

22-4543-431

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

ALISON MAGUIRE,

IN THE \_\_\_\_\_ JUDICIAL

KERI CARUTHERS,

TRACY RUNNELS, and

EMILY MEISNER,

*Plaintiffs,*

v.

ROSA RIOS, in her Official Capacity  
as City Secretary of the City of Denton, Texas,

DISTRICT COURT OF

THE CITY OF DENTON, TEXAS,

DONALD DUFF, in his Official Capacity  
as Representative of a Committee of Electors  
in the City of Denton, Texas; and,

FRANK PHILLIPS, in his Official Capacity  
as Denton County Elections Administrator,

*Defendants*

DENTON COUNTY, TEXAS

**PLAINTIFFS' VERIFIED PETITION AND APPLICATION FOR  
DECLARATORY RELIEF, INTERIM INJUNCTIVE RELIEF,  
AND PERMANENT INJUNCTIVE RELIEF**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Alison Maguire, Keri Caruthers, Tracy Runnels and Emily Meisner, Plaintiffs in the above-captioned and numbered cause, and, pursuant Rules 682, 683 and 684 of the Texas Rules of Civil Procedure, files this *Verified Petition and Application for Declaratory Relief, Interim Injunctive Relief, and Permanent Injunctive Relief*, and in this connection would respectfully show unto the Court as follows:

## I.

### PARTIES

1. Plaintiff **ALISON MAGUIRE** (“Plaintiff Maguire”) is a natural person and resident of the City of Denton, Denton County, Texas. She brings this cause of action both in her official capacity as the duly elected city councilmember of a single-member electoral district (District 4) in the City of Denton, Texas, as well as in her individual capacity. Plaintiff Maguire is a resident and registered voter of former District 4, as defined and adopted by the City of Denton, Texas on September 4, 2011 (Ordinance No. 2011-169); and is a resident and registered voter of current District 4, as defined and adopted by the City of Denton, Texas on December 14, 2021 (Ordinance No. 21-2808). Pursuant to § 30.014(a) of the Texas Civil Practice & Remedies Code, the last three numbers of Plaintiff Maguire’s Texas driver’s license number are “656,” and the last three numbers of Plaintiff’s Maguire’s social security number are “238.”
2. Plaintiff **KERI CARUTHERS** (“Plaintiff Caruthers”) is a natural person and resident of the City of Denton, Denton County, Texas. She brings this cause of action in her individual capacity. Plaintiff Caruthers is a resident and registered voter of former District 4, as defined and adopted by the City of Denton, Texas on September 4, 2011 (Ordinance No. 2011-169); and is a resident and registered voter of current District 3, as defined and adopted by the City of Denton, Texas on December 14, 2021 (Ordinance No. 21-2808). Pursuant to § 30.014(a) of the Texas Civil Practice & Remedies Code, the last three numbers of Plaintiff Caruthers’ Texas driver’s license number are “607,” and the last three numbers of Plaintiff Caruthers’ social security number are “309.”

3. Plaintiff **TRACY RUNNELS** (“Plaintiff Runnels”) is a natural person and resident of the City of Denton, Denton County, Texas. She brings this cause of action in her individual capacity. Plaintiff Runnels is a resident and registered voter of former District 4, as defined and adopted by the City of Denton, Texas on September 4, 2011 (Ordinance No. 2011-169); and is a resident and registered voter of current District 4, as defined and adopted by the City of Denton, Texas on December 14, 2021 (Ordinance No. 21-2808). Pursuant to § 30.014(a) of the Texas Civil Practice & Remedies Code, the last three numbers of Plaintiff Runnels’ Texas driver’s license number are “181,” and the last three numbers of Plaintiff Runnels’ social security number are “457.”
4. Plaintiff **EMILY MEISNER** (“Plaintiff Meisner”) is a natural person and resident of the City of Denton, Denton County, Texas. She brings this cause of action in her individual capacity. Plaintiff Meisner is a resident and registered voter of former District 4, as defined and adopted by the City of Denton, Texas on September 4, 2011 (Ordinance No. 2011-169); and is a resident and registered voter of current District 4, as defined and adopted by the City of Denton, Texas on December 14, 2021 (Ordinance No. 21-2808). Pursuant to § 30.014(a) of the Texas Civil Practice & Remedies Code, the last three numbers of Plaintiff Meisner’s Texas driver’s license number are “666,” and the last three numbers of Plaintiff Meisner’s social security number are “192.”
5. Defendant **ROSA RIOS** (“Defendant Rios”) is employed by the City of Denton, Texas, as the Denton City Secretary, and she is being sued solely in her official capacity. By virtue of her office as Denton City Secretary, under Article IV, § 4.13(b) of the Denton City Charter Defendant Rios is vested with official authority to determine whether a recall petition is “sufficient and in compliance with” the provisions of Article IV of the Denton City Charter.

Her official duties in this connection pertain particularly to the electoral recall of any Denton City Councilmember, as authorized by Article IV, § 4.11 of the Denton City Charter. Furthermore, as provided by Article IV, § 4.13(b) of the Denton City Charter, when Defendant Rios finds a recall petition “sufficient and in compliance with” the provisions of Article IV of the Denton City Charter, Defendant Rios holds the mandatory duty to submit the petition and her certificate of the petition’s sufficiency to the Denton City Council at its next regular meeting, and to “immediately” notify the Denton City Councilmember whose removal is sought. Service and notice of this suit on Defendant Rios may be had by serving her at her office located at 215 E. McKinney Street, Denton, Texas 76201.

6. Defendant **CITY OF DENTON, TEXAS** (“Defendant City of Denton”) is a “Home Rule” municipality chartered pursuant to Article XI, § 5 of the Constitution of the State of Texas and under Chapter 26 of the Texas Local Government Code. Service and notice of this suit on Defendant City of Denton may be had by serving the City Secretary of Defendant City of Denton, Rosa Rios, at her office located at 215 E. McKinney Street, Denton, Texas 76201.
7. Defendant **DONALD DUFF** (“Defendant Duff”) is the designated official representative of a five-member Committee of Electors (“Committee”) formed and constituted under Article IV of the Denton City Charter. The Committee is comprised of Defendant Duff, Creeda Faegre, Venera Monahan, David Laschinger and Shirley Martin. As the Committee may “claim a[n] interest that would be affected by” the declaratory relief sought by Plaintiff herein, Defendant Duff is being sued in his official capacity as official representative of the Committee, as required by § 37.006(a) of the Texas Civil Practice and Remedies Code. Service and notice of this suit on Defendant Duff may be had by serving him at his professional office located at 10012 Countryside Dr., Denton, Texas 76207.

8. Defendant **FRANK PHILLIPS** (“Defendant Phillips”) is employed by Denton County, Texas, as the Elections Administrator in and for Denton County, Texas Defendant Phillips is being sued solely in his official capacity solely for the purpose of securing the remedial relief sought by Plaintiffs herein. Under past practice, custom and usage, Defendant City of Denton has retained the services of Defendant Phillips, in his official capacity, to administer Denton City Council elections, and it is therefore reasonable to expect Defendant City of Denton will again retain the services of Defendant Phillips, in his official capacity, to administer any recall election arising from the recall petition challenged by Plaintiffs in this action. Service and notice of this suit on Defendant Phillips may be had by serving him at his office located at 701 Kimberly Dr., Denton, Texas 76208.

## **II.**

### **JURISDICTION AND VENUE**

1. This is an original proceeding in which this Court has jurisdiction to consider and decide the merits of this petition pursuant to Article V, § 8 of the Texas Constitution, pursuant to §§ 24.008 and 24.011 of the Texas Government Code, and pursuant to § 101.102(a) of the Texas Civil Practice & Remedies Code. *Anderson v. City of Seven Points*, 806 S.W.2d 791, 792 n. 1 (Tex. 1991).
2. Venue of this cause of action, in this Court, is proper by virtue of § 15.0151(a) of the Texas Civil Practice and Remedies Code and by § 101.102(a) of the Texas Civil Practice & Remedies Code.

### **III.**

#### **DISCOVERY CONTROL PLAN LEVEL**

In this suit Plaintiffs seek interim and a permanent equitable relief pursuant to § 65.011 of the Texas Civil Practice and Remedies Code, and recovery of their court costs. The Plaintiffs do not seek compensatory or other damages in this original petition. The Plaintiffs intend that discovery in this cause be conducted under Discovery Level 2, as provided for by Rule 190.3 of the Texas Rules of Civil Procedure.

