

CAUSE NO. D-1-GN-13-004324

JOE POOL,	§	IN THE <u>53RD</u> JUDICIAL
Plaintiff	§	
	§	
v.	§	DISTRICT COURT OF
	§	
STEVE MUNISTERI, Chairman of	§	
the Republican Party of Texas, and	§	
THE REPUBLICAN PARTY OF TEXAS	§	
Defendant	§	TRAVIS COUNTY, TEXAS

**PLAINTIFF'S ORIGINAL PETITION AND
APPLICATION FOR TEMPORARY INJUNCTION**

Plaintiff Joe Pool (Pool) files this original petition and application for a temporary injunction against Defendants Steve Munisteri (Munisteri), Chairman of the Republican Party of Texas and the Republican Party of Texas (RPT).

Discovery Level

1. Pool intends that discovery, if necessary, be conducted under Level 3 of Rule 190 of the Texas Rules of Civil Procedure.

Parties

- 2. Pool is an individual that resides in Hays County, Texas.
- 3. Munisteri is an individual who serves as Chairman of the Republican Party of Texas. He may be served with process at the Texas Republican Party headquarters, 1108 Lavaca, Suite 500 Austin, Travis County, Texas 78701.
- 4. The Republican Party of Texas is a political party and may be served with process through its Chairman, Steve Munisteri, at the Texas Republican Party headquarters, 1108 Lavaca, Suite 500 Austin, Travis County, Texas 78701.

5. Jurisdiction

6. This is a suit to prevent the violation of the Texas Election Code that would harm Pool. The Election Code gives this Court jurisdiction to order "appropriate injunctive relief to prevent the violation from continuing or occurring" on behalf of any "person who is being harmed or is in danger of being harmed by a violation or threatened violation of this code." TEX. ELEC. CODE § 273.081.

Venue

7. Venue is proper in Travis County, because it 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(a)(1).

Fact

8. Candidates for the Texas Supreme Court desiring to be in a party primary election for that office must file an application with the party chair for a place on the ballot. TEX. ELEC. CODE §§ 172.021(a); .022(a)(1). A supreme court candidate's application must be accompanied by a petition containing at least 50 valid signatures of eligible voters from each of the state's court of appeals districts. *Id.* § 172.021(g). To be valid, a petition signature must be on a page that contains a valid affidavit of the person who circulated the petition. *Id.* § 141.063(a)(3). A valid circulator's affidavit must, among other things, verify that the circulator, before the voter signed, pointed out and read to the signer each statement pertaining to the signer appearing on the petition and also witnessed each signature. *Id.* § 141.065(a).

9. Pool is a duly-qualified candidate for the Texas Supreme Court, Place 6, in the March 4, 2014 Republican Party primary, having submitted to Munisteri his application and petition on December 9, 2013.

10. On December 4, 2013, Jeff Brown (Brown) submitted an application to Munisteri seeking to have his name placed on the Republican Party primary ballot for Texas Supreme Court, Place 6. Brown's application, however, did not comply with the form and content required by the Election Code in order to have his name placed upon the ballot.

11. Section 141.062(a) of the Election Code provides that:

To be valid, a petition must: (1) be timely filed with the appropriate authority; (2) contain valid signatures in the number required by this code; and (3) comply with any other applicable requirements for validity prescribed by this code.

12. Section 141.063(a) of the Election Code states in pertinent part that:

A signature on a petition is valid if . . . (2) the petition includes . . . (C) the date of signing [and] (3) the part of the petition in which the signature appears contains the affidavit required by Section 141.065.

13. Section 141.065(a) of the Election Code provides that:

Each part of a petition must include an affidavit of the person who circulated it stating that the person: (1) pointed out and read to each signer, before the petition was signed, each statement pertaining to the signer that appears on the petition; (2) witnessed each signature; (3) verified each signer's registration status; and (4) believes each signature to be genuine and the corresponding information to be correct.

14. Brown's petitions are defective under these mandatory provisions of the Election Code and in at least two court of appeals districts Brown's petitions did not contain minimum 50 signatures as required.

15. Attached as Exhibit A are true and correct copies of Brown's petition signatures submitted by circulator Justin Dudley (Dudley) for various courts of appeals districts.

