

NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA.

NO. \_\_\_\_\_

**RENEE JEFFERSON-SMITH**  
**Plaintiff,**

**V.**

**CITY OF HOUSTON, TEXAS; and HARRIS**  
**COUNTY, TEXAS**

**Defendants.**

§ **IN THE DISTRICT COURT**  
§  
§  
§  
§  
§ \_\_\_\_\_ **TH JUDICIAL DISTRICT**  
§  
§  
§  
§  
§ **OF HARRIS COUNTY, TEXAS**

**PLAINTIFF'S ORIGINAL VERIFIED PETITION FOR DECLARATORY**  
**JUDGMENT AND APPLICATION FOR TEMPORARY RESTRAINING**  
**ORDER AND TEMPORARY INJUNCTION, AND PERMANENT INJUNCTION**

**TO THE HONORABLE JUDGE OF SAID COURT:**

NOW COMES PLAINTIFF, RENEE JEFFERSON-SMITH, Individually and as a Candidate for District B, City of Houston, and as a registered voter in District B, City of Houston, who files this Original Verified Petition for Declaratory Judgment and Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction, and in support thereof would respectfully show the Court as follows:

**PARTIES**

1. Plaintiff, RENEE JEFFERSON-SMITH (herein referred to as "Candidate Jefferson-Smith"), an Individual, a Candidate for District B, City of Houston, a registered voter in District B, City of Houston whose address is 9110 Lavender Street, Houston, Texas 77016, Houston, Harris County, Texas, files this Original Verified Petition for Declaratory Judgment and Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction. The last three numbers of RENEE JEFFERSON-SMITH's driver's license number are 856. The last three numbers of RENEE JEFFERSON-SMITH's social security number are 688.

2. Defendant, CITY OF HOUSTON (the "City") is a governmental entity in the State of Texas and may be served with citation for process by serving the City of Houston Secretary, Anna Russell, City of Houston Annex, 900 Bagby Street, Room P 101, Houston, Texas 77002.

3. Defendant, HARRIS COUNTY, TEXAS (the "County") is a governmental entity in the State of Texas and may be served with citation for service of process by serving Honorable Lina Hidalgo, Harris County, Texas, 1001 Preston Street, Suite 911, Houston, Texas 77002.

4. Defendant, DIANE TRAUTMAN (the "Clerk") is an independently elected governmental official in the County of Harris, State of Texas and may be served with citation for service of process by serving Honorable Diane Trautman, Harris County, Texas, 201 Caroline, Third Floor, Houston, Texas 77002.

5. Defendant, CYNTHIA KAY BAILEY (herein referred to as "Candidate Bailey"), is an individual and Candidate for District B, City of Houston, and may be served with citation for service of process by serving Cynthia Kay Bailey at 7830 Flintridge Drive, Houston, Texas 77028.

6. This court has jurisdiction over all of the Defendants because Defendants are governmental entities of the State of Texas, elected officials of Harris County, or candidates for public office in governmental entities of the State of Texas. Further, venue is proper in Harris County, Texas pursuant to the provisions of Section 15.001, et seq. Texas Civil Practices and Remedies Code, as all of Plaintiffs' claims arise out of the same transaction, occurrence, or series of transactions or occurrences that happened in Harris County, Texas.

### FACTS

7. In this petition for declaratory judgment and application for temporary restraining order, temporary injunction, and permanent injunction now pending in this Court, Plaintiff is seeking to enjoin Candidate Bailey from appearing as a candidate on the City of Houston Runoff Ballot.

8. On November 6, 2019, the voters in Houston City Council District B cast their votes for councilmember of District B, however, the election vote margin did not give any candidate the absolute majority needed to avoid an election runoff. Although the election results are not yet final and certified, Candidate Jefferson-Smith received 13.42% of the vote, making her the third top candidate in the District B Race which was 1% percentage less than that of the number two candidate who appears to be in the runoff at this time.

9. Unfortunately, this candidate, is an ex-felon whose disabilities have not been restored or removed, which disqualifies her from holding public office. On June 1, 2007, Cynthia Kay Bailey was sentenced to ten (10) years in the Texas Department of Criminal Justice. She served 18 months of that sentence and was released on parole. (See Exhibit A as attached)

10. As a convicted felon, Candidate Bailey is not legally entitled to be seated as the next Councilmember for District B. Furthermore, she may have perjured herself by falsely asserting on her affidavit for public office that she was not an ex-felon. (See Exhibit B, attached)

11. In reviewing the history of similar matters in Texas, this candidate should not be in the runoff as this will guarantee a victory for the other runoff candidate and deny voters in District B a real choice, and the opportunity to choose between two eligible candidates for the position of Councilmember for District B, thus ensuring that District B voters are not disenfranchised.