### **IV.**

#### **FACTS<sup>1</sup>**

1. On May 1, 2021, at a regularly scheduled election called by Defendant City of Denton, Plaintiff Maguire was duly elected as Denton city councilmember in Place 4, a “single-member” electoral district in the City of Denton, Texas, to represent constituents residing in District 4, as that District was defined and adopted in the Defendant City of Denton on September 4, 2011 (Ordinance No. 2011-169). Then as now, Article II, § 2.01(c)(1) the Denton City Charter provides that “[e]ach member of the council including the mayor shall hold a place on the city council, and shall be elected to such place for a two-year term.”
2. On May 1, 2021, Plaintiffs Caruthers, Runnels and Meisner were (and continue to be) residents and registered voters in single-member District 4, as that District was defined and adopted in the Defendant City of Denton on September 4, 2011 (Ordinance No. 2011-169), and they each voted in the election of May 1, 2021, in favor of Plaintiff Maguire to represent them in that District.

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<sup>1</sup> Attached hereto are affidavits executed by Plaintiffs which affirm under oath the truth of the material factual allegations made in this petition (**Plaintiffs’ Exhibits A through D**).

3. Article III, § 3.01(a) of the Denton City Charter (Ordinance No. 2006-232) provides now, as it did on May 1, 2021, that the regular election to determine members of the Denton City Council shall be held each year on the “uniform election day” for municipal elections established by the Texas Election Code. Under § 41.001(a)(1) of the Texas Election Code the next uniform election day for general municipal elections conducted by Defendant City of Denton, for the purpose of re-electing Plaintiff Maguire or the election of her successor in office, is Saturday, May 6, 2023. Thus, in the absence of a vacancy in Plaintiff Maguire’s office in the interim, her “two-year term” does not expire until after May 6, 2023.
4. On December 14, 2021, Defendant City of Denton adopted a new electoral districting plan (Ordinance No. 21-2808) to replace the districting plan it had previously adopted on September 4, 2011 (Ordinance No. 2011-169). It was under the districting plan adopted on September 4, 2011 (Ordinance No. 2011-169) that Plaintiff Maguire was elected on May 1, 2021.
5. Section 4 of the districting plan adopted by Defendant City of Denton on December 14, 2021 (Ordinance No. 21-2808) provided that its provisions were to “take and be given effect immediately,” and that all future “Denton City Elections shall be held under and in accordance with the new single-member council district districting plan here adopted by the City Council.”
6. On May 7, 2022, an at-large municipal election was conducted by Defendant City of Denton to elect its mayor (Place 7), and to elect two city councilmembers at-large to represent Districts 5 and 6 under the new electoral districting plan (Ordinance No. 21-2808) (for Places 5 and 6, respectively). No election for a city councilmember to represent either “new” or “old” District 4 was on the ballot on May 7, 2022.

7. On May 12, 2022, five days after the Denton City Council election held on May 7, 2022, Defendant Rios received a recall petition from Defendant Duff, wherein Duff sought the recall of Plaintiff Maguire (the “recall petition”).
8. “Robson Ranch” is a community within the City of Denton, Texas. Under the districting plan adopted by the Defendant City of Denton on September 4, 2011 (Ordinance No. 2011-169) Robson Ranch was encompassed entirely within District 3. Under the districting plan adopted by the Defendant City of Denton on December 14, 2021 (Ordinance No. 21-2808) Robson Ranch was encompassed entirely within District 4.
9. On May 1, 2021, the date on which Plaintiff Maguire was elected to serve a two-year term in office as Denton City Councilmember representing constituents of former District 4 (under Ordinance No. 2011-169), Duff was a resident and registered voter of former District 3, as defined and adopted by the City of Denton, Texas on September 4, 2011 (Ordinance No. 2011-169). On May 1, 2021, Duff was therefore ineligible to vote for Plaintiff Maguire or for any other candidate seeking election in former District 4.
10. On May 1, 2021, the date on which Plaintiff Maguire was elected to serve a two-year term as Denton City Councilmember, residents of Robson Ranch were ineligible to vote for Plaintiff Maguire or for any other candidate seeking election in former District 4. Rather, on May 1, 2021, residents of Robson Ranch were “geographically” included within former District 3 (under Ordinance No. 2011-169), and accordingly they were only entitled to vote in at-large city elections and for or against candidates seeking election in former District 3, a single-member district.
11. On May 1, 2021, the residents and registered voters of former District 3, including those who resided in the Robson Ranch area of the City of Denton, elected Jesse Davis



(“Councilmember Davis”) to represent them in former single-member District 3, as that District was defined and adopted by the Defendant City of Denton on September 4, 2011 (Ordinance No. 2011-169).

12. As with Plaintiff Maguire, under Article II, § 2.01(c)(1) of the Denton City Charter, Councilmember Davis was elected on May 1, 2021, to serve two-year term of office representing the constituents of former District 3. Like Plaintiff Maguire, Councilmember Davis’ term in office does not expire until after Saturday, May 6, 2023.
13. Article IV, § 4.13 of the Denton City Charter (“§ 4.13(a)”) governs the duties imposed on Defendant Rios in her official capacity as Denton City Secretary, in relation to recall petitions. As currently codified, and as it was originally ratified by the voters of Denton in 1980, § 4.13(a) provides in relevant part that in order to certify that a recall petition authorizes a recall election the Denton City Secretary must determine...

“...whether the [recall] petition is signed by qualified voters of the constituency of the council member whose removal is sought equal in number to at least twenty-five (25) percent of the number of the votes cast for that council member and all of his opponents in the last preceding general municipal election in which he was a candidate. As used herein ‘constituency’ shall mean the qualified voters eligible to vote for the council member whose removal is sought, either by geographical district or at large, as the case may be.”

14. The total “number of the votes cast” for Plaintiff Maguire and for “all of h[er] opponents” in “the last preceding general municipal election in which [s]he was a candidate” (that is, at the last general municipal election held on May 1, 2021, for the election of candidates to represent former District 4) was 2,690. This total number of votes, when divided by 25 percent, equals 672.5. Thus, when rounding this number upwards, 673 valid recall petition signatures would authorize a recall election under §4.13(a).

15. According to a public statement made by Duff, he collected and submitted to Defendant Rios a total of “745 or so signatures” on the recall petition favoring the recall of Plaintiff Maguire. When collecting signatures in support of the recall petition targeting Plaintiff Maguire, Duff secured virtually all of the recall petition signatures from persons who reside at Robson Ranch.
16. Under § 4.13(a) Defendant Rios was required, “[w]ithin seven (7) days after” the recall petition was filed by Duff on Thursday, May 12, 2022, to determine whether 673 valid recall petition signatures had been submitted in order for her to certify that the petition authorized a recall election to remove Plaintiff Maguire.
17. On May 20, 2022, Defendant Rios received a letter from undersigned counsel informing her that Robson Ranch residents could not lawfully be included within the total “number of the votes cast” for Plaintiff Maguire and for “all of h[er] opponents” in “the last preceding general municipal election in which [s]he was a candidate” (that is, at the last general municipal election held on May 1, 2021). As stated in the aforementioned letter, undersigned counsel explained that Robson Ranch residents were not eligible to sign the recall petition because they were not eligible to vote for any candidate in former District 4 on May 1, 2021. In the said letter Defendant Rios was further informed that her certification, to the extent it would rely on the recall petition signatures of Robson Ranch residents to meet the 673-vote threshold necessary to find the recall petition “sufficient,” would be legally in error and invalid.
18. Unbeknownst to undersigned counsel however, on May 19, 2022, before receiving the letter from undersigned counsel dated May 20, 2022, Defendant Rios found the recall petition was “sufficient” to require the recall election, and she notified Plaintiff Maguire, Duff and

members of the Denton City Council by email of her finding on that date, as required by § 4.13(b).

19. Under §4.13(b), if the Denton City Secretary finds a recall petition “sufficient and in compliance with” § 4.13, the City Secretary is required to “submit the petition and h[er] certificate of its sufficiency to the council at its next regular meeting” and to “immediately notify” the Denton City councilmember “whose removal is sought of such action.”
20. Under § 4.13(c), Plaintiff Maguire was provided an opportunity to avoid a recall election by resigning her position as the Denton City Councilmember duly elected to represent former District 4 “within seven (7) days after” she received notice from the Denton City Secretary on May 19, 2022, that the recall petition had been deemed “sufficient and in compliance with” § 4.13(a). However, Plaintiff Maguire did not resign.
21. In accordance with § 4.13(b), and as the result of Plaintiff Maguire’s choice not to resign, an item concerning the recall of Plaintiff Maguire was placed on the agenda of the Denton City Council meeting scheduled for June 7, 2022, which was the “next regular meeting” of the Denton City Council after Defendant Rios determined the recall petition was “sufficient” to require the recall election.
22. At its meeting on June 7, 2022, in accordance with Article IV, § 4.17 of the Denton City Charter, the Denton City Council received Defendant Rio’s certification. Being without discretionary authority to assay whether “all of the requirements” for a recall election had been “complied with by the petitioning electors in conformity with” § 4.13(a); and being without discretionary authority to schedule any other date for the recall election in question; the Denton City Council, on June 7, 2022, placed on the agenda for its next regularly scheduled meeting, June 28, 2022, the performance of its ministerial act to “order and fix”

November 8, 2022, as the date for holding the special recall election concerning the potential removal of Plaintiff Maguire, in conformity with the Texas Election Code.