16. Brown submitted 72 signatures for the Fourth Court of Appeals, 26 of which were submitted by Dudley and are included in Exhibit A. Attached as Exhibit B are true and correct copies of petition pages that include only signatures for the Fourth Court of Appeals, which includes 46 signatures. All of the signatures submitted by Dudley are on petition pages in which the affidavit fails to contain the date on which the Dudley swore that he complied with the required Election Code procedures for collecting each signature. Without this date on the page, the signatures are invalid for lack of a valid circulator's affidavit. This leaves Brown with only 46 valid signatures for the Fourth Court of Appeals, less than the 50 required by the Election Code.

17. Brown submitted 67 signatures for the Sixth Court of Appeals, five of which were submitted by Dudley, including one marked "6&12," and are included in Exhibit A. Attached as Exhibit C are true and correct copies of petition pages that include only signatures for the Sixth Court of Appeals, which includes 42 signatures. Twenty-two of the signatures contained in Exhibit C were sworn to between November 5, 2013 and November 8, 2013 before Marshall

Clark Wood (Wood) acting as the notary. However, Wood's notary commission expired on October 17, 2013, as shown by the Texas Secretary of State's certificate attached as Exhibit D. As Wood was not commissioned as a notary public at the time of the notarization, he was not an officer authorized to administer oaths and therefore these 22 signatures are invalid as not containing a valid circulator's affidavit. The five signatures submitted by Dudley for the Sixth Court of Appeals are invalid for the same reasons outlined in paragraph 14 of this petition. This leaves Brown with only 40 valid signatures for the Sixth Court of Appeals, less than the 50 required by the Election Code.

18. There are four counties that are contained in both the Sixth and Twelfth Courts of Appeals—Gregg, Rusk, Upshur and Wood. Brown submitted 73 signatures for the Twelfth Court of Appeals. Attached as Exhibit E are the petition pages containing these 73 signatures. Of these 73 signatures submitted for the Twelfth Court of Appeals only two are also in counties that are part of the Sixth Court of Appeals. Of these two signatures that are in the Sixth Court of Appeals, on the sheet that states "Susan Gardner Page 1 of 1" in the upper right corner, the circulator signed the affidavit on November 7, 2013 stating that she had read to the signers all applicable information prior to their signatures and had witnessed all of their signatures. However, the individual from Gregg County signed this page on November 14, 2013, a week later. This signature is therefore invalid in that it does not contain a valid circulator's affidavit, because the affidavit was executed before the signature was obtained. On the sheet

signed by what appears to be the signature of Laura S. Severt, there is not date shown on when the affidavit was executed.

19. There is one county that is contained in both the Fifth and Sixth Courts of Appeals—Hunt. Brown submitted 169 petition signatures for the Fifth Court of Appeals. Attached as Exhibit F are the petition pages containing these 169 signatures. Of these 169 signatures, none are in Hunt County and thus none are also in the Sixth Court of Appeals. Accordingly, there is at most one signature that could be added back to Browns total signatures for the Sixth Court of Appeals, which is insufficient to give him the 50 required signatures.

20. On December 20, 2013 Pool pointed out to Munisteri the various defects in Brown’s petitions, but on December 23, 2013 Munisteri sent a letter to Pool indicating Munisteri’s opinion that Brown had submitted a sufficient number of valid signatures to be placed on the ballot. Pool’s only remedy is therefore a judicial injunction as required by the Election Code in situations such as this.

Application for Temporary Injunction

21. Pool incorporates the allegations of the above paragraphs.

22. Because of Munisteri’s threatened action in continuing to violate the Election Code by taking actions to make sure that Brown’s name appears on the March 4, 2014 Republican primary ballot for the office of Texas Supreme Court, Place 6, Pool will be irreparably harmed. Pool therefore seeks a temporary injunction enjoining Munisteri and the RPT from placing Brown’s

name on the March 4, 2014 Republican primary ballot or requiring them to take any actions necessary to ensure that Brown's name does not appear on the March 4, 2014 Republican primary ballot.

Conditions Precedent

23. All conditions precedent to Pool's right to recovery have been performed or have occurred.

Prayer

Pool prays for judgment that (1) Munisteri and the RPT, their agents, servant, employees, representatives, and all other persons, firms or corporations in active concert or participation with Munisteri and the RPT be enjoined from placing Brown's name on the March 4, 2014 Republican primary ballot or mandatorily enjoined to take any actions necessary to ensure that Brown's name does not appear on the March 4, 2014 Republican primary ballot.

Respectfully submitted,

By: 

Randall B. Wood
State Bar No. 21905000

2700 Bee Caves Road, Suite 200
Austin, Texas 78746
(512) 328-8877 (Telephone)
(512) 328-1156 (Telecopier)
ATTORNEY FOR PLAINTIFF
JOE POOL