



Mr. Dunn requesting clarification of the specific information desired and also a request for acknowledgement of production requirements concerning redaction of confidential information and payment of production costs was sent August 14, 2008. Plaintiff never performed all conditions precedent to properly completing the information request before filing suit. Plaintiffs have (1) failed to clarify the specific information requested, (2) failed to affirm that Plaintiffs would accept the information with confidential material redacted and (3) failed to affirm that Plaintiffs were prepared to pay the reasonable cost of producing the information. Fed. R. Civ. P. 9(c). After completion of the conditions precedent concerning adequate clarifications, redaction and a willingness to pay the reasonable production costs required, Defendant is and has at all times stood ready, willing and able to produce the public information under his care.

2. **Failure to Pay Reasonable Consideration/Costs.** Under 42 U.S.C. § 1973gg-6(i) and Tex. Gov't Code Ann. § 552.261 et seq. a reasonable cost may be charged for obtaining the public information requested. By correspondence dated August 14, 2008, Plaintiff was notified of the reasonable cost estimated to produce and redact the information requested on August 1, 2008, Plaintiffs have failed to pay the reasonable consideration and have failed to affirm their willingness to pay the estimated reasonable cost for the production of the information.

3. **No Injury.** Defendant asserts that Plaintiffs have not been injured by Defendant.

## II.

### ANSWER

4. Defendant answers the allegations contained in Plaintiffs' First Amended Complaint in the order in which those allegations appear:

### Factual Allegations

5. Defendant admits the allegations of paragraph 1.

6. Defendant admits the allegations of paragraph 2.

7. As to paragraph 3, Defendant denies that the statutes cited call for “fairly and impartially” registering voters, rather the statutes provide a uniform process for applicants to register.

8. Defendant denies the allegations of paragraph 4.

9. As to paragraph 5, Defendant is without knowledge or information sufficient to form a belief as to what Plaintiffs may believe to be “evidence”; furthermore Defendant denies that he “rejects” voter registration applications but admits that where applications fail to comply with the statutory requirements for registration Defendant follows the guidelines of the Chief Election Official of the State of Texas, the Secretary of State, in carrying out his duties as Voter Registrar of Harris County.

10. Defendant denies the allegations of paragraph 6.

11. Defendant denies the allegations of paragraph 7.

12. Defendant denies that he “refused” to provide public information requested as alleged in paragraph 8. More specifically, Defendant responds that while information was requested and written response was made to Plaintiff for clarification of the request, Plaintiff has to this date never sufficiently responded to the August 14, 2008 request that Plaintiff (1) clarify exactly what information is sought, (2) confirm that they agree to redaction of confidential information from information to be provided and (3) affirm their agreement to pay the reasonable costs of obtaining the information which they desire. Furthermore, with adequate clarifications, agreement to redaction and an express willingness to pay the costs required, Defendant is and has always stood ready to provide the public information under his care.

13. As to paragraph 9, Defendant is without knowledge or information sufficient to form a belief as to the truth of the averment.

14. As to paragraph 10, Defendant denies that delay in processing voter applications was inexcusable; as to the media hearsay the accuracy or inaccuracy of specific hearsay speaks for itself.

15. As to paragraph 11, Defendant denies that numerous people were wrongfully denied registration by Defendant; as to the media hearsay the accuracy or inaccuracy of specific hearsay speaks for itself.

16. As to paragraph 13 [sic], Defendant denies the allegations pled, but admits that as Voter Registrar of Harris County he carries out the statutory duties of that office in a lawful manner.

17. As to paragraph 14, Defendant admits that of the 254 counties of Texas undoubtedly had a variety of experiences in meeting voter registration deadlines.

18. Defendant denies the allegations of paragraph 15.

19. As to paragraph 16, Defendant denies the allegations as pled; furthermore Defendant states that there were voters who cast provisional ballots when they could have been provided a regular ballot had they properly registered in a timely manner.

20. Defendant denies the allegations of paragraph 17, to the extent that it alleges that this lawsuit had anything to do with the timing of the processing of provisional ballots.

