

Cause No. \_\_\_\_\_

CANDACE TAYLOR,	§	IN THE SUPREME COURT
	§	
Plaintiff	§	
	§	
vs.	§	
	§	
SECRETARY OF STATE OF	§	OF
TEXAS HOPE ANDRADE	§	
and TARRANT COUNTY	§	
ELECTIONS ADMINISTRATOR	§	
STEVE RABORN,	§	
	§	
Defendants	§	THE STATE OF TEXAS

**PLAINTIFF’S ORIGINAL PETITION, EMERGENCY APPLICATION  
FOR WRIT OF MANDAMUS AND INJUNCTIVE RELIEF**

TO THE HONORABLE JUDGES OF SAID COURT:

COMES NOW Plaintiff Candace Taylor (“Ms. Taylor”) and files this Original Petition and Emergency Application for Writ of Mandamus and Injunctive Relief against Defendants, Hope Andrade, Secretary of State of Texas (the “Secretary”) and Steve Raborn, Tarrant County Elections Administrator (“Raborn”) (the Secretary and Raborn may be referred to collectively as “Defendants”), and for same show the Court as follows:

**I.**  
**JURISDICTION AND VENUE; SERVICE OF PROCESS**

This Court has jurisdiction pursuant to TEXAS ELECTION CODE §§ 273.061 and 273.081. The Secretary of State of Texas may be served with process at 1100 Congress, Capitol Bldg., Room 1E.8, Austin, Texas 78701. Steve Raborn, Tarrant County Elections Administrator, may be served with process at 2700 Premier Street, Fort Worth 76111.

**II.**  
**REQUEST FOR EXPEDITED HEARING**

Because of the upcoming deadlines relating to candidacy for the upcoming general election, scheduled for November 2, 2010, the necessity of resolving the issues that are the subject of this Petition is urgent, and Plaintiff requests that the Court set this matter for hearing on an expedited basis. The deadline for submitting a candidate's name for inclusion on the ballot is August 20, 2010, which Plaintiff Candace Taylor has already done, as evidenced by the letter from the Secretary of State, rejecting Ms. Taylor's application, which is attached to this Petition as Exhibit A. The deadline for certifying the ballot is on or about August 24, 2010, a date after which Defendant's will argue adding a candidate to the ballot for the 432nd District Court will be moot.

### III. FACTUAL BACKGROUND

1. Plaintiff Candace Taylor is an attorney licensed to practice law in the State of Texas, having been granted her law license in 1996. Ms. Taylor meets all of the qualifications for a candidate for public office pursuant to Section 141.001 of the TEXAS ELECTION CODE.

2. In 2009, a new criminal district court was created in Tarrant County, Texas. This was the 432<sup>nd</sup> District Court, and the initial Judge of the court was Ruben Gonzalez, who was appointed by Governor Rick Perry in accordance with Texas law governing the filling of judicial posts in newly created courts between elections. Judge Gonzalez's term is set to expire, and the position will be filled by the winning candidate in the general election this coming November.

3. In March 2010, the Republican and Democratic Parties each held primary elections to determine the parties' respective choices for candidates to be placed on the ballot for the general election scheduled for November 2, 2010 (hereinafter, the "General Election"). Ms. Taylor was aware that the Republican nominee for the 432<sup>nd</sup> District Court was Tom Zachry, whom Ms. Taylor believed was a highly qualified candidate, and that Mr. Zachry would win the primary election against Judge Gonzalez. Ms. Taylor, and the Democratic Party generally, were satisfied that Mr. Zachry would be an excellent judge, which was

an important reason why the Democratic Party chose not to run a candidate in the primary elections for the 432<sup>nd</sup> District Court.

4. Mr. Zachry did, in fact, defeat Judge Gonzalez in the primary, and was to have been the Republican candidate for the judgeship for the 432<sup>nd</sup> Court in the General Election. The Democrats and Ms. Taylor, not wanting to run a candidate against Mr. Zachry, were content for Mr. Zachry to run unopposed in the general election.

5. Unfortunately, Mr. Zachry was killed in a tragic boating accident shortly after the primary election. On March 19, 2010, Mr. Zachry's boat capsized on Aquilla Lake, and Mr. Zachry was subsequently pronounced dead.

Mr. Zachry's death created a vacancy in the nominees for judge of the 432<sup>nd</sup> District Court in the November General Election. As Mr. Zachry was to have been unopposed, his passing left no candidate for the position.

