

CAUSE NO. DCV-25-01745CESAR ACOSTA, ET AL.
PLAINTIFFS

VS.

CITY OF MIDLAND, TEXAS;
THE YOUNG MEN'S CHRISTIAN
ASSOCIATION OF MIDLAND TX;
AND BYNUM SCHOOL,
DEFENDANTS§ IN THE DISTRICT COURT OF
§
§
§
§ MIDLAND COUNTY, TEXAS
§
§
§
§ JUDICIAL DISTRICT

**PLAINTIFFS' ORIGINAL PETITION AND
APPLICATION FOR INJUNCTIVE RELIEF**

TO THE HONORABLE COURT:

NOW COME Plaintiffs Cesar Acosta; Brian Bailey; Sean Bailey; Abraham Bernard; Jodi Bradshaw; Nolan Bradshaw; Claudia Brasher; Alicia Carter; Wendell Creech; Larry Eudy; Paul Martin Garmon III; Misty Gray; Valerie Hall; Gilbert Hernandez; Kim Hye; Jason Reynolds; and, Brian Small by and through their Attorney, complaining of Defendants City of Midland, Texas ("Midland"); The Young Men's Christian Association of Midland TX ("the YMCA"); and, Bynum School ("Bynum") and would show the Court the following, to wit:

I. DISCOVERY CONTROL PLAN LEVEL

1. Pursuant to Rule 190 of the Texas Rules of Civil Procedure, Plaintiff respectfully requests that discovery in this case be conducted under Level 2.

II. PARTIES

Plaintiffs

2. Cesar Acosta is a Texas resident who lives in Midland County, Texas.
3. Brian Bailey is a Texas resident who lives in Midland County, Texas.

4. Sean Bailey is a Texas resident who lives in Midland County, Texas.

5. Abraham Bernard is a Texas resident who lives in Midland County, Texas.

6. Jodi Bradshaw is a Texas resident who lives in Midland County, Texas.

7. Nolan Bradshaw is a Texas resident who lives in Midland County, Texas.

8. Claudia Brasher is a Texas resident who lives in Midland County, Texas.

9. Alicia Carter is a Texas resident who lives in Midland County, Texas.

10. Wendell Creech is a Texas resident who lives in Midland County, Texas.

11. Larry Eudy is a Texas resident who lives in Midland County, Texas.

12. Paul Martin Garmon III is a Texas resident who lives in Midland County, Texas.

13. Misty Gray is a Texas resident who lives in Midland County, Texas.

14. Valerie Hall is a Texas resident who lives in Midland County, Texas.

15. Gilbert Hernandez is a Texas resident who lives in Midland County, Texas.

16. Hye Kim is a Texas resident who lives in Midland County, Texas.

17. Jason Reynolds is a Texas resident who lives in Midland County, Texas.

18. Brian Small is a Texas resident who lives in Midland County, Texas.

19. Lynn Williams is a Texas resident who lives in Midland County, Texas.

Defendants

20. Defendant, City of Midland, is a municipal corporation existing under the laws of the State of Texas and having its principal place of business in Midland County, Texas. City of Midland may be served with process by serving the city secretary, Marcia Bentley-German, at 300 North Loraine, 3rd Floor, Midland, Texas, 79702.

21. The Young Men's Christian Association of Midland TX is a Texas non-profit organization whose principal place of business is 800 North Big Spring Street, Midland, Texas, 79701. Service can be executed upon its President and CEO, Christine Bearden, at 800 North Big Spring Street, Midland, Texas, 79701.

22. Bynum School is a Texas non-profit organization whose principal place of business is 5100 Avalon Drive, Midland, Texas, 79707. Service can be executed upon its President, Katelyn Kinsey, at 4927 Rustic Trail, Midland, Texas, 79707.

III. JURISDICTION AND VENUE

23. The subject matter in controversy is within the jurisdictional limits of this Court.

24. Pursuant to Texas Rule of Civil Procedure 47(c), Plaintiffs declare that they seek monetary relief of \$250,000 or less, excluding pre-judgment interest and post-judgment interest, statutory or punitive damages and penalties, costs and expenses, and attorney's fees and non-monetary relief.

25. Plaintiffs seek an injunction against Defendants to prohibit them for the use of the private easements within the Llano Estacado subdivision, including Golden Gate Road and Avalon Road.

