**IN THE UNITED STATES DISTRICT COURT**
**FOR THE WESTERN DISTRICT OF TEXAS**
**MIDLAND-ODESSA DIVISION**

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| **TEXAS DEMOCRATIC PARTY AND BOYD L. RICHIE, IN HIS CAPACITY AS CHAIR OF THE TEXAS DEMOCRATIC PARTY, Plaintiffs,** | § | |
| **v.** | § | **CIVIL ACTION NO. MO-08-CA-005** |
| **REPUBLICAN PARTY OF TEXAS AND TINA BENKISER, IN HER CAPACITY AS CHAIR OF THE REPUBLICAN PARTY OF TEXAS, Defendants.** | § | |

**MEMORANDUM OPINION AND ORDER**

Before the Court is the Motion to Dismiss of Defendants Republican Party of Texas ("RPT") and Tina Benkiser, in her capacity as Chair of the RPT (collectively "Defendants").[1] Having considered the Motion, Response, Reply, pleadings, and applicable legal authority, the Court finds the Motion has merit and should be granted.

## I. BACKGROUND

The Texas Democratic Party ("TDP") and Boyd L. Richie, in his capacity as Chair of the TDP (collectively "Plaintiffs") claim the Mayor or a City Council Member running for the office of State Representative in Midland County, Texas does not need to comply with

[1] This case was filed on January 16, 2008 in the Midland Division of the Western District of Texas and immediately transferred to the Waco Division.

the eligibility requirements contained in Texas election law. Plaintiffs' claim is based on a 1996 federal court order (the "Order") in a voting rights case that allowed existing city officers to maintain their current city council positions while running for another office.[2] The Order states in relevant part:

> If the Mayor or any Council Member shall announce their candidacy, or shall in fact become a candidate, in any general, special or primary election, for any office of profit or trust under the laws of the State of Texas or the United States other than the office then held, such announcement or candidacy shall not constitute an automatic resignation of the office then held and such resignation shall occur only when the individual is sworn in to serve the new office.

Order, *League of United Latin American Citizens Counsel No. 4386 ("LULAC") and the Black Advisory Council v. The City of Midland, Texas, et al.*, Civil Action No. MO-84-CA-106, September 10, 1996.

Plaintiffs state that in compliance with this Order, Mr. Bill Dingus filed to become a candidate for the Texas House of Representatives in District 82. Mr. Dingus, a member of the Midland City Council, has not resigned his office. Relying on the terms of the Order, Plaintiffs seek a declaratory judgment that:

(1) Mr. Dingus is eligible to run for and serve in the office he seeks;

(2) acceptance and certification of Mr. Dingus' ballot application was proper by Plaintiffs; and

(3) Mr. Dingus is eligible to seek the Office of State Representative, District 82.

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[2] Defendants allege that this Order was issued during a time of transition from at-large elections to single-member district elections.

Plaintiffs also seek declaratory and injunctive relief providing that Mr. Dingus shall appear on the upcoming general primary ballot as a candidate for Plaintiffs for the office of State Representative, District 82.[3]

## II. APPLICABLE LAW

### A. Motion to Dismiss Standard of Review

A motion to dismiss under Rule 12(b)(6) "is viewed with disfavor and is rarely granted." *Kaiser Aluminum & Chemical Sales, Inc. v. Avondale Shipyards, Inc.*, 677 F.2d 1045, 1050 (5th Cir. 1982) (quoting 5 Wright and Miller, *Federal Practice and Procedure*, § 1357 at 598 (1969)). It is well settled that "a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the Plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *Boudeloche v. Grow Chemical Coatings Corp.*, 728 F.2d 759, 762 (5th Cir. 1984); *Kaiser*, 677 F.2d at 1050. When considering such a motion, the complaint must be liberally construed in the plaintiff's favor, and all facts well pleaded in the complaint should be accepted as true. *Campbell v. Wells Fargo Bank, N.A.*, 781 F.2d 440, 442 (5th Cir. 1986). Therefore, "the question on a motion to dismiss under Rule

[3] Plaintiffs alternatively request that should the District Court vacate or clarify its Order that Mr. Dingus shall not be eligible for the office he seeks, Plaintiffs request the Court grant Mr. Dingus the opportunity to resign his office. Plaintiffs also alternatively request that should Mr. Dingus resign, they seek declaratory judgment and injunctive relief providing that Mr. Dingus shall appear on the upcoming general primary ballot as a candidate for the Texas Democratic Party for the office of State Representative, District 82.

