

No. D-1-GN-10-001924

TEXAS DEMOCRATIC PARTY;
BOYD L. RICHIE, IN HIS CAPACITY
AS CHAIRMAN OF THE TEXAS
DEMOCRATIC PARTY; AND JOHN
WARREN, IN HIS CAPACITY
AS DEMOCRATIC NOMINEE FOR
DALLAS COUNTY CLERK,

Plaintiff

vs.

TEXAS GREEN PARTY;
KAT SWIFT, INDIVIDUALLY AND
IN HER CAPACITY AS CHAIRWOMAN
OF THE TEXAS GREEN PARTY;
TAKE INITIATIVE AMERICA, INC.;
FREE AND EQUAL, INC.;
TIM MOONEY; UNKNOWN DONORS;
AND THE 2010 UNKNOWN NOMINEES
OF THE TEXAS GREEN PARTY,

Defendant

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

353rd JUDICIAL DISTRICT

**PLAINTIFFS' FIRST AMENDED ORIGINAL PETITION AND
APPLICATION FOR TEMPORARY RESTRAINING ORDER,
TEMPORARY INJUNCTION, PERMANENT INJUNCTION,
WRIT OF MANDAMUS, AND DECLARATORY JUDGMENT**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiffs, Texas Democratic Party and Boyd L. Richie, in his capacity as Chairman of the Texas Democratic Party and John Warren, in his capacity as Democratic Nominee for Dallas County Clerk (hereinafter "TDP" or "Texas Democratic Party"), and files this Original Petition complaining of Defendants The Texas Green Party (hereinafter "TGP");

Christine Morshedi, Individually and in her capacity as Chairwoman of the Texas Green Party ¹; Take Initiative America, Inc. (hereinafter "TIA"); Free and Equal, Inc (hereinafter "FE"); Tim Mooney; Unknown Conspirators; Unknown Donors; and the 2010 Unknown Nominees of the Texas Green Party, (hereinafter Defendants) and in support thereof would show the Court as follows:

Preliminary Statement

The Texas Legislature, Congress, Federal and State Courts have found time and again that money is a corrupting influence in politics. Numerous state and federal laws have been passed limiting campaign fund raising activities and requiring detailed public disclosure of those allowed activities. Nevertheless, the last several election cycles have revealed numerous operatives ignoring and/or scheming these laws in order to retain power. Normally, these violations of election laws are not discovered until after the election when it is too late to prevent the harm. In this case, the Court has a unique opportunity to stop an ongoing violation of election laws and prevent the harm the unlawful scheme was designed to cause.

Parties

Plaintiff Texas Democratic Party is a political party and a political committee as those terms are defined in the law and it is formed under the Texas Election Code. TDP's address is 505 West 12th, Austin, Travis County, Texas 78701.

Plaintiff Boyd L. Richie is Chairman of the Texas Democratic Party and a registered voter in Texas.

¹ Plaintiffs explicitly non-suit Kat Swift who was incorrectly named as Chair for the Texas Green Party and name in her place Christine Morshedi who was identified in discovery as the proper Chair.

Plaintiff John Warren is the elected County Clerk for Dallas County and is 2010 Texas Democratic Party Nominee for re-election to that office. He is also a registered voter in Texas.

Defendant Texas Green Party is a political party and a political committee as those terms are defined in the law and it is formed under the Texas Election Code. It may be served at P.O. Box 271080, Houston, TX 77277-1080 or wherever its officers may be found.

Defendant Christine Morshedi, a Texas resident and citizen, is sued individually and in her capacity as the Chairwoman of the Texas Green Party and may be served with process where she is found.

Defendant Take Initiative America, Inc. is a Delaware Corporation and it may be served through its registered Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, DE, 19808.

Defendant Free and Equal, Inc. is an Illinois Corporation and it may be served through its Chairman of the Board, Christina Tobin at 407 S. Dearborn, Ste. 1170, Chicago, Illinois 60605.

Defendant Tim Mooney is a resident of Arizona and is a professional republican political operative. He may be served where he is found.

Defendants Unknown Conspirators are those persons and organizations that are yet unknown but who played a role in this conspiracy to violate Texas Election Laws.