6. As a further result of Mr. Zachry's untimely death, Plaintiff Candace Taylor (and Democratic Party officials of Tarrant County) now faces the prospect of having the Republican Party offer a replacement for Mr. Zachry. In fact, the Republican Party has named Judge Ruben Gonzalez – the very candidate whom Mr. Zachry defeated in the March primary - as the replacement for Mr. Zachry. Neither Ms. Taylor nor Democratic Party officials finds Judge Gonzalez to be a satisfactory replacement nominee, and do not believe Judge Gonzalez is the best candidate to hold the position of Judge of the 432<sup>nd</sup> District Court.

Accordingly, Ms. Taylor has been requested by the Democratic Party to run against Judge Gonzalez in the General Election, and Ms. Taylor has been named by the Democratic Party of Tarrant County as a replacement candidate due to the death of Tom Zachry.

7. On July 19, 2010, the Tarrant County Democratic Party Executive Committee, a quorum being present, nominated Candace Taylor as the Democratic Party for the office of 432nd District Court. Tarrant County Democratic Party Chairman Steve Maxwell immediately certified the nomination and forwarded Candace Taylor's nomination to the Texas Secretary of State. Ms. Taylor's name was submitted to the Texas Secretary of State in accordance with Texas law and procedure. See Tex. Elec. Code §143.037. A copy of a letter from Mr. Stephen C. Maxwell, Tarrant County Democratic Party Chair, to the Secretary is attached hereto as Exhibit A. The Secretary, however, has rejected Ms. Taylor as a candidate, stating that she is not qualified to run in the General Election against Judge Gonzalez for the sole reason that Ms. Taylor was not selected as a candidate by the Democratic Party in its March primary elections. A copy of an August 3, 2010 letter from the Secretary to Mr. Maxwell, denying certification of Ms. Taylor as a nominee, is attached hereto as Exhibit B.

8. Plaintiff Candace Taylor believes the Secretary of State's position on this issue is unfounded, and therefore brings this action seeking an order from this Court that Candace Taylor be placed on the ballot as a judicial candidate for

the 432<sup>nd</sup> District Court in the General Election scheduled to be held in the State of Texas on November 2, 2010.

**IV.  
ARGUMENT AND LEGAL AUTHORITIES**

9. The Secretary relies on Sections 145.035 and 145.036 of the Texas Election Code (the “Code”) as the basis for denying Ms. Taylor a place on the General Election ballot. Section 145.036(a) of the Code states as follows:

(a) Except as provided by Subsection (b), if a candidate's name is to be omitted from the ballot under Section 145.035, the political party's state, district, county, or precinct executive committee, as appropriate for the particular office, may nominate a replacement candidate to fill the vacancy in the nomination.

Subsection (b) establishes the conditions whereby a committee may select a replacement nominee who has withdrawn due to a catastrophic illness, and is therefore inapplicable to the situation at hand.

10. The Secretary contends that, because Ms Taylor was not a candidate for the 432<sup>nd</sup> judicial post in the Democratic Party’s primary election, Ms. Taylor may not now be listed as a candidate for the position on the General Election ballot. The Secretary’s position is that, for candidates who withdraw because of death, the replacement process requires that any replacement nominee must be one who was a candidate in a party’s primary (or at least that the party must have listed a candidate for the position in its primary election).

## The Secretary's Position Violates the Texas Constitution

11. Article 5, Section 28 of the Texas Constitution states that, in the event of a vacancy in the office of judge of a district court, any such vacancy will be filled by the Governor of Texas, and the appointee shall serve until “the next succeeding General Election....” TEX. CONST. ART. 5, SEC. 28. At the General Election, “...the voters shall fill the vacancy for the unexpired term.” *Id.*

12. Under the circumstances of this case, the “vacancy” occurred only because a new court was created, and the Governor properly appointed a judge – Judge Gonzalez – to serve until the next General Election.

13. The Texas Constitution, however, requires that at the next General Election, it is the voters who decide who will serve as judge. The voters are not even being given that opportunity in this case and, in fact, if the Secretary's position were to be sustained, the voters would be allowed to select only *one* major party candidate whom voters (those who voted in the Republican primary) have already *rejected* as a candidate!<sup>1</sup> The inequity of such a situation is obvious, fundamentally flawed, and violates the precepts of our State's Constitution.

14. Furthermore, the Texas Election Code, as applied by the Texas Secretary of State, violates Candace Taylor's right to Equal Protection, Candace

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<sup>1</sup> Judge Gonzalez lost the primary election by some 20 points.

Taylor's First Amendment Right to be a candidate, and the voters of Tarrant County's rights to vote, as protected by the Texas Constitution. There is no rational basis or compelling interest under the Texas Equal Protection Clause to allow the Republican Party to nominate a candidate while not allowing the Democratic Party to nominate a candidate after the death of the Republican nominee. Candace Taylor had no desire to run when Tom Zachary was a candidate; only upon Mr. Zachry's death did Ms. Taylor agree to run for the 432nd District Court. There is no rational basis or compelling interest under the Equal Protection Clause to deny voters the right to choose between two candidates for the 432nd District Court after the death of Tom Zachary.