26. This Court has jurisdiction because the parties involved are residents of or have their principal place of business in Midland County, Texas.

27. Venue in Midland County, Texas is proper in this cause under Section 15.0151 of the Texas Civil Practice and Remedies Code because this action involves the City of Midland, a political subdivision located in Midland County, Texas.

IV. FACTUAL BACKGROUND

28. In 1965, D. H. Thomason ("Thomason") and Fred Porter ("Porter") created the Llano Estacado subdivision ("the subdivision") out of the East half of the Southeast quarter (E/2 of SE/4) of Section 23, Block 40, Township 1 South, T&P Ry. Co. Survey. On May 10, 1966, Thomason conveyed to Porter his interest in the subdivision as recorded at Volume 468, page 76 of the Deed records of Midland County, Texas.

29. Although not filed until 1981, in Volume 666, page 623 of the Deed Records of Midland County, Texas, Thomason and Porter drafted restrictive covenants for the subdivision in 1965. Executed by Porter in 1981, the covenants designated two North-South easements which were dedicated to the private use of the Llano Estacado subdivision owners. One easement, named Golden Gate Road ("the Gold Gate easement"), runs the length of the subdivision as the Western boundary thereof. The second easement, named Avalon Road ("the Avalon easement"), runs the length of the subdivision as the Eastern boundary thereof. Although the restrictive covenants of the Llano Estacado subdivision allow for the owners of the subdivision to dedicate these easements to the public, neither the Golden Gate easement nor the Avalon easement have ever been dedicated for public use.

30. Plaintiffs are all owners in the Llano Estacado subdivision. Plaintiffs and the other owners in the subdivision

have maintained and continue to maintain the Golden Gate and Avalon easements at their own expense.

31. Despite the Golden Gate and Avalon easements being private to the owners in the Llano Estacado subdivision, Midland has ignored these rights and declared that Plaintiffs' private Golden Gate and Avalon easements as collector roads.¹ Midland has also slated the Avalon easement to become an arterial road in the future.² The street signs for Golden Gate Road and Avalon Road are green, which the Road & Bridge Department indicates that indicating that they City roads and maintained by the City, which is not true.³ Furthermore, and without permission, Midland has posted speed limit signs upon both the Golden Gate and Avalon easements.

32. In 2016, Bynum acquired land to the North of the subdivision along Avalon Road. It also acquired easements from the land to Navasota Road to the East. In 2018, Bynum completed a facility on this property, but rather than connecting to Navasota Road along its acquired easement, Bynum simply tied into Avalon Road and began using Plaintiffs' private easement for ingress and egress.

33. In 2023, the YMCA acquired land to the North of the subdivision along Avalon Road. In May 2024, the YMCA began building a facility on the property it acquired. This location is to be opened in September 2025. The only access to this location is along the Golden Gate easement and the Avalon easement, both private easements to the owners of the Llano Estacado subdivision.

34. North of the subdivision Golden Gate Road and Avalon Road continue, but are, at that point, public roads to Plaintiffs'

¹ <https://www.midlandtexas.gov/DocumentCenter/View/1754/City-Street-Map>

² <https://www.midlandtexas.gov/DocumentCenter/View/2743/Tall-City-Tomorrow---Future-Roads-Map?bidId=>

³ <https://www.co.midland.tx.us/Faq.aspx?QID=96>

knowledge. However, Defendants are using Plaintiffs' private, Golden Gate and Avalon easements in order to reach those public easements. This ingress and egress over Plaintiffs' easements has occurred and will continue to occur without permission from the owners in the subdivision; it is disturbing Plaintiffs' peace and use and enjoyment of the Golden Gate and Avalon easements due to the multitude of extra traffic; and, it is slowly damaging the maintenance and upkeep of the Golden Gate and Avalon easements at the extra expense of the Plaintiffs and other owners within the subdivision.

35. Plaintiffs file this lawsuit seeking to establish and confirm the Golden Gate easement and Avalon easement are and will remain private access easements only to those within the Llano Estacado subdivision and seeking to enjoin Defendants, and their invitees, from use of these private easements.