23. In the event Plaintiff Maguire is removed from office based on the results of the recall election scheduled for November 8, 2022, she, along with Plaintiffs Caruthers, Runnels and Meisner, who are all residents and registered voters in former District 4 (as defined and adopted by the Defendant City of Denton under Ordinance No. 2011-169), will be deprived of equal representation on the Denton City Council, in relation to all other Denton city voters, for approximately 6 months. This is so because under applicable provisions of the Denton City Charter and the Texas Election Code no election to fill the vacancy created by the removal of Plaintiff Maguire could lawfully occur until the next uniform election date, which is May 6, 2023.
24. Regardless of whether Plaintiff Maguire is removed from office based on the results of the recall election scheduled for November 8, 2022, the residents and registered voters of former District 3, including those who resided in the Robson Ranch area of the City of Denton and who elected Councilmember Davis to represent them in former single-member District 3 on May 1, 2021 (as provided by Ordinance No. 2011-169), will, unlike Plaintiffs, continue to enjoy full, uninterrupted representation on the Denton City Council until the next uniform election date of May 6, 2023.
25. The electors in District 4, as it was defined and adopted by the Denton City Council on September 4, 2011, and as it existed on May 1, 2021, and as it would be configured today for purposes of a recall election, share few if any common political interests with the electors who reside in the Robson Ranch community.

26. The geographical “hub” of Robson Ranch is located approximately 8 miles from the perimeter of District 4 as it was defined and adopted by the Denton City Council on September 4, 2011; and when Robson Ranch was annexed by the City of Denton in 2007 (Denton City Ordinance No. 2007-078, effective April 3, 2007), Robson Ranch was marketed as an “Adult Retirement Community” that was intended to cater primarily to elderly, more conservative voters. The marketing plan utilized by Robson Ranch since its inception proved successful, and on May 1, 2021, the Robson Ranch community was comprised of so-called “Active Adult” residents who are primarily elderly, more conservative voters.

27. In contrast to the Robson Ranch community, the electors in District 4, as it was defined and adopted by the Denton City Council on September 4, 2011, and as it existed on May 1, 2021, and as it would be configured today for purposes of collecting signatures necessary to schedule a recall election, comprise mostly middle-aged electors who are responsible for families that include younger, school-aged children. In comparison to electors in the Robson Ranch community, electors in District 4, as it was defined and adopted by the Denton City Council on September 4, 2011, comprise a constituency that is less conservative, and which shares political interests that are distinct from, and are often in conflict with, the political interests held by the vast majority of electors in the Robson Ranch community.

**V.**

**LEGAL CLAIMS**

**(A)**

**COUNT ONE**

1. The Plaintiffs collectively allege they are entitled to a declaratory judgment, and to injunctive relief, that would prohibit Defendants, their agents, successors, assigns, and anyone acting in concert with them, from engaging in any conduct intended for the purpose, or likely to cause, a recall election to be held on November 8, 2022, concerning the potential removal of Plaintiff Maguire.
2. The outcome of any inquiry to determine the meaning of § 4.13(a) depends on the “plain meaning” of the literal text of § 4.13(a); and, to the extent that the literal text of § 4.13(a) is ambiguous, resolution of this question would warrant consideration of extra-textual sources to determine what was intended by the City Council that proposed Amendment 8, and what was intended by the Denton City voters who ratified Amendment 8 as part of the Denton City Charter in 1980. While sparse, decisional law that has considered the question presented, including cases wherein a city has transitioned from at-large elections to single-member electoral districts, confirms the view that the signatures of Robson Ranch voters may not be included in the calculation of the 673 recall petition signatures necessary to authorize a recall election in the present case.
3. Section 4.13(a) was approved by the Denton City Council on December 11, 1979, as “Amendment 8” to the Denton City Charter (Ordinance No. 79-86). It was subsequently ratified by Denton City voters on January 19, 1980 (Ordinance No. 80-4).

4. Amendment 8 was part of a multi-year endeavor by the Denton City Council to conform its electoral processes to emerging requirements imposed by federal constitutional law (“one person, one vote”) and federal statutory law (the Voting Rights Act of 1965), including the necessity of adopting single-member electoral districts for the election of Denton City Council members. *See e.g.*, Denton City Council, *Official Minute Book*, 357 (Dec. 20, 1977)(discussing former “pre-clearance” requirement imposed by § 5 the Voting Rights Act of 1965, and legal advice received from the Texas Municipal League recommending adoption of single-member city council electoral districts in the City of Denton).<sup>2</sup>
5. Decisional law that has addressed the question presented in this case falls generally into three categories. For example, Plaintiffs would show that when provisions such as § 4.13(a) are bereft of literal text or extra-textual evidence of legislative intent to confine the class of voters whose signatures may validly support recall petition, courts have presumed the relevant provisions were intended to include the signatures of “all” qualified city voters. *See, e.g.*, *City Commission of Pampa v. Whatley*, 366 S.W.2d 620, 621-622 (Tex. Civ. App. – Amarillo 1963) (“It is not entirely unreasonable to assume that in leaving the recall section as it was [before adopting single-member districts] the city was giving those who could not vote for three of the commissioners a voice in recalling them instead of leaving the recall only to the commissioner’s own ward”).
6. Conversely, when the literal text of provisions similar to § 4.13(a) have expressed an intention to include petition signatures of voters who are eligible to vote for the “successor” of the particular public official sought to be recalled, effect has be given to that intention. *See, e.g.*, *Carter v. Harrell*, 126 S.W.2d 43, 44 (Tex. Civ. App. – Fort Worth 1939) (quoting

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<sup>2</sup> Available online at:  
<https://lfpubweb.cityofdenton.com/PublicWeblink/DocView.aspx?id=31767&dbid=4&repo=Public&cr=1>  
(last visited June 7, 2022).

an ordinance that provided “A petition signed by the qualified voters *entitled to vote for a successor* to the Councilman sought to be removed”) (emphasis added); *Leggitt v. Nesbitt*, 415 S.W.2d 696, 698 (Tex. Civ. App. – Tyler 1967) (quoting an ordinance that provided “A petition signed by qualified voters *entitled to vote for a successor* to each member sought to be removed”) (emphasis added); *Howard v. Clack*, 589 S.W.2d 748, 750 (Tex. Civ. App. – Dallas 1979) (same).

7. The Plaintiffs contend that the Defendant City of Defendant’s provision, § 4.13(a), falls into a third category of provisions that lies between the two polar opposites described above. In this connection, Plaintiff’s contend at least five factors compel the conclusion that § 4.13(a) was not intended to include the signatures of Robson Ranch voters in the calculation of the 673 recall petition signatures necessary to authorize a recall election in the present case.
8. *First*, unlike the situation described in *City Commission of Pampa v. Whatley*, *supra*, the Denton City Council did not “leave its recall as it was” in 1979, *i.e.*, as it existed before the Council adopted single-member electoral districts in 1979. *Id.*, 366 S.W.2d at 622. Rather, the Denton City Council proposed to amend former § 4.13(a) in 1979 when it adopted single-member districts, and the voters of the City of Denton ratified that change in January of 1980.
9. *Second*, the literal text of § 4.13(a) provides evidence of a legislative intention to limit the class of voters whose signatures on a recall petition may validly authorize a recall election.

As stated above, the second sentence of *currently effective* § 4.13(a) provides that:

“As used herein ‘constituency’ shall mean the qualified voters eligible to vote for the council member whose removal is sought, either by geographical district or at large, as the case may be.”