### GROUNDS

12. Plaintiff along with the voters and citizens of District B will suffer immediate and irreparable injury, loss, or damage if Defendant's conduct described above is not enjoined for these reasons: Candidate Bailey's disabilities that prevent her from holding an elected office have not been removed either by executive pardon, a judicial release of disabilities, or by operation of statute.

13. "Conviction for a felony in Texas carries with it, besides a judicially determined punishment, a deprivation of certain rights of citizenship." Tex. Att'y Gen. Op. No. H-587 (1975). A felony conviction results in the loss of civil rights including "the right to vote, the right to seek and hold public office, and the right to sit on a jury." *United States v. Thomas*, 991 F.2d 206; 211, 214 (5<sup>th</sup> Cir.), cert denied, 510 U.S. 1014 (1993); *United States v. Cassidy*, 899 F.2d 543, 549 (6<sup>th</sup> Cir. 1990).

14. These rights may be restored in several ways depending on the right, including an executive pardon, a judicial release of disabilities, or by operation of statute. *Easterwood v. State*, 31 S.W.294, 297 (Tex. Crim. App. 1895) (executive pardon); TEX. CODE CRIM. PROC. Art. 42A.701 (judicial release); TEX. ELEC. CODE § 11.002 (a)(4)(A)-(B) (restoration of voting rights) and TEX. CODE CRIM. PROC. Art. 48.05. The restoration of voting rights in the State of Texas was done statutorily in House Bill 1001, which became effective in law on September 1, 1997, however, that is not of issue in this case.

15. In contrast, to procedures for a convicted felons to restore his or her ability to vote under Subsection 11.002(a)(4)(A)-(B); Subsection 141.001(a)(4) of the Texas Election Code, recognizes only two methods for a convicted felon to be eligible to hold public office: a pardon or being released from the disability to hold public office. Unlike Subsection 11.002(a)(4)(A)-(B), Subsection 141.001(a)(4) of the Texas Election Code does not automatically restore a convicted felon's eligibility to hold public office upon completion of the individual's sentence.

16. However, Texas statutes provide several methods to obtain a release from disabilities resulting from conviction. Judicial clemency or judicial release of disabilities, as contained in the Code of Criminal Procedure, Art. 42A.701, authorizes a judge, in a case in which the defendant has been placed on community supervision, to set aside the verdict and dismiss the charging instrument or indictment against the defendant, under Art. 42A.701(f).

17. Unlike the restoration of civil rights under Code of Criminal Procedure, Article 48.05, which is a form of pardon that restores all civil rights under the laws of this state that the individual forfeits as a result of the individual's conviction of an offense. Article 48.05 relates to consideration of a request for restoration of civil rights of certain individuals convicted of a federal or military offense, other than an offense involving violence or the threat of violence, drugs, or firearms.

18. Further, the individual must have completed the sentence for the offense; the conviction occurred three or more years before the date of request and the individual has not been convicted at any other time of an offense under the laws of this state, another state, or the United States.

19. Though Candidate Bailey completed her sentence for the above, mentioned offense in 2007, it is unclear whether or not Candidate Bailey attempted or was successful at any of the methods to obtain a release from her disabilities allowing her to seek and hold public office.

20. Plaintiff does not have an adequate remedy at law because Although the law does address civil disabilities imposed on felons it does not specifically address the eligibility of a candidate to appear on the ballot as a candidate. Plaintiff has exercised due diligence in prosecuting this claim. The injury to Plaintiff and the citizens of District B if Defendant, Candidate Bailey, continues the conduct described above would outweigh any injury the restraining order and injunction might cause Defendants City of Houston and Harris County, and issuance of the restraining order and injunction would not disserve the public interest, in fact it would do the opposite in serving the public interest.