V. CAUSES OF ACTION

36. Plaintiffs incorporate herein by reference the allegations set forth in the preceding paragraphs.

37. The Texas Uniform Declaratory Judgment Act, Tex. Civ. Prac. & Rem. Code Ann. § 37.004(a) reads in relevant part: "A person interested under a deed, will, written contract, or other writings constituting a contract or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder." TEX. CIV. PRAC. & REM. CODE ANN. § 37.004; *see also* TEX. CIV. PRAC. & REM. CODE ANN. §37.003(a) ("A court of record within its jurisdiction has power to declare rights, status, and other legal relations whether or not further relief is or could be claimed...."). Under

this provision, "any person interested under a written contract may have determined any question of construction or validity arising under that contract and obtain a declaration of rights, status, or other legal relations thereunder." **Transp. Ins. Co. v. WH Cleaners, Inc.**, 372 S.W.3d 223, 228 (Tex. App.—Dallas 2012, no pet.) (quoting Tex. Civ. Prac. & Rem. Code Ann. § 37.004(a)); see also **Trinity Universal Ins. Co. v. Sweatt**, 978 S.W.2d 267, 270 (Tex. App.—Fort Worth 1998, no. pet.) ("Construction and validity of contracts are the most obvious and common uses of the declaratory judgment action.").

38. Plaintiffs contend that the portions of the Golden Gate easement and the Avalon easement that are contained within their subdivision are private easements. However, Defendants seek to, and for the past year or two have acted as though, use these easements for ingress and egress of themselves and the public at large.

39. This Court has the power to declare the rights, status, and legal relations between Plaintiffs and Defendants for the purposes of injunctive relief.

40. A genuine case and controversy exists between Plaintiffs and Defendants, within the jurisdiction of this Court, and involving rights, status, and other legal relations of the Parties. See Tex. Civ. Prac. & Rem. Code §37.002(b). Central to this controversy is the use of Plaintiffs' private easements by the Defendants as though they were public easements.

41. Pursuant to the Uniform Declaratory Judgment Act, Plaintiffs seek a declaration from the Court that the private, Golden Gate easement and Avalon easement are solely for the use of the Plaintiffs and other owners of the Llano Estacado subdivision and that Defendants have no right to use or encourage others to use these easements for ingress and egress of the public at large.

42. In order to preserve their property rights, Plaintiffs retained counsel for this lawsuit and have incurred fees and costs. Therefore, pursuant to Texas Civil Practice and Remedies Code §37.009, Plaintiffs are entitled to recover their reasonable attorneys' fees and costs.

VI. REQUEST FOR INJUNCTIVE RELIEF

43. Plaintiffs incorporate herein by reference the allegations set forth in the preceding paragraphs.

44. Plaintiffs request that the Court enter an injunction enjoining Defendants from all conduct and attempts to use Plaintiffs' private easements for ingress and egress of themselves or the public at large. Without injunctive relief, such actions would cause irreparable harm to Plaintiffs and Defendant has no legal basis to interfere with Plaintiffs' easement rights. Plaintiffs are simply asking this Court to maintain the status quo of the Golden Gate easement and Avalon easement that has existed for sixty (60) years until such time this action may be heard at trial. Upon a full trial in this matter, Plaintiffs further request that a permanent injunction be imposed upon Defendants.

45. Sec. 65.011 of the Texas Civil Practice and Remedies Code provides that a writ of injunction may be granted if:

- (1) the applicant is entitled to the relief demanded and all or part of the relief requires the restraint of some act prejudicial to the applicant;
- (2) a party performs or is about to perform or is procuring or allowing the performance of an act relating to the subject of pending litigation, in violation of the rights of the applicant, and the act would tend to render the judgment in that litigation ineffectual;

- (3) the applicant is entitled to a writ of injunction under the principles of equity and the statutes of this state relating to injunctions;
- (4) a cloud would be placed on the title of real property being sold under an execution against a party having no interest in the real property subject to execution at the time of sale, irrespective of any remedy at law; or
- (5) irreparable injury to real or personal property is threatened, irrespective of any remedy at law.

46. Plaintiffs are entitled to the relief demanded because Plaintiffs can show they are owners of the Golden Gate easement and Avalon easement by virtue of owning in the Llano Estacado subdivision.

