

CAUSE NO. 2013-75695

STATE OF TEXAS	§	IN THE DISTRICT COURT
	§	
v.	§	151st DISTRICT COURT
	§	
DAVID B. WILSON	§	HARRIS COUNTY, TEXAS

**STATE OF TEXAS' APPLICATION FOR TEMPORARY RESTRAINING ORDER
AND PERMANENT INJUNCTION**

I. NATURE AND STATUS OF CASE

On Thursday, December 19, 2013, a Quo Warranto action was filed under Cause No. 2013-75695 in the 151st District Court, Harris County, Texas. The quo warranto is brought in the name of the State of Texas, by and through the County Attorney of Harris County, Texas, complaining of David Buren Wilson, Trustee Elect of District II of Houston Community College System ("Wilson"). *State of Texas ex rel. Karen Angelini v. Hardberger*, 932 S.W.2d 489, 490 (Tex. 1996).

II. INJUNCTIVE RELIEF REQUESTED

Plaintiff, State of Texas, now seeks a temporary restraining order for a period of fourteen days and for injunctive relief to prevent Wilson from being sworn in and taking office in 2014 as the Houston Community College Trustee of District II because the evidence shows that Wilson does not reside in District II as required by law for him to serve as Trustee of that area.

III. PARTIES AND SERVICE

Plaintiff is the State of Texas represented by the County Attorney of Harris County, Texas under the authority of the Civil Practice & Remedies Code § 66.002.

On Monday, December 23, 2013, Defendant Wilson who was served with citation and notice of the lawsuit and the deadline for him to file an Answer has not yet passed and he has not yet made an appearance in the underlying lawsuit.

IV. VENUE

Venue is proper for this action in Harris County, Texas, pursuant to §15.002 and §15.036 of the Texas Civil Practice and Remedies Code, because all parties reside in Harris County and all or a substantial part of the events giving rise to this action occurred in this county.

V. BACKGROUND

On or about Tuesday, November 5, 2013, an election was conducted in Harris County, Texas to elect a Trustee for Houston Community College System, District II ("HCC Trustee District II"). Candidate Wilson ran in the election and prevailed in the general election for the position of Trustee to HCC, District II a single member district.

A proper candidate for HCC Trustee District II must be a resident in that Trustee District, and must be elected by residents of that District pursuant to the Texas Education Code § 130.0822(h) (Vernon 2002). If a Trustee changes his residency to a location outside of the district from which the Trustee was elected, the Trustee vacates the office. Texas Education Code § 130.0822(h) (Vernon 2002).

The State of Texas, through the Harris County Attorney's Office, will show that Wilson was not at the time of the election in November 2013 and is not now a resident of HCC District II and is therefore ineligible to take the oath of that office or to serve in that office.

VI. CAUSE OF ACTION

An action in the nature of quo warranto is available to prevent a person from unlawfully holding an office created by the authority of this state. Tex.Civ.Prac. & Rem. Code Ann. § 66.001 (Vernon 1986). The County Attorney may file a quo warranto action. Tex.Civ.Prac. & Rem. Code Ann. § 66.001 (Vernon 1986). The matter of Wilson's eligibility to take office as HCC Trustee District II is a matter of public concern. *Norville v. Parnell*, 118 S.W.3d 503, 505 (Tex.App.-Dallas

2003).

Because Wilson is ineligible to hold the office of HCC Trustee District II this Court has grounds to enter an order and judgment preventing the Defendant from taking the oath of office and from holding office or in the alternative removing the Defendant from that office.

VII. APPLICATION FOR TEMPORARY RESTRAINING ORDER

Plaintiff seeks temporary restraining order prohibiting David Buren Wilson from taking the oath of office and from serving as Houston Community College Trustee Division II due to his lack of residency in District II and his ineligibility to lawfully hold that office.

Communication with by telephone, facsimile and email have been made to advise Defendant's counsel, Mr. Keith Gross (known through ongoing federal litigation) of the Application for Temporary Restraining Order and Permanent Injunction.

Ruling by the Court on the requested TRO is necessary at this time to prevent Wilson from taking the oath of office and from unlawfully assuming the office of HCC Trustee District II this week.