10. The tense used in the first sentence of § 4.13(a), as it describes a “constituency,” is plainly in the past tense (the “constituency of the council member... in the last preceding general municipal election in which he was a candidate”). The clarifying description of the term “constituency” provided by the second sentence of § 4.13(a), particularly because it refers to the word constituency “as used” in the first sentence in § 4.13(a), would therefore most naturally be read in the past tense as well. But what was the purpose of the second sentence in § 4.13(a)? It is apparent the second sentence in § 4.13(a) was designed, moving forward in time after its adoption, to distinguish between a “constituency” that had voted in the past “either by geographical district” or “at large, as the case may be.”
11. As previously noted, the amendment to § 4.13(a) in 1980 was part of a transition from a system wherein all Denton City Councilmembers were elected at-large, to a new system that provided for single-member district elections. Without the second sentence in § 4.13(a), as it was amended in 1980, the “constituency” of a Councilmember “whose removal is sought” would have left an ambiguity concerning whether the relevant “constituency” of the Councilmember “whose removal is sought” was intended to be defined by the voters in a “geographical district,” or more broadly by all city voters “at-large.”
12. Regrettably, the second sentence of § 4.13(a) omits use of either the words “who were” or the words “who are” between the words “voters” and the word “eligible.” However, insertion of the words “who are” in the second sentence (between the words “voters” and the word “eligible”) would irreconcilably conflict with the acknowledged use of the past tense in the first sentence of § 4.13(a) (*i.e.*, the “constituency of the council member... in the last preceding general municipal election in which he was a candidate”).

13. More coherently, when the phrase “who were” is interlineated (implicitly) between the words “voters” and the word “eligible” in the second sentence, no conflict between present and past tense appears in the text of § 4.13(a) as a whole. Thus, to avoid the inconsistency in tense between the first and second sentences in § 4.13(a), it is necessary to read the second sentence in § 4.13(a) as follows:

“As used herein ‘constituency’ shall mean the qualified voters [who were] eligible to vote for the council member whose removal is sought, either by geographical district or at large, as the case may be.”

14. The second sentence in current § 4.13(a) cannot reasonably be construed, even when viewed in isolation and apart from the remainder of § 4.13(a), to broaden the “constituency” of a councilmember *previously elected* in a single-member district, without a subsequent “general municipal election” pertaining to the election of a “successor” to represent that single-member district. The Oxford English Dictionary defines “constituency” to mean:

“A body of constituents, the body of voters who elect a representative member of a legislative or other public body; in looser use, the whole body of residents in the district or place *represented by such member*, or the place or district itself considered *in reference to its representative*.”<sup>3</sup>

15. The same source (the Oxford English Dictionary) observes that the word “constituent” originated in the late 15<sup>th</sup> century as “a noun denoting a person who appoints another as an agent.”<sup>4</sup> The qualified voters of Robson Ranch have neither elected, nor have they ever had an opportunity to elect, Plaintiff Maguire as their “agent” or representative on the Denton City Council from District 4. Rather, the qualified voters of Robson Ranch, on May 1, 2021, elected Councilmember Davis as their “agent” or representative on the Denton City Council, from single-member District 3. Councilmember Davis will remain the “agent” or representative of his Robson Ranch “constituents,” on the Denton City Council, from former

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<sup>3</sup> *Oxford English Dictionary*, 373 (3<sup>rd</sup> ed. 2010)(emphasis added).

<sup>4</sup> *Ibid.*

District 3, until his term of office expires on May 6, 2023. The Defendant City of Denton's adoption of a new electoral districting plan (Ordinance No. 21-2808) on December 14, 2021, did not magically (or legally) extinguish or sever, retroactively, the "agency" relationship between Denton City Councilmembers, and their constituents, established by the election on May 1, 2021.

16. As applied in the present context, the recall petition signatures of voters residing at Robson Ranch (and all others who resided outside former District 4) would thus not qualify to authorize a recall election of Plaintiff Maguire because Robson Ranch voters are not now, and they were not on May 1, 2021, within the "geographical district" encompassing former District 4, wherein votes were cast for Councilmember Maguire and for other candidates running for election in former District 4 on May 1, 2021.
17. In short, the recall petition submitted by Duff, which has been found "sufficient" by Defendant Rios, legally does not contain the requisite number of recall petition signers necessary to authorize a recall election of Plaintiff Maguire.
18. *Third*, it is reasonable to assume the Denton City Council in 1979, as well as the Citizen's Charter Advisory Committee that provided recommendations to the Denton City Council at that time, was exposed to, and acquainted with, the very language that had previously been adopted by numerous other Texas municipalities, some of which are noted above. Both the Denton City Council and its Advisory committee certainly had an opportunity to propose terminology to the effect that a recall election could be authorized by a "petition signed by the qualified voters *entitled to vote for a successor* to the Councilman sought to be removed." Yet the Denton City Council, and its Citizen's Charter Advisory Committee, refrained from proposing that phrase for consideration by Denton voters when § 4.13(a) was ratified.

19. *Fourth*, inclusion of the signatures of Robson Ranch voters in the calculation of the 673 recall petition signatures would be directly at odds with the primary objectives sought to be accomplished by the Denton City Council in 1979, and by Denton’s voters in 1980, when the Denton City Charter was amended to provide single-member electoral districts. Again, under applicable provisions of the Denton City Charter and the Texas Election Code, no election to fill the vacancy that would be created by the removal of Plaintiff Maguire could lawfully occur until the next uniform election date on May 6, 2023; and a recall election that resulted in the removal of Councilmember Maguire from the Denton City Council would also result in her District 4 seat being vacated with no opportunity for her current constituents to elect a successor until May 6, 2023. This would result in a significant number of voters who currently reside in former District 4, including Plaintiffs, being deprived of equal representation in the Denton City Council until after May 6, 2023. Worse yet, construing § 4.13(a) to allow Robson Ranch voters *who were ineligible* to vote in former District 4 in 2021 to dictate this outcome would be wholly inconsistent with the aims of single-member electoral systems, which are designed to ensure “fair” and “equal” representation *for all voters*.
20. *Fifth*, under an interpretation of § 4.13(a) that would consider the political preferences of Robson Ranch voters in this context, Robson Ranch voters would not only retain at full strength their preferred representation in former District 3 (currently held by Councilmember Davis), but they would also disproportionately (and unfairly) enhance the strength of their representation on the Denton City Council by effectively muting the voices of a vast number of other voters, including Plaintiffs, who independently elected their own preferred candidate in former District 4. This result was surely not intended by the Denton City Council that

adopted or by the Denton voters who ratified § 4.13(a) as part of a single-member district electoral system.

**(B)**

**COUNT TWO**

1. In the alternative to the allegations contained under Court One of this petition, and in the event the second sentence in § 4.13(a) is construed to permit the inclusion of the signatures of Robson Ranch on the recall petition, Plaintiffs contend Defendant Rios erred when she confined her calculation under § 4.13(a) to the total “number of the votes cast” for Plaintiff Maguire and for “all of h[er] opponents” in “the last preceding general municipal election.” In other words, Plaintiffs, in the alternative to their allegations under Count One, contend that Defendant Rios erred when she found the recall petition “sufficient” on the basis of the total “number of votes cast” at the last general municipal election held on May 1, 2021, for the election of candidates to represent former District 4.
2. The second sentence of § 4.13(a) provides that, “as used” in § 4.13(a), the relevant “‘constituency’ shall mean the qualified voters eligible to vote for the council member whose removal is sought, either by geographical district or at large, as the case may be.” The “last preceding general municipal election” for Denton City Councilmembers occurred on May 7, 2022.
3. If §4.13(a) is construed to validate inclusion of the signatures of Robson Ranch voters on the recall petition, *on the basis of the Defendant City of Denton’s adoption of a new electoral districting plan (Ordinance No. 21-2808) on December 14, 2021*, then Defendant Rios’s calculation of the total “number of the votes cast” in District 4, and her calculation to determine 25 percent of total votes cast in District 4 necessary to certify the recall petition,

would be governed by the total “number of the votes cast” in District 4 *on May 7, 2022*, and not by the total “number of the votes cast” in former District 4 on May 1, 2021. *See, Mills v. Nickeus*, 142 P. 1145, 1147 (Wash. 1914)(ruling “that the words ‘at the preceding election’ mean at the next preceding election held for the election of councilman [sic], *whether that election be the one at which the councilman sought to be recalled was elected or a subsequent election.*”)(emphasis added).

4. Under the interpretation of § 4.13(a) described in the preceding two numbered paragraphs, the “**745 or so signatures**” favoring the recall of Plaintiff Maguire, which Duff has stated he submitted to Defendant Rios with the recall petition, would be “insufficient” under § 4.13(a) to certify the recall election to remove Plaintiff Maguire. As shown by the table of those election results appended hereto as **Plaintiffs’ Exhibit E**, the official election returns for the “the last preceding general municipal election” on May 7, 2022, disclose that the total votes cast in “new” District 4 for election of Denton mayor and two city councilmembers to represent Districts 5 and 6 (under Ordinance No. 21-2808), was **5,984** for the mayor’s race; **5,504** in the election of the councilmember for District 5; and **5,746** in the election of the councilmember for District 5.<sup>5</sup> Given these figures, the “745 or so signatures” favoring the recall of Plaintiff Maguire gathered by Duff, which were submitted by Duff to Defendant Rios with the recall petition filed on May 12, 2022, would mathematically (and unavoidably) be “insufficient” to meet the certification requirement imposed by § 4.13(a) (“at least twenty-five (25) percent of the number of the votes cast...in the last preceding general municipal election”).

