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IN RE: ROBERT MCINTOSH

Petitioner

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IN THE DISTRICT COURT

_____ JUDICIAL DISTRICT

OF BRAZOS COUNTY, TEXAS

**PETITIONER ROBERT MCINTOSH’S VERIFIED PETITION REQUESTING
DEPOSITIONS PURSUANT TO TEX. R. CIV. P. 202**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Robert McIntosh (hereinafter, “Petitioner”) and requests authority to take depositions allowed by Texas Rules of Civil Procedure 202. In support of same, Petitioner would respectfully show the Court as follows:

I.
PARTIES

Petitioner is an individual who currently resides in Brazos County, Texas. Petitioner is a student at Texas A&M University in College Station, Texas.

In order to investigate potential claims by Petitioner, he seeks to depose three (3) individuals: Amy Loyd, Rachel Keathley, and Aaron Mitchell. Amy Loyd is an individual who resides in Brazos County, Texas. She may be served at her residence in Brazos County, Texas (phone number XXX-XXX-X308), or wherever she may be found. Rachel Keathley is an individual who resides in Brazos County, Texas. She may be served at her residence in Brazos County, Texas (phone number XXX-XXX-X876), or wherever she may be found. Aaron Mitchell is an individual who resides in Brazos County, Texas. He may be served at his residence in Brazos County, Texas (phone number XXX-XXX-X209), or wherever he may be found.

II. **LEGAL AUTHORITY**

Petitioner brings this Petition pursuant to Texas Rule of Civil Procedure 202.1(b). That rule states, in pertinent part, “a person may petition the court for an order authorizing the taking of a deposition on oral examination... to investigate a potential claim...” TEX. R. CIV. P. 202.1(b). The court must order a deposition to be taken if, but only if, it finds that the likely benefit of allowing the petitioner to take the requested deposition to investigate a potential claim outweighs the burden or expense of the procedure. Tex. R. Civ. P. 202.4(a)(2).

A petition filed under Texas Rules of Civil Procedure 202 must be verified. TEX. R. CIV. P. 202.2(a). The petition must be filed in a proper court of any county where the witness resides, if no suit is yet anticipated. TEX. R. CIV. P. 202.2(b)(2). The petition must be in the name of the petitioner. TEX. R. CIV. P. 202.2(c). It must also state that the petitioner seeks to investigate a potential claim by or against petitioner. TEX. R. CIV. P. 202.2(d)(2). The petition must state the names, addresses, and telephone numbers of the persons to be deposed, the substance of the testimony that the petitioner expects to elicit from each, and the petitioner’s reasons for desiring to obtain the testimony of each. TEX. R. CIV. P. 202.2(g). Finally, the petition must request an order authorizing the petitioner to take the depositions of the persons named in the petition. TEX. R. CIV. P. 202.2(h). Petitioner has met all these requirements.

III. **FACTS**

Petitioner was a candidate for the office of Student Body President in Texas A&M University’s 2017-2018 Student Government Association (“SGA”) election (College Station campus). Voting for the position began on February 23, 2017, and ended on February 24, 2017. Petitioner garnered 4977 votes in the election—763 more than his closest opponent.

Despite his election win, Petitioner was notified on the eve of the announcement declaring him the victor that he had been disqualified. His disqualification was ostensibly for minor alleged violations of the SGA's campaign finance by-laws. Petitioner desires to investigate whether the true reasons for such disqualification and establish that those reasons are based on the fact that he is a heterosexual, white, Christian male.

This disqualification of Petitioner from the SGA election is a concrete injury not contingent on hypothetical facts or upon events that have not yet come to pass.

IV.
COMPLIANCE WITH REQUIREMENTS OF TEX. R. CIV. P. 202.2

Attached hereto is the Verification of Robert McIntosh. TEX. R. CIV. P. 202.2(a).

Each of the proposed deponent witnesses resides in Brazos County, and the Brazos County District Court is a proper court in which to bring the instant Petition. TEX. R. CIV. P. 202.2(b)(2).