47. Allowing Defendants continued use, and the encouragement of use by the public at large, of the Golden Gate easement and Avalon easement would violate Plaintiffs' rights to maintain the Golden Gate easement and Avalon easement to their private use; it would continue to disturb Plaintiffs' peace and use and enjoyment of the Golden Gate and Avalon easements due to the multitude of extra traffic; and, would require further and more frequent maintenance and upkeep of the easements, leading to further expense to Plaintiffs. Failing to enjoin Defendants would effectively render Plaintiffs' private easement rights useless at their continued expense.

48. Therefore, if the Court does not grant this request for an injunction, Plaintiffs will suffer immediate and irreparable harm by any of Defendants' unlawful actions in using Plaintiffs' private easements for its own or public use. It is fundamentally

essential to the enjoyment of Plaintiffs' property that their easement and the rights they hold therein are not thwarted by the use of ingress and egress by Defendants and their invitees.

49. Plaintiffs have no other adequate remedy at law because there is no other means to lawfully restrain Defendants from their unlawful conduct in the ingress and egress of themselves and their invitees across Plaintiffs' private easement and, thus, are entitled to a writ of injunction under Texas law.

50. Finally, a cloud will be placed on title of their real property for action taken against their easement rights and Plaintiffs will suffer irreparable harm to the value of Plaintiffs' property, irrespective of any remedy at law.

51. For all these reasons, pursuant to Texas Rule of Civil Procedure 683 and Texas Civil Practice and Remedies Code Chapter 65 to preserve the status quo during the pendency of this action, Plaintiffs respectfully request a temporary injunction be issued restraining Defendants, including its officers, agents, servants, employees, invitees, and all other persons in active concert or participation with Defendants who receive actual notice of the order from threatening to, attempting to or actually using the Golden Gate easement and Avalon easement.

52. The basis set forth in this application for injunction are supported by the verifications of Plaintiffs attached hereto. Plaintiffs respectfully ask this Court to set its application for temporary injunction for a hearing and, after the hearing, issue a temporary injunction against Defendants.

VIII. CONDITIONS PRECEDENT

53. All conditions precedent to Plaintiffs' claims for relief have been performed or have occurred.

IX. ATTORNEY'S FEES AND COSTS

54. Plaintiffs are entitled to recover costs and reasonable and necessary attorney fees that are equitable and just under Texas Civil Practice and Remedies Code Section 37.009, because this is a suit for declaratory relief.

X. JURY DEMAND

55. Plaintiffs hereby request a jury trial and has tendered the appropriate fee with this petition.

XII. PRAYER

WHEREFORE PREMISES CONSIDERED, Plaintiffs pray that citation be issued commanding Defendants to appear and answer herein and that (1) after a hearing, Plaintiffs be granted a temporary injunction and, upon a trial of this matter, to be granted a permanent injunction; (2) Plaintiffs be awarded declaratory relief; and (3) Plaintiffs be awarded their attorney's fees and costs; and (4) for all other relief to which Plaintiffs are entitled in equity and at law.

Respectfully submitted,
JOEL AMOS GORDON, ESQUIRE
P.O. Box 52688
Midland, TX 79710
Phone: (432) 242-4899
joel@joelgordonlaw.com

By:



Joel Amos Gordon
State Bar No. 24086325
ATTORNEY FOR PLAINTIFFS

VERIFICATION

STATE OF TEXAS \$

\$

COUNTY OF MIDLAND \$

"My name is Cesar Acosta. I am over 18 years of age, and I am competent to testify to these matters. I am one of the Plaintiffs in this Cause. I have personal knowledge of all facts stated in the above Plaintiffs' Original Petition and Application For Injunctive Relief and I declare under the penalty of perjury that all such facts are true and correct."



Cesar Acosta

VERIFICATION

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

"My name is Brian Bailey. I am over 18 years of age, and I am competent to testify to these matters. I am one of the Plaintiffs in this Cause. I have personal knowledge of all facts stated in the above Plaintiffs' Original Petition and Application For Injunctive Relief and I declare under the penalty of perjury that all such facts are true and correct."

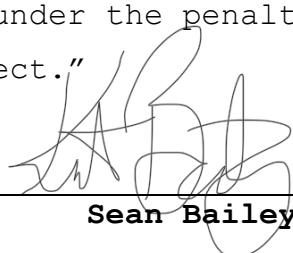


Brian Bailey

VERIFICATION

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

"My name is Sean Bailey. I am over 18 years of age, and I am competent to testify to these matters. I am one of the Plaintiffs in this Cause. I have personal knowledge of all facts stated in the above Plaintiffs' Original Petition and Application For Injunctive Relief and I declare under the penalty of perjury that all such facts are true and correct."

