

Cause No. _____

THE REPUBLICAN PARTY OF TEXAS,
CAROLINE GEORGE, AND JACK DUBOSE,
PLAINTIFFS,

VS.

THE HONORABLE ROLANDO PABLOS, IN HIS
OFFICIAL CAPACITY AS TEXAS SECRETARY
OF STATE, AND PETE GALLEGOS
DEFENDANTS.

IN THE ____ DISTRICT COURT

OF

TRAVIS COUNTY, TEXAS

Plaintiffs' Original Verified Petition for Declaratory Judgment, Temporary Restraining Order, and Injunctive Relief

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiffs The Republican Party of Texas, Caroline George, and Jack DuBose, file this Original Verified Petition for Declaratory Judgment, Temporary Restraining Order, and Injunctive Relief complaining as follows:

I.
Nature of the Case

1. Plaintiffs are the Republican Party of Texas and registered voters in Senate District 19.

The Plaintiffs seek to invoke the jurisdiction of the Court to determine the eligibility of one of the candidates who will, without Court action, appear on the ballot in an upcoming Special Election Run-off who is ineligible to hold the office of State Senator for Senate District 19.

Accordingly, this is a suit to determine the residency of a candidate seeking public office and preventing the Texas Secretary of State from placing that person on the Special Election Run-off ballot.

2. On June 18, 2018, Carlos Uresti, four months after he was found guilty of eleven felonies, resigned his public office as State Senator for Senate District 19.

3. On June 20, 2018, Texas Governor Greg Abbott, pursuant to his authority in the Texas Constitution and the Texas Election Code, ordered an Emergency Special Election to be held on Tuesday, July 31, 2018 for the purpose of electing a state senator to serve out the unexpired term of Carlos Uresti. *See Exhibit A.*

4. Eight candidates filed applications with Texas Secretary of State Rolando Pablos for a place on the Emergency Special Election ballot and on July 2, 2018 each was certified for placement on the ballot. *See Exhibit B.*

5. The results of the Emergency Special Election on July 31, 2018 were that no one candidate received a majority of the vote to be able to assume the unexpired term. Republican Peter P. “Pete” Flores received 34.37% of the vote and Democrat Pete Gallego received 28.91% of the vote. This outcome necessitates a special run-off election to be called by Governor Greg Abbott. TEX. ELEC CODE § 203.003.

6. Pete Gallego is not eligible to appear on the Special Election Run-off ballot because he does not live in Senate District 19. He does not even live in any of the seventeen counties that constitute Senate District 19. In fact, the documentary evidence demonstrates that he lives in Austin, Travis County, Texas where he owns a home which is claimed as a homestead. *See Exhibit C* (Gilbert Garcia, “Gallego faces residency questions in Senate race” (*San Antonio Express-News*, July 20, 2018)).

7. Texas law specifically requires that in order to run for office, one must actually live in the territory one seeks to represent. Texas courts have routinely enforced residency requirements and declared candidates ineligible where they live outside the district. The citizens and voters of Senate District 19 deserve to have the residency law enforced.

II.
Discovery Control Plan

8. Pursuant to Rule 190.1 of the Texas Rules of Civil Procedure, plaintiff intends to conduct discovery in this case under Level 3.

III.
Parties

9. Plaintiff **REPUBLICAN PARTY OF TEXAS** is a political party in the State of Texas with a candidate, Pete Flores, for the office of State Senator for Senate District 19 in the Special Election Run-off to fill an unexpired term in that office.

10. Plaintiff **CAROLINE GEORGE** is a citizen of the United States, resident of Senate District 19, is registered to vote, and intends to vote in the Special Election Run-off for Senate District 19. Her address is 465 Melcher Lane, Poteet, Atascosa County, Texas 78065.

11. Plaintiff **JACK DuBOSE** is a citizen of the United States, resident of Senate District 19, is registered to vote, and intends to vote in the Special Election Run-off for Senate District 19. His address is 1363 Ranch Road 336, Leakey, Real County, Texas 78873.

12. Defendant **THE HONORABLE ROLANDO PABLOS, in his official capacity as Texas Secretary of State**, is the chief election officer for the State of Texas and is the authority responsible for certifying the candidates for the ballot for the Special Election Run-off in Senate District 19. He may be served with process at his principal place of business at 1100 Congress Avenue, Texas Capitol Building, Room 1E.8, Austin, Travis County, Texas 78701.

13. Defendant **PETE GALLEGOS**, herein after Gallego, is a candidate for the office of State Senator, Senate District 19. He may be served with process at his residence at 8816 La Siesta Bend, Austin, Travis County, Texas 78749.

