

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; §  
J. GOODWILLE PIERRE; §  
ALEXANDRA GIBBS; JEFFREY T. §  
VANSCHOONHOVEN; BONI SUE §  
LESZCZUK; and ERIC J. GALLOWAY §

Cause No. 4:08-CV-03332

*Plaintiffs,*

vs.

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

*Defendant.*

**PLAINTIFFS' FIRST AMENDED 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, J. GOODWILLE PIERRE, ALEXANDRA GIBBS, JEFFREY T. VANSCHOONHOVEN, BONI SUE LESZCZUK, and ERIC J. GALLOWAY (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. 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. 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 provide 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 voter registration applications when a voter provides the last four digits of their social security number but do not provide the state issued drivers license or 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 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. None of the standards, practices or procedures relating to voting referenced above has been pre-cleared under the Voting Rights Act.

7. None of the standards, practices or procedures relating to voting referenced above are material in determining whether a person is entitled to register to vote.

8. 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. The Defendant refused to provide this information and instead demanded in excess of \$1 Million to provide redacted documents.

9. 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.

10. 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). Defendant's delay in processing voter applications was inexcusable.

11. 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](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.

13. 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.

14. Other counties in the state could and did meet the voter registration deadlines.

15. Thus, voters were undoubtedly turned away, some never to return, because the Defendant failed to comply with election deadlines or voter registration laws.

16. Other voters cast provisional ballots when they would have been provided a regular ballot had their registrations been processed timely.

17. The provisional ballots were held up for tabulation by the Defendant until this suit was filed.

18. Provisional Ballots are reviewed by the Early Voting Ballot Board to determine if they were lawfully cast and should be tabulated.

19. The Early Voting Ballot Board relies upon information provided by the Defendant concerning the voter registration status of the persons who cast provisional ballots.

20. The Early Voting Ballot Board members received records from the Defendant in relation to provisional ballots that had been altered or changed. Some of the records included the use of “white-out” correction fluid.
21. Initially, the Early Voting Ballot Board utilized the information provided by the Defendant to determine the eligibility of provisional ballots.
22. After some time, the Early Voting Ballot Board lost confidence in the work of the Defendant and demanded access to original registration records.
23. Once obtaining original registration records, the Early Voting Ballot Board concluded the Defendant had failed to register numerous voters.
24. The provisional ballots cast by these voters were then tabulated.
25. Upon learning the Early Vote Ballot Board had discovered his failure to comply with law, the Defendant attempted to threaten or coerce the Chairman of the Early Voting Ballot Board.
26. 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).
27. Voter rolls around the nation swelled to historic levels in 2008.
28. Harris County’s voter rolls did not experience similar growth because of the Defendant’s failure to comply with the law.

29. 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.

30. 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.

31. The Defendant further refused to allow poll watchers to observe his activities in so far as they are related to consideration of the provisional ballots.

32. Defendant has known for some time his voter registration practices were unlawful.

33. The United States District Court for the Southern District of Texas has ruled many of the practices complained of herein violate federal law. *See U.S. v. Waller County*, 4:08-CV-03022.

## **II.**

### **PARTIES**

34. Plaintiff, TEXAS DEMOCRATIC PARTY, is a political party formed under the Texas Election Code, whose address is 515 West 12<sup>th</sup> Street, Austin, Travis County, Texas 78701.

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

36. Plaintiffs ALEXANDRA GIBBS, JEFFREY T. VANSCHOONHOVEN, BONIE SUE LESZCZUK, and ERIC J. GALLOWAY are all residents of Harris County, Texas and each were and are eligible for voter registration in Harris County in time to

participate in the 2008 General Election. Each was harmed by the Defendant's unlawful voter registration activities.

37. Plaintiff, HARRIS COUNTY DEMOCRATIC PARTY, is a political party formed under the Texas Election Code, whose address is 1445 North Loop West, Suite 110, Houston, Harris County, Texas 77008.

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

39. J. GOODWILLE PIERRE is a registered voter in Harris County and is the 2008 Democratic Nominee for election to the 333<sup>rd</sup> State Judicial District Court.

40. 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**

41. The Court has jurisdiction over this matter under 28 U.S.C. §§ 1331, 1343(3) & (4), 1345 and 1367(a) as well as 42 U.S.C. §§ 1973c, 1973j, and 1971(c).

42. 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.

43. Those claims brought under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, must be determined by a three-judge panel. Once discovery has been substantially completed, Plaintiffs will petition the court to seek appointment of the panel

from the Chief Judge of the United States Court of Appeals for the Fifth Circuit. *See* 28 U.S.C § 2284.