**Statutes Must Be Strictly Construed in Favor of Ballot Access**

15. Any constitutional or statutory provision which restricts the right to hold office must be strictly construed against ineligibility. *Texas Democratic Party v. Benkiser*, 459 F.3d 582, 590 (5<sup>th</sup> Cir. 2006); *Wentworth v. Meyer*, 839 S.W.2d 766-67 (Tex. 1992). The Texas Supreme Court has consistently held that political candidates' access to the ballot shall be given precedence over "rigid adherence to statutory deadlines, when a candidate is deprived of a place on the ballot through no fault of the candidate's." See *Bird v. Rothstein*, 930 S.W.2d 586, 588 (Tex. 1996); *Davis v. Taylor*, 930 S.W.2d 581, 583 (Tex. 1996). Laws must be construed broadly in favor of eligibility in the interest of access to



the ballot. See *Pilcher v. Rains*, 853 F.2d 334, 336 (5<sup>th</sup> Cir. 1988); *Davis*, 930 S.W.2d at 583.

**Strict Adherence to Code Deadlines Inapplicable in Unusual Situations**

16. Moreover, the Texas Supreme Court has explicitly held that “withdrawal and replacement deadlines in the Election Code are not intended to apply to unusual situations when there is not a reasonable opportunity to comply with a statutorily set deadline.” *Slagle v. Hannah*, 837 S.W.2d 100, 102 (Tex. 1992). Nor is it unprecedented for a candidate to be placed on a general election ballot by a process other than primary election, where circumstances prevented the candidate from running in the primary. See *In re Dupont*, 142 S.W.3d 528 (Tex. App. – Fort Worth 2004, orig. proceeding). In *Dupont*, a vacancy occurred too late for nominees to be selected by voters in a primary election; therefore, the Parker County Republican Party selected a nominee by a meeting of the Party’s Executive Committee. *Id.* at 529-30.

17. The Secretary nevertheless has opted for a construction of Code §145.036 that would prevent access to the ballot by Ms. Taylor, despite the lack of any concrete basis for such an interpretation. As reflected in the Secretary’s August 3<sup>rd</sup> letter, the Secretary relies upon a single phrase – emphasized in the letter – as the basis for denying Ms. Taylor’s nomination. The portion of the statute at issue states:

Except as provided by Subsection (b), if a candidate's name is to be omitted from the ballot under Section 145.035, **the political party's** state, district or precinct executive committee....may nominate a replacement candidate....” (emphasis taken from Secretary of State's August 3, 2010 letter).

18. The Secretary, however, ignores the unusual circumstances of this case. At the time the primary elections were held, Ms. Taylor (and Democratic Party representatives) was confident that Mr. Zachry would defeat Judge Gonzalez in the primary election, and that Mr. Zachry would be an excellent judge for the 432<sup>nd</sup> District Court. Accordingly, Ms. Taylor, content with Mr. Zachry as a nominee for the judgeship, with the blessing of the Democratic Party, did not run in the primary. Candace Taylor's nomination is proper and not prohibited by the terms of section 145.036 of the Texas Election Code.

19. Obviously, circumstances changed with Mr. Zachry's tragic death. Neither Ms. Taylor nor the Democratic Party is satisfied that Judge Gonzalez – who lost the primary election to Mr. Zachry – will serve at the same level as Mr. Zachry would have. As such, both Ms. Taylor and the Democratic Party are compelled to offer voters another selection for the judgeship, someone other than a candidate who was rejected by primary voters in March 2010.

20. This is precisely the type of “unusual situation” to which the Texas Supreme Court referred in holding that Election Code withdrawal and replacement deadlines must not be construed in such a way as to prevent

access to the ballot. See *Slagle*, 837 S.W.2d at 102. As the *Slagle* court observed, Texas Supreme Court precedent has long been that “while the terms of the withdrawal and replacement statutes apply generally, in unusual situations, the political parties have inherent authority to choose nominees, as long as the method used is not expressly prohibited by statute.” See *id.* quoting *Kilday v. Germany*, 163 S.W.2d 184, 187 (Tex. 1942) (allowing extension of a filing deadline when candidate was unable to comply with original deadline).