Defendants Unknown Donors is that person or persons who donated the funds used in this scheme and conspiracy.

Defendants the 2010 Unknown Nominees of the Texas Green Party are Texas residents and citizens gaining nomination at this last weekend's convention for the Texas Green Party in

San Antonio, Texas who are sued only insofar as is necessary to obtain injunctive relief unless they can be shown to have been a part of the civil conspiracy alleged herein.

Venue

Venue is proper in Travis County because a substantial part of the actions sought to be enjoined will occur in Travis County and because a substantial part of the facts occurred in Travis County. *See* Tex. Civ. Prac. & Rem. Code § 15.002(a)(1). Furthermore, one or more of the defendants reside in Travis County.

Facts/Law

On or about May 24, 2010, the Texas Green Party (hereinafter "TGP") submitted documents to the Secretary of State (hereinafter "SOS") in Travis County, Texas seeking access to the 2010 General Election ballot for its nominees for public office. *See* TEXAS ELECTION CODE § 181.005, *et seq.*² SOS has reviewed those documents to determine if the TGP is entitled to have its nominees on the Ballot. TEC 181.006.

Recently (June 19, 2010) the TGP conducted its state convention. *See* <http://txgreens.org/drupal/> (accessed June 6, 2010). At the convention, the TGP chose its nominees. TEC 181.061 *et seq.* TGP must then certify its nominees to the SOS within 20 days of the convention. TEC 181.068. July 2, 2010 is the deadline. After this certification, TGP nominees will be on the ballot this General Election. As a result, the last step before the Texas Green Party candidates are placed on the ballot is the convention certification referenced above. TGP's officers have testified they will certify the nominees as soon as an order from this Court prohibiting such activity expires.

² For the sake of economy sections of the Texas Election Code will hereinafter be cited at TEC X with x reflecting the section number.

On or about June 6, 2008, reporter Wayne Slater of the Dallas Morning News (hereinafter "DMN") reported the TGP obtained approximately 92,000 signatures for its petitions from an out-of-state corporation. See Exhibit A. This article was expanded upon in an article the next day and was addressed by the Dallas Morning News Editorial Board the following day which stated plainly, "The legality of the money behind the Green petitions needs to be tested in court." See *id.* In this reporting, TGP Executive Director admitted, "If it hadn't been for that donation [of 92,00 signatures], we [the TGP] wouldn't have been on the ballot[in Texas]." See *id.* Subsequent deposition testimony confirms that without the unlawful contribution, TGP would not have gained ballot access.

According to the DMN, this scheme was designed and executed by an Arizona Republican political consultant, Defendant Tim Mooney. *Id.* Deposition testimony has confirmed Mr. Mooney's involvement. According to the DMN, Mr. Mooney has executed, in the past, several schemes involving elaborate transfers of funds for the assistance of causes and groups in order to undermine the vote for Democratic candidates. *Id.* The conspiracy derived by Defendant Mooney in this case involved an anonymous donation of more than \$500,000 according to documents produced by Defendants. This donation was funneled through the Defendant Take America Initiative, Inc. who then paid it to Free and Equal, Inc. in compensation for a petition drive on behalf of the TGP. Free and Equal paid circulators in Texas to collect these petitions to help elected Republicans and especially Governor Rick Perry. The collected petitions were then delivered to TGP and the Executive Director by these out-of-state corporations. **Defendants TGP and Morshedi admit the petition drive and all costs therewith were a contribution by an out-of-state corporation with the assistance of others.**

To make matters worse, TGP officers have testified that they do not intend to report the original donor of these funds. Instead, TGP will report the donor as one or more of the out-of-state corporations.

Texas Election Code

The Texas Election Code specifically relaxes the common law requirements for an injunction for those harmed or threatened harm by a violation of the state's election laws. TEC 273.081. Specifically this statute requires:

Sec. 273.081. INJUNCTION. A person who is being harmed or is in danger of being harmed by a violation or threatened violation of this code is entitled to appropriate injunctive relief to prevent the violation from continuing or occurring.

Furthermore, Party Officers are subject to a mandamus when they are under a duty prescribed by the Texas Election Code. TEC 161.009.

