

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,

Cause No. 4:08-CV-03332

vs.

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

Defendant.

PLAINTIFFS' APPLICATION FOR TEMPORARY RESTRAINING ORDER,
PRELIMINARY INJUNCTION AND
PERMANENT INJUNCTION

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 Application for Temporary Restraining Order, Preliminary Injunction and Permanent Injunction 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. The 2008 General Election for federal, state and county officers was held November 4, 2008. Early Voting by personal appearance began October 20, 2008 and concluded November 1, 2008.

2. The Defendant is the Harris County Tax Assessor Collector and the Voter Registrar for Harris County.

3. The Defendant is charged with fairly and impartially registering voters in compliance with state and federal laws. *See* 42 U.S.C § 1973gg-6 and TEX. ELEC. CODE § 11.001 *et. seq.*

4. Plaintiffs have been concerned the Defendant has not been complying with election laws and is unlawfully refusing to register thousands of voters.

5. Plaintiffs have collected evidence that the Defendant has taken the following actions, in addition to others, that has resulted in the loss of the voting franchise by thousands of voters:

- a. Defendant Bettencourt rejects the voter registration applications of applicants that list their date of birth, that clearly indicates they will be eighteen (18) years of age on or before election day, but fail to check the box on the application form that states the applicant will be eighteen (18) year of age or older on the date of the election.
- b. Section 8 of the Texas Voter Registration Application asks the applicant to provider his or her Texas Driver’s License Number or Texas Personal Identification Number, or, if the applicant has no

Texas Driver's License or Personal Identification, the last 4 digits of the applicants Social Security Number. In this same section, the applicant is asked to check a box if they do not have a Texas Driver's License or a Texas Personal Identification number and to check another box if they do not have a Social Security Number. It is Defendant Bettencourt's policy to reject an application if the applicant provides the last four digits of their Social Security Number but fails to check the block further indicating that the applicant does not possess a Texas Driver's License or a Texas Personal Identification Number.

- c. Defendant Bettencourt rejects the voter registration applications of applicants who have listed a residence address that may possibly be a commercial address. No actual investigation is undertaken to determine whether the voter does in fact reside there.
 - d. Defendant Bettencourt fails to verify that the applicant's information as provided on the Texas Voter Registration Application was input correctly by his staff after and he automatically rejects applicants when an initial search of the Texas Department of Public Safety database shows no information on the applicant. The Defendant employs a different standard for imputing first and last names in the database such that mismatches are likely to occur.
 - e. The Defendant routinely sends notices to voters too late for them to timely correct their applications. These notices advise the voter of their registration rejection and oftentimes the notice incorrectly states the reason for the rejection or does not clearly state the reason for the rejection.
6. Plaintiffs, having initially learned of some of these complaints immediately requested information from the Defendant so further investigation could occur. Plaintiffs further sought explanations from the Defendant for the reported wrongful acts. *See* Exhibits A & B. The Defendant refused to provide this information and instead demanded in excess of \$1 Million to provide redacted documents. *See* Exhibit C.

7. Unable to obtain information from the Defendant, Plaintiffs proceeded to contact voter registrants and other officials to determine the facts. Plaintiffs were unable to collect enough facts to proceed to suit before early voting began.

8. On October 17, 2008, The Houston Chronicle reported that Early Voting would begin with thousands of timely registered voters left off the rolls. *See* <http://www.chron.com/disp/story.mpl/front/6065426.html> (accessed November 11, 2008). The Defendant was still processing thousands of voter registration applications as votes were being cast. *See Id.* As of October 20, 2008, 13,000 voter registration applications had not been processed. *See* <http://www.chron.com/disp/story.mpl/chronicle/6068467.html> (accessed November 11, 2008). Thus, voters were undoubtedly turned away, some never to return, because the Defendant failed to comply with election deadlines. Other voters cast provisional ballots when they would have been provided a regular ballot had their registrations been processed timely. These provisional ballots are now being held up by the Defendant.

9. Defendant Bettencourt has the duty to review every voter registration application to determine if it complies with law. *See* Tex. Elec. Code § 13.071(a). The Defendant is required to make his determination “not later than the seventh day after the date the application is submitted to the registrar.” Tex. Elec. Code § 13.01(b). The last day to register to vote for this election was October 6, 2008. As a result, when early voting began, the Defendant had failed to meet the seven day deadline on thousands of applications.

10. There is no evidence other counties in the state could not meet the voter registration deadlines.

11. Despite enormous growth in voter registration throughout the nation as well as numerous organized efforts to locate and register new voters, the Harris County voter roll grew negligibly this cycle. *See* <http://www.chron.com/disp/story.mpl/chronicle/6068467.html> (accessed November 11, 2008). Voter rolls around the nation swelled to historic levels. Harris County's voter rolls did not experience similar growth because of the Defendant's failure to comply with the law.

12. After early voting was well underway, KHOU Channel 11 News broadcast a two-part story that interviewed numerous people who had been wrongfully denied registration by the Defendant. *See* http://www.khou.com/topstories/stories/khou081022_rm_voting-registration-troubles_.13aff3a36.html (accessed November 11, 2008). By that time, it was too late to seek judicial intervention because the voting rolls had closed pursuant to state and federal law.