21. The Secretary’s position that Ms. Taylor is ineligible because she did not run in the Democratic Party’s primary election as a nominee for the 432<sup>nd</sup> District Court is untenable. Tom Zachry’s name is, of course, to be omitted from the General Election ballot pursuant to Code §145.035. Section 145.036(a) of the Texas Election Code expressly provides that a party may nominate a replacement for a candidate whose name is omitted from the General Election ballot, including omission due to death.<sup>2</sup>

22. The Texas Supreme Court has consistently held that (i) statutes must be strictly construed in favor of allowing candidates access to the ballot, and against a construction that prevents such access, (ii) that strict adherence to statutory deadlines is not required when it restricts access to the ballot, where deadlines were missed through no fault of the candidate, and (iii) that withdrawal

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<sup>2</sup> Section 145.036(b) provides alternative requirements *only* for a candidate who has withdrawn due to a catastrophic illness, not because of death.

and replacement deadlines in the Election Code to not apply to unusual situations where there was no reasonable opportunity to comply.

23. In this situation, it was obviously through no fault of Ms. Taylor – nor the Democratic Party – that no Democratic nominee appeared in the March primary for the 432<sup>nd</sup> judicial position. Ms. Taylor and the Party believed that Mr. Zachry, who defeated Judge Gonzalez in the primary, was a more than satisfactory candidate. Only upon Mr. Zachry's death – after the primary elections – did Ms. Taylor believe that the voters needed another choice. To comply with Texas Supreme Court precedent, and to satisfy the Texas Constitution's mandate that elections be decided by the voters, Ms. Taylor must be certified as a nominee of the Democratic Party, and her name accordingly be placed on the ballot, for the upcoming General Election.

24. With respect to Defendant Steve Raborn, Plaintiff requests the Court to issue a temporary restraining order, prohibiting Raborn from printing ballots or early vote ballots that do not include the name of Candace Taylor. Printing such ballots prior to the resolution of the issues described in this Petition would violate Candace Taylor's right to Equal Protection, Candace Taylor's First Amendment Right to be a candidate, and the voters of Tarrant County's right to vote as protected by the Texas Constitution. Plaintiff requests this injunctive relief only to preserve the status quo. Defendants will not be prejudiced by refraining from printing the ballots, as a delay in printing should not add to the

cost or labor involved in printing. Plaintiff has herein shown herself to be entitled to such relief by showing that she is entitled to prevail on the merits in this action to have her name included on the ballot for the General Election as the nominee of the Democratic Party for the 432<sup>nd</sup> District Court judge position.

25. In addition, Plaintiff requests that in the event that the Court has not rendered a decision in this matter on or before August 24, 2010, that the Court issue a temporary restraining order or temporary injunction against the Secretary, enjoining the Secretary from certifying the candidates for the General Election ballot until such time as this Court renders a decision in this case.

August 24, 2010 is the latest date by which a candidate can file for a place on the General Election ballot. Plaintiff therefore seeks to preserve the status quo by enjoining the Secretary from acting to declare Plaintiff ineligible for inclusion on the General Election ballot or declaring a final list of candidates for inclusion on the General Election ballot until this issue is finally determined by this Court.

## **V. PRAYER**

26. Upon hearing of this cause, Plaintiff requests this Court to issue a writ of mandamus to the Secretary of State of Texas, ordering the Secretary of State to certify Candace Taylor as the Democratic Party's nominee for the position of Judge, 432<sup>nd</sup> District Court of the State of Texas, that the Court issue a temporary restraining order against Steve Raborn in his capacity as Tarrant

County Elections Administrator restraining Raborn from printing or causing to be printed any ballots or early vote ballots that do not include the name of Candace Taylor as a candidate for judge of the 432<sup>nd</sup> District Court, and that the Court conditionally issue an injunction against the Secretary of State of Texas, if the Court has not rendered a decision in this proceeding on or before August 24, 2010, enjoining the Secretary of State from certifying the candidates for the General Election ballot until such time as this Court renders a decision in this case, and for such other and further relief, both general and special, at law and equity, to which Plaintiff may show herself to be justly entitled.

Respectfully submitted,

**THE DRINNON LAW FIRM, P.L.L.C.**

/s/ Stephen W. Drinnon

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ATTORNEYS FOR PLAINTIFF

VERIFICATION

STATE OF TEXAS           §  
  §  
COUNTY OF TARRANT   §

BEFORE ME, the undersigned authority on this 13<sup>TH</sup> day of August, 2010, personally appeared Candace Taylor, being by me duly sworn on her oath, deposed and said that she is the Plaintiff in the above-entitled and numbered cause; that she has read the above and foregoing Plaintiff's Original Petition and Application for Writ of Mandamus, and that facts set forth therein are within her personal knowledge and true and correct.

By: \_\_\_\_\_  
          CANDACE TAYLOR

SUBSCRIBED AND SWORN TO BEFORE ME, on this the \_\_\_\_ day of August, 2010, to certify which witness my hand and official seal.

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Notary Public in and for the State of  
Texas