Restraining Order and hearing on same.

Plaintiffs file this Verified Application for Temporary Restraining Order and Other Equitable Relief pursuant to general principles of equity, Texas Rules of Civil Procedure 680, *et seq.*, and Texas Civil Practice and Remedies Code section 65.011. Plaintiff is willing to post a bond as required by Texas law in an amount determined by the Court.

GROUNDS FOR TEMPORARY INJUNCTION

Plaintiffs reallege the foregoing paragraphs and incorporates them here as if fully set forth herein.

Plaintiffs request this Court to set is Request for Temporary Injunction for hearing and after hearing issue a temporary injunction against Defendant.

Additionally, Plaintiffs further request that following a trial on the merits of this case, that the Court enter a permanent injunction against Defendant.

REQUEST FOR RELIEF

Plaintiffs request the following relief:

- a. a declaration that Defendants' actions violate Plaintiffs' right to freedom of expression;
- b. a declaration that Defendants' actions violate Plaintiffs' right to freedom of association;
- c. a declaration that Defendants' action violates Plaintiffs' right of equal protection;
- d. a declaration that Texas Government Code Section 418.101(b) et seq., violate Article II, section 1 of the Texas Constitution;
- e. a declaration that Mayor Turner's Fourth Amended Order Prohibiting Certain Large Gatherings and Reopening and Imposing Temporary Restrictions On Certain Businesses and City Premises by the Mayor of the City of Houston (Exhibit "B") violates Article I, section 28 of the Texas Constitution;
- f. a declaration that Texas Government Code Section 418 et seq. violates Article I, section 28 of the Texas Constitution;

- g. a temporary and permanent injunction that enjoins Defendants from canceling the Texas Republican Convention;
- h. a temporary restraining order that enjoins Defendants from canceling the Texas Republican Convention;
- i. an order requiring Defendant HRC to fulfill its promise to license Plaintiffs' use of the GRB facilities for the Convention from July 16, 2020 to July 18, 2020;
- j. an award of nominal and compensatory damages;
- k. an award of costs and attorneys' fees; and
- l. all other relief that the Court may deem just, proper, or equitable.

Respectfully submitted,

/s/ Jared R. Woodfill

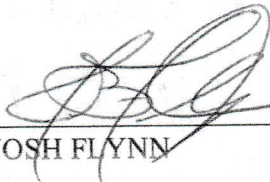
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VERIFICATION

STATE OF TEXAS

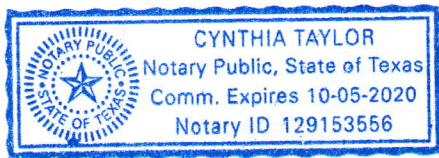
COUNTY OF HARRIS

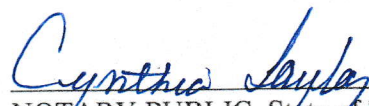
Before me, the undersigned notary public in and for said county and state, on this day personally appeared Josh Flynn and after being duly sworn, stated upon his oath that his secretary of the Republican Party of Texas and a delegate to the Republican Party Convention, that he has read Plaintiffs' Verified Original Petition and Verified Application for Temporary Restraining Order, and that the factual statements contained in the Verified Original Petition and Verified Application for Temporary Restraining Order are true and correct based upon his personal knowledge.



JOSH FLYNN

SUBSCRIBED AND SWORN TO before me this 9th day of July 2020, to which witness my hand and seal.





NOTARY PUBLIC, State of Texas