If Wilson is allowed to take the oath of office and take on the role of HCC Trustee District II his action will be contrary to the law and may cause undue confusion from the Houston Community College Board of Trustees and their future actions.

Attached as Exhibit I is a true and correct copy of the Application For A Position On The November 5, 2013 General Election Ballot seeking the position as Houston Community College Trustee District II which was filed by Wilson stating that his "Permanent Residence Address" was 5600 W. 34th Street, Houston, Texas 77092.

Attached as Exhibit 2 is a true and correct certified copy of the Harris County Appraisal District Real Property Account Information for account number 0590030230005 concerning the property located at 5600 W. 34th Street, Houston, Texas 77092-6510 and showing that the subject property is "commercial" property not residential property.

Attached as Exhibit 3 is a true and correct copy of the Affidavit of Charles Moritz swearing that an examination of the public real property records shows that the property located at 5600 W. 34th Street, Houston, Texas 77092-6510 is "commercial" property which is owned by D.S.W. Equipment, Inc.

Attached as Exhibit 4 is a true and correct copy of the Affidavit of Robert Soard, First Assistant Harris County Attorney indicating that County Attorney Vince Ryan authorized the filing of the this Quo Warranto action to prevent David Buren Wilson, Trustee Elect of District II of Houston Community College System from taking or holding the office of Trustee because the evidence shows that Wilson does not reside in the geographic area of District II as required to hold that office.

Plaintiff should prevail because Wilson is not eligible to be sworn in or to serve as the HCC Trustee District II since the property at 5600 W. 34th Street, Houston, Texas 77092-6510 is a commercial property owned by DSW Equipment, Inc. and Wilson is not a resident of HCC District II.

If the temporary restraining order is not issued irreparable harm will occur because Wilson could be sworn in to serve as HCC Trustee District II even though he is not eligible to occupy that position because of his lack of residency in District II.

The harm that will result if the temporary restraining order is not issued is irreparable because the residents of HCC Trustee District II will not have a qualified Trustee representing District II for an unknown time.

Plaintiff has no adequate remedy at law because Wilson could be sworn in to that office at any time beginning January 1, 2014.

A ruling of the Court on the request for a temporary restraining order is necessary without delay to protect the residents and voters in HCC Trustee District II and the integrity of the HCC Board of Trustees.

Plaintiff is not required to post bond pursuant to Tex.Civ.Prac. & Rem. Code Ann. § 6.001.

VIII. REQUEST FOR PERMANENT INJUNCTION

Plaintiff asks the court to set its request for a permanent injunction for a full trial and, after the trial, issue a permanent injunction against Defendant.

IX. JURY DEMAND

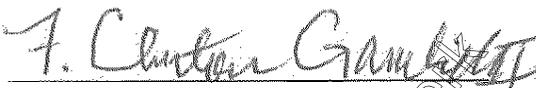
Plaintiff demands a jury trial.

WHEREFORE, PREMISES CONSIDERED, the State of Texas, by and through the County Attorney of Harris County, Texas, prays that this Honorable Court grant a temporary restraining order, set a hearing for temporary injunction and upon final hearing, enjoin or remove David Buren Wilson from holding the office of Houston Community College Trustee District II, and that this Court grant the State of Texas all other relief, at law and in equity, to which it may

show itself entitled.

Respectfully submitted,

VINCE RYAN
HARRIS COUNTY ATTORNEY



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ATTORNEY FOR PLAINTIFF
STATE OF TEXAS

CERTIFICATE OF SERVICE

I hereby certify that on this the 30th day of December, 2013, in accordance with the Texas Rules of Civil Procedure, a true and correct copy of the foregoing pleading was delivered by certified mail, return receipt requested, to each of the following and additionally the pleading was delivered to Attorney at Law Keith Gross by facsimile transmission and email:

Keith Gross
Attorney at Law
250 Park Ave.
League City, TX 77573

David Buren Wilson
5600 W. 34th Street
Houston, TX 77092-6510


F. CLINTON GAMBILL, II

Unofficial Copy Office of the Clerk of the District Court