12(b)(6) is whether in the light most favorable to the plaintiff, and with every doubt resolved in the pleader's [favor], the complaint states any legally cognizable claim for relief." 5 Wright and Miller, *Federal Practice and Procedure*, § 1357 at 640 (3d ed. 2004).

**B. Texas Election Requirements**

Candidates for the Texas Legislature are required to resign from any relevant elected office before running for office in the Texas Legislature. Tex. Const. Art. 3, § 19. Section 19 states:

> No judge of any court, Secretary of State, Attorney General, clerk of any court of record, or any person holding a lucrative office under the United States, or this State, or any foreign government shall during the term for which he is elected or appointed, be eligible to the Legislature.

*Id*. The Texas Election Code requires that a person must "satisfy any other eligibility requirements prescribed by law for the office." Tex. Elec. Code § 141.001(a)(6).

The automatic resignation provision in the Texas Constitution states:

> A Home Rule City may provide by charter or charter amendment, and a city, town or village operating under the general laws may provide by majority vote of the qualified voters voting at an election called for that purpose, for a longer term of office than two (2) years for its officers, either elective or appointive, or both, but not to exceed four (4) years; provided, however, that tenure under Civil Service shall not be affected hereby; provided, however, that such officers, elective or appointive, are subject to Section 65(b), Article XVI, of this constitution, providing for automatic resignation in certain circumstances, in the same manner as a county or district officer to which that section applies.

Tex. Const. Art. 11, § 11. Texas Constitution Art. 16, § 65(b), to which art. 11, § 11 refers, states:

> If any of the officers named herein shall announce their candidacy, or shall in fact become a candidate, in any General, Special or Primary Election, for any office of profit or trust under the laws of this State or the United States other than the office then held, at any time when the unexpired term of the office then held shall exceed one (1) year, such announcement or such candidacy shall constitute an automatic resignation of the office then held, and the vacancy thereby created shall be filled pursuant to law in the same manner as other vacancies for such office are filled.

Tex. Const. Art. 16, § 65(b).

## III. DISCUSSION

Defendants make six arguments for this Court to dismiss this case: (1) the Order applied only to a limited situation; (2) the Order only involved automatic resignations; (3) the Order does not override Art. 3, § 19 of the Texas Constitution; (4) the Declaratory Judgment sought is really just an advisory opinion; (5) the Court should abstain from hearing the case because State law predominates; and (6) proper parties are absent from the case.

### A. Advisory Opinion

Defendants argue that Plaintiff's declaratory judgment amounts to no more than a request for an advisory opinion. Mr. Dingus, the real party in interest, has not contested the resignation requirement. Defendants assert that although the Chair of the TDP could declare Mr. Dingus ineligible after the primary election, there is no indication the he intends to do so. Defendants do state that the Secretary of State could declare Mr. Dingus ineligible. However, neither the TDP Chair nor the Secretary of State has actually

declared Mr. Dingus ineligible, or even threatened to do so; thus, Defendants assert that Plaintiffs are merely seeking an advisory opinion based on a hypothetical situation.

Plaintiffs argue that Defendants actually raise material issues that will affect the determination of whose name appears on the ballot in a particular race in November making any decision by the Court hardly "advisory." Further, Plaintiffs argue that Texas law specifically provides that 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." Tex. Elec. Code § 278.081 (emphasis added). Defendants seek to have Mr. Dingus declared ineligible to serve; thus, Plaintiffs argue that they are in danger of being harmed by Defendants' attempt to have him declared ineligible. *See e.g., Tex. Democratic Party v. Benkiser*, 459 F.3d 582 (5th Cir. 2006).

Defendants distinguish *Benkiser* because it relies on two facts absent from the pleadings in this case: (1) the TDP proves the existence of an economic loss; and (2) the TDP contended its party election prospect would be materially affected by the eligibility determination. *Benkiser*, 459 F.3d at 586-87. Further, in *Benkiser* a determination of eligibility had already been made. Here, Defendants state that there is no allegation that the determination made by the TDP is in the hands of the Defendants, or that any other person has threatened to overturn the TDP's determination.

