

(hereinafter "FE"); Tim Mooney; King Street Patriots, Inc (hereinafter "KSP"); Catherine Engelbrech; Bryan Engelbrecht and Diane Josephs (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. This election, coordinated interests in support of Republican candidates have and are continuing to engage in brazen attempts to confuse and/or intimidate voters. What is worse, these interests, many of whom are included as defendants herein, are conducting these activities in violation of state laws prescribing the appropriate use of campaign cash. Plaintiffs seek all appropriate relief to stop these activities and to obtain judgment against the wrongdoers for twice the unlawful contributions and expenditures, as provided by law.

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.

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 Dallas County, Texas.

Plaintiff Ann Bennett is the 2010 Texas Democratic Party Nominee for election to the office of Harris County Clerk. She is also a registered voter in Harris County, Texas.

GREEN PARTY DEFENDANTS

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 has been served and has filed an answer herein.

Defendant Christine Morshedi, a Texas resident and citizen, is sued individually and in her capacity as the Chairwoman of the Texas Green Party and she has been served herein.

Defendant Take Initiative America, Inc. is a Delaware Corporation. It was properly served through its registered Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, DE, 19808.

Defendant Charles Hurth, III is the incorporator of Take Initiative America, Inc. which he operates as his alter ego. He may be served where he is found.

Defendant Free and Equal, Inc. is an Illinois Corporation and it has been served.

Defendant Tim Mooney is a resident of Arizona and is a professional republican political operative. He has been served.

KING STREET PATRIOTS DEFENDANTS

Defendant King Street Patriots, Inc. is a sham domestic nonprofit corporation that instead acts as an unregistered and illegal political committee. It may be served through its registered agent, Catherine Engelbrecht at 708 Damascus, Rosenberg, Texas 77471.

Defendant Catherine Engelbrecht is an individual who operates King Street Patriots, Inc. as an alter ego and as an illegal political committee in knowing violation of law. She may be served through at 708 Damascus, Rosenberg, Texas 77471.

Defendant Bryan Engelbrecht is an individual who operates King Street Patriots, Inc. as an alter ego and as an illegal political committee in knowing violation of law. He may be served through at 708 Damascus, Rosenberg, Texas 77471.

Defendant Dianne Josephs is an individual who operates King Street Patriots, Inc. as an alter ego and as an illegal political committee in knowing violation of law. She may be served through at 3225 Locke Lane, Houston, Texas 77019.

Unknown Conspirators are all those persons acting in concert with any or all defendants to violate state election and campaign finance laws. Plaintiffs seek to amend their claims and add any entities or persons who have participated in violations or the state's laws in cooperation with one or more defendants.

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). Some Defendants made unlawful political expenditures and accepted contributions in Travis County. Some Defendants performed political activities in Travis County with funds unlawfully obtained. All the Defendants failed to make reports to the Texas Ethics Commission in Travis County as required by law.

FACTS/LAW

GREEN PARTY DEFENDANTS

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.*¹ SOS has reviewed those documents to determine if the TGP is entitled to have its nominees on the Ballot. TEC 181.006.

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 then certified its nominees to the SOS. TEC 181.068. Because of this certification, TGP has its nominees on this election ballot.

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.

¹ For the sake of economy sections of the Texas Election Code will hereinafter be cited at TEC X with x reflecting the section number.

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 reported the donor as one or more of the out-of-state corporations.

KING STREET PATRIOTS DEFENDANTS

In or around December of 2009, Defendants Engelbrecht and Defendant Joseph formed King Street Patriots, Inc. (hereinafter "KSP") as a domestic nonprofit corporation. KSP was intended to receive political contributions and to make political expenditures. Despite their clear purposes, these same Defendants petitioned for, and obtained, federal non-profit status. Upon information and belief, KSP was formed and/or operated in coordination with the Green Party

effort described above. Both the KSP and Green Party efforts involve identical, intentional violations of the same laws.

Since formation, KSP, acting as an alter ego and part of a conspiracy with the remaining KSP Defendants, then received numerous political contributions and made numerous political expenditures. *See* TEC 251.001. KSP Defendants amount to a general purpose political committee. *See id.* Despite clear laws requiring same, the KSP Defendants have failed to file any reports or registrations for KSP and/or their political committee. Furthermore, the KSP Defendants make their unlawful expenditures in coordination with the Republican Party and/or one or more of its candidates.