II.

CURRENT FACTUAL ALLEGATIONS

13. At the time of this writing, 6,950 provisional ballots and approximately 1,000 mail-in ballots remain uncounted in the Harris County 2008 General Election. *See* Exhibits D & E. The Defendant has only processed 2,439 provisional ballots as of this writing. *See Id.* As a result, 4,511 provisional ballots can not be considered by the Early Vote Ballot Board because they are being held up by the Defendant. *See Id.* Of those

provisional ballot processed the Defendant and considered by the Early Vote Ballot Board, 427 have been accepted and are ready to tabulated. *See Id.* The board must, by state law, complete its work tomorrow, Wednesday November 12, 2008. *See* TEX. ELEC. CODE § 65.051.¹

14. Provisional Ballots are tabulated only after they are deemed properly cast by the Early Voting Ballot Board. *See* Tex. Elec. Code. Chapter 65, generally. Before the Board can consider the ballots, the voter registrar must review the affidavits accompanying the ballots to determine the voter registration circumstances of the voter. *See* Tex. Elec. Code § 65.052. The Voter Registrar was required to complete his review of the ballots “no later than the third business day after election day.” TEX. ADMIN. CODE § 81.172(g). The Defendant has failed to comply with this deadline.

15. The Defendant’s failure to comply with yet another crucial election deadline threatens to disenfranchise additional voters than those not properly registered. It also may affect who prevails in certain races. For example, Plaintiff Goodwille Pierre is the 2008 Democratic Nominee for the 333rd State District Court. The unofficial results reported to date reveal Plaintiff Pierre is the loser by 595 votes. *See* <http://www.election.co.harris.tx.us/Cumulative/cumulative.htm> at Page 21 (accessed November 11, 2008). It is foreseeable that failing to count the provisional ballots could prevent an accurate election result.

¹ Technically the deadline is today but due to the National Holliday, the Texas Secretary of State has extended the deadline to tomorrow. *See* <http://www.sos.state.tx.us/elections/laws/advisory2008-07.shtml> (accessed November 11, 2008).

16. Furthermore, consistent with the Defendant's policy of secrecy, Poll Watchers appointed by Plaintiffs are not being permitted to observe the Defendant's staff review of the affidavits. *See* Exhibit F. *See also* TEX. ELEC. CODE § 33.001 *et. seq.*

17. It is believed the Defendant is selectively reviewing the affidavits attached to the Provisional Ballots. It has been observed, in the short time Poll Watchers were permitted, that the Defendant's staff was rejecting Provisional Ballots cast by voters who report a commercial address, in violation of law. *See* Exhibit F. *See also* 42 U.S.C. 1973gg-6(d) (requiring a voter may not be removed from rolls unless residency is confirmed in writing).

18. Because of the Defendant's failure to comply with law, Provisional Ballots are in danger of not being counted before a state statutory deadline – 7 days from Election Day. *See* TEX. ELEC. CODE § 65.051. Furthermore, many of the ballots are in danger of not being counted because the voter registration information reported by Defendant Bettencourt to the Ballot Board is incorrect.

III.

EMERGENCY RELIEF

19. 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. Alternatively, if the Defendant is permitted to complete his work after this deadline, a time and date certain should be set. The Court and counsel should be provided daily reports of the progress.

20. Plaintiffs further seek an order that Poll Watchers appointed by appropriate parties under the Texas Election Code be permitted to observe the processing of Provisional Ballots by the Defendant.

21. Plaintiffs seek an order enjoining the defendant from sorting, categorizing or profiling the Provisional Ballots in any way that might reveal the voting tendency of the person who cast the ballot.

22. Plaintiffs seek an order that the Defendant refrain from recommending against the consideration of a provisional ballot on the basis that the voter reports a commercial address.

23. Plaintiffs seek an order the Defendant provide to the Ballot Board evidence of voter registration activities by a person who cast a provisional ballot including the registration application received, the date of its receipt, the reason rejected, if rejected, a copy of the letter sent to voter confirming when rejected and why, and any documents obtained in review of the registrant's application.

24. 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."

IV.

PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF

25. Plaintiffs seek an order enjoining the Defendant from taking actions in violation of registration laws.

26. Plaintiffs seek an order enjoining the Defendant from the unlawful voter registration activities described herein and more particularly learned of in discovery.

27. Plaintiffs expect to seek additional injunctive relief once discovery is complete.

V.

APPLICATION FOR TEMPORARY RESTRAINING ORDER

28. Plaintiffs ask this Court to enter a Temporary Restraining Order granting the relief requested herein.

29. 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.

30. 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.

31. 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

32. Plaintiffs re-allege the foregoing paragraphs 1 through 31 of this Complaint.

33. 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

34. Plaintiffs re-allege the foregoing paragraphs 1 through 32 of this Complaint.
35. After full trial on the merits, the Plaintiffs ask the Court to enter a permanent injunction granting the relief requested herein.

VI.

BOND

36. Plaintiffs are willing to post a reasonable bond.

VII.

PRAYER

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

Dated this 11th day of November, 2008.

Respectfully submitted,

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

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