

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

TEXAS DEMOCRATIC PARTY; §
BOYD L. RICHIE, in his capacity as §
Chairman of the Texas Democratic Party; §
FRANK JOSEPH; and BRETT §
ROSENTHAL §
Plaintiffs, §

vs. §

Civil Action No. 3:08-CV-02117-P

DALLAS COUNTY, TEXAS; §
BRUCE SHERBERT, in his capacity as §
Election Administrator for Dallas County, §
Texas; JAMES FOSTER, in his capacity §
as Recount Supervisor for the Recount §
of the Election for District 105 of the §
Texas House of Representatives; and §
TONI PIPPINS-POOLE, in her capacity §
as Recount Chair for the Recount of the §
Election for District 105 of the Texas §
House of Representatives §
Defendants. §

MOTION FOR LEAVE OF COURT TO FILE *AMICUS* BRIEF

TO THE HONORABLE JORGE A. SOLIS:

COMES NOW Hope Andrade, Secretary of State for the State of Texas, and files this her Motion for Leave of Court to File Amicus Brief in the above-entitled cause and shows respectfully as follows:

I.

Rule 7.2(b) of the Local Rules of the requires that an *amicus* brief may be filed only with the leave of the presiding judge. The Texas Secretary of State seeks to file her *amicus* brief because this case involves the uniform application of election laws, and the Texas Secretary of State is the state's

chief election officer. TEX. ELEC. CODE § 31.001. The case also involves a specific aspect of the operation of an electronic voting system in Texas. The same aspect of a different electronic voting system was the subject of a recent lawsuit filed by two of these same Plaintiffs against the Texas Secretary of State. That lawsuit was dismissed on summary judgment by the court of the Western District of Texas, Austin Division, and the dismissal was affirmed by the Fifth Circuit. Petition for Writ of Certiorari is pending in the Supreme Court of the United States. The Texas Secretary of State believes that this case is relevant to the issues currently before the court and wishes to bring those opinions to the court's attention.

CONCLUSION

For the reasons given herein, the Texas Secretary of State has an interest in this litigation and requests that the court grant her leave to file her *amicus* brief.

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

On December 3, 2008, a staff member of the Office of the Attorney contacted the office of counsel for Plaintiff, Chad W. Dunn, to see if he was opposed or unopposed to this motion. A message was left with Mr. Dunn's assistant because he was out of his office. At the time of filing this motion, Mr. Dunn had not returned the call. Therefore, undersigned counsel does not know whether this motion is opposed or unopposed. This office could not contact counsel for Defendants as they have not yet appeared in the case.

/s/ William T. Deane _____

WILLIAM T. DEANE
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been sent via electronic transmission on **December 4, 2008**, to:

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