

NO. J-1-GN-06-002541

CAROLE KEETON "GRANDMA"
STRAYHORN

VS.

ROGER WILLIAMS, SECRETARY OF
STATE OF THE STATE OF TEXAS

§
§
§
§
§
§
§

IN THE DISTRICT COURT

OF TRAVIS COUNTY, TEXAS

353 JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION AND
APPLICATION FOR INJUNCTIVE RELIEF**

FILED

06 JUL 12 AM 8:07

Amelia Rodriguez

DISTRICT CLERK
TRAVIS COUNTY, TEXAS

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Carole Keeton "Grandma" Strayhorn brings this action for declaratory and injunctive relief against Defendant Roger Williams, Secretary of State of the State of Texas, and shows the Court:

1. Plaintiff intends that discovery in this case be performed under a Level 2 discovery control plan (T.R.C.P. 190.3).

2. a. Plaintiff is a resident of Travis County, Texas.

b. Defendant Roger Williams is a resident of Travis County, Texas, and is sued herein in his capacity as Secretary of State of the State of Texas. He may be served with process at his office at Suite 1E.8 of the Capitol of the State of Texas at 1100 Congress Avenue, Austin, Travis County, Texas.

3. Plaintiff is a person who is being harmed or is in danger of being harmed by a violation or threatened violation of the Texas Election Code, and as a result thereof she is entitled to injunctive relief to prevent the violation from continuing or occurring under Election Code § 273.081.

4. Plaintiff is a qualified independent candidate for the office of Governor of the State of Texas. She made application for a place on the General Election Ballot in accordance with Election Code § 142.004 on the 9th day of May, 2006. A true and correct copy of such application, which was filed with her petition, is attached hereto as Exhibit A. Defendant has determined that Plaintiff's petition satisfied the minimum signature requirement of Election Code § 142.007, and Plaintiff's name will therefore be on the ballot for the November, 2006, general election for the office of Governor.

5. As indicated in Exhibit A, Plaintiff's application specifically requested that her name appear on the ballot as Carole Keeton "Grandma" Strayhorn. Election Code § 52.031(c) specifically authorizes the inclusion of a candidate's nickname on the ballot if the candidate by affidavit indicates that the nickname complies with law. Plaintiff made this verification in her application. Election Code § 141.032 requires that Defendant review the application to determine whether it complies with the requirements as to form, content, and procedure that it must satisfy for the applicant-candidate's name to be placed on the ballot. Such review must be completed not later than the fifth day after the application is received. Defendant failed to inform Plaintiff of any defect in her application within that period. Since her application was in all respects accepted, Plaintiff proceeded with her preparation for the campaign assuming that her name would appear on the ballot as requested.

6. On June 22, 2006, Plaintiff was certified for a place on the ballot as an independent candidate for Governor. On June 23, 2006, forty-five days after she filed her application with Defendant, Plaintiff received a letter from Defendant, a copy of which is attached hereto as Exhibit B. By such letter Defendant suggested that the nickname "Grandma"

constituted a “slogan,” and requested information that would verify that the use of “Grandma” on the ballot would not constitute a slogan. Since Plaintiff’s nickname is plainly not a “slogan,” she made a response, a copy of which is attached as Exhibit C.

7. On July 10, 2006, fourteen days after Plaintiff was certified for a place on the ballot, Plaintiff received from Defendant the letter, a copy of which is attached as Exhibit D. By such letter Defendant belatedly advised Plaintiff that he would not permit the use of Plaintiff’s nickname on the November ballot.

8. Plaintiff’s nickname, “Grandma,” is not a “slogan,” grammatically or otherwise. The American Heritage Dictionary defines a slogan as “a phrase expressing the aims or nature of an enterprise, organization or candidate.” The word “Grandma” is not a “phrase,”¹ nor does it express the aims or nature of Plaintiff’s candidacy. It is simply Plaintiff’s nickname.

9. Election Code § 52.031 permits Plaintiff to identify herself on the ballot by her nickname. Defendant’s denial of her right to do so may result in harm to Plaintiff in that it may deny voters the ability to recognize or identify Plaintiff on the ballot. Under Election Code § 273.081 Plaintiff is entitled to injunctive relief to prevent Defendant’s announced violation of the Code he is sworn to enforce and uphold.

Wherefore, Plaintiff requests that this Court enter its order directing Defendant to appear and show cause why he should not be ordered and directed by temporary injunction to place Plaintiff’s name on the November, 2006, general election ballot in the form requested in her application; and that on final hearing hereof that such injunctive relief be made permanent.

