

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

TEXAS DEMOCRATIC PARTY; §
BOYD L. RICHIE, in his capacity as §
Chairman of the Texas Democratic §
Party; HARRIS COUNTY §
DEMOCRATIC PARTY; §
GERALD BIRNBERG, in his capacity §
as Chairman of the Harris County §
Democratic Party; and §
J. GOODWILLE PIERRE §

Plaintiffs,

vs.

PAUL BETTENCOURT, in his capacity §
as Harris County Tax Assessor Collector §
and Harris County Voter Registrar §

Defendant.

Cause No. _____

PLAINTIFFS' ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Plaintiffs, TEXAS DEMOCRATIC PARTY, BOYD L. RICHIE, in his capacity as Chairman of the Texas Democratic Party, HARRIS COUNTY DEMOCRATIC PARTY, GERALD BIRNBERG, in his capacity as Chairman of the Harris County Democratic Party, and J. GOODWILLE PIERRE (hereinafter collectively referred to as "Plaintiffs"), and files this Original Complaint complaining of Defendant PAUL BETTENCOURT, in his capacity as Harris County Tax Assessor Collector and Harris County Voter Registrar (hereinafter referred to as "Defendant"), and in support thereof would show the Court as follows:

I.

FACTUAL ALLEGATIONS

1. Federal and Texas law has historically provided voters the assurance that their votes will not be lost because election officers fail to comply with the law.
2. Federal and Texas law has further historically provided voters the assurance that their votes will not be lost because of legal technicalities.
3. At the time of this writing, approximately 7,000 provisional ballots and more than 1,000 mail-in ballots remain uncounted in the Harris County 2008 General Election.
4. Because of the Defendant's failure to comply with law, these ballots are in danger of not being counted before a state statutory deadline.
5. Furthermore, because of the unlawful and hyper-technical voter registration activities of the Defendant, numerous voters lost their chance to vote in the 2008 General Election despite having been qualified.
6. Each of the Defendant's activities has been cloaked in secrecy because the Defendant has failed to comply with federal law by refusing requests for information. The Defendant has further refused to allow poll watchers to observe his activities in so far as they are related to consideration of the provisional ballots.
7. Plaintiffs seek to enjoin and order that the Defendant to process voter registration information for the voters who cast provisional ballots in this election in time for the Ballot Board to complete its work by the state statutory deadline of Wednesday, November 12, 2008. *See* TEX. ELEC. CODE § 65.051.

8. Plaintiffs further seek an order compelling Defendant to provide the information requested by Plaintiffs pursuant to 42 U.S.C. § 1973gg-6(i) in the attached Exhibits “A” and “B.”

9. Plaintiffs seek to enjoin the Defendant from certain voter registration practices that prevent lawful voters from registering to vote in upcoming elections

II.

PARTIES

10. Plaintiff, TEXAS DEMOCRATIC PARTY, is a political party formed under the Texas Election Code, whose address is 707 Rio Grande Street, Austin, Travis County, Texas 78701.

11. Plaintiff, BOYD L. RICHIE, is Chairman of the Texas Democratic Party and a registered voter in Young County, Texas.

12. Plaintiff, HARRIS COUNTY DEMOCRATIC PARTY, is a political party formed under the Texas Election Code, whose address is 707 Rio Grande Street, Austin, Travis County, Texas 78701.

13. Plaintiff, GERALD BIRNBERG, is Chairman of the Harris County Democratic Party and a registered voter in Harris County, Texas.

14. J. GOODWILLE PIERRE is a Harris County resident and is the 2008 Democratic Nominee for election to the 333rd State Judicial District Court. He may be served through counsel below.

15. Defendant PAUL BETTENCOURT is sued in his capacity as the Harris County Tax Assessor Collector and Harris County Voter Registrar and may be served with process at 1001 Preston, Harris County, Texas 77002.

III.

JURISDICTION AND VENUE

16. The Court has jurisdiction over this matter under 28 U.S.C. §§ 1331, 1343(3) & (4), and 1367(a).

17. Venue is proper in this district under 28 U.S.C. §1391(b)(2) in that a substantial part of the events or omissions giving rise to these claims occurred in this district.

IV.

