

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; and §
GERALD BIRNBERG, in his capacity §
as Chairman of the Harris County §
Democratic Party, §

Plaintiffs, §

Cause No. 4:08-CV-03332

vs. §

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

Defendants. §

PLAINTIFFS’ PETITION TO ENFORCE SETTLEMENT AGREEMENT
AND
COMPLAINT FOR ADDITIONAL CAUSES OF ACTION

TO THE HONORABLE GRAY MILLER:

COME NOW Plaintiffs, TEXAS DEMOCRATIC PARTY, BOYD L. RICHIE, in his capacity as Chairman of the Texas Democratic Party, HARRIS COUNTY DEMOCRATIC PARTY, and GERALD BIRNBERG, in his capacity as Chairman of the Harris County Democratic Party (hereinafter collectively referred to as “Plaintiffs”), and complains of Defendant LEO VASQUEZ, in his capacity as Harris County Tax Assessor Collector and Harris County Voter Registrar and HARRIS COUNTY, TEXAS

(hereinafter referred to as “Defendants”), and in support thereof would show the Court as follows:

I.

FACTUAL ALLEGATIONS

1. On November 10, 2008, Plaintiffs filed suit against Defendants in order to cure serious violations of federal and state law regarding the administration of the voter registration office in Harris County, including, but not limited to the improper denial of approximately 65,000 voter registration applications. *See* Doc No. 1.
2. After discovery and depositions, the Court issued a discovery ruling limiting access by Plaintiffs and the general public to the voter registration records. *See* Doc. No. 35.
3. Harris County argued that disclosure of voter registration applications and other documents would violate the privacy of the public. *See* Doc. Nos. 24 and 31. It further argued disclosure of the actual voter registration applications and correspondence with applicants would be too burdensome. *See id.* As a result, disclosure of important governmental records was impeded and such public darkness permitted an environment where additional government misconduct would fester. Recently, Defendant Vasquez has abandoned the arguments of privacy he presented to this Court and has provided the very same information denied in this case to his political allies.
4. On October 22-23, 2009, Plaintiffs and Defendants attended mediation and a settlement was reached. *See* Exhibit “A.” (Resolution Agreement)

5. After receiving the settlement, this Court dismissed the case retaining jurisdiction over enforcement of the settlement agreement. *See* Doc. No. 57 and 42 U.S.C. § 1973a(c).
6. The settlement was submitted to the Department of Justice (hereinafter “DOJ”) for pre-clearance in compliance with paragraph 9 and 42 U.S.C. § 1973c.
7. The DOJ granted pre-clearance on January 21, 2010. *See* Exhibit “B.”
8. When the DOJ granted pre-clearance the settlement agreement became the baseline for Section 5 analysis.
9. Despite the immediate enforceability of the settlement, the Defendants delayed implementation of portions of the settlement until after the pre-clearance was granted.
10. Furthermore, the DOJ required Defendants to make additional Section 5 submissions. *See id.*
11. Upon information and belief, the Defendants did not make the additional submissions required under the DOJ pre-clearance letter.
12. Notwithstanding the foregoing, Plaintiffs have been patient in allowing Defendants to implement the agreement on the belief that the expressed goodwill from Defendant Vasquez was genuine.
13. On August 24, 2010, Defendant Vasquez announced and gave a press conference wherein he admitted to violations of the settlement agreement.
14. Released to the press and public that day was a statement by Defendant Vasquez and alleged supporting slides. *See* Exhibit “C.”

15. The August 24, 2010 event was attended almost exclusively by press and Tea Party activists.
16. Defendant Vasquez' written and oral statements constitute admissions that voter registration is being handled on an unlawful basis.
17. At the August 24, 2010 event, it was revealed that Defendants had released voter registration information and applications to the "King Street Patriots," a Tea Party group, for an "independent review."
18. The documents disclosed were the same type of documents Defendants resisted disclosing to Plaintiffs in this case and therefore was inconsistent with this Court's Order regarding production of documents.
19. The disclosure of documents also did not comply with paragraph 7(a) of the Resolution Agreement because upon information and belief King Street Patriots had not obtained authorizations from the applicants at issue.
20. The disclosure of documents was also a violation of 42 U.S.C. § 1973c because it is a change in election practices or procedures that has not been pre-cleared.
21. Disclosure of official election records on a partisan basis is unlawful. *See* 42 U.S.C. § 1973gg-6(i) and 42 U.S.C. § 1971(a)(2)(A).
22. At the August 24, 2010 event, Defendant Vasquez admitted to violations of paragraph 8(c) in disclosing that 1,133 applications were rejected for the alleged failure to provide a Social Security Number (SSN) or Driver's License Number (DL).