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<sup>5</sup> These figures are derived from data publicly posted by Defendant Phillips, the Denton County Elections Administrator, which are officially available online at: <https://results.enr.clarityelections.com/TX/Denton/112974/web.285569/#/detail/70> (last visited June 7, 2022).

## **RELIEF REQUESTED BY PLAINTIFFS**

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray this Court will:

21. Cause citations to be issued by the Clerk directing all Defendants named herein to appear and answer this petition;
22. After notice to Defendants and a preliminary hearing on the relief requested by Plaintiffs, issue a temporary injunction that prohibits Defendants, as well as their agents, successors, assigns, or anyone acting in concert with them, from engaging in any conduct intended for the purpose, or likely to cause, a recall election to be held in the City of Denton, Texas, on November 8, 2022, based on the recall petition certified by Defendant Rios on May 19, 2022, concerning the potential removal of Plaintiff Maguire as the duly elected Denton City Councilmember for District 4;
23. After further proceedings, and a trial if necessary, issue a Declaratory Judgment pursuant to Chapter 37 of the Texas Civil Practice and Remedies Code, declaring the recall petition seeking the removal of Plaintiff Maguire from her office as duly elected Denton City Councilmember for District 4, as said recall petition was certified by Defendant Rios on May 19, 2022, is not “sufficient and in compliance with” Article IV of the Denton City Charter, and that the said recall petition is therefore invalid for the purpose of authorizing a recall election on November 8, 2022, concerning the potential removal of Plaintiff Maguire as the duly elected Denton City Councilmember for District 4;
24. After further proceedings, and a trial if necessary, issue a permanent mandatory injunction pursuant to § 65.011 of the Texas Civil Practice and Remedies Code, that compels Defendant Rios, in her official capacity as Denton City Secretary, to rescind or vacate her certification

that the recall petition challenged in this case is “sufficient” under Article IV of the Denton City Charter;

25. After further proceedings, and a trial if necessary, issue a permanent mandatory injunction pursuant to § 65.011 of the Texas Civil Practice and Remedies Code, that compels Defendant City of Denton, by and through its City Council, to rescind or repeal any order or ordinance “fixing” the date for a recall election under Article IV, § 4.13(c) of the Denton City Charter, on the basis of Defendant Rios’ certification that the recall petition challenged in this case was “sufficient” under Article IV of the Denton City Charter;
26. After further proceedings, and a trial if necessary, grant prospective injunctive relief to Plaintiffs pursuant to § 65.011 of the Texas Civil Practice and Remedies Code, that permanently prohibits Defendants Rios, City of Denton and Phillips, as well as their agents, successors, assigns, or anyone acting in concert with them, from engaging in any conduct intended for the purpose, or likely to cause, a recall election to be held in the City of Denton, Texas, on November 8, 2022, based on the recall petition certified by Defendant Rios on May 19, 2022, concerning the potential removal of Plaintiff Maguire as the duly elected Denton City Councilmember for District 4;
27. Enter an order and final judgment that grants Plaintiffs their court costs and such attorney’s fees as are shown to be reasonable and necessary to litigate this cause on their behalf, against Defendant City of Denton and Defendant Rios in her official capacity, as authorized by § 37.009 of the Texas Civil Practice and Remedies Code; and,
28. Grant Plaintiffs any additional or further relief to which they may show themselves entitled, as authorized by Rule 47(d) of the Texas Rules of Civil Procedure.



### **JURY DEMAND**

The Plaintiffs hereby invoke their right to a trial by jury under Article I, § 15 of the Constitution of the State of Texas, and under § 37.007 of the Texas Civil Practice and Remedies Code. Contemporaneously with the filing of this petition, Plaintiffs have tendered to the Clerk full payment of the jury fee required by Rule 216 of the Texas Rules of Civil Procedure.

Respectfully submitted,

/s/Richard Gladden

Texas Bar No.07991330

*Attorney for Plaintiffs*

Law Office of Richard Gladden

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940/323-9300 (voice)

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# PLAINTIFFS' EXHIBIT A

THE STATE OF TEXAS

COUNTY OF DENTON

## AFFIDAVIT

On this day personally appeared before me, the undersigned authority, ALISON MAGUIRE, who, having duly been sworn, did depose and state upon her oath as follows:

My name is Alison Maguire. I am over the age of 18 years and I am competent to make this Affidavit. I am one of the Plaintiffs in this case, captioned *Maguire v. Rios, et al.* I have read the foregoing pleading entitled *Plaintiff's Verified Petition and Application for Declaratory Relief, Interim Injunctive Relief, and Permanent Injunctive Relief*, and having read that pleading, I hereby more specifically affirm that the facts stated in this affidavit are within my personal knowledge and are true and correct:

I am a resident of the City of Denton, Denton County, Texas, and I have brought this case in both my official capacity as the duly elected city councilmember of a single-member district (District 4) in the City of Denton, Texas, as well as in my individual capacity as an elector in the City of Denton, Texas. I am a resident and registered voter of District 4, as defined and adopted by the City of Denton, Texas on September 4, 2011 (Ordinance No. 2011-169). I am also a resident and registered voter of current District 4, as defined and adopted by the City of Denton, Texas on December 14, 2021 (Ordinance No. 21-2808). The last three numbers of my Texas driver's license number are "656," and the last three numbers of my social security number are "238."

On May 1, 2021, at a regularly scheduled election called by the City of Denton, Texas, I was duly elected as Denton City Councilmember in Place 4, which is a "single-member"

electoral district in the City of Denton, Texas. Place 4, also known as District 4, was configured to provide representation on the Denton City Council for electors residing in District 4, as that District was defined and adopted in the Defendant City of Denton on September 4, 2011. On the basis of the results from the election on May 1, 2021, I was elected by a majority of the qualified electors who cast votes in District 4, as that District existed on May 1, 2021; and at that time, I was elected to serve a two-year term as a Denton City Councilmember representing District 4. My two-year term in that office does not expire until after May 6, 2023.

On or about May 19, 2022, I was notified that the Denton City Secretary, Rosa Rios, had found the recall petition, filed against me by Donald Duff, “sufficient” to require a recall election for the purpose of potentially removing me from office. Under the Denton City Charter I was provided with an opportunity to avoid a recall election by resigning my position as the Denton City Councilmember for District 4, so long as I did so within seven (7) days after I received notice that Ms. Rios had found the recall petition “sufficient” to require the recall election. However, I chose not to resign.

An item concerning my potential recall from office was placed on the agenda of the Denton City Council meeting scheduled for June 7, 2022. At its meeting on June 7, 2022, the Denton City Council formally received and accepted the recall petition, as certified by Ms. Rios. Additionally, at its meeting on June 7, 2022, the Denton City Council placed on the agenda for its next regularly scheduled meeting, June 28, 2022, the performance of its ministerial act to “order and fix” November 8, 2022, as the date for holding the special recall election concerning my potential removal as the duly elected Denton city councilmember representing District 4.

In the event I am removed from office based on the results of the recall election scheduled for November 8, 2022, both I and my constituents in District 4 will be deprived of

equal representation on the Denton City Council, in relation to all other Denton city voters, for approximately 6 months. This is so because, under applicable provisions of the Denton City Charter and the Texas Elections Code, no election to fill the vacancy in District 4 created by my removal could occur until the next uniform election date, which is May 6, 2023.

Robson Ranch is an area of the City of Denton, Texas, that was located in District 3 when I was elected on May 1, 2021. Because qualified voters of Robson Ranch did not reside in District 4 when I was elected on May 1, 2021, they were ineligible to cast a vote for or against me when I was elected on May 1, 2021. For the same reason, under the Denton City Charter the qualified voters of Robson Ranch were ineligible, in April and May of May 12, 2022, to sign the recall petition that has been submitted by Donald Duff for the purpose of requiring an election that would consider my recall from office on November 8, 2022.

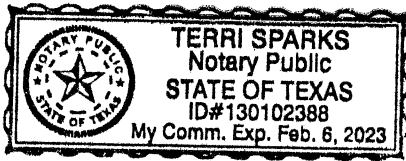
The qualified voters of Robson Ranch have never elected me, nor have they ever had an opportunity to elect me, as their representative on the Denton City Council from District 4. Instead, the qualified voters of Robson Ranch, on May 1, 2021, elected Councilmember Jesse Davis as their representative on the Denton City Council, from single-member District 3. Councilmember Davis will remain the representative of his Robson Ranch “constituents,” on the Denton City Council, from former District 3, until his term of office expires on May 6, 2023.