This Petition is brought in the name of Petitioner, Robert McIntosh. TEX. R. CIV. P. 202.2(c).

Petitioner seeks to investigate a potential claim by Petitioner. TEX. R. CIV. P. 202.2(d)(2).

The name of the persons to be deposed are: Amy Loyd, Rachel Keathley, and Aaron Mitchell. TEX. R. CIV. P. 202.2(g). The substance of the testimony that Petitioner expects to elicit from Ms. Loyd is with regard to statements she has made that she did not, and does not, want Petitioner to be elected as Student Body President of Texas A&M University. *Id.* The substance of the testimony that Petitioner expects to elicit from Ms. Keathley is with regard to her actions leading up to, and during the time, when Petitioner was disqualified from the Texas A&M SGA's Student Body President election and her motivation and involvement with the disqualification of Petitioner. *Id.* The substance of the testimony that Petitioner expects to elicit from Mr. Mitchell is with regard to his first-hand knowledge of statements made by Texas A&M University faculty and

staff associated with the SGA that such faculty and staff members specifically did not want Petitioner to be elected as Student Body President. *Id.*

Petitioner desires the testimony of the potential deponent witnesses in order to determine whether, based on the facts presented herein, an exercise of governmental authority has substantially burdened his free exercise of religion under the Texas Religious Freedom and Restoration Act. TEX. CIV. PRAC. & REM. CODE § 110.001, *et seq.* Petitioner also seeks to investigate whether government has substantially burdened his free exercise of religion under the Religious Freedom Restoration Act of 1993. 42 U.S.C. § 2000bb, *et seq.* More specifically, Petitioner wishes to investigate whether the conduct of the potential witness deponents violated Petitioner's religious freedoms as codified in either Texas and/or Federal Statutes.

Furthermore, Petitioner desires the testimony of the potential deponent witnesses in order to determine whether he has actionable claims for violation of his right to the due course of the law of the land under the Texas Constitution. TX.CONST. art I, § 19. Furthermore, Petitioner wishes to investigate whether he has actionable claims for violation of his right to due process of law under the United States Constitution. US CONST, am. XIV. More specifically, Petitioner wishes to investigate whether his disqualification from the SGA election was a violation of his due process rights under either the Texas Constitution or the United States Constitution.

Finally, Petitioner seeks to investigate whether the actions as described herein present him with viable claims for deprivation of his civil rights. *See* 42 U.S.C. § 1983. More specifically, Petitioner wishes to investigate whether the actions of the potential witness deponents and/or his disqualification from the SGA election by these deponents, or others, deprived Petitioner of his civil rights.

Petitioner requests this Court enter an Order authorizing Petitioner to take the depositions of Ms. Loyd, Ms. Keathley, and Mr. Mitchell. TEX. R. CIV. P. 202.2(h).

V.
ARGUMENT AND AUTHORITIES

This Court should find under Texas Rule of Civil Procedure 202.4(a)(2) that the likely benefit of allowing Petitioner to take the requested depositions to investigate his potential claims outweighs the burden or expense of the procedure.

In the matter at bar, the benefits to Petitioner in allowing him to take the depositions requested herein are substantial. In taking these depositions, he will be allowed to investigate potential claims without the necessity of filing a lawsuit. At this stage of Petitioner's understanding of the facts surrounding his denial of process, and indeed his rightful assumption of the office of Student Body President at Texas A&M University, such a lawsuit would be filed in order to investigate whether Petitioner has actionable claims. In allowing investigation of his potential claims, the Court will allow Petitioner (and potential defendants) to potentially save the large amount of time and expense commitment of a full lawsuit if Petitioner finds, after an investigation, that he does not have actionable claims.