23. The practice or procedure described in the paragraph above also is in violation of 42 U.S.C. § 1973c because it is a change in election practices or procedures that has not been pre-cleared.

24. Federal law does not require an applicant to provide their TDL or SSN to register to vote and Defendants' efforts to require same is unlawful. *See* 42 U.S.C. § 1971(a)(2)(B).

25. At the August 24, 2010 event, Defendant Vasquez admitted he was referring, for prosecution, 1,597 persons for allegedly submitting multiple voter registration applications.

26. Submitting multiple applications is not a crime.

27. It is to be expected that multiple applications would be submitted from a public that is aware Defendants have systematically failed to register lawful voters over the last several years.

28. It is to be expected that multiple applications would be submitted from a public that is aware Defendants continuously fail to comply with election deadlines pertaining to the timely processing of applications.

29. Multiple applications are the result of concerted efforts by citizens to obtain registration despite Defendants' unlawful activities.

30. Referral of these matters and others, none of which are legitimate crimes, for criminal prosecution amounts to voter intimidation and is unlawful. *See* 42 U.S.C. § 1971b.

31. Announcement of alleged criminal prosecution is designed to stifle registration and intimidate the public.

32. Referral of these matters and others for criminal prosecution is in violation of 42 U.S.C. § 1973c because it is a change in election practices or procedures that has not been pre-cleared.

33. At the August 24, 2010 event, Defendant Vasquez admitted applications were rejected because of his subjective belief the applicant's signature did not match another application or record.

34. The practice or procedure described in the paragraph above is a violation of 42 U.S.C. § 1973c because it is a change in election practices or procedures that has not been pre-cleared.

35. Defendant Vasquez is implementing the voter registration form as an unlawful test or device in violation of 42 U.S.C. § 1973b.

36. Defendants have failed to process applications within the timeline required by elections laws and in violation of the Resolution Agreement.

37. Defendant Vasquez has admitted that approximately 10,000 proper and timely received applications are pending even though the law requires they be processed in seven days.

38. Defendants failed to follow the dispute resolution procedure of the settlement agreement at paragraph 6 when they enacted these voting changes in violation of the settlement.¹

39. Upon information and belief, Defendants are violating other terms of the settlement as well as state and federal laws not mentioned herein.

40. The actions of Defendant Vasquez as described above, and others not yet discovered, amount to contempt of the federal voting laws. *See* 42 U.S.C. § 1971(f).

41. On November 2, 2010, a General Election will occur.

42. October 4, 2010 is the deadline to submit a voter registration application. *See* TEX. ELEC. CODE § 13.143.

43. Absent emergency relief, granted by this Court, Harris County voter registration will be plagued with many, if not all, of the same election law violations as were committed by Defendants in the last General Election.

II.

PARTIES

44. Plaintiff, TEXAS DEMOCRATIC PARTY, is a political party formed under the Texas Election Code, whose address is 505 West 12th Street, Austin, Travis County, Texas 78701.

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

¹ Contemporaneous with the filing of this Petition, Plaintiffs have demanded mediation under paragraph 6 of the Resolution Agreement. Counsel have already met and conferred under the agreement. The short time between now and the voter registration cut-off required this suit and immediate action.

46. 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.

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

48. Defendant LEO VASQUEZ is the Harris County Tax Assessor Collector and Harris County Voter Registrar and may be served with process at 1001 Preston, Harris County, Texas 77002.

49. Defendant HARRIS COUNTY, TEXAS is a political subdivision of Texas that can be served through counsel herein.

III.

JURISDICTION AND VENUE

50. The Court has jurisdiction over this matter under 28 U.S.C. §§ 1331, 1343(3) & (4), and 1367(a). The Court also has jurisdiction under 42 U.S.C. § 1983.

