



P.O. Box 12276  
Austin, Texas 78711-2276  
512-463-6100  
thc.texas.gov

April 22, 2020

Office of the Attorney General                    *by U.S. Mail and interagency mail*  
Open Records Division  
P.O. Box 12548  
Austin, Texas 78711

RE: Texas Historical Commission Request for Attorney General Letter Ruling in Response to Max Grossman's April 9, 2021 Public Information Request

Dear Open Records Division:

On April 9, 2021, the Texas Historical Commission ("Commission") received the request for public information attached as **Exhibit A**. The Commission hereby requests a letter ruling determining that a portion of the responsive information is excepted from disclosure pursuant to Texas Government Code § 552.103.

The Commission has already released some responsive information to the requestor, and only seeks a letter ruling with respect to the information attached as **Exhibit B** (the "information at issue"). The information at issue is responsive to the requestor's second category of requested information, which was presented to the Commission as follows:

[A]ny email correspondence between Kemp Smith LLC of El Paso (or any of the attorneys who work for that firm) and Mark Wolfe or Gregory Smith of the Texas Historical Commission, dated on or after April 6, 2021. To be clear, that would include any and all correspondence to or from Kemp Smith.

The information at issue attached as Exhibit B comprises all of the information responsive to this portion of the request. The Commission contends that the information at issue is excepted from disclosure in its entirety under the litigation exception codified at Texas Government Code § 552.103 because the responsive information consists of communications relating to ongoing civil litigation.

On April 5, 2021, Mark Wolfe was named as the defendant in *323 Chihuahua, LLC et al. v. Mark Wolfe*, Case No. D-1-GN-21-001459 (250th Judicial District in Travis County). A copy of the petition without exhibits is attached as **Exhibit C** (the "Petition"). Mr. Wolfe was sued in his capacity as the Commission's Executive Director as well as his capacity as the Texas State Historic Preservation Officer, a role he occupies by virtue of his position as Executive Director. Tex. Gov't Code § 442.004(k). The lawsuit concerns his official activities in the administration of the National Historic Preservation Act. *See* Petition at 4-5. Kemp Smith LLC is plaintiffs' counsel in the lawsuit.

For information to be excepted from public disclosure under Texas Government Code § 552.103(a), (1) litigation involving the governmental body must be pending or reasonably anticipated on the date of the request and (2) the information must relate to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding). First, the lawsuit was pending on the day of the public information request. Second, the information at issue consists of email communications relating to the parties' administration of the lawsuit. Specifically, the emails concern Mr. Wolfe's responsibilities in his role as the State Historic Preservation Officer. These responsibilities are at the heart of the dispute in the litigation. Because Mr. Wolfe was among the group of persons communicating about how the litigation would proceed, these emails should be excepted from disclosure in their entirety.

With this letter, the Commission has satisfied the requirements of Texas Government Code § 552.301(d) and (e). Because the Commission received the request on April 9, 2021, this letter is timely submitted. The Commission does not intend to submit a subsequent letter relating to this request for a letter ruling, but is available to provide additional information should the Office of the Attorney General request it. The Commission has provided a copy of this letter to the requestor (without Exhibit B). By copy of this letter, the Commission hereby notifies the requestor that it wishes to withhold the information at issue and has asked for a decision from the Office of the Attorney General about whether the information is within the litigation exception to public disclosure

Sincerely,



Esther Brickley  
Texas Historical Commission  
Public Information Coordinator

Encl.

CC: Max Grossman *by email* ([maxelijah@hotmail.com](mailto:maxelijah@hotmail.com))  
w/o Exhibit B

**Esther Brickley**

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**Subject:** FW: ORR: El Paso

**From:** Max Grossman <[maxelijah@hotmail.com](mailto:maxelijah@hotmail.com)>  
**Sent:** Friday, April 9, 2021 4:17 PM  
**To:** Gregory W. Smith <[Greg.Smith@thc.texas.gov](mailto:Greg.Smith@thc.texas.gov)>  
**Cc:** Lynnette Cen <[Lynnette.Cen@thc.texas.gov](mailto:Lynnette.Cen@thc.texas.gov)>  
**Subject:** ORR: El Paso

**CAUTION:** External Email – This email originated from outside the THC email system. Do not click links or open attachments unless you recognize the sender and know the content is safe.