The RPT sent a letter to the Chair of the TDP that Mr. Dingus may be ineligible and requested that he act in accordance with Texas law to immediately resolve this matter. Plaintiffs state in their Complaint that "Defendants seek to have Bill Dingus declared ineligible" and "on information and belief, Defendants have or will pursue litigation in state court to achieve their purposes." *Plaintiff's Original Complaint*, ¶¶ 12, 13. Based on the letter sent by the RPT, Plaintiffs were threatened that Mr. Dingus may be declared ineligible, which the Court finds is a legitimate reason for the Plaintiffs' filing of this declaratory judgment action for a determination of whether he is eligible and whether the Plaintiffs' acceptance and certification of Mr. Dingus was proper; thus, this case is not a request for an advisory opinion.

**B. Abstention**

Defendants next assert that dismissal is appropriate where State law predominates. Defendants assert that the fundamental issue in this case is whether Texas election law permits Mr. Dingus to run for the Texas Legislature while holding another lucrative office or whether he is ineligible under Texas. Const. Art. 3, § 19. Defendants assert that the state courts are well-equipped to make this decision, and given the sovereign prerogative of the State of Texas to determine eligibility for election to public offices in Texas, this Court should be reluctant to override the state's compelling interest in resolving this issue. Defendants argue that the only federal issue in this case is to determine in what limited situation the Order applies and what Texas law the Order intended to temporarily preempt.

Plaintiffs first argue that there is no question that issues of candidate eligibility requirements imposed by state law implicate constitutional rights. *See Nader v. Connor*, 332 F. Supp. 2d 982, 986 (W.D. Tex. 2004). Further, Plaintiffs argue that it reasonably relied on the Order, which was issued by a federal court when it accepted Mr. Dingus' application and certified his candidacy. Plaintiffs assert that the Order properly enforces the constitutional rights guaranteed to members of City Council, and Plaintiffs are entitled to the same guarantee here. Thus, Plaintiffs argue that state issues are insufficiently predominant to justify the abstention Defendants seek.

Defendants reply that it would be appropriate and beneficial for this Court to hold and make clear the Order is limited in scope and time and does not forever except Midland City officials from complying with clear mandates of the Texas Constitution. However, concerning the eligibility to run for the Texas Legislature, Defendants argue that other state law issues predominate.

Plaintiffs specifically state in the Complaint that this action is brought to give effect to the Order. *Plaintiff's Original Complaint*, ¶ 20. The Court finds that abstention is not appropriate because the central issue in this case is the federal court Order issued by Judge Bunton.

**C. Necessary Parties**

Defendants also argue that the Texas Secretary of State and Mr. Dingus are missing necessary parties for a final resolution of this matter. They state that the Chair of the TDP determines eligibility of a candidate for the Democratic Primary. Tex. Elec.

Code § 172.028. Then the Chair of the TDP delivers the list of candidates to the Texas Secretary of State. Tex. Elec. Code § 172.029. After the list is delivered, the Chair of the TDP loses the right to determine eligibility for the primary. Further, Defendants assert that the TDP and the RPT are not proper parties to argue about the eligibility of Mr. Dingus. *See Colvin v. Ellis County Republican Executive Committee*, 719 S.W.2d 265, 266-67 (Tex. App.–Waco 1986, no writ) ("The only citizen who has an interest separate and apart from that of the general public is a candidate who has an interest in not being opposed by an ineligible candidate."). Thus, Defendants argue that at this point, only Mr. Dingus has the right to argue about his ineligibility, and then only in the event this eligibility is contested. Defendants contend that if the Secretary of State declares Mr. Dingus ineligible, Mr. Dingus would be authorized to contest that determination, and his claim would be against the Texas Secretary of State.

Plaintiffs assert that they have standing to seek, on their own behalf, a declaratory judgment that their acceptance of Mr. Dingus' ballot application was proper. Plaintiffs argue that the Fifth Circuit has held that a political party and its leaders can sue when they have suffered an injury in fact, traceable to defendant's conduct, that was likely to be redressed by a favorable decision of the court. *See Tex. Democratic Party v. Benkiser*, 459 F.3d 582, 586 (5th Cir. 2006). Plaintiffs argue that the court in *Benkiser* did not require the candidate himself or the Texas Secretary of State to be joined as parties. Plaintiffs note that the question presented in this case involves the propriety of the actions of the Plaintiffs, not of Mr. Dingus; thus, all parties necessary to the determination of this

case are before the Court. Plaintiffs distinguish *Colvin* because the plaintiff in *Colvin* was the Chairman of the Ellis County Democratic Party and here it is the Texas Democratic Party and its Chairperson. Also, the procedural issue of standing in a case pending in federal court is determined by federal law; thus, Plaintiffs urge reliance on *Benkiser*.