DECLARATORY JUDGMENT/WRIT OF MADNAMUS

18. This is an action for declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201-2202, 42 U.S.C. § 1983 and Federal Rule of Civil Procedure 65 to enforce rights guaranteed under the Fourteenth Amendment to the United States Constitution and other federal and state laws. This action is brought to prevent deprivation under color of law of the rights, privileges and immunities secured to Plaintiffs by the aforementioned statutes and constitutional provisions.

19. This is also a request for a Writ of Mandamus to direct a state officer to comply with his non-discretionary duties created by law.

VI.

CAUSES OF ACTION

COUNT 1:

**The Defendant's Actions Burden the Fundamental Right to Vote
in Violation of the Due Process Clause of the
Fourteenth Amendment to the United States Constitution**

20. Plaintiffs re-allege Paragraphs 1 through 19 of this Complaint.
21. Defendant's actions in failing to process provisional ballots violate the due process rights of Plaintiffs and the affected voters
22. Defendant's actions in failing to register voters by overly technical review of voter registration applications violate the due process rights of Plaintiffs and the affected voters.

COUNT 2:

**The Defendant's Actions Burden the Fundamental Right to Vote
in Violation of the Equal Protection Clause of the
Fourteenth Amendment to the United States Constitution**

23. Plaintiffs re-allege Paragraphs 1 through 22 of this Complaint.
24. Defendant's actions in failing to process provisional ballots violate the equal protection rights of Plaintiffs and the affected voters
25. Defendant's actions in failing to register voters by overly technical review of voter registration applications violate the equal protection rights of Plaintiffs and the affected voters.

COUNT 3:

The Defendant has Violated 42 U.S.C. § 1973gg-6(i) by Failing to Provide Information Timely and Properly Requested by Plaintiffs

26. Plaintiffs re-allege Paragraphs 1 through 25 of this Complaint.
27. 42 U.S.C. § 1973gg-6(i) provides a requesting party is entitled to information requested concerning voter registration procedures.
28. Defendant has refused to provide any substantive information and will only provide documents after considerable expense (over \$1 Million) and an unknown redaction process.
29. Because of Defendant's failure to provide information, Plaintiffs were unable to learn of Defendant's unlawful voter registration procedures until after the 2008 election deadlines had passed.
30. Plaintiffs are entitled the information requested pursuant to 42 U.S.C. § 1973gg-6(i) and seek an order compelling its production pursuant to 42 U.S.C. § 1973gg-9.

VII.

APPLICATION FOR TEMPORARY RESTRAINING ORDER¹

31. Plaintiffs ask this Court to enter a Temporary Restraining Order granting the relief requested herein.
32. It is probable that the Plaintiffs will prevail against the Defendant on the merits and obtain permanent injunctive and mandamus relief precluding the violations of law alleged herein.

¹ Pursuant to the Southern District Local Rules, a separate Application for Injunctive Relief will also be filed with the Court.

33. If the Plaintiffs' Application for Temporary Restraining Order and Injunctive Relief is not granted, irreparable harm is imminent because, on information and belief, Defendant intends to continue his unlawful actions.

34. The Plaintiffs have no adequate remedy at law because the substantial damages and harm from Defendant's conduct are incalculable and a money judgment could not serve as adequate compensation for the wrong inflicted on the Plaintiffs and the voters of the state.

A. Request for Preliminary Injunction

35. Plaintiffs re-allege the foregoing paragraphs 1 through 34 of this Complaint.

36. The Plaintiffs ask the Court to set this request for preliminary injunction for hearing, and after the hearing, enter a preliminary injunction granting the relief requested herein.

B. Request for Permanent Injunction

37. Plaintiffs re-allege the foregoing paragraphs 1 through 36 of this Complaint.

38. After full trial on the merits, the Plaintiffs ask the Court to enter a permanent injunction granting the relief requested herein.

ATTORNEYS FEES

39. Plaintiffs request award of their reasonable and necessary attorneys' fees for this action.

PRAYER

40. For the foregoing reasons, the Plaintiffs respectfully request that the Court enter judgment against Defendant consistent with the relief requested herein.

Dated this 10th day of November, 2008.

Respectfully submitted,

TEXAS DEMOCRATIC PARTY and
BOYD L. RICHIE, in his capacity as
Chairman of the Texas Democratic Party

By: /s/ Chad W. Dunn

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