¹ A “phrase” is a “sequence of words.” See American Heritage Dictionary.

Plaintiff further requests that she recover her costs of court, and that she be granted such other and further relief to which she may be entitled under the law.

Respectfully submitted,

MINTON, BURTON, FOSTER & COLLINS

A Professional Corporation

1100 Guadalupe

Austin, Texas 78701

(512) 476-4873

(512) 476-1315 (Fax)

By: 

Roy Q. Minton

State Bar No. 14196000

John L. Foster

State Bar No. 07289000

AFFIDAVIT OF CAROLE KEETON "GRANDMA" STRAYHORN

STATE OF TEXAS §
 §
 §
COUNTY OF TRAVIS §

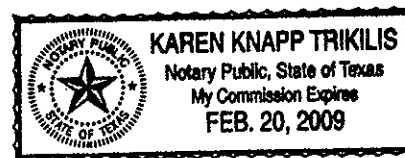
Before me, the undersigned authority, on this day personally appeared Carole Keeton "Grandma" Strayhorn who, being by me duly sworn, stated and deposed as follows:

"My name is Carole Keeton "Grandma" Strayhorn, and I am the Plaintiff in the above-styled petition and application for injunctive relief. I am over the age of eighteen, am of sound mind, have never been convicted of a felony or misdemeanor involving moral turpitude, and am fully qualified to make this affidavit. What is stated in the Plaintiff's Original Petition and Application for Injunctive Relief is within my personal knowledge and is true."

Carole Keeton "Grandma" Strayhorn
Carole Keeton "Grandma" Strayhorn

SWORN TO AND SUBSCRIBED BEFORE ME on this 11th day of July,
2006, to certify which witness my hand and seal of office.

Karen Knapp Trikalis
Notary Public, State of Texas
My Commission Expires: 02-20-09



Carole Keeton "One Tough Grandma" RECEIVED
Strayhorn 2006 MAY -9 PM 4:24
 for **Governor** ELECTIONS DIVISION
 SECRETARY OF STATE
 www.carolestrayhorn.com

CAROLE KEETON STRAYHORN
 TEXAS COMPTROLLER

May 9, 2006

The Honorable Roger Williams
 Secretary of State
 State of Texas
 Elections Division
 Thomas J. Rusk Building, Third Floor
 208 East 10th Street
 Austin, Texas 78701

RE: Carole Keeton "Grandma" Strayhorn
 Application for a Place on the General Election Ballot

Dear Secretary Williams:

I am pleased to enclose herewith my original, duly executed and notarized Independent Candidate's Application for a Place on the General Election Ballot, together with my Petition, as required by Section 142.004, Texas Election Code, to secure my place on the upcoming general election ballot for the Office of the Governor of the State of Texas.


I believe you will find my Application to be complete and in proper form, and that the Petition overwhelmingly satisfies the minimum signature requirement of Section 142.007 of the Code. Please note that my Petition consists of literally thousands of notarized pages reflecting more than 223,000 signatures, and we entrust these to you, trusting that you will safeguard them throughout the verification process. We look forward to receiving regular weekly updates as to your progress in verifying the minimum number.

Please note that I am specifically requesting that my name appear on the ballot as follows:
CAROLE KEETON "GRANDMA" STRAYHORN, incorporating the nickname by which I have been known for over eleven years.

I am filing my Application and Petition early, in advance of the May 11, 2006 deadline, to meet the statutory requirements. Please be aware that I will be submitting additional duly executed Petition pages reflecting additional signatures prior to the statutory deadline. These additional signatures should be placed for verification with my Petition filed this date.

I request that your office immediately, certainly before the May 11th deadline, contact Roy Minton at 512-476-4873, and my campaign office at 512-469-9393, should you have any question about my Application or Petition, or assert any deficiency in these filings, technical or otherwise.

Sincerely,


 Carole Keeton Strayhorn

www.carolestrayhorn.com P.O. BOX 684219, AUSTIN, TEXAS 78768-4219 512/469-9393 FAX 512/469-9323
 NOT PRINTED OR MAILED AT STATE EXPENSE

EXHIBIT A

RECEIVED

A2-6PM
Prescribed by Secretary of State
Sections 141.031, 142.004, Texas Election Code
9/01
All information is required to be provided unless indicated as optional. (Se requiere toda la informaci3n a menos que se indique de otro modo que es obligatoria.)