IV.
Jurisdiction and Venue

14. This suit is for declaratory and injunctive relief within the jurisdiction of this Court.

Plaintiffs brings this action pursuant to the Texas Uniform Declaratory Judgment Act, Texas Election Code § 273.081, Tex. Civ. Prac. & Rem. Code § 65.001 *et seq.*, and Texas Rule of Civil Procedure 680.

15. Travis County is the proper venue for this petition because Travis is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred. Tex. Civ. Prac. & Rem. Code § 15.002.

V.
Statement of Facts and Relevant Legal Framework

Background

16. Texas Governor Greg Abbott declared the July 31, 2018 special election to be an emergency and therefore is required to establish date for the Special Election Run-off in Senate District 19. TEX. ELEC. CODE § 203.004(b).

17. Pete Flores, a member of the Republican Party of Texas, Plaintiff herein, timely filed his ballot application with the Texas Secretary of State and was the top vote earner in July 31, 2018 Emergency Special Election for Senate District 19.

18. Defendant Gallego filed his application with the Texas Secretary of State on June 22, 2018. *See Exhibit D.* Absent this current action, he is Pete Flores's opponents in the special election run-off for Senate District 19 race.

19. Texas Governor Greg Abbott will, in accordance with the Texas Election Code, canvass the vote from the Emergency Special Election on Saturday, August 11, 2018.

20. Defendant The Honorable Rolando Pablos will have five days from the date of the canvass, Thursday, August 16, 2018 in this case, to certify “...the names of the runoff candidates for placement on the runoff ballot....” TEX. ELEC CODE § 203.010.

Residency requirement for Senate candidates in a Special Election

21. The Texas Constitution provides that, “[n]o person shall be a Senator, unless he...shall have been a resident of this State five years next preceding his election, and the last year thereof a resident of the district for which he shall be chosen....” TEX. CONST. ART. 3, SEC. 6¹.

22. Therefore, to be eligible to be a candidate for Senate District 19, a person must have resided in Texas for five years and Senate District 19 for a year before they are elected to the office.

23. Although Governor Abbott has not issued a proclamation declaring the date of the Special Election Run-off, Gallego will not have resided in Senate District 19 for a full twelve months preceding his election.

Pete Gallego is a resident of Austin, not Senate District 19

24. Gallego claimed on his ballot application that his residence was 600 N. Harrison, Alpine, Brewster County, Texas, in Senate District 19. Information on file with the Brewster County clerk’s office reflects that Gallego’s father purchased that property in 1978 and that it is currently owned by Elena P. Gallego, not Defendant Gallego. *See Exhibit E* (Brewster County CAD Property Details).

¹ Under normal circumstances, the Texas Election Code would further provides that, “[t]o be eligible to be a candidate for, or elected or appointed to, a public elective office in this state, a person must...have resided continuously in the state for 12 months and in the territory from which the office is elected for six months immediately preceding” certain events. TEX. ELEC. CODE § 141.001(a)(5). However, none of the additional eligibility requirements are applicable for a Special Election and they are governed solely by the requirements found in the Texas Constitution.

25. It is clear, however, that Gallego actually resides day-to-day in Austin, at a home other than the one listed in another person's name.

26. A deed filed with the Travis County Clerk's office reflects that, in 2000, Gallego and his wife, Maria Ramon, purchased a residence at 8816 La Siesta Bend, Austin, Travis County, Texas 78749. *See Exhibit F* (October 6, 2000 Deed of Trust). A second deed of trust, filed in 2009 with the Travis County Clerk's office, confirms Gallego and his wife still maintain this residence. *See Exhibit G* (April 28, 2009 Deed of Trust). This Austin home has a 2018 appraised value of \$404,376. *See Exhibit H* (2018 Notice of Appraised Value noting a homestead exemption on the property).

27. Gallego's wife, Maria Ramon, is currently employed as general counsel for the Texas Office of Court Administration which is located in Austin, Travis County, Texas. On information and belief, Mrs. Ramon has been employed with the Texas Office of Court Administration since October 1, 1997.

28. As intent of residence, Gallego has claimed the homestead exemption on his home in Austin, Travis County, Texas. *See Exhibit H*. By claiming the homestead exemption in Austin, Travis County, Texas, Gallego, by definition, represented to the Travis County tax assessor that the Austin residence "is occupied as [his] *principal residence*." TEX. TAX CODE § 11.13(j)(1)(D) (emphasis added) .

29. Further confirming intent of residence, Gallego has twice held out to federally insured lending institutions that he would "...occupy, establish, and use [the Austin home] as [his] *principle residence*..." *See Exhibit F at page 5*, and *Exhibit G at page 7* (emphasis added).

Gallego is ineligible to run for Senate District 19 because he cannot meet the residency standard.

