

NO. _____

MICHELE PETTY,

Plaintiff,

vs.

TEXAS REPUBLICAN PARTY,
STEVE MUNISTERI, CHAIR OF THE
TEXAS REPUBLICAN PARTY, STATE
OF TEXAS, HOPE ANDRADE,
SECRETARY OF STATE, AND THE
HONORABLE NATHAN HECHT,

Defendants.

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IN THE DISTRICT COURT

_____ JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

PLAINTIFF’S ORIGINAL PETITION AND APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTIONS

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, Michele Petty (“Petty”), complaining of Defendants, the Texas Republican Party, Steve Munisteri, the Chairman of that political party, State of Texas, and Hope Andrade, and the Honorable Nathan Hecht, as her Original Petition and Application for Temporary and Permanent Injunctions, states the following:

I.
PARTIES

1. Plaintiff, Michele Petty, (“Petty”) is a resident of Bexar County, Texas, and is standing for election as a Democrat for the Texas Supreme Court, Place 6.
2. Defendant, Texas Republican Party is a political party and is involved in slating candidates for the ballot for the Republican Party Primary and General elections in the State of Texas. The Republican Party is charged by law to follow the Texas Election Code with

respect to the conduct of all such elections. It can be served with process herein by delivering the citation directed to it and a copy of this pleading to its Chairman, Steve Munisteri at 1108 Lavaca, Suite 500 Austin, Texas 78701.

3. Defendant Steve Munisteri is a resident of Travis county. Steve Munisteri is sued herein in his capacity as the Chair of the Republican Party and can be served with process herein by delivering the citation directed to him and a copy of this pleading to him at 1108 Lavaca, Suite 500 Austin, Texas 78701 or where ever he may be found.
4. The State of Texas can be served by serving the Secretary of State, Hope Andrade with process herein by delivering the citation directed to it and a copy of this pleading at P.O. Box 12887, Austin, TX 78711-2887, 1100 Congress, Capitol Building, Room 1E.8 Austin, TX 78701. The State of Texas is a party to this action only to the extent it is responsible for matters related to the 2012 Republican Primary Election, and 2012 General election, including printing the election ballots at issue int his matter, and Petty seeks an injunction prohibiting the printing of any ballot or other related election materials that include Justice Hecht as a candidate for the Texas Supreme Court, place 6.
5. Hope Andrade is the Secretary of State, and may be served with process herein by delivering the citation directed to her and a copy of this pleading at P.O. Box 12887, Austin, TX 78711-2887, 1100 Congress, Capitol Building, Room 1E.8 Austin, TX 78701. Hope Andrade is a party to this action only to the extent that she is charged with elections administration and is responsible for matters related to the 2012 Republican Primary Election, and 2012 General election, including printing the election ballots at issue in this matter, and

Petty seeks an injunction prohibiting the printing of any ballot or other related election materials that include the Hecht as a candidate for the Texas Supreme Court, place 6.

6. The Honorable Nathan Hecht is the incumbent justice on the Texas Supreme Court, place 6, and is a party to this action because he has filed for re-election to the position as the Republican party nominee with defective petitions. Justice Hecht may be served with process herein by delivering the citation directed to him and a copy of this pleading to him at the Texas Supreme Court, 201 W. 14th, Austin, Texas 78701 or where ever he may be found.

II. **JURISDICTION AND VENUE**

7. This court has jurisdiction because Petty seeks injunctive relief pursuant to Section 273.081 of the Texas Election Code, which provides “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 ANN. § 273.081 (Vernon 2012); *see generally Blum v. Lanier*, 997 S.W.2d 259 (Tex. 1999); *see also In re Gamble*, 71 S.W.3d 313 (Tex. 2002)

8. Venue properly lies in Travis County, Texas, because a substantial part of the actions forming the basis of Plaintiff's claims against Defendants occurred in Travis County, Texas, and Defendants reside, are located, or conduct business in Travis County. Additionally, pursuant to Section 15.015, Travis County, Texas, is a county of proper venue because the State of Texas is a party in this suit.

III. **FACTUAL BACKGROUND**

9. Justice Hecht is the current Justice for the Texas Supreme Court, Place 6. Petty is the Democratic challenger and has no opposition in the Democratic Primary. Justice Hecht has no opposition in the Republican Primary.
10. Justice Hecht timely filed his application for a place on the Republican party General Primary Ballot along with petitions containing the signatures of individuals petitioning for his name to be place on the ballot.
11. Candidates for statewide judicial office in Texas must file an application accompanied by a petition with signatures of at least 50 eligible voters from each of the State's 14 appellate districts. *See* TEX. ELEC. CODE § 172.021(g); *cf.* TEX. ELEC. CODE § 181 *et. seq.* The following statement must appear at the top of each page of the petition in both English and Spanish:

Please read this statement before signing the petition. *(Por favor lea la siguiente declaración a todos los firmantes antes de que la suscriban.)*