Defendants argue that Plaintiffs' reliance on *Benkiser* is misplaced because that case involved election of a federal officer, not a state officer.

The Fifth Circuit has long held that parties with legal interests threatened in an actual controversy have standing to sue under the Declaratory Judgment Act. *See, e.g., Collin County, Texas v. Homeowners Association for Values Essential to Neighborhoods (HAVEN)*, 915 F.2d 167, 170 (5th Cir. 1990). The Plaintiffs have a legal interest in whether Mr. Dingus is eligible to run as a TDP candidate for the Texas Legislature. Because of the Order, an actual controversy between the Plaintiffs and the Defendants has arisen over whether Mr. Dingus is required to resign. The RPT sent a letter to the Chair of the TDP suggesting that Mr. Dingus may be ineligible and requested that he act in accordance with Texas law to immediately resolve this matter. In this particular case, Plaintiffs seek a declaratory judgment that Mr. Dingus is eligible and that Plaintiffs' acceptance and certification of Mr. Dingus was proper. The Court finds that Plaintiffs have standing to bring this declaratory judgment action. Further, to make the determinations requested in this case, the Court does not find that it would be necessary for Mr. Dingus or the Texas Secretary of State to be parties to the case.

**D. The Order and Texas Election Requirements**

**1. Limited Situation**

First, Defendants argue that the Order was issued in response to a complaint that Midland's at-large system of electing the Mayor and City Council members violated the Voting Rights Act. In the Order, Judge Bunton ordered a reorganization of the Midland City Council, which changed the method of electing City Council members from an at-large system to a regimen of single-member districts. Defendants assert that Judge Bunton issued the Order based on the parties' agreement that the Mayor and Council Members could run for another office without triggering the automatic resignation of the current offices. Thus, Defendants contend that the Order **temporarily** set aside the "Automatic Resignation" provision of the Texas Constitution that would have otherwise applied. Defendants argue that the Order cannot be read to determine issues not presented to Judge Bunton, nor those not ruled upon by Judge Bunton. Defendants assert that Judge Bunton did not rule on the state system for electing state representatives, and the Order cannot, as a matter of law, be a precedent for every future election taking place in the State of Texas.

Plaintiffs argue that a position in the Texas Legislature is an "office of profit or trust under the laws of the State of Texas" as stated in the Order for when automatic resignations do not apply to candidates. Thus, Plaintiffs assert that the Order should

apply to members of the Midland City Council running for a position in the Texas Legislature.

Defendants reply that the Order cannot be read to forever grant an exemption from Texas election law to every Midland City official. Defendants assert that Judge Bunton was only requested to change the voting procedures for electing Midland City Council, and he ordered Midland to change its election districts to comply with the Voting Rights Act.

**2. Automatic Resignations**

Second, Defendants argue that even if the Court were willing to decide the Order applies to an election for state office in 2008 and beyond, the only effect of the Order would be that running for another office would not result in an automatic resignation from City Council. Defendants assert that the Order **does not** say that resignation is not required under Texas law, only that resignation is not automatic. Defendants assert that Texas election law specifically provides that a person may not hold one office and, at the same time, run for the Legislature. Tex. Const. Art. 3, § 19. Thus, Defendants argue that an express resignation for Mr. Dingus to run for the Texas Legislature is required.

Plaintiffs argue that the Order means what it says—that City Council members are permitted to maintain their offices without resigning during their candidacy, and are only required to resign when sworn into some new office, *i.e.*, after the successful conclusion

of the campaign. Plaintiffs note that Defendants did not contend that the Order was unconstitutional; thus, it must be considered an accurate statement of the law.

Defendants argue that if the Order means what it says then it allows persons holding at-large seats on the Midland City Council to run for newly created, single member district seats without the filing for that new seat constituting an automatic resignation from the current seat. Defendants argue that the Order does not suspend other, relevant provisions of Texas law that require resignation in relation to other offices, such as the requirement under Art. 3, § 19 of the Texas Constitution that persons who presently hold a lucrative office are not eligible for the Texas Legislature.