30. "Residence" is defined in the Texas Election Code as follows:

- (a) In this code, “residence” means domicile, that is, one’s home and fixed place of habitation to which one intends to return after any temporary absence.
- (b) Residence shall be determined in accordance with the common-law rules, as enunciated by the courts of this state, except as otherwise provided by this code.
- (c) A person *does not lose* the person’s residence by leaving the person’s home to go to another place for *temporary* purposes only.
- (d) A person does not acquire a residence in a place to which the person has come for *temporary* purposes only and without the intention of making that place the person’s home.

TEX. ELEC. CODE § 1.015 (emphasis added).

31. To establish residency, the Texas Supreme Court has made clear that both elements – *bodily presence* and *intent* – must be met. *Mills v. Bartlett*, 377 S.W.2d 636, 637 (Tex. 1964). “Neither bodily presence alone nor intention alone will suffice to create the residence, but when the two coincide at that moment the residence is fixed and determined.” *Id.*

32. The Fourth Court of Appeals has recognized and applied this standard, explaining that “under the statute the election officials are to focus on the voter’s ‘home and fixed place of habitation.’ Intention and presence are important evidentiary factors, and a *temporary* move from one place to another will neither create a new residence nor lose an old one.” *Alvarez v. Espinoza*, 844 S.W.2d 238, 247 (Tex. App.–San Antonio 1992, writ dism’d w.o.j.) (emphasis added).

33. Even where intent is sufficient, the Fourth Court of Appeals teaches that residency is not established if the voter’s “presence in the district is, as a matter of law, too attenuated.” *Id.* at 248; *see also Owens Corning v. Carter*, 997 S.W.2d 560, 571 (Tex. 1999) (“[A]lthough intent is

necessary to establish a permanent residence, it alone is not *sufficient* to establish a permanent residence.”) (emphasis in original). “In assessing presence, the cases have considered such conduct as where the voter sleeps and keeps clothes and furniture, and the length of time spent in the alleged residence.” *Id.*; *see also In re Graham*, 251 S.W.3d 844, 850-51 (Tex. App. – Austin 2008, no pet.) (for purposes of “domicile” as related to jurisdiction, evidence that individual “slept, gardened, entertained guests, stored her personal possessions, and generally conducted day-to-day activities in Travis County conclusively establishes residence in fact and intent to make the residence her home.”).

34. Gallego cannot meet either element necessary for residency under the Texas Election Code, and therefore he is ineligible to run as a candidate for the Senate District 19 seat.

35. It is now undisputed that Gallego does not actually live day-to-day in Alpine, and most likely has not done so since, at best, sometime in 2000.

36. The facts reveal that Gallego appears to have been living in Austin continuously since at least sometime in 2000, when he married Mrs. Ramon.

37. Because Gallego clearly cannot establish “bodily presence” in the Brewster County home, he will likely claim that he has only temporarily vacated the home and intends to return to Senate District 19. However, the facts belie any such claimed intent.

38. The residency statute provides that “[a] person *does not lose* the person’s residence by leaving the person’s home to go to another place for *temporary* purposes only.” TEX. ELEC. CODE § 1.015(c). At this point, Plaintiffs are unaware whether Gallego ever *actually* resided in the Brewster County home. Even if he did live there in the past, it is immaterial now, since his prior actions preclude any claim that he has currently moved for temporary purposes only.

39. If Gallego had truly temporarily moved to Austin and intends to return to Brewster County, Texas law afforded him the opportunity to maintain a homestead exemption on his Brewster County home. The homestead statute expressly states:

(l) A qualified residential structure does not lose its character as a residence homestead when the owner who qualifies for the exemption temporarily stops occupying it as a principal residence *if that owner does not establish a different principal residence* and the absence is:

(1) for a period of less than two years *and the owner intends to return and occupy the structure* as the owner's principal residence[.]

TEX. TAX CODE § 11.13(l) (emphasis added).

40. Of course, the documents reveal that Gallego did not take advantage of this opportunity. Instead, he not only purchased a new, more expensive home in Travis County, Texas, but he declared it his "principal residence" when he claimed the homestead exemption.

41. Therefore, Gallego clearly does not *actually* reside in Senate District 19, and the facts also belie any claim that he has the requisite present intent to permanently reside in Brewster County. He cannot establish residency in Senate District 19 under the Texas Election Code.

VI. **Declaratory Judgment**

42. Plaintiffs incorporate herein by reference each and every allegation contained in each of the above paragraphs of this Petition as if fully set forth herein.

43. Plaintiff seeks a declaration, pursuant to the Uniform Declaratory Judgments Act, that Defendant Pete Gallego does not meet the residency qualification of Article 3, Section 6 of the Texas Constitution of having been a resident of Senate District 19 for the last year preceding the date of the Special Election Run-off for which he is a candidate.