In my view, an interpretation of the Denton City Charter that would consider the political preferences of Robson Ranch voters, for the purpose of potentially removing me from office at a recall election, would be mistaken and illegal. Such an interpretation of the Denton City Charter would violate my right to remain in the office to which I was duly elected, and it would also violate the rights of my constituents who elected me on May 1, 2021. Under these circumstances, and under such a mistaken interpretation of the Denton City Charter, Robson Ranch voters

would not only retain at full strength their preferred representation in former District 3 (currently held by Councilmember Davis), but they would also simultaneously (and illegally) enhance the strength of their representation on the Denton City Council by effectively muting both my voice as an elector in District 4, and the voices of my constituents in District 4, who independently elected their own preferred candidate in District 4 on May 1, 2021. For these and other reasons I believe I am entitled to the judicial relief I am seeking in this case.

  
Alison Maguire

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, on this 8<sup>th</sup> day of June, 2022.



  
Notary Public in and for the  
State of Texas

# PLAINTIFFS' EXHIBIT B

THE STATE OF TEXAS

COUNTY OF DENTON

## AFFIDAVIT

On this day personally appeared before me, the undersigned authority, KERI CARUTHERS, who, having duly been sworn, did depose and state upon her oath as follows:

My name is Keri Caruthers. I am over the age of 18 years and I am competent to make this Affidavit. I am one of the Plaintiffs in this case, captioned *Maguire v. Rios, et al.* I have read the foregoing pleading entitled *Plaintiff's Verified Petition and Application for Declaratory Relief, Interim Injunctive Relief, and Permanent Injunctive Relief*, and having read that pleading, I hereby more specifically affirm that the facts stated in this affidavit are within my personal knowledge and are true and correct:

I am a resident of the City of Denton, Denton County, Texas, and I have brought this case in my individual capacity as an elector in the City of Denton, Texas. I am a resident and registered voter of former District 4, as defined and adopted by the City of Denton, Texas on September 4, 2011 (Ordinance No. 2011-169), and I am also a resident and registered voter of current District 3, as defined and adopted by the City of Denton, Texas on December 14, 2021 (Ordinance No. 21-2808). The last three numbers of my Texas driver's license number are "607," and the last three numbers of Plaintiff Caruthers' social security number are "309."

In the regularly scheduled election called by the City of Denton, Texas, for May 1, 2021, I voted for Plaintiff Alison Maguire to be elected as Denton City Councilmember in Place 4. Place 4 is a "single-member" electoral district in the City of Denton, Texas, and it is commonly known as District 4. District 4 was configured to provide representation on the Denton City

Council for electors residing in District 4, as that District was defined and adopted in the Defendant City of Denton on September 4, 2011. On the basis of the results of the election on May 1, 2021, Plaintiff Maguire was elected by a majority of the qualified electors who cast votes in District 4, as that District existed on May 1, 2021; and at that time, Plaintiff Maguire was elected to serve a two-year term as my Denton City Councilmember representing me in District 4.

On or about May 12, 2022, Donald Duff submitted a recall petition to the Denton City Secretary wherein he, Mr. Duff, sought to require an election in the City of Denton for the purpose of recalling my Denton City Councilmember, Plaintiff Maguire. On May 1, 2021, Mr. Duff resided in an area of the City of Denton known as “Robson Ranch,” and at the time I voted for Plaintiff Maguire at the election on May 1, 2021, neither Mr. Duff, nor any other residents of Robson Ranch, were legally eligible to cast a vote for Plaintiff Maguire (or for any of her opponents running in that election) to be Denton City Councilmember for District 4. On May 1, 2021, Mr. Duff and all other residents of Robson Ranch were only eligible to vote in the election for a Denton City Councilmember to represent District 3, and at the at-large election for Mayor of the City of Denton, and at the at-large elections for Denton City Councilmembers to represent District 5 and District 6.

Under the Denton City Charter, the qualified voters of Robson Ranch were ineligible to sign the recall petition that has been submitted by Donald Duff for the purpose of requiring an election that would consider Plaintiff Maguire’s recall from office on November 8, 2022. The qualified voters of Robson Ranch have never elected Plaintiff Maguire, nor have they ever had an opportunity to elect Plaintiff Maguire, or to vote for any of her opponents, as their representative on the Denton City Council from District 4. Instead, the qualified voters of

Robson Ranch, on May 1, 2021, elected Councilmember Jesse Davis as their representative on the Denton City Council, from single-member District 3. Councilmember Davis will remain the representative of his Robson Ranch “constituents,” on the Denton City Council, from former District 3, until his term of office expires on May 6, 2023.

The electors in District 4, as it was defined and adopted by the Denton City Council on September 4, 2011, and as it existed on May 1, 2021, and as it would be configured today for purposes of collecting signatures necessary to schedule a recall election, share few if any common political interests with the electors who reside in the Robson Ranch community. The geographical “hub” of Robson Ranch is located approximately 8 miles from the perimeter of District 4 as it was defined and adopted by the Denton City Council on September 4, 2011; and when Robson Ranch was annexed by the City of Denton in 2007, Robson Ranch was marketed as an “Adult Retirement Community” that was intended to cater primarily to elderly, more conservative voters. The marketing plan utilized by Robson Ranch since its inception proved successful, and on May 1, 2021, the Robson Ranch community was comprised of so-called “Active Adult” residents who are primarily elderly, more conservative voters.

In contrast to the Robson Ranch community, the electors in District 4, as it was defined and adopted by the Denton City Council on September 4, 2011, and as it existed on May 1, 2021, and as it would be configured today for purposes of a recall election, comprise mostly middle-aged electors who belong to and are responsible for families that include younger, school-aged children. In comparison to electors in the Robson Ranch community, electors in District 4, as it was defined and adopted by the Denton City Council on September 4, 2011, comprise a constituency that is less conservative, and which shares political interests that are distinct from,



and are often in conflict with, the political interests held by the vast majority of the electors in the Robson Ranch community.

In the event Plaintiff Maguire is removed from office based on the results of the recall election scheduled for November 8, 2022, I will be deprived of equal representation on the Denton City Council, in relation to all other Denton city voters, for approximately 6 months, from November 8, 2022 until after May 6, 2023. Under applicable provisions of the Denton City Charter and the Texas Elections Code, no election to fill the vacancy in District 4 created by the removal of Plaintiff Maguire could occur until the next uniform election date on May 6, 2023.

Mr. Duff has publicly stated that he obtained “745 or so signatures” favoring the recall of Plaintiff Maguire, which he submitted to the Denton City Secretary with his recall petition. In order for there to be a recall election to potentially remove Plaintiff Maguire from her current office as the duly elected City Councilmember for District 4, Mr. Duff was required to obtain the signatures of 673 persons in support of the recall petition from among the qualified voters residing in District 4 on May 1, 2021.

It is commonly known by virtually all residents of the City of Denton that Mr. Duff obtained most if not all of the signatures he obtained in support of the recall petition from persons who were residents of Robson Ranch, which was geographically encompassed by District 3 on May 1, 2021; and I have personal knowledge of this fact as well. It is therefore apparent that the number of signatures obtained by Mr. Duff in support of the recall petition and the removal of Plaintiff Maguire from office falls far short of the number of signers that are necessary to require a recall election on November 8, 2022.

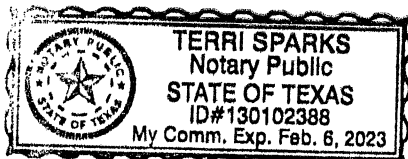
An interpretation of the Denton City Charter that would consider the political preferences of Robson Ranch voters, for the purpose of potentially removing Plaintiff Maguire from office at

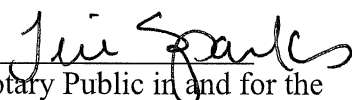
a recall election, would be mistaken and illegal. Such an interpretation of the Denton City Charter would clearly violate my right to be represented by Plaintiff Maguire in District 4. I acquired a vested right to be represented in District 4 by Plaintiff Maguire as the result of the election held on May 1, 2021. That right cannot legally be taken from me by Mr. Duff, or by the residents of Robson Ranch, in the absence of a valid recall petition.

Furthermore, under the mistaken interpretation of the Denton City Charter adopted by the Denton City Secretary, Robson Ranch voters would not only retain at full strength their preferred representation in District 3 (currently held by Councilmember Davis), but they would also simultaneously (and illegally) enhance the strength of their representation on the Denton City Council by effectively muting both my voice as an elector in District 4, and the numerous voices of my neighbors in District 4, who independently elected their own preferred candidate in District 4, Plaintiff Maguire, on May 1, 2021. For these and other reasons I believe I am entitled to the judicial relief I am seeking in this case.