Furthermore, conducting an investigation into his potential claims prior to potentially bringing suit with regard to such claims will help insulate Petitioner against sanctions under Chapter 10 of the Texas Civil Practice and Remedies Code and Texas Rule of Civil Procedure 13. If Petitioner was forced to file a lawsuit with regard to the facts at issue herein without the ability to more fully investigate whether he has proper claims, there would be no way to avoid the potential for sanctions under the provisions of Chapter 10 or Rule 13. It is of great benefit to Petitioner to allow him to investigate his potential claims before he is to face such potential sanctions.

Therefore, there is a substantial benefit to the Petitioner in allowing him to investigate his potential claims based upon the facts stated herein under Texas Rule of Civil Procedure 202.1(b).

On the other hand, the burden on each of the proposed deponent witnesses to sit for one limited deposition each is miniscule—especially when compared to the burden on each of them should a lawsuit be filed in order to allow Petitioner to investigate his potential claims. If such a lawsuit was filed, each of the deponents would not only be subject to a single deposition each, but instead they would potentially be subject to third-party discovery under Texas Rule of Civil Procedure 205, or even be possibly be named as defendants in such lawsuit. The time and expense of being involved in such a lawsuit is substantially more burdensome than merely sitting for one, limited deposition each. Petitioner is willing to work with the proposed deponent witnesses to schedule the proposed depositions around their work and/or school schedules in order to eliminate any burden on them to the furthest extent possible.

Furthermore, the burden on the Court to allow the depositions requested herein is small when compared to the burden on the Court of a full-blown lawsuit being filed with regard to the facts revealed herein. Judicial resources will be most economically used by the Court by ordering the three depositions requested herein. Thus, rather than forcing Petitioner to use the Court's limited resources on a full-blown lawsuit regarding facts which may never lead to actionable claims, it is in the Court's best interest to grant these requests. From a judicial economy perspective, the Court should allow Petitioner to investigate his potential claims by allowing three limited depositions in order to determine the extent and number of his actionable claims.

It would therefore be a minor burden on, and of relatively little expense for, the proposed deponent witnesses and the Court if this Court were to order the Rule 202 depositions requested herein.

VI.
CONCLUSION

Based on the foregoing facts and law, Petitioner requests that this Court find that the requested depositions' benefits outweigh any burden or expense of the procedure, and enter an Order authorizing the Rule 202 depositions of Amy Loyd, Rachel Keathley, and Aaron Mitchell as requested herein.

VII.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioner Robert McIntosh respectfully requests the Court to set this Petition for hearing and, after such hearing, find that the likely benefit of allowing Petitioner to take the requested depositions to investigate a potential claim outweighs the burden or expense of the procedure, and enter an Order authorizing Petitioner to take the requested depositions at a time and place to be specified by Petitioner in a deposition notice as required by the Texas Rules of Civil Procedure.

Respectfully submitted,

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ATTORNEYS FOR ROBERT MCINTOSH

VERIFICATION

STATE OF TEXAS §
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COUNTY OF BRAZOS §

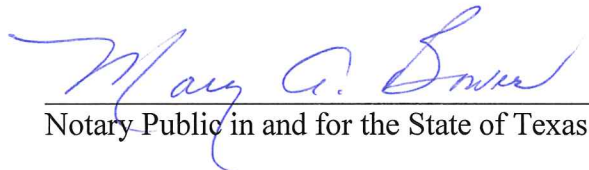
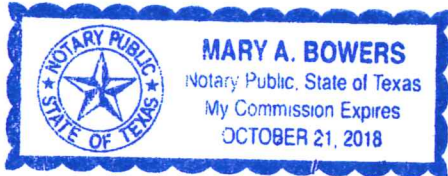
Before me, the undersigned notary, on this day personally appeared Robert McIntosh, the affiant, a person whose identity is known to me. After I administered an oath to affiant, affiant testified:

“My name is Robert McIntosh. I am capable of making this verification. I read the foregoing Verified Petition Requesting Deposition Pursuant to Tex. R. Civ. P. 202, and the facts stated therein are within my personal knowledge and are true and correct.”



Robert McIntosh

SWORN TO AND SUBSCRIBED before me on this 23rd day of March, 2017.



Notary Public in and for the State of Texas