**Dear Mr. Smith and Ms. Cen,**

I respectfully request that you provide me with copies of all petitions, including notarized petitions, from El Paso property owners objecting to the establishment of a National Register District in downtown El Paso or in the Segundo Barrio of El Paso that were received by you on or after April 6, 2021.

Please also send me any email correspondence between Kemp Smith LLC of El Paso (or any of the attorneys who work for that firm) and Mark Wolfe or Gregory Smith of the Texas Historical Commission, dated on or after April 6, 2021. To be clear, that would include any and all correspondence to or from Kemp Smith.

Finally, please send to me any correspondence received from any official of El Paso County dated on or after April 6, 2021.

Many thanks,

Max Grossman

6265 Camino Alegre Dr.

El Paso, TX 79912

D-1-GN-21-001459

Cause No.

323 CHIHUAHUA, LLC; URBAN LION, LLC; MARCEP GROUP, LLC; HUNT OREGON, LLC; R.B. WICKER TIRE and RUBBER CO.; and JOHN P. KEMP.

Plaintiffs,

v.

MARK WOLFE, in his official capacity as Texas State Historic Preservation Officer and Executive Director of the Texas Historical Commission,

Defendant.

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

250th JUDICIAL DISTRICT

**PLAINTIFFS' ORIGINAL PETITION, APPLICATION FOR TEMPORARY RESTRAINING ORDER. AND APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION**

TO THE HONORABLE JUDGE OF THE DISTRICT COURT:

COME NOW 323 Chihuahua, LLC, Urban Lion, LLC; Marcep Group, LLC; Hunt Oregon, LLC; R.B. Wicker Tire and Rubber Co.; and John P. Kemp (Plaintiffs), by and through their counsel of record, and file this Original Petition, Application for Temporary Restraining Order, and Application for Temporary and Permanent Injunction, and would respectfully show the Court the following:

**I. SUMMARY OF ACTION**

1.1 Plaintiffs own real property in El Paso, Texas, within the area nominated to be included in the National Register of Historic Places (National Register) as the "El Paso Downtown Historic District" (the District). A map showing the District's location and boundaries is attached as Exhibit A.

1.2 In accordance with the requirements of applicable federal and state law, Plaintiffs have filed objections to the proposed listing of the District in the National Register with Mark Wolfe (Wolfe), the State Historic Preservation Officer and Executive Director of the Texas Historical Commission (THC or State). Including Plaintiffs, a majority of the owners of private property in the District have filed objections with Wolfe. As a result, under applicable law, Wolfe is required to submit the nomination of the District to the Keeper of the National Register of Historic Places (the Keeper) only for a determination of eligibility in the National Register, but not to submit the nomination for consideration for listing in the National Register. The Keeper is the person delegated the authority by the National Park Service to list properties and determine their eligibility for the National Register.

1.3 Despite the fact that the objections of a majority of private property owners in the District, including Plaintiffs, comply with federal and state law, Mark Wolfe has informed Plaintiffs in writing that: 1) he will not follow applicable federal and state law, 2) he will not recognize Plaintiffs' objections, and 3) he will be submitting the nomination of the District to the Keeper for consideration for listing in the National Register.

1.4 Plaintiffs request that the Court find Wolfe is acting ultra vires, that he be prevented from doing so, and that he be required to follow applicable federal and state law in connection with his actions in his official capacity as Texas State Historic Preservation Officer and Executive Director of the Texas Historical Commission

## **II. PARTIES AND OTHER MATTERS**

2.1 Plaintiffs affirmatively plead that discovery is intended to be conducted under Level 2 of Texas Rule of Civil Procedure 190.

2.2 Plaintiff 323 Chihuahua, LLC is a Texas limited liability company that owns real property in El Paso County, Texas within the area referred to as the District.

2.3 Plaintiff Urban Lion, LLC is a Texas limited liability company that owns real property in El Paso County, Texas within the area referred to as the District.

2.4 Plaintiff Marcep Group, LLC is a Texas limited liability company that owns real property in El Paso County, Texas within the area referred to as the District.

2.5 Plaintiff Hunt Oregon, LLC is a Delaware limited liability company that owns real property in El Paso County, Texas within the area referred to as the District.

2.6 Plaintiff R. B. Wicker Tire and Rubber Co. is a Texas for-profit corporation that owns real property in El Paso County, Texas within the area referred to as the District.