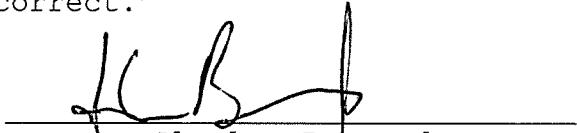


Sean Bailey

VERIFICATION

STATE OF TEXAS \$
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COUNTY OF MIDLAND \$

"My name is Abraham Bernard. I am over 18 years of age, and I am competent to testify to these matters. I am one of the Plaintiffs in this Cause. I have personal knowledge of all facts stated in the above Plaintiffs' Original Petition and Application For Injunctive Relief and I declare under the penalty of perjury that all such facts are true and correct."

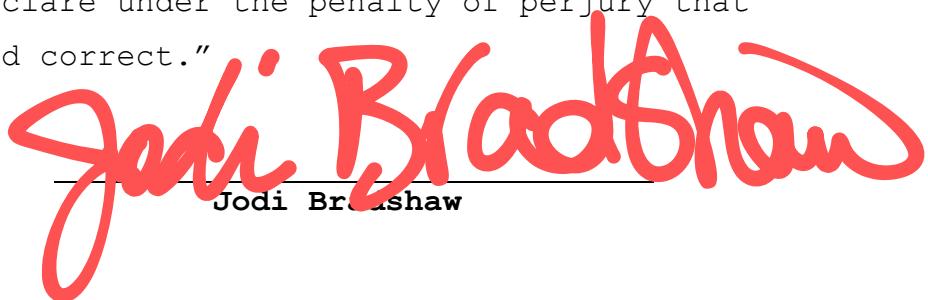


Abraham Bernard

VERIFICATION

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

"My name is Jodi Bradshaw. I am over 18 years of age, and I am competent to testify to these matters. I am one of the Plaintiffs in this Cause. I have personal knowledge of all facts stated in the above Plaintiffs' Original Petition and Application For Injunctive Relief and I declare under the penalty of perjury that all such facts are true and correct."



Jodi Bradshaw

VERIFICATION

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

"My name is Nolan Bradshaw. I am over 18 years of age, and I am competent to testify to these matters. I am one of the Plaintiffs in this Cause. I have personal knowledge of all facts stated in the above Plaintiffs' Original Petition and Application For Injunctive Relief and I declare under the penalty of perjury that all such facts are true and correct."

Nolan Bradshaw
Nolan Bradshaw

VERIFICATION

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

"My name is Claudia Brasher. I am over 18 years of age, and I am competent to testify to these matters. I am one of the Plaintiffs in this Cause. I have personal knowledge of all facts stated in the above Plaintiffs' Original Petition and Application For Injunctive Relief and I declare under the penalty of perjury that all such facts are true and correct."



Claudia brasher

VERIFICATION

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

"My name is Alicia Carter. I am over 18 years of age, and I am competent to testify to these matters. I am one of the Plaintiffs in this Cause. I have personal knowledge of all facts stated in the above Plaintiffs' Original Petition and Application For Injunctive Relief and I declare under the penalty of perjury that all such facts are true and correct."



Alicia Carter

A handwritten signature in black ink, appearing to read "Alicia Carter". The signature is fluid and cursive, with a horizontal line underneath it. The name is printed in a bold, sans-serif font directly beneath the signature.

VERIFICATION

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

"My name is Wendell Creech. I am over 18 years of age, and I am competent to testify to these matters. I am one of the Plaintiffs in this Cause. I have personal knowledge of all facts stated in the above Plaintiffs' Original Petition and Application For Injunctive Relief and I declare under the penalty of perjury that all such facts are true and correct."