21. Plaintiff has attached a Sworn Affidavit, (Exhibit C)

### **SUIT FOR DECLARATORY RELIEF**

22. Plaintiff seeks declaratory relief as provided in Tex. Civ. Prac. Rem. Code section 37.004 (a), as the Plaintiff is a person who seeks to have the legal relations affected by a statute or municipal ordinance to be determined. Plaintiff seeks to have a judicial declaration as to whether a candidate that is

ineligible to be sworn in as an elected member of government may be placed on the ballot in a municipal election, and would that placement on the ballot deprive the voters of a municipal district of an actual choice in said election.

### **APPLICATION FOR TEMPORARY RESTRAINING ORDER**

23. Plaintiff's application for a temporary restraining order is authorized by Tex. Civ. Prac. & Rem. Code §65.011(1). Plaintiff is entitled to the relief demanded because Plaintiff is a resident-voter of the district affected and is a candidate in the election affected by the presence on the ballot of Candidate Bailey. Plaintiff requires the restraint of the placement of Candidate Bailey on the ballot.

24. Plaintiff asks the court to prevent the defendants from placing Candidate Bailey on the ballot and/or certifying the Candidate Bailey on the runoff election ballot, as the candidate is ineligible to hold office based on Texas election Code sec 140.001(a)(4).

25. It is probable that plaintiff will recover from defendant after a trial on the merits because the Plaintiff has standing and would be harmed by Candidate Bailey. Candidate Bailey is a felon. Candidate Bailey's disabilities have not been removed. Therefore, by statute, Candidate Bailey is not eligible to run for office.

26. If plaintiff's application is not granted, harm is imminent because Candidate Bailey would be placed on the ballot causing a two-fold effect. First, Candidate Bailey's certification to the runoff ballot would wrongfully hinder the Plaintiff, an eligible candidate, from being certified to the ballot. Second, if Candidate Bailey is certified to the runoff ballot it effectively denies the voters of District B an electoral choice.

27. The harm that will result if the temporary restraining order is not issued is irreparable because Candidate Bailey's certification to the runoff ballot would wrongfully hinder the Plaintiff, an eligible candidate, from being certified to the ballot. Additionally, if Candidate Bailey is certified to the runoff ballot it effectively denies the voters of District B an electoral choice.

28. Plaintiff has no adequate remedy at law because damages are incalculable and the statutes do not provide a mechanism for handling a felon that has been certified for a runoff in violation of state law.

29. Plaintiff is willing to post bond.

### **REQUEST FOR TEMPORARY INJUNCTION**

30. Plaintiff asks the court to set her application for temporary injunction for a hearing and, after the hearing, issue a temporary injunction against the defendants.

31. Plaintiff has joined all indispensable parties under Texas Rule of Civil Procedure 39. Plaintiff has joined the necessary governmental units, elected officials and Candidate Bailey.

## REQUEST FOR PERMANENT INJUNCTION

32. Plaintiff asks the court to set her request for a permanent injunction for a full trial on the merits and, after the trial, issue a permanent injunction against defendant.

## CONDITIONS PRECEDENT

33. All conditions precedent have been performed or have occurred.

## PRAYER

34. Plaintiff prays that the Court issue a temporary restraining order restraining Defendants and its officers, agents, servants, and employees from directly or indirectly from listing Candidate Bailey as a runoff candidate in the upcoming City of Houston Runoff Elections; the Court set a date and time for a hearing on this application for a temporary injunction; all defendants be cited to appear and answer; after hearing, the Court issue a temporary injunction enjoining Defendants and its officers, agents, servants, and employees from directly or indirectly from listing Candidate Bailey as a runoff candidate in the upcoming City of Houston Runoff Elections; during the pendency of this action;

35. Plaintiff be granted reasonable expenses and attorney fees incurred in obtaining the restraining order and injunction; and

36. Plaintiff be granted all further relief to which Plaintiff may be entitled.

Respectfully submitted,

By:   
LAW OFFICE OF NICOLE R. BATES  
Texas Bar No. 24045171  
Email: famjuv07@yahoo.com  
The Preserve at North Loop  
2010 North Loop West, Suite 175  
HOUSTON, TX 77018  
Tel. (713) 225-1300  
Fax. (713) 225-1301  
Attorney for Plaintiff  
RENEE JEFFERSON-SMITH

By:   
DANVAL SCARBROUGH  
State Bar No. 24073023  
[Dan.r.scarbrough@gmail.com](mailto:Dan.r.scarbrough@gmail.com)  
Attorney for RENEE JEFFERSON-SMITH