2006 MAY 9 PM 1:10
COPY

INDEPENDENT CANDIDATE'S APPLICATION FOR A PLACE ON THE GENERAL ELECTION BALLOT
(SOLICITUD DE UN CANDIDATE INDEPENDIENTE PARA QUE SU NOMBRE APAREZCA EN LA BOLETA DE LA ELECCION GENERAL)

TO: Secretary of State/County Judge
(A: Secretario del Estado/Jefe del Condado)

I request that my name be placed on the above-named official ballot as a candidate for the office indicated below.
(Solicito que mi nombre est3 puesto en la arriba nombrada boleta como candidato para puesto oficial indicado abajo.)

OFFICE SOUGHT (PUESTO OFICIAL SOLICITADO) Include any place number or other distinguishing number. (Incluya cualquier n3mero de lugar u otro n3mero que hace al puesto oficial diferente a otros.) GOVERNOR	INDICATE FULL OR UNEXPIRED TERM (INDIQUE SE EL TERMINO DEL PUESTO OFICIAL ES TERMINO COMPLETO O NO COMPLETADO) FULL			
FULL NAME (First, Middle, Last) (NOMBRE COMPLETO) (Nombre de Pila, Segundo Nombre, Apellido) CAROLE KEETON STRAYHORN	PRINT NAME AS YOU WANT IT TO APPEAR ON THE BALLOT (ESCRIBA SU NOMBRE COMO DESSEA QUE APAREZCA SOBRE LA BOLETA) CAROLE KEETON "GRANDMA" STRAYHORN			
PERMANENT RESIDENCE ADDRESS Street address and apartment number. If none, describe location of residence (do not include P.O. Box or Rural Rt.) (DIRECCION DE RESIDENCIA PERMANENTE: Calle y N3mero de Departamento; si no tiene, describa la localidad de su residencia. No incluya su caja postal o ruta rural.) 2904 Bowman Avenue CITY, STATE (CIUDAD, ESTADO) Austin, Texas ZIP 78703 (ZONA POSTAL)	MAILING ADDRESS (if different from residence address) (DIRECCION POSTAL (si es diferente a su direcci3n de residencia)) CITY, STATE (CIUDAD, ESTADO) ZIP (ZONA POSTAL)			
OCCUPATION (EMPLEO) Comptroller State of Texas	DATE OF BIRTH (FECHA DE NACIMIENTO) September 13, 1939			
TELEPHONE NUMBER (Include area code) (Optional) (N3MERO DE TELEFONO--Incluya el c3digo de la area) (Facultativo) OFFICE: (DE SU OFICINA) 512-463-4444 HOME: (DE SU DOMICILIO) 512-477-8656	Length of Continuous Residence as of Date Application Sworn (Tiempo en que ha Residido en un Solo Lugar en la Fecha en que Present3 Juramento Sobre la Solicitud) <table border="1"> <tr> <td>IN STATE (EN EL ESTADO) 38 yrs 5 mos (a3os) (meses)</td> <td>IN COUNTY (EN EL CONDADO) 38 yrs 5 mos (a3os) (meses)</td> <td>IN DISTRICT OR PRECINCT (EN EL DISTRITO O PRECINTO) 38 yrs 5 mos (a3os) (meses)</td> </tr> </table>	IN STATE (EN EL ESTADO) 38 yrs 5 mos (a3os) (meses)	IN COUNTY (EN EL CONDADO) 38 yrs 5 mos (a3os) (meses)	IN DISTRICT OR PRECINCT (EN EL DISTRITO O PRECINTO) 38 yrs 5 mos (a3os) (meses)
IN STATE (EN EL ESTADO) 38 yrs 5 mos (a3os) (meses)	IN COUNTY (EN EL CONDADO) 38 yrs 5 mos (a3os) (meses)	IN DISTRICT OR PRECINCT (EN EL DISTRITO O PRECINTO) 38 yrs 5 mos (a3os) (meses)		
COUNTY OF RESIDENCE (CONDADO DE RESIDENCIA) Travis County				

Before me, the undersigned authority, on this day personally appeared Carole Keeton Strayhorn, who being by me here and now duly sworn, upon oath says: "I, Carole Keeton Strayhorn, of Travis County, Texas, being a candidate for the office of Governor, swear that I will support and defend the Constitution and laws of the United States and of the State of Texas. I am a citizen of the United States eligible to hold such office under the Constitution and laws of this state. I have not been declared mentally incompetent as determined by final judgment of a court, nor have I been finally convicted of a felony for which I have not been pardoned or had my full rights of citizenship restored by other official action. I am aware of the nepotism law, Chapter 573, Government Code.