#### IV.

#### **DECLARATORY JUDGMENT/INJUNCTION**

44. 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 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.

#### V.

#### **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**

45. Plaintiffs incorporate the foregoing by reference.

46. Defendant's actions in failing to process provisional ballots violate the due process rights of Plaintiffs and the affected voters

47. 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**

48. Plaintiffs incorporate the foregoing by reference.
49. Defendant's actions in failing to process provisional ballots violate the equal protection rights of Plaintiffs and the affected voters
50. 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 and Continues to Violate 42 U.S.C. § 1973gg-6(i) by Failing to  
Provide Information Timely and Properly Requested by Plaintiffs**

51. Plaintiffs incorporate the foregoing by reference.
52. 42 U.S.C. § 1973gg-6(i) provides a requesting party is entitled to information requested concerning voter registration procedures.
53. Defendant has refused to provide any substantive information and will only provide documents after considerable expense (over \$1 Million) and an unknown redaction process.
54. 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.

55. 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.

**COUNT 4:**

**The Defendant Has and Continues to Violate 42 U.S.C. § 1971(a)(2)(B)**

56. Plaintiffs incorporate the foregoing by reference.

57. The Defendant denies the right of individuals to vote in elections because of an error or omission on a record or paper relating to any application, registration, or other act requisite to voting, even though such error or omission is not material in determining whether such individual is qualified under State law to vote in such elections.

58. Each of the practices described in the foregoing are designed to limit voter registration and none are material in making the determination a person is eligible to vote.

**COUNT 5:**

**The Defendant Has and Continues to Violate 42 U.S.C. § 1973c**

59. Plaintiffs hereby incorporate the foregoing by reference.

60. This is an action under the Voting Rights Act, 42 U.S.C. 1973c (“Section 5”), to enjoin the use of election practices or procedures not pre-cleared under the terms of the Act.

61. Section 5 requires that “any voting qualification or prerequisite to voting, or standard, practice or procedure with respect to voting” different from that in force or effect in Houston County on November 1, 1972 may not be lawfully implemented unless Houston County obtains declaratory judgment from the United States District Court for

the District of Columbia that the voting change does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group, except such change may be implemented without such judgment if it has been submitted to the Attorney General and the Attorney General has not interposed an objection within sixty days. *See* 42. U.S.C. § 1973c.

62. As an officer of a political subdivision, Defendant is subject to the pre-clearance requirements of Section 5.

63. The Defendant is enacting, administering or effectuating standards, practices or procedures with respect to voting different from those in force or effect on November 1, 1972 or that were subsequently lawfully pre-cleared under the terms of Section 5.

64. Defendant's failure to obtain pre-clearance of the changes described above renders the changes legally unenforceable. *See* 42 U.S.C. § 1973c.

65. Unless enjoined by this Court, the Defendant will continue to enforce the aforementioned changes without obtaining the requisite pre-clearance in violation of Section 5.

#### **COUNT 6:**

##### **The Defendant Has and Continues to Violate 42 U.S.C. § 1973gg**

66. Plaintiffs incorporate the foregoing by reference.

67. The Defendant has and continues to violate the National Voter Registration Act, 42 U.S.C. § 1973gg.

## COUNT 7:

### **The Defendant Has and Continues to Alter Official Election Records**

68. Plaintiffs incorporate the foregoing by reference.
69. The Defendant has and continues to destroy, deface, mutilate, or alter official voting records.

## VI.

### **APPLICATION FOR TEMPORARY RESTRAINING ORDER**<sup>1</sup>

70. Plaintiffs ask this Court to enter a Temporary Restraining Order prohibiting the Defendant from taking the actions described herein.
71. 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.
72. 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.
73. 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.

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<sup>1</sup> Pursuant to the Southern District Local Rules, a separate Application for Injunctive Relief will be filed with the Court after discovery has taken place.

**A. Request for Preliminary Injunction**

74. Plaintiffs incorporate the foregoing by reference.

75. 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**

76. Plaintiffs incorporate the foregoing by reference.

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

**VII.**

**ATTORNEYS FEES**

78. Plaintiffs request award of their reasonable and necessary attorneys' fees for this action. *See, e.g.*, 42 U.S.C. §§ 1973l(e), 193gg-9(c) and 1988.

79. Defendants are not entitled to qualified or sovereign immunity because the only relief requested herein is declaratory and/or injunctive relief as well as an award of attorneys fees and court costs.

**PRAYER**

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

Dated this 1st day of December 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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