  
Keri Caruthers

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, on this 8<sup>th</sup> day of June, 2022.



  
Notary Public in and for the  
State of Texas

# PLAINTIFFS' EXHIBIT C

THE STATE OF TEXAS

COUNTY OF DENTON

## AFFIDAVIT

On this day personally appeared before me, the undersigned authority, TRACY RUNNELS, who, having duly been sworn, did depose and state upon her oath as follows:

My name is Tracy Runnels. I am over the age of 18 years and I am competent to make this Affidavit. I am one of the Plaintiffs in this case, captioned *Maguire v. Rios, et al.* I have read the foregoing pleading entitled *Plaintiff's Verified Petition and Application for Declaratory Relief, Interim Injunctive Relief, and Permanent Injunctive Relief*, and having read that pleading, I hereby more specifically affirm that the facts stated in this affidavit are within my personal knowledge and are true and correct:

I am a resident of the City of Denton, Denton County, Texas, and I have brought this case in my individual capacity as an elector in the City of Denton, Texas. I am a resident and registered voter of former District 4, as defined and adopted by the City of Denton, Texas on September 4, 2011 (Ordinance No. 2011-169), and I am also a resident and registered voter of current District 4, as defined and adopted by the City of Denton, Texas on December 14, 2021 (Ordinance No. 21-2808). The last three numbers of my Texas driver's license number are "181," and the last three numbers of Plaintiff Runnels' social security number are "457."

In the regularly scheduled election called by the City of Denton, Texas, for May 1, 2021, I voted for Plaintiff Alison Maguire to be elected as Denton City Councilmember in Place 4. Place 4 is a "single-member" electoral district in the City of Denton, Texas, and it is commonly known as District 4. District 4 was configured to provide representation on the Denton City

Council for electors residing in District 4, as that District was defined and adopted in the Defendant City of Denton on September 4, 2011. On the basis of the results of the election on May 1, 2021, Plaintiff Maguire was elected by a majority of the qualified electors who cast votes in District 4, as that District existed on May 1, 2021; and at that time, Plaintiff Maguire was elected to serve a two-year term as my Denton City Councilmember representing me in District 4.

On or about May 12, 2022, Donald Duff submitted a recall petition to the Denton City Secretary wherein he, Mr. Duff, sought to require an election in the City of Denton for the purpose of recalling my Denton City Councilmember, Plaintiff Maguire. On May 1, 2021, Mr. Duff resided in an area of the City of Denton known as “Robson Ranch,” and at the time I voted for Plaintiff Maguire at the election on May 1, 2021, neither Mr. Duff, nor any other residents of Robson Ranch, were legally eligible to cast a vote for Plaintiff Maguire (or for any of her opponents running in that election) to be Denton City Councilmember for District 4. On May 1, 2021, Mr. Duff and all other residents of Robson Ranch were only eligible to vote in the election for a Denton City Councilmember to represent District 3, and at the at-large election for Mayor of the City of Denton, and at the at-large elections for Denton City Councilmembers to represent District 5 and District 6.

Under the Denton City Charter, the qualified voters of Robson Ranch were ineligible to sign the recall petition that has been submitted by Donald Duff for the purpose of requiring an election that would consider Plaintiff Maguire’s recall from office on November 8, 2022. The qualified voters of Robson Ranch have never elected Plaintiff Maguire, nor have they ever had an opportunity to elect Plaintiff Maguire, or to vote for any of her opponents, as their representative on the Denton City Council from District 4. Instead, the qualified voters of

Robson Ranch, on May 1, 2021, elected Councilmember Jesse Davis as their representative on the Denton City Council, from single-member District 3. Councilmember Davis will remain the representative of his Robson Ranch “constituents,” on the Denton City Council, from former District 3, until his term of office expires on May 6, 2023.

The electors in District 4, as it was defined and adopted by the Denton City Council on September 4, 2011, and as it existed on May 1, 2021, and as it would be configured today for purposes of collecting signatures necessary to schedule a recall election, share few if any common political interests with the electors who reside in the Robson Ranch community. The geographical “hub” of Robson Ranch is located approximately 8 miles from the perimeter of District 4 as it was defined and adopted by the Denton City Council on September 4, 2011; and when Robson Ranch was annexed by the City of Denton in 2007, Robson Ranch was marketed as an “Adult Retirement Community” that was intended to cater primarily to elderly, more conservative voters. The marketing plan utilized by Robson Ranch since its inception proved successful, and on May 1, 2021, the Robson Ranch community was comprised of so-called “Active Adult” residents who are primarily elderly, more conservative voters.

In contrast to the Robson Ranch community, the electors in District 4, as it was defined and adopted by the Denton City Council on September 4, 2011, and as it existed on May 1, 2021, and as it would be configured today for purposes of a recall election, comprise mostly middle-aged electors who belong to and are responsible for families that include younger, school-aged children. In comparison to electors in the Robson Ranch community, electors in District 4, as it was defined and adopted by the Denton City Council on September 4, 2011, comprise a constituency that is less conservative, and which shares political interests that are distinct from,

and are often in conflict with, the political interests held by the vast majority of the electors in the Robson Ranch community.

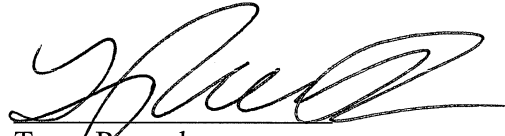
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Mr. Duff has publicly stated that he obtained “745 or so signatures” favoring the recall of Plaintiff Maguire, which he submitted to the Denton City Secretary with his recall petition. In order for there to be a recall election to potentially remove Plaintiff Maguire from her current office as the duly elected City Councilmember for District 4, Mr. Duff was required to obtain the signatures of 673 persons in support of the recall petition from among the qualified voters residing in District 4 on May 1, 2021.

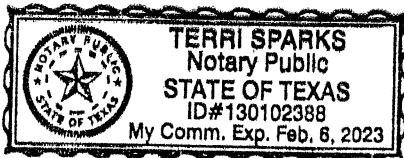
An interpretation of the Denton City Charter that would consider the political preferences of Robson Ranch voters, for the purpose of potentially removing Plaintiff Maguire from office at a recall election, would be mistaken and illegal. Such an interpretation of the Denton City Charter would clearly violate my right to be represented by Plaintiff Maguire in District 4. I acquired a vested right to be represented in District 4 by Plaintiff Maguire as the result of the election held on May 1, 2021. That right cannot legally be taken from me by Mr. Duff, or by the residents of Robson Ranch, in the absence of a valid recall petition.

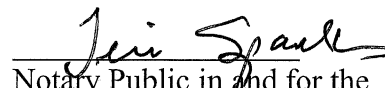
Furthermore, under the mistaken interpretation of the Denton City Charter adopted by the Denton City Secretary, Robson Ranch voters would not only retain at full strength their preferred

representation in District 3 (currently held by Councilmember Davis), but they would also simultaneously (and illegally) enhance the strength of their representation on the Denton City Council by effectively muting both my voice as an elector in District 4, and the numerous voices of my neighbors in District 4, who independently elected their own preferred candidate in District 4, Plaintiff Maguire, on May 1, 2021. For these and other reasons I believe I am entitled to the judicial relief I am seeking in this case.

  
Tracy Runnels

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, on this 8<sup>th</sup> day of June, 2022.



  
Notary Public in and for the  
State of Texas

# PLAINTIFFS' EXHIBIT D

THE STATE OF TEXAS

COUNTY OF DENTON

## AFFIDAVIT

On this day personally appeared before me, the undersigned authority, EMILY MEISNER, who, having duly been sworn, did depose and state upon her oath as follows:

My name is Emily Meisner. I am over the age of 18 years and I am competent to make this Affidavit. I am one of the Plaintiffs in this case, captioned *Maguire v. Rios, et al.* I have read the foregoing pleading entitled *Plaintiff's Verified Petition and Application for Declaratory Relief, Interim Injunctive Relief, and Permanent Injunctive Relief*, and having read that pleading, I hereby more specifically affirm that the facts stated in this affidavit are within my personal knowledge and are true and correct:

I am a resident of the City of Denton, Denton County, Texas, and I have brought this case in my individual capacity as an elector in the City of Denton, Texas. I am a resident and registered voter of former District 4, as defined and adopted by the City of Denton, Texas on September 4, 2011 (Ordinance No. 2011-169), and I am also a resident and registered voter of current District 4, as defined and adopted by the City of Denton, Texas on December 14, 2021 (Ordinance No. 21-2808). The last three numbers of my Texas driver's license number are "666," and the last three numbers of Plaintiff Caruthers' social security number are "192."