44. Plaintiffs believe the Defendant Pete Gallego is, in fact, a resident of Travis County, Texas, which is not part of Senate District 19, and has been since 2000.

VII.
Application for Temporary and Permanent Injunction

45. Plaintiffs incorporate herein by reference each and every allegation contained in each of the above paragraphs of this Petition as if fully set forth herein.

46. Plaintiffs respectfully move this Court grant injunctive relief against Defendant The Honorable Rolando Pablos, including but not limited to a temporary restraining order, a temporary injunction and a permanent injunction restraining Defendant from enforcing certifying Defendant Gallego for the Special Election Run-off.

47. For all reasons stated above, Plaintiffs have a probable right to the relief they seek and have established a likelihood of success on the merits. Defendant Gallego is not eligible to be a candidate for State Senator for Senate District 19 because he is not a resident of Senate District 19 under the relevant standard.

48. Plaintiffs will be irreparably harmed if Defendant The Honorable Roland Pablos is not enjoined from certifying Defendant Gallego for the Special Election Run-off because, upon certification, Gallego's name will be printed on ballots for the seventeen counties that compose Senate District 19.

49. Defendant The Honorable Rolando Pablos's actions in certifying Defendant Gallego for the ballot will have an irreparable effect on Plaintiffs interests in this election unless timely restrained. This Court has the authority to issue appropriate orders to protect Plaintiffs' rights. *Bird v. Rothstein*, 930 S.W.2d 586, 587 (Tex. 1996) (Texas Supreme Court noting that it had ordered "the Secretary of State to notify election officials in District 108 to stop printing and

mailing ballots pending further order of this Court,” while determining whether relator was entitled to be included on ballot).

50. Money damages cannot adequately compensate these injuries, and, absent injunctive relief, the injuries will be irreparable. Plaintiffs have no adequate remedy at law. Accordingly, appropriate injunctive relief is necessary.

51. Plaintiffs do not seek to interrupt or delay voting in the Special Election Run-off. There are no other elections scheduled in Senate District 19 until the November General Election, and no impact on the November General Election is necessary to reach a disposition of these issues as they affect the Special Run-off Election in Senate District 19.

52. Because residency is a fact-intensive issue, Plaintiffs request that this Court set a hearing to receive evidence and argument as to Gallego’s residency.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff/Applicant respectfully requests that this Court:

- a) Issue a temporary restraining order enjoining Defendant The Honorable Rolando Pablos from certifying Defendant Gallego for the Special Election Run-off;
- b) Set a scheduling hearing to determine, and set, an appropriate date for a hearing on Plaintiffs’ Application for Temporary Injunction which provides sufficient time for service of trial subpoenas for said hearing;
- c) Enjoin Defendant The Honorable Rolando Pablo from certifying Defendant Pete Gallego for the Special Election Run-off ballot, in the manner and to the extent necessary to protect any rights to which Plaintiffs are entitled under the Texas Constitution, Texas Election Code, and any other applicable law;

- d) Set this cause for expedited trial on the merits;
- e) Recognize and declare that Plaintiffs have justiciable rights to appropriate relief and declare that Defendant Gallego is not eligible to run as a candidate for, or serve as, State Senator for Senate District 19;
- f) Award Plaintiffs costs of this action, as well as all reasonable and necessary attorneys' fees pursuant to the Texas Uniform Declaratory Judgment Act and/or any other relevant authority; and
- g) Grant all other relief to which Plaintiff may be entitled.

Respectfully submitted,

AKERMAN, L.L.P.

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ATTORNEYS FOR PLAINTIFFS

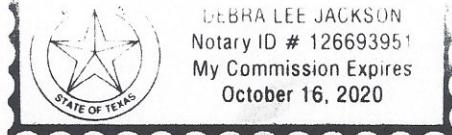
VERIFICATION

THE STATE OF TEXAS
COUNTY OF TRAVIS

Before me, the undersigned authority, on this day personally appeared James Dickey, Chairman and authorized representative of the Republican Party of Texas, and being by me duly sworn state he is greater than 21 years of age, competent and of sound mind, and has reviewed Plaintiffs' Original Verified Petition for Declaratory Judgment, Temporary Restraining Order, and Injunctive Relief, and, except to the extent such pleadings relate to legal contentions, the facts stated therein are based upon his personal knowledge, and are true and correct. The Republican Party of Texas intends to campaign on behalf of Pete Flores in the Special Election Run-off for Senate District 19. The Republican Party of Texas believes that immediate, irreparable injury, loss and damage to our rights under the Texas Constitution will result without the relief requested in the Petition.

JAMES DICKEY
CHAIRMAN
REPUBLICAN PARTY OF TEXAS

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 10th day of August, 2018.




Sandra Jackson
Notary Public for the State of Texas