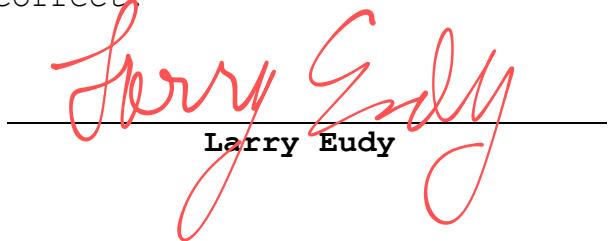


Wendell Creech

VERIFICATION

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

"My name is Larry Eudy. I am over 18 years of age, and I am competent to testify to these matters. I am one of the Plaintiffs in this Cause. I have personal knowledge of all facts stated in the above Plaintiffs' Original Petition and Application For Injunctive Relief and I declare under the penalty of perjury that all such facts are true and correct."



Larry Eudy

VERIFICATION

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

"My name is Paul Martin Garmon III. I am over 18 years of age, and I am competent to testify to these matters. I am one of the Plaintiffs in this Cause. I have personal knowledge of all facts stated in the above Plaintiffs' Original Petition and Application For Injunctive Relief and I declare under the penalty of perjury that all such facts are true and correct."



Paul Martin Garmon III

VERIFICATION

"My name is Misty Gray. I am over 18 years of age, and I am competent to testify to these matters. I am one of the Plaintiffs in this Cause. I have personal knowledge of all facts stated in the above Plaintiffs' Original Petition and Application For Injunctive Relief and I declare under the penalty of perjury that all such facts are true and correct."

Misty Gray
Misty Gray

VERIFICATION

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

"My name is Valerie Hall. I am over 18 years of age, and I am competent to testify to these matters. I am one of the Plaintiffs in this Cause. I have personal knowledge of all facts stated in the above Plaintiffs' Original Petition and Application For Injunctive Relief and I declare under the penalty of perjury that all such facts are true and correct."

Valerie Hall

Valerie Hall

VERIFICATION

STATE OF TEXAS \$
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COUNTY OF MIDLAND \$

"My name is Gilbert Hernandez. I am over 18 years of age, and I am competent to testify to these matters. I am one of the Plaintiffs in this Cause. I have personal knowledge of all facts stated in the above Plaintiffs' Original Petition and Application For Injunctive Relief and I declare under the penalty of perjury that all such facts are true and correct."



Gilbert Hernandez

VERIFICATION

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

“My name is Kim Hye. I am over 18 years of age, and I am competent to testify to these matters. I am one of the Plaintiffs in this Cause. I have personal knowledge of all facts stated in the above Plaintiffs’ Original Petition and Application For Injunctive Relief and I declare under the penalty of perjury that all such facts are true and correct.”

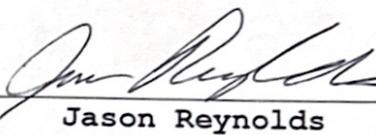
Hye Kim

Kim Hye

VERIFICATION

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

"My name is Jason Reynolds. I am over 18 years of age, and I am competent to testify to these matters. I am one of the Plaintiffs in this Cause. I have personal knowledge of all facts stated in the above Plaintiffs' Original Petition and Application For Injunctive Relief and I declare under the penalty of perjury that all such facts are true and correct."

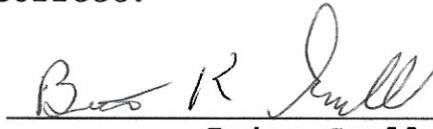


Jason Reynolds

VERIFICATION

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

"My name is Brian Small. I am over 18 years of age, and I am competent to testify to these matters. I am one of the Plaintiffs in this Cause. I have personal knowledge of all facts stated in the above Plaintiffs' Original Petition and Application For Injunctive Relief and I declare under the penalty of perjury that all such facts are true and correct."


Brian Small
Brian Small

VERIFICATION

STATE OF TEXAS \$
 \$
COUNTY OF MIDLAND \$

"My name is Lynn Williams. I am over 18 years of age, and I am competent to testify to these matters. I am one of the Plaintiffs in this Cause. I have personal knowledge of all facts stated in the above Plaintiffs' Original Petition and Application For Injunctive Relief and I declare under the penalty of perjury that all such facts are true and correct."

Lynn Williams

Lynn Williams

Automated Certificate of eService

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Joel Gordon

Bar No. 24086325

joel@joelgordonlaw.com

Envelope ID: 104992112

Filing Code Description: Petition

Filing Description: Plaintiffs??? Original Petition And Application For Injunctive Relief

Status as of 8/29/2025 8:08 AM CST

Case Contacts