“I know that the purpose of this petition is to entitle _____¹ to have their name placed on the ballot for the office of _____² for the _____³ primary election. I understand that by signing this petition I become ineligible to vote in a primary election or participate in a convention of another party, including a party not holding a primary election, during the voting year in which this primary election is held.” *(Reconozco que el objeto de la presente petición es facultar a _____¹ para que su nombre aparezca en la boleta como candidato(a) al puesto de _____² en la elección primaria del Partido _____³. Entiendo que al firmar la petición, dejo de tener derecho a votar en una elección primaria de otro partido y a tomar parte en la convención del mismo, incluso de un partido que no celebre una elección primaria, durante el año electoral en que se celebre dicha elección primaria.)* *Id.* § 172.027

Justice Hecht’s petitions are facially defective for Ft Worth. Such a number of signatures were affixed to petition forms that had three blanks which should have been filled out completely but were left blank. The failure to comply with the Texas Election code which mandates that the blanks must be completed requires that the signatures be stricken and leaves Justice Hecht without the mandatory 50 valid signatures for the Ft. Worth Court of Appeals District.

12. Republican and Democratic candidates for statewide judicial office must file their applications and petitions with the "state chair" of the party in whose primary they choose to

run.*Id.* § 172.022(a)(1). After filing, state law provides that the state chair "shall review" an application and accompanying petition to determine whether they comply with statutory requirements "as to form, content, and procedure."*Id.* § 141.032(a), (c) Further, that review "shall be completed as soon as practicable," or "not later than the fifth day" if the application does not include a petition. If the documents do not comply with the statutory requirements, the state chair "shall reject the application and immediately deliver to the candidate written notice of the reason for the rejection. *Id.* § 141.032 et seq. The Republican party should have rejected Justice Hecht's facially defective signatures, and such were not subject to cure or in the alternative Justice Hecht would have been unable to cure the defects.

13. Upon information and belief, Justice Hecht's petitions also contain inaccurate and defective affidavits of the circulators, and the notaries failed to comply with the Notary Laws, pursuant to the Texas Government Code. These defects are not facially apparent. Accordingly the signatures on pages where the circulator failed to comply with the Texas Election Code, or where the Notary failed to comply with the Texas Government Code should be stricken rendering Justice Hecht without the mandatory 50 valid signatures for each Court of Appeals District.

14. A voter who signs a petition "becomes ineligible to vote in a primary election or participate in a convention of another political party during the voting year in which the primary election is held." *Id.* § 172.026. The petition must alert voters to the effect of their signatures by containing the following statement: "I understand that by signing this petition I become ineligible to vote in a primary election or participate in a convention of another party, including a party not holding a primary election, during the voting year in which this primary

election is held." Id. § 172.027. This statement must be read to each voter who signs a petition, id. § 141.064, and the person who obtains the signature must swear that this was done, id. § 141.065. A person who votes in an election in which he is not eligible commits a third degree felony. Id. § 64.012.

15. Upon information and belief, the petition circulators failed to comply with the legal requirements to obtain valid signatures on the petitions.
16. If the requirements of the Election Code are strictly enforced against Justice Hecht, his petitions are not valid. TEX.ELEC.CODE §§ 141.062, 141.063.

IV. CAUSES OF ACTION

A. REQUEST FOR INJUNCTIVE RELIEF

17. The preceding paragraphs "1" through "23" of this pleading are incorporated herein by reference as if set forth verbatim.

18. Defendants Munisteri and the Republican Party have violated Petty's rights under the Election Code, and her rights to due process and equal protection of the laws. Section 273.081 of the Texas Election Code states "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."

19. The decision by Munisteri and the Republican Party to approve Justice Hecht's application and petitions will cause Petty to be severely and irreparably harmed if Justice Hecht is allowed to appear on the general 2012 ballot as a candidate for the Texas Supreme Court, place 6.

In light of the foregoing, Petty requests this Court, after notice and hearing, issue a Temporary Injunction and Permanent Injunction, enjoining and restraining Defendants from:

- a. placing Justice Hecht's name on the ballot as a candidate for the position in question for the 2012 general election and 2012 Republican Primary; and
- b. preparing, printing, circulating, or using any ballot or election materials for or in the 2012 elections that includes Justice Hecht, or any replacement candidate for the Republican Party as a candidate for Justice of the Texas Supreme Court, Place 6.
- c. Certifying or approving Justice Hecht's candidacy, position on the ballot, application or petitions as a candidate for the Republican Primary.

**VII.
PRAYER FOR RELIEF**

WHEREFORE, Petty respectfully requests that this Court:

Cite Defendants to appear herein; set a hearing for the temporary injunction, and permanent injunction restraining and enjoining Defendants from a.placing Justice Hecht's name on the ballot as a candidate for the position in question for the 2012 general election, b. preparing, printing, circulating, or using any ballot or election materials for or in the 2012 elections that includes Justice Hecht, or any replacement candidate for the Republican Party as a candidate for Justice of the Texas Supreme Court, Place 6.; and c. Certifying or approving Justice Hecht's candidacy, position on the ballot, application or petitions as a candidate for the Republican Primary. Plaintiff additionally requests she be awarded costs of court and such other and further relief to which she may be justly entitled.

Respectfully submitted,

Michele Petty

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