2.7 Plaintiff John P. Kemp is an individual residing in El Paso, El Paso County, Texas who owns real property in El Paso County, Texas within the area referred to as the District.

2.8 Defendant Mark Wolfe is the Texas State Preservation Officer and Executive Director of the THC and is being sued in his official capacity as the Texas State Preservation Officer and Executive Director of the THC. Defendant may be served with process at 1511 Colorado Street, Austin, Texas 78701.

### **III. JURISDICTION AND VENUE**

3.1 The Court has jurisdiction over this suit because Plaintiffs seek declaratory and injunctive relief to address the ultra vires actions of Wolfe.

3.2 Venue is proper in Travis County pursuant to Section 15.002 of the Texas Civil Practice & Remedies Code because all or a substantial part of the acts or omissions giving rise to the claims brought herein occurred in Travis County.

#### **IV. FACTUAL BACKGROUND**

4.1 The THC has been designated the authority to administer the National Historic Preservation Act of 1966 and amendments thereto (National Historic Preservation Act) 54 U.S.C. §§ 300101-307108. 15 Tex. Admin. Code § 15.1(a). As the THC's Executive Director, Wolfe serves as the "State Historic Preservation Officer." 15 Tex. Admin. Code § 15.1(b). Wolfe has the responsibility pursuant to the National Historic Preservation Act and state law to, among other things, "identify and nominate eligible properties to the National Register and otherwise administer applications for listing historic properties on the national register." 15 Tex. Admin. Code § 15.1(c)(2); 36 C.F.R. § 60.6(a). In order to administer Wolfe's obligations under the National Historic Preservation Act, the THC has adopted as its own the relevant provisions of federal statutes and rules governing the National Register. 15 Tex. Admin. Code § 15.2(a).

4.2 The State Board of Review for the National Register of Historic Places, Texas (State Board of Review) is appointed by the THC and reviews and makes recommendations to Wolfe, as the State Historic Preservation Officer, on nominations from Texas to the National Register. 15 Tex. Admin. Code § 15.3(a), (b), (d). The THC provides the State Board of Review with information regarding nominations and schedules nominations for consideration by the State Board of Review. 36 C.F.R. § 60.6(j). *See also* <https://www.thc.texas.gov/preserve/nrhp-process>. The State Board of Review then makes a recommendation to Wolfe to approve or disapprove of the nomination. 36 C.F.R. § 60.6(j).

4.3 Wolfe reviews nominations approved by the State Board of Review, along with comments received, and, as appropriate, submits them to the Keeper. 36 C.F.R. § 60.6(k).

4.4 In considering eligible properties to the National Register, the State is required to consult with local authorities and provide notice of Wolfe's intent to nominate a property and to solicit written comments in connection therewith. 36 C.F.R. § 60.6(b).

4.5 As part of the process for nominating properties to the National Register, the State is required to give owners of private property an opportunity to concur in or object to the listing. 36 C.F.R. § 60.6(b). This notice must inform property owners of Wolfe's intent to bring a nomination before the State Board of Review. 36 C.F.R. § 60.6(c). Written notification to property owners shall be sent at least 30 days but not more than 75 days before the State Board of Review meeting. *Id.* The notice shall inform property owners of the opportunity to concur in or object in writing to the nomination of the property. *Id.* Where there is a nomination with more than 50 property owners, the State is required to provide written notice to the chief elected officials of the county and the city in which the property is located and to publish a general notice at least 30 days but not more than 75 days before the State Board of Review meeting. 36 C.F.R. § 60.6(d).

4.6 Property owners wishing to object to a proposed listing are required to file their objections with Wolfe. 36 C.F.R. § 60.6(g). Section 60.6(g) states that private property owners who object "shall submit to the State Historic Preservation Officer a notarized statement certifying that the party is the sole or partial owner of the private property, as appropriate, and objects to the listing." Each private property owner within a proposed district has one vote "regardless of how many properties or what part of one property that party owns and regardless of whether the property contributes to the significance of the district." 36 C.F.R. § 60.6(g). 28 U.S.C. § 1746 provides that written declarations made "under penalty of perjury" are permissible in lieu of notarized statements in any federal proceeding:



Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and made, in substantially the following form:

(1) If executed without the United States: “I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)”.

(2) If executed within the United States, its territories, possessions, or commonwealths: “I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)”.