21. Defendant admits the allegations of paragraph 18.

22. As to of paragraph 19, Defendant admits that he provides information concerning the voter registration status of persons who cast provisional ballots, but Defendant is without knowledge or information sufficient to form a belief as to the truth of the averment concerning the actions of the Early Voting Ballot Board.

23. As to paragraph 20, Defendant admits that the Early Voting Ballot Board was provided some voter registration documents which were changed during processing and as a result were no longer identical to the “copy” attached to the provisional ballot which was not handled by Defendant.

24. Defendant admits the allegations of paragraph 21.

25. Defendant denies the allegations of paragraph 22 regarding actions of the Board.

26. As to paragraph 23, Defendant is without knowledge or information sufficient to form a belief as to the “conclusions” of the Board; however Defendant admits that numerous voter registration applications were not accepted for failing to comply with the registration requirement.

27. As to paragraph 24, Defendant is without knowledge or information sufficient to form a belief as to the allegations.

28. Defendant denies the allegations of paragraph 25.

29. As to paragraph 26, Defendant is without knowledge or information sufficient to form a belief as to what Plaintiffs may mean by “enormous growth” and as to the media hearsay the accuracy or inaccuracy of specific hearsay speaks for itself.

30. As to paragraph 27, Defendant admits that apparently in some places voter rolls swelled as alleged.

31. Defendant denies the allegations of paragraph 28.

32. Defendant denies the allegations of paragraph 29.

33. Defendant denies the allegations of paragraph 30.

34. As to the allegations of paragraph 31, Defendant admits that poll watchers were not allowed to observe the processing of voter registration applications which included confidential

information; furthermore Defendant did not handle or process provisional ballots, only voter registration forms.

35. Defendant denies the allegations of paragraph 32.

36. Defendant denies the allegations of paragraph 33.

#### **Parties**

37. Defendant admits that paragraph 34 identifies a named Plaintiff.

38. Defendant admits that paragraph 35 identifies a named Plaintiff.

39. Defendant admits that paragraph 36 identifies named Plaintiffs; otherwise Defendant denies there were any unlawful activities by Defendant which caused harm to the named Plaintiffs.

40. Defendant admits that paragraph 37 identifies a named Plaintiff.

41. Defendant admits that paragraph 38 identifies a named Plaintiff.

42. Defendant admits that paragraph 39 identifies a named Plaintiff.

43. Defendant admits that paragraph 40 identifies Defendant as being sued in his official capacity and not in his individual capacity.

#### **Jurisdiction and Venue**

44. Defendant admits the allegations of paragraph 41 that this Honorable Court has jurisdiction under 28 U.S.C. §§ 1331, 1343(3), 1343(4), 1367(a), but otherwise Defendant denies the allegations.

45. Defendant admits the allegations of paragraph 42 that venue is proper in this Honorable Court.

46. Defendant admits the allegations of paragraph 43 to the effect that it calls for a three-judge panel; otherwise Defendant is without knowledge or information sufficient to form a belief as to what Plaintiffs plans may be.

#### **Declaratory Judgment/Injunction**

47. Defendant admits the allegations of paragraph 44 that Plaintiffs have sued for declaratory and injunctive relief, but Defendant otherwise denies the averments and specifically denies that Plaintiffs are entitled to the relief requested.

#### **Causes of Action**

48. Defendant admits that paragraph 45 re-alleges previous paragraphs.

49. Defendant denies the allegations of paragraph 46.

50. Defendant denies the allegations of paragraph 47.

51. Defendant admits that paragraph 48 re-alleges previous paragraphs.

52. Defendant denies the allegations of paragraph 49.

53. Defendant denies the allegations of paragraph 50.

54. Defendant admits that paragraph 51 re-alleges previous paragraphs.

55. In response to paragraph 52, Defendant admits that 42 U.S.C. § 1973gg-6(i) provides for public disclosure of some voter registration activities and information, but Defendant denies that all conditions precedent have been met for such disclosure or that the time for disclosure is ripe because Plaintiffs have (1) failed to cooperate in clarifying the specific information desired, (2) failed to agree to redaction of confidential information from the information to be produced and (3) failed to agree to pay the reasonable cost necessary for production of information.