In the regularly scheduled election called by the City of Denton, Texas, for May 1, 2021, I voted for Plaintiff Alison Maguire to be elected as Denton City Councilmember in Place 4. Place 4 is a "single-member" electoral district in the City of Denton, Texas, and it is commonly known as District 4. District 4 was configured to provide representation on the Denton City



Council for electors residing in District 4, as that District was defined and adopted in the Defendant City of Denton on September 4, 2011. On the basis of the results of the election on May 1, 2021, Plaintiff Maguire was elected by a majority of the qualified electors who cast votes in District 4, as that District existed on May 1, 2021; and at that time, Plaintiff Maguire was elected to serve a two-year term as my Denton City Councilmember representing me in District 4.

On or about May 12, 2022, Donald Duff submitted a recall petition to the Denton City Secretary wherein he, Mr. Duff, sought to require an election in the City of Denton for the purpose of recalling my Denton City Councilmember, Plaintiff Maguire. On May 1, 2021, Mr. Duff resided in an area of the City of Denton known as “Robson Ranch,” and at the time I voted for Plaintiff Maguire at the election on May 1, 2021, neither Mr. Duff, nor any other residents of Robson Ranch, were legally eligible to cast a vote for Plaintiff Maguire (or for any of her opponents running in that election) to be Denton City Councilmember for District 4. On May 1, 2021, Mr. Duff and all other residents of Robson Ranch were only eligible to vote in the election for a Denton City Councilmember to represent District 3, and at the at-large election for Mayor of the City of Denton, and at the at-large elections for Denton City Councilmembers to represent District 5 and District 6.

Under the Denton City Charter, the qualified voters of Robson Ranch were ineligible to sign the recall petition that has been submitted by Donald Duff for the purpose of requiring an election that would consider Plaintiff Maguire’s recall from office on November 8, 2022. The qualified voters of Robson Ranch have never elected Plaintiff Maguire, nor have they ever had an opportunity to elect Plaintiff Maguire, or to vote for any of her opponents, as their representative on the Denton City Council from District 4. Instead, the qualified voters of

Robson Ranch, on May 1, 2021, elected Councilmember Jesse Davis as their representative on the Denton City Council, from single-member District 3. Councilmember Davis will remain the representative of his Robson Ranch “constituents,” on the Denton City Council, from former District 3, until his term of office expires on May 6, 2023.

The electors in District 4, as it was defined and adopted by the Denton City Council on September 4, 2011, and as it existed on May 1, 2021, and as it would be configured today for purposes of collecting signatures necessary to schedule a recall election, share few if any common political interests with the electors who reside in the Robson Ranch community. The geographical “hub” of Robson Ranch is located approximately 8 miles from the perimeter of District 4 as it was defined and adopted by the Denton City Council on September 4, 2011; and when Robson Ranch was annexed by the City of Denton in 2007, Robson Ranch was marketed as an “Adult Retirement Community” that was intended to cater primarily to elderly, more conservative voters. The marketing plan utilized by Robson Ranch since its inception proved successful, and on May 1, 2021, the Robson Ranch community was comprised of so-called “Active Adult” residents who are primarily elderly, more conservative voters.

In contrast to the Robson Ranch community, the electors in District 4, as it was defined and adopted by the Denton City Council on September 4, 2011, and as it existed on May 1, 2021, and as it would be configured today for purposes of a recall election, comprise mostly middle-aged electors who belong to and are responsible for families that include younger, school-aged children. In comparison to electors in the Robson Ranch community, electors in District 4, as it was defined and adopted by the Denton City Council on September 4, 2011, comprise a constituency that is less conservative, and which shares political interests that are distinct from,

and are often in conflict with, the political interests held by the vast majority of the electors in the Robson Ranch community.

In the event Plaintiff Maguire is removed from office based on the results of the recall election scheduled for November 8, 2022, I will be deprived of equal representation on the Denton City Council, in relation to all other Denton city voters, for approximately 6 months, from November 8, 2022 until after May 6, 2023. Under applicable provisions of the Denton City Charter and the Texas Elections Code, no election to fill the vacancy in District 4 created by the removal of Plaintiff Maguire could occur until the next uniform election date on May 6, 2023.

Mr. Duff has publicly stated that he obtained “745 or so signatures” favoring the recall of Plaintiff Maguire, which he submitted to the Denton City Secretary with his recall petition. In order for there to be a recall election to potentially remove Plaintiff Maguire from her current office as the duly elected City Councilmember for District 4, Mr. Duff was required to obtain the signatures of 673 persons in support of the recall petition from among the qualified voters residing in District 4 on May 1, 2021.

It is commonly known by virtually all residents of the City of Denton that Mr. Duff obtained most if not all of the signatures he obtained in support of the recall petition from persons who were residents of Robson Ranch, which was geographically encompassed by District 3 on May 1, 2021; and I have personal knowledge of this fact as well. It is therefore apparent that the number of signatures obtained by Mr. Duff in support of the recall petition and the removal of Plaintiff Maguire from office falls far short of the number of signers that are necessary to require a recall election on November 8, 2022.

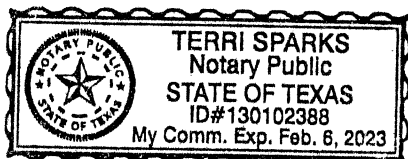
An interpretation of the Denton City Charter that would consider the political preferences of Robson Ranch voters, for the purpose of potentially removing Plaintiff Maguire from office at

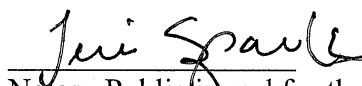
a recall election, would be mistaken and illegal. Such an interpretation of the Denton City Charter would clearly violate my right to be represented by Plaintiff Maguire in District 4. I acquired a vested right to be represented in District 4 by Plaintiff Maguire as the result of the election held on May 1, 2021. That right cannot legally be taken from me by Mr. Duff, or by the residents of Robson Ranch, in the absence of a valid recall petition.

Furthermore, under the mistaken interpretation of the Denton City Charter adopted by the Denton City Secretary, Robson Ranch voters would not only retain at full strength their preferred representation in District 3 (currently held by Councilmember Davis), but they would also simultaneously (and illegally) enhance the strength of their representation on the Denton City Council by effectively muting both my voice as an elector in District 4, and the numerous voices of my neighbors in District 4, who independently elected their own preferred candidate in District 4, Plaintiff Maguire, on May 1, 2021. For these and other reasons I believe I am entitled to the judicial relief I am seeking in this case.

  
Emily Meisner

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, on this 8<sup>th</sup> day of June, 2022.



  
Notary Public in and for the  
State of Texas

# PLAINTIFFS' EXHIBIT "E"

DENTON CITY GENERAL AND SPECIAL ELECTION, MAY 7, 2022						
CITY COUNCIL DISTRICT 4 (TOTAL VOTES CAST)						
MELTZER v. HUDSPETH (MAYOR, PLACE 7) (AT-LARGE)						
	<u>MELTZER</u>	<u>HUSPETH</u>				
<u>PRECINCT</u>						
4161	169	232				
4162	60	80				
4164	347	439				
4179	288	522				
4180	127	250				
4181	282	430				
4182	0	0				
4183	0	0				
4184	224	470				
4185	165	643				
4186	<u>242</u>	<u>1014</u>				
	1904	4080				
<u>TOTAL VOTES CAST</u>			5984			
	5984	x .25 =	<b>1496</b>	(Necessary Recall Petition Signers)		
McGEE v. CLANTON		COUNCILMEMBER, PLACE 5) (AT-LARGE)				
	<u>McGEE</u>	<u>CLANTON</u>				
<u>PRECINCT</u>						
4161	181	194				
4162	64	70				
4164	358	374				
4179	318	424				
4180	146	197				
4181	338	325				
4182	0	0				
4183	0	0				
4184	257	355				
4185	183	556				
4186	<u>282</u>	<u>882</u>				
	2127	3377				
<u>TOTAL VOTES CAST</u>			5504			
	5504	x .25 =	<b>1376</b>	(Necessary Recall Petition Signers)		

<b>BRIGGLE v. WATTS</b>		<b>COUNCILMEMBER, PLACE 6) (AT-LARGE)</b>				
	<b><u>BRIGGLE</u></b>	<b><u>WATTS</u></b>				
<b><u>PRECINCT</u></b>						
4161	174	218				
4162	65	72				
4164	324	440				
4179	264	531				
4180	120	242				
4181	297	386				
4182	0	0				
4183	0	0				
4184	216	425				
4185	159	609				
4186	243	961				
	1862	3884				
<b><u>TOTAL VOTES CAST</u></b>			5746			
	5746	x .25 =	<b>1436.5</b>	(Necessary Recall Petition Signers)		