28 U.S.C. § 1746. *See also Ion v. Chevron, USA, Inc.*, 731 F.3d 379, 382 n. 2 (5<sup>th</sup> Cir. 2013) (plaintiff's unsworn declaration could be considered in connection with pleading as it complied with 28 U.S.C. § 1746); *Carter v. Clark*, 616 F.2d 228 (5<sup>th</sup> Cir. 1980) (holding that 28 U.S.C. § 1746 allowed prisoner petitions that met its requirements, despite local rule by federal district judge requiring notarized statements, which local rule was adopted pursuant to federal statute); *U.S. v. Gomez-Vigil*, 979 F.2d 254, 257-58 (6<sup>th</sup> Cir. 2013) (28 U.S.C. § 1746 applies to all matters required or permitted to be supported by sworn declaration). Texas law also provides for written declarations made “under penalty of perjury” to be used in lieu of notarized statements in any state proceeding. Section 132.001(a) of the Texas Civil Practice and Remedies Code provides that “an unsworn declaration may be used in lieu of a written sworn declaration, verification, certification, oath, or affidavit required by statute or required by a rule, order, or requirement adopted as

provided by law.” An unsworn declaration under Section 132.001 must be in writing and made “under penalty of perjury.” Tex. Civ. Prac. & Rem. Code Ann. § 132.001(c). *See also Tex. Dep’t of Pub. Safety v. Caruana*, 363 S.W.3d 558, 564 (Tex. 2012) (applying Section 132.001 to admit declaration despite another statutory requirement for a sworn report).

4.7 Wolfe, as the State Historic Preservation Officer, has the responsibility “to ascertain whether a majority of owners of private property have objected.” 36 C.F.R. § 60.6(g).

4.8 If a majority of property owners within a nominated district object to the nomination, the proposed district cannot be listed in the National Register but the nomination is to be submitted to the Keeper of the National Register of Historic Places only for a determination of eligibility for listing. 36 C.F.R. § 60.6(n).

4.9 On November 17, 2020, the THC published notice in the *El Paso Times* of the proposed listing and the scheduled consideration of the proposed listing of the District by the State Board of Review at its January 16, 2021 meeting.

4.10 On January 16, 2021, the THC’s appointed State Board of Review considered and recommended approval of the District for inclusion in the National Register. In accordance with the provisions of 36 CFR § 60.6(n), Wolfe now has the duty to determine if a majority of the private property owners in the District have objected to the nomination of the District. 36 CFR § 60.6(g). If so, he shall submit the nomination to the Keeper only for a determination of eligibility for listing, but not for consideration for listing, on the National Register. 36 CFR § 60.6(n). A copy of 36 CFR § 60.6(n) is attached as Exhibit B. A copy of 28 U.S.C. § 1746 is attached as Exhibit C. A copy of Section 132.001 of the Texas Civil Practice and Remedies Code is attached as Exhibit D.

4.11 There are a total of 213 private property owners in the District. Attached as Exhibit E is a list identifying those 213 private property owners. The private property owners in the District, including Plaintiffs, would be impacted by a listing of the District on the National Register.

4.12 As of the date of the filing of this petition, 124 of those private property owners, including Plaintiffs, have submitted proper and lawful objections to the proposed listing of the District to Wolfe. *See* Exhibit F. Those objections were all compliant with 36 C.F.R. ch. 60 and with 28 U.S.C. § 1746 and with Tex. Civ. Prac. & Rem. Code Ann. § 132.001. In fact, those objections specifically cited 36 C.F.R. ch. 60, 28 U.S.C. § 1746 and Tex. Civ. Prac. & Rem. Code Ann. § 132.001, and contained the owner's declaration of ownership, objection to the proposed listing, and declaration that the statement was made "under penalty of perjury" and was "true and correct." Copies of those objections are attached as Exhibit F.

4.13 The math is simple: a majority of the private property owners in the District have objected to the nomination of the District. As a matter of law, Wolfe's duty is now to submit the nomination to the Keeper only for a determination of eligibility for listing, but not for consideration for listing, on the National Register.

4.14 Instead of following the law, Wolfe sent a letter to property owners in the District addressed to "Property Owner," dated March 24, 2021, in which he stated, "Your letter of objection was not notarized and thus your objection will not be recognized by the NPS in the determination of whether a majority of property owners object." A copy of Wolfe's March 24, 2021 letter is attached as Exhibit G. Wolfe's refusal to count the objections he has received "because they are not notarized" is an ultra vires act. The provisions of 28 U.S.C. § 1746 and Tex. Civ. Prac. & Rem.