56. In response to paragraph 53, Defendant denies that he ever “refused” to provide public information and asserts that information generally has not been provided by Defendant because

Plaintiffs have failed to cooperate and have to date refused to (1) respond to the request to clarify what specific information is desired, (2) agree to redaction of confidential information and (3) agree to pay the reasonable cost necessary to the production of information.

57. Defendant denies the allegations of paragraph 54 and asserts that any delays in production of the public information and disclosure of the facts were caused by Plaintiffs failure to respond to the correspondence dated August 14, 2008 and to provide the information requested pre-requisite to the production of the public information.

58. In response to paragraph 55, Defendant denies that Plaintiffs are unconditionally entitled to any and all information under 42 U.S.C. § 1973gg-6(i) and that they do not have a right to the public information until they meet the reasonable conditions precedent to disclosure of the public information (1) by clarifying the specific information requested, (2) by agreeing to redaction of confidential information and (3) by agreeing to pay the reasonable cost necessary for the production of the information. Furthermore, Defendant admits that Plaintiffs have sued for an order compelling production of the information, but Defendant denies that Plaintiffs are entitled to such order at this time without more and further deny that such order is necessary to obtain public information.

59. Defendant admits that paragraph 56 re-alleges previous paragraphs.

60. Defendant denies the allegations of paragraph 57.

61. Defendant denies the allegations of paragraph 58.

62. Defendant admits that paragraph 59 re-alleges previous paragraphs.

63. Defendant admits the allegations of paragraph 60 say what they say.

64. Defendant denies the allegations of paragraph 61 as to Houston County have any relevance to Harris County, otherwise Defendant admits generally the allegations as to 42 U.S.C. § 1973c.

65. Defendant denies the allegations of paragraph 62 concerning his specific office as to all changes.

66. Defendant denies the allegations of paragraph 63.

67. Defendant denies the allegations of paragraph 64.

68. Defendant denies the allegations of paragraph 65.

69. Defendant admits that paragraph 66 re-alleges previous paragraphs.

70. Defendant denies the allegations of paragraph 67.

71. Defendant admits that paragraph 68 re-alleges previous paragraphs.

72. Defendant denies the allegations of paragraph 69.

#### **Application for Temporary Restraining Order**

73. Defendant admits that paragraph 70 seeks a Temporary Restraining Order which is not necessary and is moot.

74. Defendant denies the allegations of paragraph 71.

75. Defendant denies the allegations of paragraph 72.

76. Defendant denies the allegations of paragraph 73.

#### **Request for Preliminary Injunction**

77. Defendant admits that paragraph 74 re-alleges previous paragraphs.

78. Defendant admits that paragraph 75 requests a hearing and preliminary injunction, but Defendant denies that any such injunction is necessary or should issue.

#### **Request for Permanent Injunction**

79. Defendant admits that paragraph 76 re-alleges previous paragraphs.
80. Defendant admits that paragraph 77 requests a permanent injunction, but Defendant denies that any such injunction is necessary or should issue.

**Attorney Fees**

81. Defendant admits that paragraph 78 requests attorneys' fees for Plaintiffs but Defendant denies that this action was ever necessary and denies that Plaintiffs should receive attorneys' fees.
82. Defendant admits the allegations of paragraph 79 to the extent that Plaintiffs claim they are only seeking declaratory and/or injunctive relief; otherwise Defendant denies the assertions.

FOR THE REASONS STATED, Defendant, PAUL BETTENCOURT, in his official capacity as Harris County Tax Collector and Harris County Voter Registrar, respectfully requests this Court to enter judgment in his favor and to dismiss all of Plaintiffs' claims against Defendant. Defendant further asks that this Court award him the reasonable and necessary costs and attorney fees expended in defending this action and to award such other and further relief to which he shows himself entitled under both law and equity.

Respectfully submitted,

OF COUNSEL:

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ATTORNEY-IN-CHARGE FOR  
PAUL BETTENCOURT

**CERTIFICATE OF SERVICE**

I hereby certify that on the 9<sup>th</sup> day of December, 2008, a true and correct copy of the foregoing pleading was served in accordance with the Federal Rules of Civil Procedure on the following:

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