KSP has provided "candidate forums" exclusively to Republican Candidates. KSP provided several in-kind contributions to Governor Rick Perry's campaign including meeting space and volunteers. KSP has trained and/or paid personnel that are then provided to the Harris County Republican Party to be used as election judges and/or poll watchers. All these political activities were performed without the disclosures required by law.

Many of the candidates, volunteers and donors who participated in these activities and/or made contributions or received political expenditures did so knowing KSP's unlawful scheme and therefore are part of the conspiracy concerning same. As these person's are discovered, they will be added as Defendants to this action and judgment will be demanded of them in compliance with the laws cited herein.

Upon information and belief, KSP Defendants will be training and dispatching people to polling locations with the sole intent to deceive and discourage lawful voting. These practices will be targeted to undermine the vote of Plaintiffs and to undermine the vote of certain segments

of the population. There is no evidence illegal or unlawful voting will take place. Such efforts to undermine lawful voting in the context of these schemes to ignore election laws will subject the participants to liability herein. Each of the actions complained of herein also amount to criminal offenses.

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.

The Green Party Defendants' activities described above, and as reported by the DMN and discovered in this suit, 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.
9. Making political expenditures and/or political contributions as a political committee without complying with any of the registration and reporting requirements of a political committee

The King Street Patriots Defendants' activities described above, and as reported by the Houston Chronicle and discovered in this suit, 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. Unlawfully directing a campaign expenditure. TEC 253.002.
3. Unlawfully accepting a political contribution. TEC 253.003.
4. Making an expenditure from an unlawful contribution. TEC 253.005.
5. Making an expenditure that violates the Texas Election Code. TEC 253.004.
6. Making or accepting a contribution from a corporation. TEC 253.094.
7. A corporation making a contribution to a political party. TEC 253.104.
8. Making political expenditures and/or political contributions as a political committee without complying with any of the registration and reporting requirements of a political committee

CLAIMS FOR RELIEF

1. Declaratory Judgment

The Texas Democratic Party seeks a declaratory judgment that the Texas Green Party and its nominees are not entitled to placement on the 2012 General Election ballot, if they are otherwise so qualified, because their qualification for same was procured through numerous violations of state law as stated herein and hereinafter alleged.

The Texas Democratic Party seeks declaratory judgment that the activities of Defendants is in violation of the state's laws so as to prevent others from operating unlawfully.

2. Application for Temporary or Permanent Injunction

The Texas Democratic Party asks this Court to enter a Temporary and, after trial, a Permanent Injunction prohibiting the TGP and its chair from certifying TGP nominees to the SOS for placement on the 2012 ballot.

The Texas Democratic Party also asks this Court to enjoin the Defendants' activities that are in violation of the state's laws and are capable of being enjoined in advance of the election.

It is probable that the Texas Democratic Party will prevail against Defendants on the merits and obtain permanent injunctive and mandamus relief precluding, the wrongful campaign activity, the nominee certification, and/or the appearance of Green Party candidates on the 2012 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 educating voters that support for the TGP or

its nominees in this election is really support for another party's candidates. Furthermore, Plaintiffs are placed at a strategic disadvantage in the election because the Defendants' are not complying with these important election laws.

If the Texas Democratic Party's Application for Injunctive Relief is not granted, irreparable harm is imminent because denying the request cannot simply be remedied by the payment of economic damages. The voting public is being deceived and denied fair elections because of the Defendants' wrongful behavior.

The Texas Democratic Party has no adequate remedy at law because damages from the Defendants' 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. 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.

4. Claims for Damages

In addition 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 fully and adequately compensate Plaintiffs for their damages as a result of the Defendants' wrongful acts. 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 judgment against all Defendants, jointly and severally. Plaintiffs allege the Defendants are a part of a civil conspiracy and therefore each is liable for the

acts of the others who participate in the same conspiracy. Plaintiffs allege one more of the Defendants acted as the agent, ostensible or otherwise, for other Defendants therefore causing all involved Defendants to incur the same liability.

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.

Dated this 18th day of October, 2010.

Respectfully submitted,

TEXAS DEMOCRATIC PARTY

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing instrument has been directed to the following counsel of record and/or interested parties herein by facsimile transmission, by certified mail, return receipt requested, and/or by regular first class U.S. Mail on this the 18th day of October, 2010:

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