**3. Override Art. 3, § 19 of the Texas Constitution**

Thirdly, Defendants argue that the Order does not override Art. 3, § 19 of the Texas Constitution. The office of City Council Member in Midland, Texas is legally considered a lucrative office. Thus, under the Texas Constitution, individuals holding the office of City Council Member are ineligible to be elected to the Texas Legislature. Defendants argue that the Order does not address this Constitutional provision because eligibility to be a candidate for the Texas Legislature was not an issue before Judge Bunton. Defendants assert that if Judge Bunton intended to preempt certain provisions of the Texas Constitution in all future elections, including those not at issue before him, he would have identified the provisions in his Order and stated his desire to permanently preempt.[4]

[4] Defendants request the extent to which the Order applies to future election proceedings in Texas be clarified.

Plaintiffs argue that Art. 3, § 19 should be construed strictly against ineligibility. *See Wentworth v. Meyer*, 839 S.W.2d 766, 767 (Tex. 1992 (orig. proceeding) ("Any constitutional or statutory provision which restricts the right to hold office must be strictly construed against ineligibility."). Plaintiffs note the *Wentworth* Court did not decide when a candidate's resignation from a lucrative office must take place for purposes of complying with Article 3, § 19.[5] Plaintiffs also cite *Dawkins v. Meyer*, 825 S.W.2d 444 (Tex. 1992 (orig. proceeding). In *Dawkins*, the Texas Supreme Court determined that a member of the Board of the Texas Department of Mental Health and Mental Retardation ("MHMR") was ineligible to run for the State House of Representatives because her term of office at MHMR would overlap with the next regular session of the Legislature. *Dawkins*, 825 S.W.2d at 447. The candidate had not resigned her position at MHMR before being certified as a candidate for the Legislature; however, the Supreme Court's decision turned on whether the candidate's membership on the board was "lucrative" within the meaning of Art. 3, § 19. *Id.* at 449-50.[6] Based on *Wentworth* and *Dawkins*, Plaintiffs argue that an intent to resign will suffice, and if the candidate resigns after being

[5] Justice Gonzalez opined that a person "who has filed for an office without resigning a current office with an overlapping term risks disqualification which later resignation after the filing deadline would not cure." *Wentworth*, 839 S.W.2d at 771 (Gonzales, J., concurring). Justices Cornyn and Hecht did not state when resignation must occur. *Id.* at 776-80 (Cornyn, J., concurring). Justice Cook, writing for the majority, states "we reserve the issue when an officeholder must resign to avoid article III, section 19." *Id.* at 766, n.1.

[6] Plaintiffs distinguish the candidate in *Dawkins* from Mr. Dingus because the candidate in *Dawkins* did not express an intent to resign; thus, the Court only looked at whether her position was lucrative.

certified as a candidate for the Texas Legislature, he or she meets the requirements of Art. 3, § 19. Plaintiffs assert that while Mr. Dingus has not resigned from his Midland City Council position, he has expressed his intent to resign from that position should he be elected to the House. Alternatively, Plaintiffs argue that even if the Court determines that Mr. Dingus was required to resign from his City Council seat before running for office and that Mr. Dingus was improperly certified, it is proper under Texas law to allow him to resign from his position on the Midland City Council at this point. Plaintiffs cite to *In re Francis*, 186 S.W.3d 534 (Tex. 2006) (orig. proceeding) where a candidate for the Texas Court of Criminal Appeals filed a petition signed by enough potential voters to have his name placed on the Republican primary ballot. 186 S.W.3d at 536. Due to a clerical error, several pages did not state he was running for "Place 8" on the Court. *Id*. The Republican Party of Texas listed him as a candidate, but his name was removed by a Travis County District Judge upon challenge by another Republican candidate. *Id.* The Supreme Court agreed the petition was invalid under Texas law but disagreed that invalid signatures could not be cured. *Id.* at 539 n.16. Thus, the candidate was not excluded from the ballot as a penalty. *Id*. at 543. Plaintiffs argue that its reliance on the Order was reasonable because the Order, in plain language, permits Council Members to run for office without resigning. Further, Plaintiffs assert that there is a lack of a definitive decision on when a resignation must take place in previous decisions by the Texas Supreme Court. Plaintiffs argue that if the Court were to determine that Mr. Dingus was

required to resign from his City Council position before seeking to become the Democratic candidate for the Texas Legislature, it could craft the "abatement" remedy laid out in *Francis*, and allow Mr. Dingus to resign from his council position without losing his right to run for office. Plaintiffs assert that the resignation requirement is akin to the clerical error in *Francis*, and this Court should apply *Francis* and hold any error can be cured by Mr. Dingus' resignation.