If using a nickname as part of your name to appear on the ballot, you are also signing and swearing to the following statements: I further swear that my nickname does not constitute a slogan nor does it indicate a political, economic, social, or religious view or affiliation. I have been commonly known by this nickname for at least three years prior to this election.

I further swear that the foregoing statements included in my application are in all things true and correct."

(Ante m3, la abajo firmada autoridad, apareci3 en persona la persona nombrada quien habiendo aqu3 y ahora prestado juramento debido, bajo juramento dice:
"Yo, _____ del condado de _____ Texas, siendo candidata para el puesto oficial de _____ solemnemente juro que apoyar3 y defender3 la Constituci3n y las leyes de los Estados Unidos y del Estado de Texas. Soy ciudadana de los Estados Unidos elegible para ocupar el puesto oficial bajo la Constituci3n y las leyes de este Estado. No he sido declarado incompetido de la mente como determinado por la decisi3n final de una corte, ni he sido probado culpable finalmente de una felon3a por la cual no se me ha sido perdonado o por la cual no se me han restituido enteramente mis derechos de ciudadana por medio de otra acci3n oficial. Yo tengo conocimiento de la ley sobre el nepotismo seg3n el cap3tulo 573 de C3digo Gobierno.

Para poder incluir un apodo como parte de su nombre completo el la papeleta, Ud. debera firmar la siguiente constancia: Adem3s, juro que se me ha conocido por este apodo por mas de tres a3os. Adem3s, juro que el apodo no es un lema pol3tico ni una indicaci3n de mis creencias o afiliaciones pol3ticas, econ3micas, sociales, o religiosas.

Adem3s juro que las precedentes declaraciones que incluyo en mi solicitud son verdaderas y est3n correctas en todas cosas.")

Carole Keeton Strayhorn
SIGNATURE OF CANDIDATE (FIRMA DEL CANDIDATO)

Sworn to and subscribed before me at Austin this the 9th day of May, 2006
(Jurado y suscrita ante m3 en _____ este d3a _____ de _____ de _____)

W. O. Minton
Signature of Officer administering oath (Firma del oficial administrando el juramento)

Notary Public
Title of Officer administering oath (T3tulo del oficial administrando el juramento)

W. O. MINTON
Notary Public, State of Texas
My Commission Expires **APRIL 15, 2008**
(SELLO)

TO BE COMPLETED BY SECRETARY OF STATE OR COUNTY JUDGE:

Date received _____ Signature of Receiving Officer _____

INSTRUCTIONS AND FOOTNOTE ON BACK
(VEA LAS INSTRUCCIONES Y LAS NOTAS DE PIE AL LADO REVERSO)



Roger Williams
SECRETARY OF STATE
State of Texas

June 23, 2006

VIA CERTIFIED AND FIRST CLASS MAIL

The Honorable Carole Keeton Strayhorn
1002 Rio Grande
Austin, Texas 78701

**Re: Request for information as to your use of "Grandma" on the November 7,
2006 General Election Ballot**

Dear Comptroller Strayhorn:

The Office of the Secretary of State is in receipt of your May 9, 2006, Independent Candidate's Application for a Place on the General Election Ballot (Application), as well as the accompanying correspondence, which contains your campaign slogan, "One Tough Grandma." In this same campaign correspondence, you ask that this office certify the official ballot with the term "Grandma" placed within your name. It appears that your use of the term "Grandma" within your name constitutes a slogan.

As you may know, Section 52.031(c) of the Texas Election Code prohibits the use of a slogan as a nickname. In an effort to assist in the determination of how your name should appear on the November 7, 2006 General Election Ballot, we would request that you provide any information that would verify that your use of "Grandma" *does not* constitute a slogan.

Please be advised that the final determination on this issue must be made on or before the 55th day before the election. To that end, your timely response to this request would be greatly appreciated.

Sincerely,

A handwritten signature in black ink that reads "Roger Williams".

Roger Williams
Secretary of State

Post Office Box 12697, Capitol Station
Austin, Texas 78711-2697
512-463-5770

EXHIBIT B

Minton, Burton, Foster & Collins, P.C.