Code Ann. § 132.001 expressly permit objections to be made as sworn declarations under penalty of perjury without the requirement of being notarized.

4.15 As a result of Wolfe's failure to follow 28 U.S.C. § 1746 and Tex. Civ. Prac. & Rem. Code Ann. § 132.001, Wolfe is refusing to follow applicable federal and state law, he is refusing to recognize the objections of a majority of the private property owners, including Plaintiffs, in the District, and he is refusing to submit the nomination of the District to the Keeper only for a determination of eligibility for listing, but not for consideration for listing, on the National Register. These are his lawful duties as the Texas State Preservation Officer and Executive Director of the THC. He has no discretion under the law to fail to carry out these duties. Despite the uncontroverted applicable law, Wolfe is acting ultra vires.

4.16 Wolfe's actions give rise to the following causes of action.

#### **V. CAUSES OF ACTION**

5.1 Plaintiffs incorporate by reference the above paragraphs as if expressly stated herein.

#### **ACTION TO DECLARE THAT WOLFE'S REFUSAL TO FOLLOW APPLICABLE FEDERAL AND STATE LAW IS ULTRA VIRES**

5.2 Plaintiffs request a declaratory judgment that Wolfe's refusal to follow applicable federal and state law, his refusal to recognize the objections of a majority of the private property owners, including Plaintiffs, in the District, and his refusal to submit the nomination to the Keeper only for a determination of eligibility for listing, but not for consideration for listing, on the National Register is in violation of 28 U.S.C. § 1746, 36 C.F.R. § 60.6, Tex. Civ. Prac. & Rem. Code Ann. § 132.001 and is ultra vires.

5.3 Plaintiffs request a declaratory judgment that Wolfe is required to follow applicable federal and state law, to recognize the objections of a majority of the private property owners, including Plaintiffs, in the District, and to submit the nomination of the District to the Keeper only for a determination of eligibility for listing, but not for listing for listing, on the National Register.

## **VI. APPLICATION FOR TEMPORARY RESTRAINING ORDER AND FOR TEMPORARY AND PERMANENT INJUNCTION**

6.1 Plaintiffs request an injunction to require Wolfe to follow applicable federal and state law, to recognize the objections of a majority of the private property owners, including Plaintiffs, in the District, and to submit the nomination of the District to the Keeper only for a determination of eligibility for listing, but not for consideration for listing, on the National Register, and to prevent Wolfe from taking further action to submit the nomination to the Keeper for consideration for listing in the National Register.

6.2 Plaintiffs have a probable right to relief because 28 U.S.C. § 1746 and Tex. Civ. Prac. & Rem. Code Ann. § 132.001 allow objections under 36 C.F.R. § 60.6 to be made as sworn declarations under penalty of perjury without the requirement of being notarized.

6.3 Plaintiffs will suffer a probable, imminent and irreparable injury because Wolfe's refusal to follow applicable federal and state law and to recognize the objections of a majority of the private property owners, including Plaintiffs, in the District, denies the majority of private property owners, including Plaintiffs, of their statutory right to object to and thereby prevent the listing of the District in the National Register. Wolfe has indicated that he will submit the nomination of the District for consideration for listing prior to April 16, 2021.

6.4 There is no adequate remedy at law.

6.5 Plaintiffs are not aware of any prior applications for the same or similar relief and do not believe that the injunctive relief sought will conflict with any order.

6.6 Plaintiffs have not contacted Wolfe about the application for a temporary restraining order as Plaintiffs are concerned that if he is provided with notice, Wolfe will make the ultra vires submission to the Keeper as stated in his March 24, 2021 letter before it can be ruled on and considered by the Court. Therefore, it is necessary for the Court to grant an ex parte TRO without prior notice to Wolfe and without first affording Wolfe the opportunity to be heard.

6.7 It is essential that the Court immediately and temporarily restrain Wolfe from continuing with the ultra vires conduct described in this petition. It is essential that the Court act immediately because Wolfe has stated he will continue to take actions in violation of federal and state law, including actions that will likely cause irreparable harm and injury to Plaintiffs.

