

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 §

*Plaintiffs,*

vs.

LEO VASQUEZ, in his capacity as §  
Harris County Tax Assessor Collector §  
and Harris County Voter Registrar §

*Defendant.*

Cause No. 4:08-CV-03332

**MOTION TO ENTER SCHEDULING ORDER OR**  
**ALTERNATIVELY, MOTION TO EXTEND DEADLINES**

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 their Motion to Expand the Scheduling Order or Alternatively, Motion to Extend Deadlines.

## I.

Early in this case, the court set a comprehensive Scheduling Order for the case. Subsequent to the entry the Scheduling Order, the parties spent months briefing and presenting to the court arguments regarding the discoverability of official election records. Since the recent ruling on Plaintiff’s Motion to Compel, the parties have been in settlement discussions. In the event some of the discussions are not fruitful, Plaintiffs intend to file a new motion concerning the discoverability of election records in the form of a Motion for Summary Judgment since Plaintiffs’ claims for review of the election records is a separate and distinct cause of action created under federal law. Alternatively, Plaintiffs intend to file another Motion to Compel, which proposes an additional compromise, and a Motion to Sever the court’s ruling so that immediate appellate review can occur, if needed. The foregoing has not occurred because the parties have been in settlement discussions and have agreed to schedule a two-day mediation.

## II.

In the meantime, the parties are in dispute as to whether the Scheduling Order in this case still has effect. Counsel for the Plaintiffs received a docket entry from the court dated March 13, 2009 that stated “deadlines terminated.” Since that day, Plaintiffs’ counsel has assumed the Scheduling Order was terminated pending resolution of the discovery issue. The “deadlines terminated” docket entry was made days after briefing

was exchanged on the Motion to Compel. On the other hand, Defendant believes the Scheduling Order is still in place. If that is true, there is a deadline of September 11, 2009 to complete discovery and file Motions for Summary Judgment.

### **III.**

Plaintiffs respectfully request that the court cancel these deadlines and any others, if they have not already been cancelled by the court's earlier order, and withhold entering a new Scheduling Order for 30 days while the parties prepare for, and attend, a two-day mediation. The parties will advise the court in writing the date of the mediation, and will advise the court in writing the result thereof. In the event the parties are unable to settle the case at mediation, the Plaintiffs request the court enter a new Scheduling Order taking into consideration the time needed to resolve the discovery issues, including a possible interlocutory appeal or an appeal of a severed, final order.

### **IV.**

#### **Certificate of Conference**

Plaintiffs' counsel has conferred with counsel for the Defendant. Counsel for the Defendant is unopposed to the court canceling the present Scheduling Order and entering a new Scheduling Order. Otherwise any other statements herein are denied.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray the court grant this Motion for Entry of Scheduling Order or Alternatively, Motion to Expand Deadlines and grant then all other and further relief to which they may show themselves justly entitled.

Dated this 10<sup>th</sup> day of September 2009

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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ATTORNEYS FOR PLAINTIFFS

**CERTIFICATE OF SERVICE**

I hereby certify that on September 10, 2009, I electronically filed the foregoing document with the Clerk of the United States District Court, Southern District of Texas, Houston Division, using the electronic case filing system of the Court. The electronic case filing system sent a “Notice of Electronic Filing” to the following attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means:

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(Attorneys for Defendant)

*/s/ Chad W. Dunn*  
Chad W. Dunn

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**ORDER**

BE IT REMEMBERED on this the \_\_\_\_\_ day of \_\_\_\_\_, 2009, in the above-numbered and entitled cause, wherein 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, filed their Motion to Enter Scheduling Order or

Alternatively, Motion to Extend Deadlines, and after considering the Motion, pleadings on file, arguments of counsel, and after due consideration, it is

ORDERED, ADJUDGED and DECREED that Plaintiffs Motion is **granted**, all deadlines are terminated and the Court will enter a new Scheduling Order.

. SIGNED on this the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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PRESIDING JUDGE

APPROVED AND ENTRY REQUESTED:

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

By:  /s/ Chad W. Dunn  
Chad W. Dunn – Attorney In Charge  
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