51. 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.

IV.

DECLARATORY JUDGMENT/WRIT OF MANDAMUS

52. 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 and state 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.

53. This is also a request for a Writ of Mandamus to direct a state officer to comply with his non-discretionary duties created by state and/or federal law.

V.

CAUSES OF ACTION

COUNT 1:

**The Defendants' Actions Burden the Fundamental Right to Vote
in Violation of the Due Process Clause of the
Fourteenth Amendment to the United States Constitution**

54. Plaintiffs incorporate the foregoing by reference.

55. Defendants' actions above violate the due process rights of Plaintiffs and the affected voters.

56. Defendants' 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 Defendants' Actions Burden the Fundamental Right to Vote
in Violation of the Equal Protection Clause of the
Fourteenth Amendment to the United States Constitution**

57. Plaintiffs incorporate the foregoing by reference.

58. Defendants' actions described above violate the equal protection rights of Plaintiffs and the affected voters.

59. Defendants' 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.

60. Defendants' actions in releasing voter registration data under different terms to different groups violates the equal protection rights of Plaintiffs and the affected voters.

COUNT 3:

**The Defendants have Violated 42 U.S.C. § 1973gg-6(i) by
Discriminatory Compliance**

61. Plaintiffs incorporate the foregoing by reference.

62. 42 U.S.C. § 1973gg-6(i) provides a requesting party is entitled to information requested concerning voter registration procedures.

63. Defendant Vasquez has complied with this provision of the law only in so far as it benefits his political friends.

COUNT 4:

**The Defendants have and Continue to Violate
42 U.S.C. § 1971(a)(2)(B)**

64. Plaintiffs incorporate the foregoing by reference.

65. Defendants deny 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.

66. 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 Defendants have and Continue to Violate
42 U.S.C. § 1973c**

67. Plaintiffs hereby incorporate the foregoing by reference.

68. 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. Determination of Section 5 claims requires a three-judge panel.²

69. 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

² Plaintiffs assume the Court's earlier constituted three-judge panel applies to this case. *See* Doc. No. 20. If not, a request is hereby made to empanel a three-judge Court.

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.

70. Defendants are subject to the pre-clearance requirements of Section 5.

71. Defendants are 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.

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

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

COUNT 6:

**The Defendants have and Continue to Violate
42 U.S.C. § 1973gg**

74. Plaintiffs incorporate the foregoing by reference.

75. Defendants have and continues to violate the National Voter Registration Act, 42 U.S.C. § 1973gg.

COUNT 7:

Breach of Contract

76. Plaintiffs incorporate the foregoing by reference.

77. Defendants have and continue to violate the Resolution Agreement. *See* Exhibit "A."

78. Defendant Vasquez has violated the spirit and intent of the Resolution Agreement.

VI.

REQUEST FOR PERMANENT INJUNCTION

79. Plaintiffs incorporate the foregoing by reference.

80. After full trial on the merits, the Plaintiffs ask the Court to enter a permanent injunction granting the relief requested herein.³

VII.

ATTORNEYS FEES

81. Plaintiffs request award of their reasonable and necessary attorneys' fees for this action. *See, e.g.*, 42 U.S.C. §§ 19731(e), 193gg-9© and 1988. *See also* paragraph 6 of Exhibit "A."

82. 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

83. For the foregoing reasons, the Plaintiffs respectfully request that the Court enter judgment against Defendants consistent with the relief requested herein including but not limited to:

- a. Issue Temporary Restraining Orders and/or a Preliminary Injunction in order to ensure compliance with election laws for the upcoming election;

³ Plaintiffs will file a separate request for emergency and injunctive relief pursuant to the Local Rules.

- b. Require expedited discovery in order to resolve issues in timely fashion, in advance of the election; and
- c. Award judgment to the Plaintiffs for all relief requested, including attorneys' fees.

Dated this 2nd day of September, 2010.

Respectfully submitted,

By: /s/ Chad W. Dunn
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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on September 2, 2010, 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 Defendants)
By Electronic Notice and by Facsimile

/s/ Chad W. Dunn

Chad W. Dunn