6.8 Plaintiffs are willing to post a reasonable surety bond pursuant to Texas Rule of Civil Procedure 684. However, only a low bond is warranted here. As Rule 684 provides, where the temporary restraining order or temporary injunction is against the State or a State agency and is such that the State has no pecuniary interest in the suit and no monetary damages can be shown, the amount of the bond shall be fixed by the Court. Tex. R. Civ. P. 684; *Maples v. Muscletech, Inc.*, 74 S.W.3d 429, 431 (Tex. App.—Amarillo 2002, no pet.) (explaining that bond determination should be made on a case-by-case basis within the discretion of the trial court). In this case against Wolfe in his official capacity as an agent of the State, neither Wolfe nor the State will be economically harmed by a restraining order or other injunctive relief. For the foregoing reasons, Plaintiffs request that the Court set a bond of \$100 so that Plaintiffs are not prevented from having access to the judicial system to ensure that Wolfe complies with applicable law.

6.9 Plaintiffs request that upon hearing, appropriate TRO and temporary injunctive relief be granted against Wolfe, and his agents and employees, to ensure that Wolfe stops his ultra vires acts and instead complies with the requirements of 36 C.F.R. § 60.6, 28 U.S.C. § 1746, and Tex. Civ. Prac. & Rem. Code Ann. § 132.001 with respect to the District.

## VII. RULE 47(C) STATEMENT

7.1 Pursuant to Texas Rules of Civil Procedure 47(c)(2), Plaintiffs state that they are seeking only monetary relief of \$100,000 or less, and non-monetary relief in this lawsuit.

## VIII. PRAYER

8.1 WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendant be cited to appear and answer and respectfully request the following relief:

- (a) That the Court enter a declaratory judgment that Wolfe's refusal to follow applicable federal and state law, his refusal to recognize the objections of a majority of the private property owners, including Plaintiffs, in the District, and his refusal to submit the nomination to the Keeper only for a determination of eligibility for listing, but not for consideration for listing, on the National Register is in violation of 28 U.S.C. § 1746, 36 C.F.R. § 60.6, Tex. Civ. Prac. & Rem. Code Ann. § 132.001 and is ultra vires;
- (b) That the Court enter a declaratory judgment that Wolfe is required to follow applicable federal and state law, to recognize the objections of a majority of the private property owners, including Plaintiffs, in the District, and to submit the nomination of the District to the Keeper only for a determination of eligibility for listing, but not for listing for listing, on the National Register;
- (c) That the Court issue a temporary restraining order without notice to Wolfe compelling Wolfe to follow applicable federal and state law, must recognize the objections of private property owners, including Plaintiffs, to the listing of the nominated District, including objections which are notarized and those objections which are not notarized but are sworn declarations made in accordance with the provisions of 28 U.S.C. § 1746, Tex. Civ. Prac. & Rem. Code Ann. § 132.001 and 36 C.F.R. § 60.6, and shall not submit the nomination of the District to the Keeper for listing on the National Register, and shall not take any further action in furtherance of the submission of the nomination of the District to the Keeper for consideration for listing in the National Register;

- (d) That the Court issue a temporary injunction to require Wolfe to follow applicable federal and state law, to recognize the objections of a majority of the private property owners, including Plaintiffs, in the District, and to submit the nomination of the District to the Keeper only for a determination of eligibility for listing, but not for consideration for listing, on the National Register, and to prevent Wolfe from taking further action to submit the nomination to the Keeper for consideration for listing in the National Register;
- (e) That upon final trial, the injunction be made permanent, as requested above;
- (f) That Plaintiffs be awarded all other relief appropriate in law or equity.

Respectfully submitted,

By: /s/ Deborah C. Trejo  
Deborah C. Trejo  
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Attorneys for Plaintiffs



**DECLARATION OF YOLANDA GINER**

I, Yolanda Giner, declare and state:

My name is Yolanda Giner, my date of birth is August 17, 1968, and my address is 709 Willow Glen, El Paso, Texas 79922. I am Executive Vice President and General Counsel with Franklin Mountain Investments, and as a result of my duties and responsibilities at Franklin Mountain Investments, I have become involved in efforts to secure objections from owners of private property within the nominated El Paso Downtown Historic District for submission to Mark Wolfe, and as a result of those efforts, I have personal knowledge of the facts stated in the foregoing Original Petition, Application for Temporary Restraining Order, and Application for Temporary and Permanent Injunction, and those facts are true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED in El Paso County, State of Texas, on the 15 day of April, 2021.

  
\_\_\_\_\_  
Yolanda Giner