ATTORNEYS AT LAW

ROY Q. MINTON
JOHN L. FOSTER
JOHN C. CARSEY
SAMUEL E. BASSETT
BRIAN ROARK

1100 GUADALUPE STREET
AUSTIN, TEXAS 78701
TELEPHONE (512) 476-4873
FACSIMILE (512) 479-8315

CHARLES R. BURTON
RIP COLLINS
DAVID F. MINTON
JEFFREY D. MILLER

WWW.MBFC.COM

E. BARHAM BRATTON, OF COUNSEL
R. LOUIS BRATTON, OF COUNSEL

JUNE 28, 2006

Mr. Roger Williams
Secretary of State
1100 Congress, 1E.8
Austin, Texas 78701

Dear Mr. Secretary:

In response to your letter of June 23rd I want to discuss with you Mrs. Strayhorn's nickname *Grandma* and how we got here.

Carole became a Grandma on the 12th day of November, 1994. Like all of us grandmas and grandpas she was extremely proud of her status as such and began referring to herself as Grandma. -And her many, many friends picked it up and began calling her Grandma also. Sometime later the campaign began identifying her in the public world as "One Tough Grandma." She has been called One Proud Grandma concerning her grandchildren, one Heartbroken Grandma, concerning foster children, and the *Texas Monthly* called her One Ticked Off Grandma. As long as I have known Carole and called her Carole I began calling her Grandma even though I don't and would not address my own wife as Grandma and she has been a Grandma much, much longer. I think that the connection between her nickname and the line "One Tough Grandma," which may or may not be a slogan, is what is giving you a problem and I understand the connection you have in your own mind.

But, *Grandma* is clearly not a slogan no matter what "One Tough Grandma" may or may not be. I remember so well after December 7, 1941 when Roosevelt began the slogan "Remember Pearl Harbor," we all said it. -But it never occurred to us that just the name "Pearl Harbor" was a slogan. Probably the earliest battle cry that Texans had was "Remember the Alamo!" -But the Alamo is in San Antonio and nobody thinks it is a slogan. Remember "I like Ike." The majority of Texans did like Ike. -But Ike was not a slogan. -And Carole Keeton "Grandma" Strayhorn is not a slogan.

Unlike the dictionary definition of slogan, *Grandma* is not a phrase expressing the aims or nature of an enterprise nor is *Grandma* a motto or a battle cry or even a position or goal.

EXHIBIT C

You may remember when a dozen of us carried about twenty boxes of petitions to your office. We parked our cars out on the street and each of us grabbed a box or two and started for the door. It was fun and I particularly enjoyed the many folks passing by on the sidewalk who waived to Carole and yelled "Hi Grandma", "good luck, Grandma", "go get 'em Grandma." I was impressed. I have been practicing law here for forty-five years and nobody ever waives at me or says hi to me and hollers "go get 'em Roy!"

Sincerely,

A handwritten signature in cursive script that reads "Roy Q. Minton". The signature is written in black ink and is positioned above a horizontal line. Below the line, the name "ROY Q. MINTON" is printed in a simple, sans-serif font.

RQM:kkt



Roger Williams
SECRETARY OF STATE
State of Texas

July 10, 2006

Roy Minton
Minton, Burton, Foster & Collins, P.C.
1100 Guadalupe Street
Austin, Texas 78701

Dear Mr. Minton:

I am in receipt of your June 28 letter in response to my request of Carole Keeton Strayhorn for more information on her desire to use the slogan "Grandma" in conjunction with her name on the November 7, 2006 General Election Ballot. While I appreciate your timely response to my request for information, I must respectfully disagree with your conclusion that in this context "Grandma" is not a slogan.

Your letter does not articulate any facts that would counter my interpretation that the use of "Grandma," in the context of Carole Keeton Strayhorn's name appearing on the ballot, is a slogan and as such is prohibited by the Texas Election Code. Moreover, the Texas Legislature has designated me to serve as the Chief Election Officer of the State of Texas and, in that capacity, I am vested with the authority to obtain and maintain uniformity in the application, operation and interpretation of the Texas Election Code. Tex. Elec. Ann. § 31.003 (Vernon 2003).

In compliance with Section 52.031 of the Texas Election Code, Carole Keeton Strayhorn's name will be certified for the November 2006 General Election Ballot as:

Carole Keeton Strayhorn

Thank you very much for your correspondence.

Respectfully,

A handwritten signature in cursive script that reads "Roger Williams".

Roger Williams
Secretary of State

Post Office Box 12697, Capitol Station
Austin, Texas 78711-2697
512-463-5770

EXHIBIT D