Defendants reply that Plaintiffs ask the Court to ignore the plain language of the Texas Constitution that a person holding a lucrative office is not eligible to run for the Texas Legislature. Defendants argue that the cases cited by Plaintiffs cannot be cited for the proposition that a person holding an admittedly lucrative office can ignore Art. 3, § 19 of the Texas Constitution.

Further, Defendants reply that Plaintiffs have failed to recognize the essence of the holding in *Francis*. Defendants assert that Mr. Francis' defect rendering him ineligible was a facial defect evident from the four corners of his application and subject to cure, not a substantive defect rendering him ineligible. The Supreme Court limited its holding as follows:

> Finally, we emphasize several limitations on today's holding. **First, it concerns only facial defects that are apparent from the four corners of a candidate's filings; . . . Fourth, it concerns only defective filings that have erroneously been approved; it does not change what the Election Code says party chairs should and must reject. Finally, it does not absolve candidates of the need for diligence and responsibility in their filings;** party chairs must only notify them of defects, not do their work for them.

186 S.W.3d 542-43 (emphasis added). Thus, Defendants assert that the *Francis* case does not offer a second chance to remedy substantive eligibility requirements imposed by the Texas Constitution. Defendants argue that the eligibility defects in this case persist because Plaintiffs and Mr. Dingus continue to take positions that directly conflict with Texas law.

**4. Analysis**

The Court agrees that Judge Bunton was not presented with issues relating to the state system for election of state representatives. However, there is language in the Order that set aside the "automatic resignation" provision when a City Council member becomes a candidate for "any office of profit or trust under the laws of the State of Texas." The Court agrees with the Plaintiffs that this would include a position in the Texas Legislature. However, as the Defendants point out, the Order merely states that announcing the candidacy does not constitute an automatic resignation. The Order does not hold that resignation is not required when it is required under Texas election law. Further, Judge Bunton did not declare the Texas Constitution unconstitutional regarding candidacy requirements. The Court agrees that a person holding a lucrative office, such as a member of the Midland City Council, is not eligible to become a candidate for the Texas Legislature. Tex. Const. Art. 3, § 19. Plaintiff's argument, relying on *Wentworth* and *Dawkins*, that the Court should strictly construe Art. 3, § 19 against ineligibility lacks

merit based on the plain language of this section of the Constitution.[7] The Court cannot ignore this plain language, and Judge Bunton's Order does not explicitly or implicitly overrule the Texas Constitution. Mr. Dingus holds a lucrative office, and he and the Court cannot ignore Art. 3, § 19 of the Texas Constitution. Lastly, Plaintiff's alternative remedy requesting that the Court allow Mr. Dingus an opportunity to resign based on the *Francis* case also lacks merit. Mr. Dingus' eligibility defect is a substantive defect based on the Texas Constitution's eligibility requirements. The *Francis* case limited its holding to only facial defects, which are not present in this case. 186 S.W.3d at 542-43. Thus, the Court finds that Plaintiff's Complaint does not present any legally cognizable claims for relief. For these reasons, Defendants' Motion to Dismiss should be granted. Accordingly, it is

**ORDERED** that the Motion to Dismiss of the Republican Party of Texas and Tina Benkiser, in her capacity as Chair of the Republican Party of Texas is **GRANTED** and Plaintiffs' claims against the Republican Party of Texas and Tina Benkiser, in her capacity as Chair of the Republican Party of Texas, are **DISMISSED**. It is further

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[7] In *Wentworth*, the Court overruled its prior interpretation of section 19 restricting eligibility and stated that "we must advance the purpose of section 19 and adhere to the rule requiring us to decide in favor of eligibility." 839 S.W.2d at 768. The argument, based on Wentworth, that Mr. Dingus' intent to resign is sufficient, lacks merit because the *Wentworth* holding was based on an actual resignation four years prior to Mr. Wentworth running for the Texas Legislature. The issue of not resigning prior to filing for an office was not an issue before the Court. In addition, the *Dawkins* case is not applicable because the candidate there did not resign at all. The issue in *Dawkins* was merely whether the office the candidate held was lucrative within the meaning of section 19. *Id.* at 769.

**ORDERED** that any and all pending motions or requests not previously ruled upon by the Court are **DENIED** as moot.

**SIGNED** on this 15th day of April, 2008.

WALTER S. SMITH, JR.
CHIEF UNITED STATES DISTRICT JUDGE