Defendants' activities described above, and as reported by the DMN violate numerous provisions of the Texas Election Code including the following:

1. Making a contribution or expenditure in the name of another. TEC 253.001.
2. Exceeding the \$500 limitation on contributions from an out-of-state committee and failing to obtain the proper disclosure from the out-of-state committee. TEC 253.032.
3. Unlawfully directing a campaign expenditure. TEC 253.002.
4. Unlawfully accepting a political contribution. TEC 253.003.
5. Making an expenditure from an unlawful contribution. TEC 253.005.
6. Making an expenditure that violates the Texas Election code. TEC 253.004.
7. Making or accepting a contribution from a corporation. TEC 253.094.

8. A corporation making a contribution to a political party. TEC 253.104.

Moreover, Plaintiffs incorporate by reference the arguments and authorities filed in Plaintiffs' Bench Brief submitted for the temporary injunction hearing.

Claims for Relief

1. Declaratory Judgment

Texas Democratic Party so seeks a declaratory judgment that the Texas Green Party and its nominees are not entitled to placement on the 2010 General Election ballot because their application for same was procured through numerous violations of state law as stated herein and hereinafter alleged.

2. Application for Temporary Restraining Order/Motion to Compel

The Texas Democratic Party asks this Court to enter a Temporary Restraining Order prohibiting the TGP and Chair Morshedi from certifying the TGP nominees to the SOS until the Court conducts a full evidentiary hearing on a Motion for Temporary Injunction no more than 14 days from the TRO. TGP agreed to a TRO on June 10, 2010.

It is probable that the Texas Democratic Party will prevail against TGP and Morshedi on the merits and obtain permanent injunctive and mandamus relief precluding the nominee certification and the appearance of Green Party candidates on the ballot because permitting same would violate numerous provisions of law as stated herein. Furthermore, permitting the unlawful nominees causes Plaintiffs harm because they will have to raise and spend money discouraging voters from casting votes for the unlawful nominees and because Plaintiffs will be forced to

spend resources education voters that support for the TGP or its nominees in this election is really support for another party's candidates.

If the Texas Democratic Party's Application for Temporary Restraining Order is not granted, irreparable harm is imminent because denying the request for the TRO may prevent TDP from obtaining any injunctive relief since that relief would be arguably moot.

The Texas Democratic Party has no adequate remedy at law because damages from TGP's anticipated unlawful conduct are incalculable and could not serve as adequate compensation for the wrong inflicted on the Texas Democratic Party and the voters of the state.

3. Request for Temporary Injunction

Incorporating the foregoing, The Texas Democratic Party asks the Court to set this request for temporary injunction for hearing, and after the hearing, enter a temporary injunction granting the relief requested herein and Plaintiffs' Bench Brief and further enjoining Defendants from taking any steps to have nominees of the TGP placed on the 2010 General Election Ballot. Further or in the alternative, Plaintiffs request the TGP and Morshedi be ordered to reject the unlawful contribution by June 30, 2010 as required by law. See TEC 254.034.

4. Request for Permanent Injunction

After full trial on the merits, the Texas Democratic Party asks the Court to enter a permanent injunction granting the relief requested herein.

5. Petition for Writ of Mandamus

Pursuant to § 161.009 of the Texas Election Code and other applicable law, the Texas Democratic Party asks the Court to issue a writ of mandamus compelling the relief requested herein.

6. Claims for Damages

Strictly in the alternative to the relief requested above, Plaintiffs pray for their damages as required by Texas Election Code §§ 253.131-132 even though these damages do not adequately compensate Plaintiffs for their damages as a result of the Defendants wrongful acts in the event TGP nominees are certified and placed on the ballot. Specifically, Plaintiffs pray for judgment against Defendants for two times the amount of the wrongful contributions and expenditures as well as attorneys fees as required by the aforementioned statutes. Plaintiffs seek this judgment against all Defendants, jointly and severally. Plaintiffs further allege the Defendants are a part of a civil conspiracy and therefore each is liable for the acts of the others.

Prayer

For the foregoing reasons, the Texas Democratic Party respectfully requests that the Court cite the Defendants to answer herein and thereafter enter judgment against Defendants for the relief requested herein.